INDIA — EXPORT RELATED MEASURES

(DS541)

RESPONSES OF THE UNITED STATES TO WRITTEN QUESTIONS POSED BY THE PANEL AND INDIA

March 18, 2019

TABLE OF REPORTS

SHORT TITLE	FULL CITATION	
Argentina – Footwear Safeguards (AB)	Appellate Body Report, Argentina – Safeguard Measures on Imports of Footwear, WT/DS121/AB/R, adopted 12 January 2000	
Argentina – Textiles and Apparel (AB)	Appellate Body Report, Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items, WT/DS56/AB/R and Corr.1, adopted 22 April 1998	
Australia – Automotive Leather II (Panel)	Panel Report, Australia – Subsidies Provided to Producers and Exporters of Automotive Leather, WT/DS126/R, adopted 16 June 1999	
Brazil – Taxation (AB)	Appellate Body Report, <i>Brazil – Certain Measures Concerning</i> <i>Taxation and Charges</i> , WT/DS472/AB/R ; WT/DS497/AB/R and Add.1, adopted 11 January 2019	
Canada – Aircraft (AB)	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/AB/R, adopted 4 August 2000	
Canada – Autos (AB)	Appellate Body Report, Canada – <i>Certain Measures Affecting the Automotive Industry</i> , WT/DS139/AB/R / WT/DS142/AB/R, adopted 19 June 2000	
Canada – Renewable Energy / Feed-In Tariff Program ("Canada – FIT") (AB)	Appellate Body Reports, <i>Canada – Certain Measures Affecting the</i> <i>Renewable Energy Generation Sector</i> , <i>Canada – Measures</i> <i>Relating to the Feed-In Tariff Program</i> , WT/DS412/AB/R / WT/DS426/AB/R, adopted 24 May 2013	
Columbia – Textiles (Panel)	Panel Report, <i>Columbia – Measures Relating to the Importation of Textiles, Apparel and Footwear</i> , WT/DS461/RW and Add.1, adopted 22 June 2016	
EC – Tariff Preferences (AB)	Appellate Body Report, <i>European Communities – Conditions for</i> <i>the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/AB/R, adopted 20 April 2004	
EU – PET (Pakistan) (AB)	Appellate Body Report, <i>European Union – Countervailing</i> <i>Measures on Certain Polyethylene Terephthalate from Pakistan</i> , WT/DS486/AB/R and Add.1, adopted 28 May 2018	
Japan – Alcoholic Beverages II (Panel)	Panel Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/R / WT/DS10/R / WT/DS11/R, adopted 1 November 1996, as modified	

	by Appellate Body Report WT/DS8/AB/R / WT/DS10/AB/R / WT/DS11/AB/R	
US – (FSC) (AB)	Appellate Body Report, <i>United States – Tax Treatment for</i> <i>"Foreign Sales Corporations"</i> , WT/DS108/AB/R, adopted 20 March 2000	
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US – Large Civil Aircraft (2 nd Complaint) (AB)	Appellate Body Report, <i>United States – Measures Affecting Trade</i> <i>in Large Civil Aircraft – Second Complaint</i> , WT/DS353/AB/R, adopted 23 March 2012	
US – Shrimp (AB)	Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS121/AB/R, adopted 12 January 2000	
US – Softwood Lumber V (AB)	Appellate Body Report, United States – Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R, adopted 31 August 2004	
US – Upland Cotton (AB)	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005	
US – Upland Cotton (Panel)	Panel Report, United States – Subsidies on Upland Cotton, WT/DS267/R, Corr.1, and Add.1 to Add.3, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R	

TABLE OF U.S. EXHIBITS

Ex. No.	Description
US-42	Dictionary Definitions
US-61	Central Excise Act of 1944, as amended (excerpts)
US-62	Central Excise Tariff Act of 1985, as amended (excerpts)
US-63	The First Schedule to the Central Excise Tariff Act, 1985 (Central Excise Tariff 2016-17), last updated 02-02-2017, available online at http://cbic.gov.in/htdocs-cbec/excise/cxt-2016-17-revised/cxt-1617-june16-idx-bkp and subsequent notifications and rate changes.
US-64	Rates of GST on Goods (Ministry of Finance, Department of Revenue, July 3, 2017)
US-65	Rates of Goods and Services Tax at <u>https://cbec-gst.gov.in/gst-goods-services-</u> rates.html, last visited March 14, 2019
US-66	The Goods and Services Tax (Compensation to States) Act, 2017
US-67	Report No.21 of 2014 - Report of the Comptroller and Auditor General of India Performance of Special Economic Zones (SEZs) (Comptroller and Auditor General of India, November, 28, 2014) at: <u>https://cag.gov.in/sites/default/files/audit_report_files/Union_Performance_Dep_t_Revenue_Indirect_Taxes_Special_Economic_Zones_SEZs_21_2014.pdf</u> .
US-68	India Ministry of Commerce and Industry Fact Sheet, March 31, 2012 at http://sezindia.nic.in/upload/latestnews/5907072810f8d202NEWFACTsheet.pdf

1. This submission contains, first, the U.S. responses to the written questions from the Panel and, second, the U.S. responses to the questions posed by India.

QUESTIONS POSED BY THE PANEL TO THE UNITED STATES

ARTICLE 27 OF THE SCM AGREEMENT

Q.21. To both parties: In its arguments, India relies on the fact that the first sentence of Article 27.4 refers to an eight-year period without qualifying this period to commence on the date of entry into force of the WTO Agreement. The third sentence of Article 27.4 also refers to "the 8-year period" and provides for the possibility of developing country Members to request an extension of this period by the SCM Committee for specific subsidy programs. Such requests must be notified "no later than one year before the expiry of this period". WTO Members put in place prior to 1 January 2003 a specific mechanism and procedures for Article 27.4 extensions which they administered over subsequent years.

Do you consider that WTO Members' practice concerning Article 27.4 extensions is a means of interpretation identified in Articles 31 and 32 of the Vienna Convention? If so, which?

2. Consistent with Article 3.2 of the DSU, a WTO adjudicator is to interpret the text of the covered agreements according to customary rules of interpretation of public international law. Article 31 of the Vienna Convention on the Law of Treaties¹ provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."² According to this text ("shall be interpreted"), the starting point for interpreting Article 27 of the SCM Agreement is the text ("the ordinary meaning to be given to the terms of the treaty").³ Thus, as past WTO reports have correctly noted, in the hierarchy of the elements of Article 31, "[a] treaty interpreter must begin with, and focus upon, the text of the particular provision to be interpreted."⁴ Only if the meaning of the text is "equivocal or inconclusive, or where confirmation of the correctness of the reading of the text itself is desired, light from the object and purpose of the treaty as a whole may usefully be sought."⁵

3. The meaning of Article 27 of the SCM Agreement is clear from the ordinary meaning of the text in light of the context and object and purpose of the SCM Agreement. "A period of eight years from the date of entry into force of the WTO Agreement [January 1, 1995]" is January 1, 2003. Article 27 of the SCM Agreement and Annex VII(b) show that India does

¹ Article 3.2 of the DSU provides that the WTO dispute settlement system serves "to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law." While the United States is not a party to the Vienna Convention on the Law of Treaties, the United States does agree that Articles 31 through 33 of the Vienna Convention reflect customary rules of interpretation of public international law and therefore those articles of the Vienna Convention are useful in light of Article 3.2 of the DSU.

² See Argentina – Footwear (AB), para. 91.

³ Japan – Alcoholic Beverages II (Panel), para. 6.7.

⁴ *US* – *Shrimp* (*AB*), para. 114.

⁵ US – Shrimp (AB), para. 114.

not enjoy an additional eight-year phase out period of its challenged schemes after it graduated from Annex VII(b).

4. While the ordinary meaning controls and no further inquiry is necessary, Members' practice concerning Article 27.4 of the SCM Agreement described in the Panel's question provides further support for the fact that there is no additional phase-out period for India. The fact that Members established a specific mechanism and procedures for Article 27.4 of the SCM Agreement extensions prior to January 1, 2003, is consistent with the view that "the 8-year period" refers to a set time beginning on January 1, 1995, and terminating on January 1, 2003.⁶

Q.22. To both parties: To the extent they are relevant to the interpretation of Article 27.2(b), what, if anything, do the third sentence of Article 27.4 and WTO Members' practice under it tell us about the meaning of "for a period of eight years from the date of entry into force of the WTO Agreement" in Article 27.2(b)?

5. Article 27.4 of the SCM Agreement supports the U.S. interpretation of Article 27.2(b). Article 27.2(b) speaks of "[a] period of eight years from the date of entry into force of the WTO Agreement." The first sentence of Article 27.4 reads in relevant part: "[a]ny developing country Member referred to in paragraph 2(b) shall phase out its export subsidies within *the* eight-year period. ..." The third sentence of Article 27.4 references the same time period and reads in relevant part: "[i]f a developing country Member deems it necessary to apply such subsidies beyond *the* eight-year period, it shall not later than one year before the expiry of *this* period enter into consultations with the Committee, which will determine whether an extension of *this* period is justified"

6. The use of the definite article "the" in "the eight-year period" makes clear that the reference is to the same eight-year period that is in Article 27.2(b). "The" is defined as "[d]enoting one or more persons or things already mentioned or known, particularized by context or circumstances, inherently unique, familiar, or otherwise sufficiently identified."⁷ Article 27.4's references to "the eight-year period" refer back to "a period of eight years from the date of entry into force of the WTO Agreement" mentioned in Article 27.2(b) or January 1, 1995 until January 1, 2003.

7. Moreover, as explained in the previous answer, Members' practice under Article 27.4 further supports that Article 27 of the SCM Agreement does not provide for an additional period of time for India.

Q. 23. To both parties: In its arguments concerning the negotiating history, India refers to the draft text by the Chairman of the Negotiating Group for the

⁶ In addition, certain Annex VII(b) countries sought a time extension prior to 2003 under the procedure outlined in Article 27.4 of the SCM Agreement including the Dominican Republic and Guatemala. *See, e.g.*, (G/SCM/64) (Dominican Republic), (G/SCM/72-74) (Guatemala). These Members' practices also demonstrate the view that India is not entitled to any further period of time under Article 27.2(b) of the SCM Agreement.

⁷ New Shorter Oxford English Dictionary, Volume 2, p. 3269 (Thumb Index ed. 1993) (Ex. US- 42).

SCM Agreement circulated on 6 November 1990.⁸ The subsequent Draft Final Act of 20 December 1991 and the ultimately adopted text of the SCM Agreement and its Annex VII differ from the draft text of 6 November 1990 specifically with respect to the issue of the exemption mechanism for Members falling under Annex VII(b) and the transition period. Do you consider that the draft text of 6 November 1990 falls among the means of interpretation identified in Articles 31 and 32 of the Vienna Convention? If so, which?

8. The text of Article 27 of the SCM Agreement is plain, and the Panel need not resort to examining the negotiating history of the SCM Agreement. In any event, it is clear that the November 6, 1990, draft text does not meet any of the elements of Article 31 of the Vienna Convention, and therefore it does not fall among the means of interpretation identified in Article 31.⁹

9. Article 32 of the Vienna Convention permits recourse to "supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion." Supplementary means may be used to confirm the meaning from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable. Again, resorting to supplemental means of interpretation and considering the draft text of November 6, 1990, is unnecessary.

10. The meaning of Article 27 of the SCM Agreement resulting from the application of the customary rules of interpretation reflected in Article 31 of the Vienna Convention is clear. That meaning is not ambiguous or obscure, and does not lead to a manifestly absurd or unreasonable result. In any event, consideration of the November 6, 1990, draft text only demonstrates that Members considered this draft text and did not adopt it. Indeed, the Chairman of the Negotiating Group on Subsidies and Countervailing Measures reported that there was disagreement on Article 27 in the draft and in general it "was clear that the Group

(b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

⁸ Draft text on Subsidies and CVD, (Exhibit IND-4) (dated 7 November 1990); this document refers to MTN.GNG/NG10/W/38/Rev.3 of 6 November 1990.

⁹ Article 31 of the Vienna Convention-General rule of interpretation

^{1.} A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

^{2.} The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

⁽a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

^{3.} There shall be taken into account, together with the context:

⁽a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

⁽b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

⁽c) any relevant rules of international law applicable in the relations between the parties.

^{4.} A special meaning shall be given to a term if it is established that the parties so intended.

was not in a position to reach final agreement on the text" presented in the November 6, 1990, draft.¹⁰

Q. 24. To both parties: The Panel refers to Articles 4.1, 4.4, and 27.7.

- a. How are Articles 4.1, 4.4, and 27.7 to be read together, having in mind cases where the defendant argues that, because of Article 27.7, Article 4 does not apply?
- b. In particular, in such cases, at what stage in the proceedings is a panel to adjudicate upon the applicability of Article 4?
- c. Further, in such cases, can a panel adjudicate upon the applicability of Article 4 without deciding whether the requirements in Article 27.7 are met?

11. The United States answers subparagraphs (a) through (c) together. It is important as an initial matter to recognize that Article 4 of the SCM Agreement has different components that have different functions.

12. Articles 4.1 and 4.4 both apply before there could be any finding as to whether a Member's measure is a prohibited subsidy. The text of Article 4.1 is clear, for instance, that it applies whenever a Member "has reason to believe" that a prohibited subsidy is being granted or maintained by another Member. The text of Article 4.4 is also clear that where a Member has requested consultations under Article 4.1, then either party to those consultations (including the responding party) may refer the matter to the DSB.

13. Some additional components of Article 4 also apply regardless of whether the measure is ultimately found to be a prohibited subsidy, including the expedited timeframes under Article 4.12. At the same time, other aspects of Article 4 apply once there is a determination that a measure is a prohibited subsidy. For instance, Article 4.7 and the requirement that if "the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn."

14. Article 27.7 of the SCM Agreement by contrast operates only "in the case of export subsidies which are in conformity with the provisions of paragraphs 2 through 5" of Article 27. The only means to determine if a measure is in fact an export subsidy let alone one that is in conformity with Articles 27.2 through 27.5 of the SCM Agreement is through a dispute settlement proceeding. This means that once the DSB establishes the panel, the responding Member may raise Article 27 of the SCM Agreement, including Article 27.7, as a defense.

15. A panel would first need to determine if the measure at issue is an export subsidy, and if so whether it is an export subsidy in conformity with Articles 27.2 through 27.5. Only at that point would the conditions of Article 27.7 apply. And at that point, Article 27.7 would mean that even though the measure is an export subsidy, Article 4 would not apply.

¹⁰ MTN.GNG/NG10/24, paras. 3 and 4.

16. But at that point, the relevant components of Article 4, and thus the components that consequently would not apply, by operation of Article 27.7, would only be those relevant to a finding that a measure is an export subsidy. These would include the requirement in Article 4.7 as to the recommendation for the panel to make, as well as the components regarding the compliance phase in Articles 4.10 and 4.11.

17. As a result, a panel would evaluate whether Article 27.7 applies as part of the panel's overall evaluation of the matter referred to it by the DSB. If a panel were to determine, for instance, that the measure at issue is not an export subsidy, then the panel would not need to reach the question of whether the other conditions in Article 27.7 are met.

STATEMENT OF AVAILABLE EVIDENCE

Q. 25. To the United States: Please indicate how each item in your statement of available evidence relates to (a) the existence of the alleged subsidy and/or (b) its nature as a subsidy. In each case, please indicate the relevant provisions (e.g. subsections) of the cited legal instruments (items Nos. 3 to 27 in the statement), or, for items Nos. 1 and 2, the relevant paragraphs of those documents. In preparing your answer, you may want to use the matrix set out in the following table.

	If the item evidences the existence of the measure:		If the item evidences the character of the measure as a subsidy:	
	How?	Relevant provisions or paragraphs	How?	Relevant provisions or paragraphs
Item No. 1				
Item No. 2				
Item No. 3				
Item No. 4				

18. Please see <u>Appendix 1</u>.

Q. 28. To both parties: Article 3.1(a) prohibits subsidies that are de jure contingent upon export performance. Article 3.1(b) prohibits subsidies that are de jure contingent upon the use of domestic over imported goods. In such cases, it may often be the case that the legal instruments that serve to identify the measures at issue also provide evidence of the existence of the subsidies and of their nature as subsidies.

At the same time, the requirements in Article 4.2, which have been specifically laid down for disputes under Article 3, are additional to the requirement, in Article 4.4 of the DSU, to identify the measures at issue.

What are the implications of these two propositions, combined, for the interpretation of Article 4.2? In particular, are there situations in which Article 4.2 may be satisfied by the mere listing of the same legal instruments that serve to identify the measure at issue in the request for consultations? If so, what are examples of such situations?

19. Article 4.2 of the SCM Agreement and Article 4.4 of the DSU contain distinct obligations. However, nothing in the text of the DSU nor the SCM Agreement indicates that the identification of the measures at issue is mutually exclusive from the available evidence with regard to the existence and nature of the subsidy in question.

20. In fact, the legal instruments that identify the measures (consistent with Article 4.4 of the DSU) may also serve as evidence of the existence and nature of the subsidy (consistent with Article 4.2 of the SCM Agreement). This will often be true with a *de jure* prohibited export subsidy because a "subsidy is contingent 'in law' upon export performance when the existence of that condition can be demonstrated on the basis of *the very words of the relevant legislation, regulation or other legal instrument constituting the measure.*"¹¹

21. India, in arguing that the statement of available evidence must include a "basis to demonstrate how the 'character' of these schemes constituted a subsidy,"¹² appears to be arguing that the statement of available evidence must also contain an explanation as to why the evidence demonstrates that the measure is a subsidy. However, in so doing, India confuses evidence with argument, and India's argument is in error. In order to satisfy Article 4.2 of the SCM Agreement, the complaining party must only bring forth available *evidence* as opposed to legal argument.¹³

22. India relies on the Appellate Body report in *US-FSC*. However, in that proceeding, there was no statement of available evidence and the Appellate Body was clear that "we do not find it necessary to rule on whether the European Communities' request for consultations includes a 'statement of available evidence' that satisfies the requirements of Article 4.2 of the SCM Agreement."¹⁴ The Appellate Body was addressing a different issue from the one presented in the Panel's question. In *US-FSC*, the question that the Appellate Body was opining on was whether the requirement for a statement of available evidence could be satisfied by a consultations request because it met the requirements of Article 4.4 of the DSU. Here, there is no question that the U.S. consultations request contained a separate statement of available evidence.

¹⁴ US – FSC (AB), para. 165.

¹¹ Canada – Autos (AB), para. 100 (emphasis added).

¹² See, e.g., India First Written Submission, para. 100.

¹³ See Australia – Automotive Leather II (Panel), para. 9.18 ("[t]he ordinary meaning of the phrase 'include a statement of available evidence' does not, on its face, require disclosure of arguments in the request for consultations.").

23. Situations involving *de jure* export subsidies would be instances in which one would expect the legal instruments comprising the measure at issue would also be the available evidence regarding the existence and nature of the subsidy.

Q. 29. To both parties: Do you consider that a reference to one or more legal instruments can serve both to identify the measures at issue for purposes of Article 6.2 of the DSU, and as evidence of the existence and nature of a subsidy for purposes of Article 4.2?

24. In a dispute involving claims of a *de jure* export subsidy, reference in a panel request to one or more instruments that constitute the measures at issue will often satisfy the requirement in Article 6.2 of the DSU to "identify the specific measures at issue" and listing the same legal instruments in a statement of available evidence included with a consultation request will satisfy the requirements of Article 4.2 of the SCM Agreement.

Q. 30. To both parties: Does the adjective "available" in Article 4.2 mean that a complainant must state all evidence available to the complainant at the time of requesting consultations, or can the complainant limit its statement to the minimum of evidence that is necessary "with regard to the existence and nature" of the alleged subsidy?

25. The text of Article 4.2 does not contain the modifier "all" before "available evidence." Nor would a panel be in a position to know what evidence was available to the Member requesting consultations at the time the consultations were requested, so a panel would not be in a position to know if the Member had identified "all" the evidence available to it at the time. Nor would it be productive or appropriate to invite lengthy procedural disputes over whether the complaining Member had omitted one or more pieces of evidence that should have been available to it.¹⁵ It would be particularly inappropriate in light of the expedited timeframes that Members agreed should govern disputes where the complaining Member considers the measure at issue is a prohibited subsidy.

26. "Available" is defined as "[a]ble to be used or turned to account; at one's disposal; within one's reach, obtainable. ...¹⁶ A panel has described "available" evidence as not "absolutely comprehensive and exhaustive of the entire universe of all available evidence,"¹⁷ but rather the evidence available to the complaining Member at the time of the consultations request.¹⁸ Based on the dictionary definition and text of Article 4.2, "available evidence" means the evidence of a prohibited export subsidy at the disposal of the complaining Member

¹⁵ Inviting responding Members to argue that a statement of available evidence is insufficient because it does not contain "all" available evidence could create the very odd situation of a responding Member arguing that "here is a piece of evidence the complaining Member omitted as to the existence and nature of the measure concerned as a prohibited subsidy" even while arguing "and by the way, that measure is not a prohibited subsidy so there can be no evidence that shows it is."

¹⁶ New Shorter Oxford English Dictionary, Volume 1, p. 154 (Thumb Index ed. 1993) (Ex. US- 42).

¹⁷ US – Upland Cotton (Panel), para. 7.102.

¹⁸ US – Upland Cotton (Panel), para. 7.101.

at the time it requests consultations.¹⁹ In the case of *de jure* export subsidy challenges, the available evidence to the complaining Member will often be the legal instruments constituting the measures regarding the existence and nature of the subsidy in question.

27. In such cases, as here, the evidence relied upon by the complaining party during the course of the panel proceeding may differ only slightly from the evidence presented in the statement of available evidence. It would be highly unusual for a panel to find that a complaining party satisfied its burden of *establishing* a prohibited export subsidy under Article 3 of the SCM Agreement, but had not - using nearly identical evidence (i.e., the legal instruments) - satisfied its necessarily lower burden under Article 4.2. Article 4.2 only requires the inclusion of a statement of available evidence with regard to the *existence* and *nature* of those subsidies.

FINANCIAL CONTRIBUTION: IN GENERAL

Q. 31. To the United States: Please indicate the exchange rate you used to compile the table in paragraph 3 of your first written submission, its source, and your criterion for selecting that specific exchange rate.

28. The United States relied upon the US Federal Reserve's G5A average exchange rate for 2017 of 65.07 INR to USD.²⁰ According to the United States Federal Reserve, the G5A annual exchange rates are based on "daily noon buying rates for cable transfers in New York City certified for customs purposes by the Federal Reserve Bank of New York."²¹

29. Based on the information available to the United States at the time of its first written submission, it was not possible to disaggregate the Indian government's revenue forgone or direct payments for the challenged schemes on a monthly, weekly, or daily basis. Therefore, an annual exchange rate was the most appropriate.

Q. 32. To the United States: Please indicate the source of the value of the benefit conferred under the Duty-Free Imports for Exporters Scheme (DFIES) in the table at paragraph 3 of your first written submission.

30. The United States estimated the potential benefit for this scheme based on export data released by the various Indian Export Promotion Councils that administer the duty-free certificates for this scheme.

31. The relevant Export Promotion Councils are:

Eligible Sector

Export Promotion Council

¹⁹ Of course, since consultations are intended in part to allow for a clarification of the facts, there may often be additional evidence produced as a result of consultations, and therefore the complaining Member may have different or additional evidence available at the time of a panel request.

²⁰ See Board of Governors of the Federal Reserve System, Foreign Exchange Rates (Release Date January 2, 2019), <u>https://www.federalreserve.gov/releases/g5a/current/</u> (last visited February 26, 2019).

²¹ See Board of Governors of the Federal Reserve System, Foreign Exchange Rates (Release Date January 2, 2019), <u>https://www.federalreserve.gov/releases/g5a/current/</u> (last visited February 26, 2019).

Marine Products / Aquaculture	Marine Products Export Development Authority
Handicrafts	Export Promotion Council for Handicrafts
Textile Garments	Apparel Export Promotion Council
Silk	Indian Silk Promotion Council
Leather/Synthetic Footwear	Council for Leather Exports
Handloom Garments	Handloom Export Promotion Council
Handloom Made-Ups	Handloom Export Promotion Council
Cotton Made-Ups	Cotton Textile Export Promotion Council
Synthetic Made-Ups	Synthetic and Rayon Textile Export Promotion Council
Carpets	Carpet Export Promotion Council
Sporting Goods	Sports Goods Export Promotion Council

32. For most of the products eligible for DFIES benefits in Notification 50/2017, the relevant condition requires that the applicant be a member of an applicable export promotion council. For example, Condition 28 states that scheme beneficiaries must "be registered with the Apparel Export Promotion Council or Indian Silk Promotion Council or Council for Leather Exports, or as the case may be, Handloom Export Promotion Council" as one of the conditions for obtaining benefits.

33. For textile garments and cotton made-ups, export data for 2016-2017 were unavailable, so the United States used published export data for 2015-2016 for the estimate. For handloom garments, the available export data included some handloom fabrics not covered by DFIES. For synthetic made-ups, data specific to synthetic made-ups alone were unavailable, so the United States relied on export totals for all Synthetic and Rayon Textile Export Promotion Council products. For sporting goods, the United States relied on export data from Global Trade Atlas.

34. In the absence of published information regarding DFIES usage, the United States estimated potential benefits by estimating the total amount of DFIES benefits available to exporters based on the total value of exports for that sector as reported by the applicable export promotion council.

35. For example, the Apparel Export Promotion Council reported that "India's garments exports totaled US \$17 billion during FY 2015-16, giving an inevitable market share of 3.7%."²² The DFIES duty-free benefit for textile garments, found in Condition 28 in Notification 50/2017, is 3 percent of prior-year FOB sales. Therefore, multiplying \$17 billion by 3 percent yielded a potential benefit of \$510,000,000 for textile garments. The United States followed this methodology for all sectors listed above to estimate the total value of DFIES benefits granted.

34. To both parties: Please explain whether and, if so, to what extent, a measure comprising both components that are consistent with footnote 1 and the Annexes

²² See Apparel Export Performance Council, <u>http://aepcindia.com/performance</u> (last visited February 26, 2019).

and components that are not, can benefit from the shelter of footnote 1 for those components that are consistent with it.

For example, assume that a Member has a scheme exempting from import duties both (1) inputs that are consumed in the production of exported products, and (2) goods that cannot qualify as "inputs that are consumed in the production of the exported product" under Annex I(i), as illustrated below:

Component 1	Component 2
Exemption from import duties on inputs consumed in the production of	Exemption from import duties of goods of a type that cannot qualify as inputs consumed
exported products	in the production of exported products

Assume that in every other respect, the scheme is compliant with footnote 1 and Annex I(i). In such a case, (a) does Component 1 benefit from the shelter of footnote 1, whereas Component 2 does not, or (b) does the entire scheme fall outside footnote 1?

36. The fact that some aspect of the measure may, under some limited circumstances, not be a subsidy as defined with reference to footnote 1 does not render the measure WTO-consistent.

37. Under footnote 1, "the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy."

38. Annex I, item (i) explains how the inputs in the exported product could enjoy import duty remission or exemption. It permits "remission or drawback of import charges [not] in excess of those levied on imported inputs that are consumed in the production of the exported product [making normal allowance for waste]." The consumption of the input in the production of the exported product is a pre-requisite condition that must be established before consideration of whether any remission or drawback has been "excessive." Because that condition does not exist under Component 2, then the measure would not meet the criteria in footnote 1 and Annex I, item (i). The hypothetical "exported product" would receive improper exemptions for products not consumed in its production.

39. There have been instances in which the application of a measure may in some circumstances be inconsistent with a covered agreement and be consistent in others; to the extent the measure necessarily results in a WTO-inconsistency in some circumstances, the measure was found to be in breach. For instance, in *Argentina – Textiles*, the Appellate Body found "that the application of a type of duty different from the type provided for in a Member's Schedule is inconsistent with Article II:1(b), first sentence, of the GATT 1994 to

the extent that it results in ordinary customs duties being levied in excess of those provided for in that Member's Schedule."²³

Q. 35. To both parties: When a challenged scheme exempts specified goods (or groups of goods, or all goods) from customs duties and other indirect taxes, while the same goods are subject to duties or taxes outside the challenged scheme, is there a requirement to conduct a "three-step test", including in particular an examination of the structure of the domestic tax system and its organizing principles²⁴, in order to ascertain whether government revenue that is otherwise due has been foregone within the meaning of Article 1.1(a)(1)(ii)?

40. Article 1.1(a)(ii) of the SCM Agreement provides that "there is a financial contribution . . . where government revenue that is otherwise due is foregone or not collected." The plain language of the SCM Agreement does not refer to a "benchmark" determination or a "three-step test."

41. The Appellate Body has applied a three-step approach that (i) identifies the tax treatment that applies to the income of the alleged subsidy recipients; (ii) identifies a benchmark for comparison; and (iii) compares the challenged tax treatment and the reasons for it with the benchmark tax treatment.²⁵ In the second step, the Appellate Body has noted that determining a benchmark may require examining the "structure" and "organizing principles" of a Member's domestic tax system.²⁶ Both the United States and India agreed at the substantive meeting that there is no need to examine the structure and organizing principles of India's domestic tax regime.

42. While a three-step approach can serve as a useful analytical tool in certain cases, it is unnecessary in this dispute under these facts.

43. First, the challenged schemes provide for a 100% exemption of customs duties and the degree or rate of the exemption is not at issue.²⁷ The applicable treatment to the subsidy recipients in the challenged schemes is a 0 percent import duty rate.

44. Second, while the applied import duty rate may vary by product, exporters participating in the challenged schemes, who receive blanket import duty exemptions, do not

²⁵ Brazil – Taxation (AB), para. 5.162.

²⁶ Brazil – Taxation (AB), para. 5.163.

²⁷ In *US* – *Large Civil Aircraft (2nd complaint)*, the Appellate Body used a three-step test to identify the benchmark tax rate applicable to general tax rates for businesses engaged in manufacturing (.484%), wholesaling (.484%), and retailing (.471%) activities. In comparison, the tax rate, under the challenged scheme there, for the gross income of commercial aircraft and component manufacturers was .2904%. The general tax rates are what would have applied to the commercial aircraft and component manufacturers in the absence of the challenged scheme. *US* – *Large Civil Aircraft (2nd complaint) (AB)*, para. 825.

²³ Argentina – Textiles (AB), para. 55.

²⁴ See, e.g., Appellate Body Reports, *Brazil - Taxation*, paras. 5.162 and 5.196; *US – Large Civil Aircraft (2nd complaint)*, paras. 812-14.

pay import duties, and similarly situated exporters in India, *absent participation in the challenged scheme*, do.²⁸

45. Third, the "reasons for the challenged tax treatment" in the case of the challenged schemes are clear: a reward for export performance.

46. Although the "three-step test" is unnecessary here, the United States identifies the "benchmark" for comparison in response to the Panel's questions at 48, 50, 67, and 84.

47. In this sense, the analysis is similar to that for "like products" – there have been instances in which panels or the Appellate Body have found that there is no need to conduct a more extensive analysis of whether two products are "like" when the only difference is whether a product is imported or not.²⁹

Q. 36. To both parties: In EU – PET (Pakistan), the Appellate Body held:

With particular respect to duty drawback schemes as defined in Annex I(i), footnote 1 of the SCM Agreement highlights that the comparison to be made is between the tax treatment of the inputs imported under the duty drawback scheme that are consumed in the production of the goods destined for export, on the one hand, and the "duties or taxes borne by the like" imported input "when destined for domestic consumption", on the other hand.³⁰

What, if anything, does this say about the extent to which the adjudicator must enquire into the "structure" and "organizing principles" of a Member's tax system³¹, in the context of duty exemptions or remissions?

48. The Appellate Body reasoning in its report in EU - PET (*Pakistan*) is not particularly relevant to this dispute. EU - PET (*Pakistan*) began with the unchallenged³² premise that the

²⁹ See, e.g., Brazil – Taxes (Panel), paras. 7.124-7.126.

³⁰ EU – PET (Pakistan) (AB), para. 5.100.

³¹ See, e.g., Appellate Body Reports, *Brazil - Taxation*, paras. 5.162 and 5.196; US – Large Civil Aircraft (2nd complaint), paras. 812-814.

 32 EU – PET (Pakistan) (AB), para. 5.140 ("[t]]he European Union does not challenge the Panel's review of the Commission's findings on the MBS [the Pakistani duty drawback system], beyond the European Union's claim that the Panel applied the wrong legal standard to the facts of this case."); see EU-PET (Pakistan) (AB), para. 5.92, n.216 ("[w]]e recall that the Panel did not *a priori* exclude the possibility that an investigating authority might permissibly reject a company's characterization of monies obtained from a government as remissions obtained under a duty drawback scheme. However, as the Panel noted, the Commission's findings in the countervailing duty investigation at issue in this dispute did not concern this possibility").

²⁸ If the applicable Indian import duty rate was zero, there would be little incentive for companies to accept the restrictions imposed by India (e.g., the positive net foreign exchange requirement). Thus, participants in the challenged schemes decide that it is better to accept these restrictions, *not borne by other comparable companies*, in exchange for the incentive of a 100% exemption from payment of import duty that *other comparable companies* do not receive.

scheme at issue was a duty drawback scheme.³³ Here, India has asserted that the challenged schemes are proper duty drawback or remission schemes. The United States has demonstrated that the challenged Indian schemes are not proper duty drawback or remission schemes *to begin with* because the schemes are not limited to inputs consumed in exported products and/or do not even attempt to connect the alleged drawback or remission to the import charges or indirect taxes accrued.

49. As a result, there is no need to enquire into the structure and organizing principles of India's tax system since it is not a matter of needing to compare the treatment of a product under one system compared to the treatment of the identical product under another. India's schemes themselves are not tied to the particular input for an exported good.

Q. 37. To both parties: Under the Duty-Free Imports for Exporters Scheme, India caps the total value of import duty exemptions an importer can receive at a level corresponding to a certain percentage of the previous year's exports. India explains that, in this way, "the scheme merely aggregates the value of the duty exemption on the basis of past export values and volume".³⁴ Similarly, under the Merchandise Exports from India Scheme (MEIS), India provides scrips corresponding to a certain percentage of an exporter's past exports. India explains that "the value of MEIS Scrip is calculated using the FOB value of exports, which includes the indirect taxes already paid."³⁵

Do you consider that, under footnote 1 and Annex I(i) or (h), a Member can determine the value of the duty or tax exemptions or remissions to which an exporter is entitled on the basis of aggregate (rather than transaction-specific) values, e.g. by providing for the remission of, or exemption from, duties or taxes representing a certain percentage of exports?

50. In relevant part, footnote 1 of the SCM Agreement calls for "the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued. . ." The plain meaning of footnote 1 calls for "the exemption or remission" of *an* exported product from duties and taxes, or, in other words, the exemption or remission for the specific export involved in the transaction.

51. Under Annex I, item (h), "[t]he exemption, remission, or deferral of prior-stage cumulative indirect taxes³⁶ on goods or services used in the production of exported products

 $^{^{33}}$ EU – PET (Pakistan) (AB), para. 5.92 ("[t]he MBS, the programme of the Government of Pakistan that is at the heart of this issue on appeal, operates as a duty drawback scheme.").

³⁴ India's second written submission, para. 197.

³⁵ India's second written submission, para. 98 (fns. omitted).

³⁶ In relevant part, according to footnote 58:

[&]quot;Prior-stage" indirect taxes "are those levied on goods or services used directly or indirectly in making the product."

in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption...." is not permitted. The SCM Agreement specifically refers to "taxes on goods or services used" rather than alternative text such as an "average of taxes on goods or services typically used." The plain meaning of Annex I, item (h) shows that an examination of actual transactions, rather than an aggregate estimate, is required.

52. Similarly, Annex I, item (i), indicates that, to prevent excess import charge remission, a proper drawback program must account for "import charges³⁷... levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste)...." The plain meaning of "inputs that are consumed" rather than an alternative such as "inputs that could be consumed" or "average of inputs that are consumed" indicates that an examination of actual transactions, rather than an aggregate estimate, is required under Annex I, item (i).

53. The MEIS and DFIES features illustrate that they do not satisfy the conditions in footnote 1, Annex I, item (h), and Annex I, item (i). Under MEIS, the amount of remission has no connection to the amount of indirect taxes or import duty incurred. India does not calculate the value of cumulative prior stage indirect taxes under MEIS. Instead, India determines the amount of duty credit scrips awarded based *solely* on the value of exports, country of export, and item of export. The MEIS is not a proper remission of prior stage cumulative indirect taxes in compliance with Annex I, item (h). Instead, it provides a reward for export performance.³⁸

54. Under DFIES, the duty exemption reward has no connection to the import duty liability. India does not calculate the value of past import duty paid under DFIES. Instead, the DFIES grants duty exemptions at the industry level (e.g., "sporting goods" or "textile garments") without regard to the type of product, the inputs used, and the duties paid (if any) on those inputs. The DFIES is not a proper exemption of import duty liability under Annex I, item (i). Instead, it provides a reward for export performance.

55. In sum, even as asserted by India that an aggregate exemption or remission were proper, India's schemes would still fail. India has provided no evidence showing that it connects or calculates exemption or remission rates under MEIS and DFIES to any cumulative prior stage tax liability or import duty actually incurred.

[&]quot;Cumulative" indirect taxes "are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production."

[&]quot;Indirect taxes" mean "sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all other than direct taxes and import charges."

³⁷ Footnote 58 defines "import charges" as "tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports."

³⁸ See Foreign Trade Policy 3.00 (Ex. US-03).

EXPORT ORIENTED UNITS (EOU) AND SECTOR SPECIFIC SCHEMES

Q. 39. To the United States: At paragraph 89 of its second written submission, you have argued that "EOU/EHTP/BTP [Export Oriented/ Electronics Hardware Technology Park/ Bio-Technology Park] units may import/procure from DTA [domestic tariff area] ... certain specified goods for creating a central facility" which, in the US view, need not be involved in the manufacturing process at all. As you have indicated, these goods include pollution control equipment, forklifts, modular office furniture, air conditioning systems, and security systems. Is this argument additional to your argument on capital goods (i.e. your argument that capital goods are not inputs consumed in the production of the exported product), or the same?

56. This argument is in addition to the argument on capital goods. The relevant dictionary definition of "capital goods" is "the buildings, machines, and equipment that are used to produce products or provide services."³⁹ As the Panel recognizes, items such as office furniture and security systems are not used for the production of other goods and services.

Q. 40. To the United States: Section 6.01(d)(i) of the Foreign Trade Policy (FTP) provides that "[g]oods imported by a unit ... shall be used for export production." Section 6.00 of the FTP provides that EOU/EHTP/BTP units "undertak[e] to export their entire production of goods and services (except permissible sales in [domestic tariff area])". Section 6.08(a)(i) of the FTP provides for "reversal" of the duty exemption on inputs used in the production of goods sold in the domestic tariff area. At paragraph 82 of your second written submission, you have submitted that "[u]nits face no restriction that imported duty-free goods be consumed in the export production process." What is the basis for your assertion?

57. The EOU/EHTP/BTP scheme does not limit duty-free imports to only those products that will be consumed in the production of an exported product. According to Section 6.04 of the Handbook of Procedures (HP), "[g]oods permitted to be imported / procured from DTA" for scheme participants include: a) raw materials, b) capital goods, and c) assets such as office furniture, projectors, computers, and data transmission cables.

58. In Section 6.04 of the HP, units may import "[a]ny other items not mentioned above with approval of BOA." Thus, the list of permitted imports at Section 6.04 is not exhaustive, and units may import "any other items" for which they obtain approval, regardless of whether the items are inputs consumed in the production of the exported product.

59. Additionally, Section 6.01(f) of the FTP states that EOU units may also import free of duty "certain specified goods for creating a central facility."

60. The sections of the FTP cited in the Panel's question support that imported duty-free goods are not required to be consumed in the export production process.

³⁹ Cambridge Dictionary, at <u>https://dictionary.cambridge.org/us/dictionary/english/capital-goods</u> (last visited March 14, 2019).

61. Section 6.01(d)(i) of the FTP states that "[g]oods imported by a unit shall be with actual user condition and shall be *utilized* for export production." The requirement that goods be "utilized" for export production is not equivalent to requiring them to be "consumed in" the exported product – one of the fundamental elements for a proper duty drawback scheme.

62. Section 6.00 of the FTP is irrelevant because it instructs that the EOU/EHTP/BTP "undertak[e] to export their entire production of goods and services . . ." This instruction addresses the export contingency of this scheme and does not address the requirement that inputs be consumed in export production.

63. According to Section 6.08(a)(i), a "reversal of duties of Customs leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption, if any on [sic] the inputs *utilized* for the purpose of manufacturing . . ." Again, "utilized for" does not mean "consumed in" the production of the exported product.

Q. 41. To the United States: At paragraphs 67 and 77 of its second written submission, you have described duty drawback schemes as assessing the import duty on inputs at the time of importation and remitting or refunding the import duty only after exportation of the finished good and verification that the input has been consumed in the production process.⁴⁰ India understands you to argue that duty drawback schemes must operate on a "post-export" basis in the form of duty remission occurring at the time of export of the finished product and upon demonstration of relevant documentation.⁴¹ Is India's understanding of your position correct?

64. India's understanding is incorrect. Regardless of whether they operate on what India labels a "post-export" basis, duty drawback schemes must limit their scope to "imported inputs that are consumed in the production of the exported product" and connect the "remission or drawback of import charges" with "those [import charges] levied." The challenged Indian schemes fail to meet these fundamental elements.

65. As explained previously, the SCM Agreement envisions the connection described above to be based on a firm's actual experience, including actual import duty liability incurred and input consumption, and not on an aggregate, estimated or industry or product-wide rate. For instance, paragraph 2 of Annex II specifies that the analysis involves the amount that is "actually levied" on inputs that are consumed in the production of the exported product.

66. The United States provided an example of a duty drawback model that is conceptually simple to understand in its second written submission. A scheme is straightforward where: (1) an import duty on inputs is assessed at the time of importation, (2) then refunded after exportation of the finished product and confirmation of consumption of inputs. The government and the drawback recipient can then easily determine the *actual amount* of the import duty assessed on imported inputs consumed in the production of the exported product.

⁴⁰ United States' second written submission, paras. 67 and 77.

⁴¹ India's second written submission, para. 42.

Q. 42. To the United States: With regard to India's Central Excise Duty regime, please identify and provide the text of the relevant provisions that impose the duties from which you consider the EOU/EHTP/BTP Schemes to provide for an exemption.

67. The United States identifies the following provisions and provides online citations to their text: (1) India's Central Excise Act of 1944 and Central Excise Tariff Act of 1985 are located online here: <u>http://www.cbic.gov.in/htdocs-cbec/excise/cx-act/cx-act-idx#</u> and (2) the most recent Central Excise Tariff is located here: <u>http://www.cbic.gov.in/htdocs-cbec/excise/cx-act/cx-act-idx#</u> and (2) the compared to the compared to the text of text of

68. We note that the Central Excise Duty (CED) was largely merged into the General Services Tax (GST), so only a small number of goods not subject to GST remain subject to the CED.

Q. 46. To both parties: What are the mandatory elements that WTO law imposes in respect of remission or exemption schemes compliant with footnote 1, read together with Annexes I(g), I(h), and I(i), respectively?

69. The elements that Members agreed are required for a proper remission or exemption scheme differ depending on whether the scheme concerns indirect taxes, cumulative indirect taxes, or import charges.

70. A remission or exemption scheme may fall within the scope of Annex I, item (g) if it contains the following elements, as reflected in the text of item (g): (1) permits remission or exemption for indirect taxes applied to exported products; (2) permits remission or exemption for only production and distribution-related indirect taxes; and (3) requires determining the indirect taxes actually levied on the production and distribution of like products sold for domestic consumption so as not to provide excessive remission or exemption.

71. A remission or exemption scheme may fall within the scope of Annex I, item (h) if the exemption, remission or deferral of prior-stage cumulative indirect taxes: (1) is tied to actual prior stage cumulative indirect tax liability; (2) is limited to goods and services used in the production of the exported product; (3) is tied to inputs, as defined in footnote 61, consumed in the production of exported products; and (4) is determined on actual taxes levied on inputs that are consumed in the production of the exported product.

72. A remission or exemption scheme may fall within the scope of Annex I, item (i) if: (1) there is an input as defined in footnote 61; (2) the input is imported (with the exception of certain home market inputs described in Annex I, item (i)) and Annex III; (3) the input is consumed in the production of the exported product; and (4) the remission or drawback of import charges is not in excess of those levied on the imported inputs.

⁴² India's Central Excise Act of 1944 (Ex. US-61); Central Excise Tariff Act of 1985 (Ex. US-62); and The First Schedule to the Central Excise Tariff Act, 1985 (Central Excise Tariff 2016-17), last updated 02-02-2017, available online at <u>http://cbic.gov.in/htdocs-cbec/excise/cxt-2016-17-revised/cxt-1617-june16-idx-bkp</u>; and subsequent notifications and rate changes (Ex. US-63).

Q. 48. To the United States: Please describe, precisely and comprehensively, the normative benchmark against which the treatment you are challenging must be assessed in order to determine whether it amounts to the foregoing of revenue otherwise due. For each tenet of your description, please point to the precise portions of the evidence on the Panel's record that support it.

73. For the reasons explained in the U.S. response to Question 35, the United States does not believe that a "benchmark" analysis is required under these facts. To recall, the challenged schemes provide for a 100% exemption of customs duties and the degree or rate of the exemption is not at issue. Exporters participating in the challenged schemes, who receive blanket import duty exemptions, do not pay import duties, and similarly situated exporters in India, *absent participation in the challenged scheme*, do. The reasons for the challenged treatment is transparent: a reward for export performance.

74. In the alternative event the Panel considers it should confirm its conclusion through a "benchmark" analysis, we describe the relevant "benchmark" for comparison.

75. As outlined in FTP Chapter 6, the EOU/EHTP/BTP scheme provides for Units to enjoy an exemption on: (1) import duty; (2) integrated goods and services tax (IGST); (3) compensation cess and (4) excise duty. Each of these benefits are granted *contingent upon export performance*, namely the promise to export their entire production and to maintain a positive Net Foreign Exchange (NFE). Below, we identify the benchmark for each of these exemptions.

76. The "benchmark" for comparison of the EOU/EHTP/BTP scheme for the duty exemption is the treatment of exporters under the Customs Tariff Act, 1975, as amended.⁴³ Under that Act, a comparably situated enterprise in India, all things being equal absent participation in the scheme, pays customs duties according to India's national tariff schedule while the Unit is entitled to a duty exemption for export performance. The First Schedule to the Customs Tariff Act, 1975 lists the rate of duty for products, subject to duties, as required by the Customs Act, 1962. The Customs Act of 1962 reads, "[e]xcept as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act of, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.⁴⁴

77. The "benchmark" for comparison for exemption from paying IGST is the treatment of exporters under the IGST Act.⁴⁵ Similarly situated enterprises, all things being equal, would pay the IGST absent their participation in the scheme. According to Chapter III, Section 5 of the IGST: "[1]evy and collection: (1) Subject to the provisions of sub-section (2), there shall

⁴³ Customs Tariff Act, 1975, as amended (Ex. US-07).

⁴⁴ Customs Act, 1962, Section 12 (Ex. US-08).

⁴⁵ See The Integrated Goods and Services Tax Act, 2017, section 5(1) (Ex. US-32); Rates of goods and services tax can be found at <u>http://cbic.gov.in/resources//htdocs-cbec/gst/goods-rates-booklet-03July2017.pdf</u> (Ex. US-64) and <u>https://cbec-gst.gov.in/gst-goods-services-rates.html</u> (Ex. US-65).

be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption . . ."

78. The "benchmark" for comparison for exemption from paying compensation cess is the treatment of enterprises under India's Goods and Services Tax (Compensation to States) Act, 2017 ("Compensation Cess Act").⁴⁶ Similarly situated exporters, all things being equal, would have to pay this compensation cess absent their participation in the scheme.

79. The "benchmark" for comparison for exemption from paying excise duty is the treatment of exporters under India's Central Excise Act of 1944 and Central Excise Tariff Act of 1985 (*see* Q.42).⁴⁷ Similarly situated exporters, all things being equal, would pay the excise duty absent their participation in the scheme. According to the Central Excise Tax Act of 1944, Chapter II, Section 3, "[t]here shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule . . ."

EXPORT PROMOTION CAPITAL GOODS SCHEME (EPCG)

Q. 50. To the United States: Please describe, precisely and comprehensively, the normative benchmark against which the treatment you are challenging must be assessed in order to determine whether it amounts to the foregoing of revenue otherwise due. For each tenet of your description, please point to the precise portions of the evidence on the Panel's record that support it.

80. For the reasons explained in the U.S. response to Question 35, the U.S. does not believe that a "benchmark" analysis is required under these facts. In the event the Panel considers it should confirm its conclusion through a "benchmark" analysis, we describe the relevant "benchmark" for comparison.

81. As outlined in FTP Chapter 5, EPCG participants enjoy an exemption on: (1) import duties, (2) IGST, and (3) compensation cess. Each of these benefits are granted *contingent*

⁴⁶ "The Goods and Services Tax (Compensation to States) Act, 2017 located at: <u>http://gstcouncil.gov.in/sites/default/files/GST-Compensation-to-States-Law.pdf</u> or <u>http://cbic.gov.in/resources//htdocs-cbec/gst/gst-compensation-to-states-</u> <u>act.pdf;jsessionid=4148266AC296AA52D3E029DC88FEE6F5</u>. (Ex. US-66).

The FTP does not specify IGST and compensation cess exemptions for EOU/EHTP/BTP units. India periodically extends exemptions for this scheme via separate notification. Notification 35/2015-20 is the most recent granting document for the IGST exemption for EOUs and EPCG authorization holders. It expires March 31, 2019. *See* <u>http://dgft.gov.in/sites/default/files/Notification%20No%2035%20%E2%80%93%2026-09-2018%20English.pdf</u>. (Ex. US-47).

⁴⁷ India's Central Excise Act of 1944 (Ex. US-61); Central Excise Tariff Act of 1985 (Ex. US-62); and The First Schedule to the Central Excise Tariff Act, 1985 (Central Excise Tariff 2016-17), last updated 02-02-2017, available online at <u>http://cbic.gov.in/htdocs-cbec/excise/cxt-2016-17-revised/cxt-1617-june16-idx-bkp</u>; and subsequent notifications and rate changes (Ex. US-63).

upon export performance, namely, the fulfillment of export obligations. Below, we identify the benchmark for each of these exemptions.

82. The "benchmark" for comparison under the EPCG scheme for the duty exemption is the treatment of exporters under the Customs Tariff Act, 1975, as amended.⁴⁸ A comparably situated enterprise, all things being equal and absent participation in the scheme, in India pays customs duties according to India's national tariff schedule while the EPCG participant is entitled to a duty exemption for export performance. The First Schedule to the Customs Tariff Act, 1975 lists the rate of duty for listed products, as required by the Customs Act, 1962. The Customs Act of 1962 reads, "[e]xcept as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act of, 1975 (51 of 1975)], or any other law for the time being in force, or exported from, India."⁴⁹

83. The "benchmark" for comparison for exemption from paying IGST is the treatment of exporters under the IGST Act.⁵⁰ Similarly situated enterprises, all things being equal, would pay the excise duty absent their participation in the scheme. According to Chapter III, Section 5 of the IGST Act: "[1]evy and collection: (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption . . ."

84. The "benchmark" for comparison for exemption from paying compensation cess is the treatment of exporters under India's the Goods and Services Tax (Compensation to States) Act, 2017 ("Compensation Cess Act").⁵¹ Similarly situated exporters, all things being equal, would have to pay this compensation cess absent their participation in the scheme.

⁴⁸ Customs Tariff Act, 1975, as amended (Ex. US-07).

⁴⁹ Customs Act, 1962, Section 12 (Ex. US-08).

⁵⁰ The Integrated Goods and Services Tax Act, 2017, section 5(1) (Ex. US-32); Rates of goods and services tax can be found at <u>http://cbic.gov.in/resources//htdocs-cbec/gst/goods-rates-booklet-03July2017.pdf</u> (Ex. US-64) and <u>https://cbec-gst.gov.in/gst-goods-services-rates.html</u> (Ex. US-65).

⁵¹ "The Goods and Services Tax (Compensation to States) Act, 2017 located at: <u>http://gstcouncil.gov.in/sites/default/files/GST-Compensation-to-States-Law.pdf</u> or <u>http://cbic.gov.in/resources//htdocs-cbec/gst/gst-compensation-to-states-</u> <u>act.pdf;jsessionid=4148266AC296AA52D3E029DC88FEE6F5</u>. (Ex. US-66).

Notification 35/2015-20 is the most recent granting document for the IGST exemption for EOUs and EPCG authorization holders. It expires March 31, 2019. *See* <u>http://dgft.gov.in/sites/default/files/Notification%20No%2035%20%E2%80%93%2026-09-</u>2018%20English.pdf (Ex. US-47).

MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS)

Q. 54. To the United States: You characterize the award of MEIS scrips as a direct transfer of funds. Does this mean that you consider that they cannot be characterized as revenue foregone? If so, why?

85. MEIS scrips could best be described as a direct transfer of funds under Article 1.1(a)(1)(i) of the SCM Agreement. Because the scrips can be used to offset import duty liability, MEIS scrips could possibly also be characterized as revenue foregone under Article 1.1(a)(1)(ii) of the SCM Agreement.

Q. 55. To the United States: Could MEIS scrips be described as falling under both Articles 1.1(a)(1)(i) and (ii)? If so, what are the elements/features that MEIS scrips share with direct transfers of funds, and what are the elements/features that they share with government revenue foregone?

86. Yes. In exchange for export performance, India grants duty credit scrips to the MEIS participant. The transfer of a value-bearing financial instrument from India to the recipient constitutes a direct transfer of funds within the meaning of Article 1.1(a)(1)(i).⁵² The MEIS participant can later trade or exchange the scrips to a third party, often for cash.⁵³

87. Additionally, India may be considered to forgo revenue from import duty within the meaning of Article 1.1(a)(1)(ii) when either the original MEIS participant or a subsequent third party redeems the scrips. Nevertheless, the critical juncture is when India transfers the value-bearing financial instrument, the scrips, to the MEIS participant. The government financial contribution in the form of a direct transfer of funds occurs at that time.

Q. 62. To both parties: To your knowledge, in domestic jurisdictions, are 'tax credits'' transferable to third parties for monetary value in arm's length transactions, or are they to be used by the original recipient to satisfy that recipient's tax liability?

88. The United States understands that there are instances in domestic jurisdictions in which a tax credit recipient may transfer credits to a third party for monetary value in certain circumstances.

SPECIAL ECONOMIC ZONES SCHEME (SEZ)

Q. 63. To the United States: At paragraph 110 of your first written submission, you have asserted, by reference to Exhibit USA-30, that India's Income Tax Act, 1961,

 $^{^{52}}$ A direct transfer of funds entails "conduct on the part of the government by which money, financial resources, and/or financial claims are made available to the recipient." *US – Large Civil Aircraft (2nd Complaint) (AB)*, para. 614.

⁵³ An analogous situation is the receipt by a consumer of a store gift card. Although the gift card is not cash and may not be used as freely as cash, it represents a direct transfer of funds to the recipient. The recipient may use the gift card either to offset costs for purchases from the vendor or may sell/trade the gift card for cash, goods, or services to a third party.

as amended, does not permit enterprises, as a general rule, to deduct profits. Please explain how Exhibit USA-30 supports this assertion.

89. Section 80A of the Income Tax Act of 1961, states, in relevant part: "(1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U."⁵⁴ These sections outline the full universe of categories of income that can be deducted from total income. For example, Section - 80HHB (deduction in respect of profits and gains from projects outside India), Section - 80HHBA (deduction in respect of profits and gains from housing projects in certain cases), Section - 80HHE (deduction in respect of profits from export of computer software, etc.), Section - 80-IAB (deductions in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone), Section - 80HHC (deduction in respect of profits retained for export business).

90. While the Income Tax Act of 1961 carves out limited examples of when profits may be deducted, as a general rule, profits are not deductible.

Q. 67. To the United States: Please describe, precisely and comprehensively, the normative benchmark against which the treatment you are challenging must be assessed in order to determine whether it amounts to the foregoing of revenue otherwise due. For each tenet of your description, please point to the precise portions of the evidence on the Panel's record that support it.

91. For the reasons explained in the U.S. response to Question 35, the U.S. does not believe that a "benchmark" analysis is required under these facts. Should the Panel considers it should confirm its conclusion through a "benchmark" analysis, we describe the relevant "benchmark" for comparison.

92. The SEZ provides for 1) the deduction of corporate income of export profits; 2) exemption from customs duty on imported goods; 3) exemption from export duties; and 4) exemption from IGST. Each of these benefits are granted *contingent upon export performance*, namely the promise to maintain a positive NFE. While this benchmark analysis was provided in the U.S. First Written Submission, below we summarize the "benchmark" treatment for each of these benefits.

93. The "benchmark" for comparison of the SEZ scheme for the deduction of corporate income taxes is the treatment of exporters under India's Income Tax Act, 1961, as amended.⁵⁵ India does not permit enterprises, generally, to deduct profits. Thus, a comparably situated enterprise in India, all things being equal and absent participation in the scheme, would pay corporate taxes according to India's Income Tax Act of 1961.

⁵⁴ Income Tax Act, 1961, section 80A (Ex. US-30).

⁵⁵ See Income Tax Act, 1961, section 80A ("Deductions to be made in computing total income: in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in section 80C to [80U].") (Ex. US-30); U.S. Response to Panel Q.63.

94. The "benchmark" for comparison of the SEZ scheme for the import and export duty exemptions are the treatment of exporters under the Customs Tariff Act, 1975, as amended.⁵⁶ A comparably situated enterprise in India, all things being equal absent participation in the SEZ scheme, pays import and export duties according to India's national tariff schedule.

95. The First Schedule to the Customs Tariff Act, 1975 lists the rate of duty for listed (import) products, subject to duties, as required by the Customs Act, 1962. The Second Schedule to the Customs Tariff Act, 1975 lists the rate of duty for listed (export) products,⁵⁷ as required by the Customs Act, 1962. The Customs Act of 1962 reads, "[e]xcept as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act of, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.⁵⁸

96. The "benchmark" for comparison for exemption from paying IGST is the treatment of exporters under the IGST Act.⁵⁹ Similarly situated enterprises, all things being equal, would pay the IGST absent their participation in the scheme. According to Chapter III, Section 5 of the IGST: "[1]evy and collection: (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption . . ."

Q. 68. To both parties: Exhibit USA-60 bears a revised version of Section 53 of the SEZ Rules. Please confirm whether Section 53 as set out in Exhibit USA-28 was the version in force until 18 September 2018, and Section 53 as set out in Exhibit USA-60 is the version in force since 19 September 2018.

97. The version of the SEZ Rules submitted at Exhibit USA-28 is a full copy of the SEZ Rules incorporating various prior amendments up until July 2010. This exhibit is the most recent full version of the SEZ Rules the United States was able to locate.

98. The Special Economic Zone (Amendment) Rules, 2018, submitted as Exhibit USA-60, made various significant modifications to the SEZ Rules, including to Rule 53.

99. The United States understands there to have been various amendments and modifications to the SEZ Rules since their promulgation in July 2010 of the version submitted at Exhibit USA-28 and prior to the promulgation of the Special Economic Zone (Amendment) Rules, 2018. Thus, it is uncertain whether Exhibit USA-28 was in force in its entirety until 18 September 2018.

⁵⁶ Customs Tariff Act, 1975, as amended (Ex. US-07).

⁵⁷ Customs Tariff Act, 1975, Second Schedule (Ex. US-31).

⁵⁸ Customs Act, 1962, Section 12 (Ex. US-08).

⁵⁹ The Integrated Goods and Services Tax Act, 2017, section 5(1) (Ex. US-32). Rates of goods and services tax can be found at <u>http://cbic.gov.in/resources//htdocs-cbec/gst/goods-rates-booklet-03July2017.pdf</u> (Ex. US-64) and <u>https://cbec-gst.gov.in/gst-goods-services-rates.html</u> (Ex. US-65).

100. However, the version of Rule 53 found in the Special Economic Zone (Amendment) Rules, 2018, is, to the best of our knowledge, the version in force since September 19, 2018.

Q. 69. To both parties: Section 53 of the SEZ Rules, laying out the formula for calculating "Net Foreign Exchange", defines item "A" in that formula. Section 2(m) of the SEZ Act, relied upon at paragraph 145 of the United States' second written submission, defines "exports". What is the relationship between these two definitions?

101. Rule 53 of the SEZ Rules states that: Positive Net Foreign Exchange = A - B > 0

102. "A" is defined as "Free on Board of Approval value of exports, including exports to Nepal and Bhutan against freely convertible currency, by the Unit and the value of following supplies of their products, manufactured in the Special Economic Zone and the value of the services (excluding traded goods) namely . . ." It then defines certain supplies of goods that count toward the "A" calculation.

103. "Export" is defined as "send[ing] (esp. goods) to another country."⁶⁰

104. Section 2(m) of the SEZ Act defines "exports" as: (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer [not applicable]; or (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone.

105. Both rules appear to contemplate the common understanding of the term "export."

106. Despite this common understanding and the SEZ scheme's primary focus on foreign "export," India focuses on narrow domestic means to improve an enterprise's NFE that purportedly negates the scheme's export contingency. Section 2(m) of the SEZ Act provides for a limited exception under (iii) for domestic sales, and Rule 53 differentiates between exports on the one hand, and a narrowly defined list of exceptions in the form of encouraged domestic sales, subject to special conditions, by which an SEZ unit may improve its NFE.

107. The availability of these limited exceptions as a secondary means for an SEZ unit to fulfill its NFE does not diminish the primary means for an SEZ unit to fulfill its net foreign exchange requirement – foreign export.

108. India has not and cannot explain why the SEZ scheme only incentivizes exports by SEZ units and not sales to other SEZ units. To recall, SEZ units may deduct from income tax liability 100% of profits from exports for the first five years, and then 50% of profits from exports during the subsequent five years. Profits from domestic sales do not result in the same benefits to SEZ units. If, as India contends, the SEZ units are merely designed to increase the production capacity of the SEZ units, economic activity, investment, and

⁶⁰ New Shorter Oxford English Dictionary, Volume 1, p. 889 (Thumb Index ed. 1993) (Ex. US-42).

employment opportunities,⁶¹ it is puzzling why the incentives skew toward export rather than remaining uniform.

109. Also, the export contingency of a scheme is not lost even if a small number of "exports" made domestically can count toward positive NFE or a small number of exporters can meet their NFE requirement predominantly through domestic sales.⁶²

110. India's own examination of the SEZ scheme supports the U.S. view. The Comptroller and Auditor General of India (CAG), in a report entitled "Performance of Special Economic Zones (SEZs),"⁶³ analyzed exports from SEZ units based on the common understanding of "exports."

111. The CAG reports that: "[a]n average 15 per cent of exports has been sold in DTA and gradually the sales not counting for positive NFE has overtaken the value of DTA sales counting for positive NFE."⁶⁴ Thus, at least 85 percent of SEZ sales were physical exports from India, the intended result of the NFE requirement.

112. The CAG report also notes that "[t]he guiding principles of SEZs, inter alia, include promotion of exports of Goods and Services. Expressing their concern over fall in physical exports, the Public Accounts Committee (PAC) in its 62nd report in the year 2012-13 emphasised the need for having Physical exports and hence recommended that at least 51 per cent of the production of goods and services by a unit in a SEZ be physically exported out of India. We noted in 34 cases⁶⁵ . . . that the SEZ units could undertake physical exports ranging from zero to 46.91 per cent only of their turnover thereby defeating the basic objective of the scheme of earning foreign exchange from overseas by the units by resorting to deemed exports/ DTA sales but not *effecting actual physical exports to foreign countries*...^{*66}

113. While the Department of Commerce noted the NFE impact of certain DTA sales, the CAG concluded that the possibility of an SEZ unit fulfilling its NFE requirement without making physical exports was an unintended loophole incompatible with the SEZ scheme. The CAG emphasized that reliance by SEZ units on domestic sales defeated "the basic

⁶³See

⁶⁵ For comparison, as of March 31, 2012, there were 3,400 operational SEZ units in India according to the Ministry of Commerce and Industry. *See*

⁶¹ India second written submission, para. 154.

⁶² US – Upland Cotton (AB), para. 582; see infra. n.65.

https://cag.gov.in/sites/default/files/audit report files/Union Performance Dept Revenue Indirect Taxes Spe cial Economic Zones SEZs 21 2014.pdf. ("CAG Report") (Ex. US-67).

⁶⁴ CAG Report, p.71 (Ex. US-67).

<u>http://sezindia.nic.in/upload/latestnews/5907072810f8d202NEWFACTsheet.pdf</u> (Ex. US-68). Thus, the CAG identified only one percent of SEZs that were meeting the majority of their NFE obligation via DTA sales. The fact that any SEZs were able to do this was highlighted as a flaw in the scheme by the CAG.

⁶⁶ 2014 CAG Report, p.71 (emphasis added) (Ex. US-67).

objective of the scheme of earning foreign exchange from overseas" through "actual physical exports to foreign countries..."⁶⁷

Q. 70. To both parties: The Panel refers to Section 53 of the SEZ Rules as set out in Exhibit USA-28, and in particular to item "A" therein. Please indicate, for each of items (a) to (o) under item A, which consists of sales to the DTA and which does not.

114. As a preface to the U.S. responses to QQ. 70-73, the United States highlights that the categories described in these questions are the exceptions to the norm (*see* U.S. Response to Panel Q.69). "Exports," as the common understanding of that term is used, constitute the bulk of sales under "A" in Rule 53.

115. Relying on the more recent version of Section 53 of the SEZ Rules found in Exhibit USA-60, the United States understands that all of the items listed following item A (i.e., items (a) through (k)) refer to DTA sales, with the exception of item (h), which may refer either to DTA sales or to exports:

(h) export of services by services Units including services rendered within Special Economic Zone or such services rendered in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by the Reserve Bank of India...

Q. 71. To both parties: For those of items (a) to (o) that do not consist of sales to the DTA, please indicate whether you consider that they are exports (as the term is understood in the SCM Agreement) or not and, if not, what they are.

116. As described in the answer to Q.70, the United States understands that item (h) of Exhibit USA-60 may be an "export," however, the United States does not challenge subsidized exports of services in this dispute.

Q. 72. To both parties: The Panel refers to Section 53 of the SEZ Rules as set out in Exhibit USA-60, and in particular to item "A" therein. Please indicate, for each of items (a) to (k) under item A, which consists of sales to the DTA and which does not.

117. Please see response to Q.70.

Q. 73. To both parties: For those of items (a) to (k) that do not consist of sales to the DTA, please indicate whether you consider that they are exports (as the term is understood in the SCM Agreement) or not and, if not, what they are.

118. Please see response to Q.71.

Q. 74. To both parties: Is all economic activity in a special economic zone under the SEZ Scheme undertaken through a "Unit"?

⁶⁷ 2014 CAG Report, p.71 (Ex. US-67).

119. Regardless of whether all economic activity in the SEZ scheme is undertaken through a "Unit," the United States challenges only subsidies under the SEZ scheme that apply to manufacturers and exporters of goods (i.e., Units, and not the developers of SEZ units or the entrepreneurs establishing the Units).

Q. 75. To both parties: Can a ''developer'' or an ''entrepreneur'' (within the meaning of the SEZ Act and SEZ Rules) undertake economic activities benefiting from the challenged exemptions or deductions outside the context of a Unit?

120. Please see response to Q.74.

Q. 76. To the United States: Are your claims limited to the alleged subsidies to the extent they are provided to Units (or to the entrepreneurs having set up the Units, for activities of the Units)?

121. The United States focuses its claims on the export subsidies provided to the Units under the SEZ scheme.

Q. 77. To the United States: As one of the grounds for arguing that the SEZ Scheme is de facto export contingent, you point out that the SEZ scheme provides for the ability to deduct 100% of export profits from taxable income for five years, and 50% of export profits for a further five years.⁶⁸ Please explain how this argument differs from your argument on de jure export contingency.

122. This element supports both that the scheme is *de jure* and *de facto* export contingent. On *de facto* contingency, the fact that profits for exports are 100% deductible for five years and 50% deductible for an additional five years demonstrates that a producer would be incentivized under this program to seek profits through exports. A producer with only domestic sales and without profits from export would not receive any income tax reductions.

123. As referenced above, India asserts that the SEZ units are merely designed to increase the production capacity of the Units, economic activity, investment, and employment opportunities,⁶⁹ and are not, contrary to the preamble of the SEZ Act, "for the promotion of exports..." This tax incentive for export profits is part of the "total configuration of the facts" that goes toward the inference of a subsidy contingent upon export performance⁷⁰ and rebuts India's purported justification that the SEZ scheme is unconcerned about export performance.

Q. 78. To the United States: Is your argument that the alleged subsidies under the SEZ Scheme are de facto contingent on export performance made as an alternative to the United States' argument of de jure export contingency?

124. The United States provided the argument that the SEZ scheme is *de facto* contingent upon export performance for completeness. As a matter of judicial economy, if the Panel

⁶⁸ Income Tax Act, 1961 (Exhibit US-29), Sections 10A and 10AA.

⁶⁹ India second written submission, para. 154.

⁷⁰ Canada – Aircraft (AB), para. 26.

agrees with the United States that the SEZ scheme is *de jure* contingent upon export performance, the Panel need not conduct a *de facto* analysis.⁷¹

DUTY-FREE IMPORTS FOR EXPORTERS SCHEME (DFIES)

Q. 79. To the United States: All challenged Conditions, except for Conditions 60 and 61 pertaining to Line Numbers 430 and 431, appear to require that the goods be "imported ... for use in [processing/manufacturing specified goods] for export"?⁷² At paragraph 166 of your second written submission, you asserted that the "DFIS imposes no obligation on the producer to utilize the exemption for imported inputs that will be consumed in the production of an exported good. In other words, the imported good could be used to produce a domestic product or an exported product, or sold to a third party". What is the basis for your assertion?

125. The U.S. statement described in the Panel's question was referring to Conditions 60 and 61. Condition 60(i) and (ii) and Condition 61 call for imported goods to be "installed"—rather than used or consumed in processing/manufacturing. Moreover, under these conditions, there is no requirement that an imported good be used in the processing/manufacturing of a subsequently exported product.

126. The United States recognizes that other conditions contain language regarding the processing/manufacturing of the imported good in the exported product. For instance, Condition 28 states that goods should be imported "for use in the manufacture of textile garments or leather garments for export . . ." Despite the inclusion of this language in DFIES, the DFIES still fails to meet the fundamental elements of a duty drawback scheme under the SCM Agreement. The fact that duty-free inputs imported via some provisions of DFIES are inputs for various exported products is not sufficient to establish the scheme as a legitimate drawback scheme.

127. As explained in response to Question 46, a remission or drawback scheme, as described in Annex I, item (i), is not an export subsidy if: (1) there is an input as defined in footnote 61; (2) the input is imported (with the exception of certain home market inputs described in Annex I, item (i)) and Annex III; (3) the input is consumed in production of the exported product; and (4) the remission or drawback of import charges is not in excess of those levied on the imported inputs.

128. The DFIES fails the last element at a minimum. The DFIES fails to connect the drawback of import charges actually levied to the remission or drawback.

129. There is a glaring disconnect between the import duty actually levied on the imported inputs, and India's reward of exemption. The SCM Agreement, on its face, necessitates connecting "the remission or drawback of import charges" with "those levied on imported inputs that are consumed in the exported product." Under DFIES, the amount of duty

⁷¹ See US – Upland Cotton (AB), para. 718 ("panels may exercise judicial economy and refrain from addressing claims beyond those necessary to resolve the dispute.") (citation omitted).

⁷² Notification No. 50/2017, (Ex. US-36); Chart of Customs Notification No. 50/2017 products, (Ex. US-38).

exemption granted for exports is uniform across broad categories of exports based on the FOB value of exports, regardless of what inputs were used, whether the inputs were themselves imported duty-free, or whether the inputs were even imported. As a result, one cannot connect the actual amount of import duty levied on the imported inputs with the amount of the import duty exemption. This fact is unsurprising because the amount of the duty exemption is a reward contingent upon the exporter's export performance.

Q. 80. To both parties: Please indicate, among the items eligible under the challenged Line Numbers of Custom Notification No. 50/2017 for import duty exemption identified in the table in Exhibit USA-36 and in any relevant lists referred to in that table, which are capital goods.

130. The relevant dictionary definition of "capital goods" is "the buildings, machines, and equipment that are used to produce products or provide services."⁷³

131. Footnote 61 of the SCM Agreement further distinguishes capital goods from inputs that are "consumed in the production process [that] are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product."

132. Therefore, under the SCM Agreement, both large fixed assets as well as smaller tools and equipment (hammers, sewing machines, etc.) are capital goods if they are used for the production of the exported product without being physically incorporated into the exported product.

133. On this basis, the items found in Notification 50/2017 at List 21 and List 22 are capital goods. We also identified several items at line number 229 and one item at List 1 that appear to be capital goods. These lists are provided in the attached <u>Appendix 2</u>.

134. While the United States has not identified other goods that on their face appear to be capital goods, the lists in Appendix 2 are non-exhaustive and other goods may be considered capital goods depending on their use (i.e., if they are used for production of the exported product without being physically incorporated into the exported product).

Q. 81. To the United States: Do you consider that any items other than the capital goods listed in the answer to your previous question cannot be inputs consumed in the production of the exported product. If so, please state which.

135. The United States is not aware of any goods available for duty-free importation under DFIES that are not: (1) capital goods or (2) inputs consumed in the production of an exported product. However, as explained in detail to the response to question 79, the fact that an input may be consumed in the production of an exported product is one necessary element of a duty drawback scheme but is not sufficient to constitute a proper duty drawback scheme.

136. Annex I, item (i) lays out, in relevant part, the required elements for a drawback of import charges. These elements include: (1) there is an input as defined in footnote 61; (2)

⁷³ *Cambridge Dictionary*, at <u>https://dictionary.cambridge.org/us/dictionary/english/capital-goods</u> (last visited March 14, 2019).

the input is imported (with the exception of certain home market inputs described in Annex I, item (i)) and Annex III; (3) the input is consumed in production of the exported product; and (4) the remission or drawback of import charges is not in excess of those levied on the imported inputs. The DFIES fails at least the last element as described above.

Q. 82. To both parties: What does ''an exported product'' (''un produit exporté'', ''un producto exportado'') in footnote 1 mean?⁷⁴ Does it mean a product ''as a whole''?⁷⁵

Consider, for example, a scheme that provides for duty exemptions on the importation of specified inputs consumed in the production of the exported product. Next, consider that these duty exemptions are only available until the value of such imports of inputs reaches a given ceiling. Does the existence of this ceiling mean that the scheme no longer falls under footnote 1, because the exemption is not provided for specified inputs into the production of the exported product ''as a whole''?

137. Footnote 1 reads, in relevant part, "the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy." Footnote 1 does not use the phrase "as a whole," nor does the approach adopted by the Appellate Body in the context of anti-dumping duties apply here. The plain meaning of "an exported product" refers to the finished or completed product that is exported. And Annex II, for instance, makes it clear that the analysis is with respect to the taxes or import charges that are "actually levied on inputs that are consumed in the product."

138. The text of Annex II thus affirms that the analysis is not with respect to taxes or import charges levied on some form of the product (which appears to be what the Appellate Body was referring to in using "product as a whole"), but rather is with respect to the particular product that is actually exported.

139. A hypothetical scheme that provides duty exemptions on inputs that are consumed in the production of an exported product might comply with footnote 1 and Annex I, item (i). If the scheme is determined to be a duty drawback scheme, then to comply with Annex I, item (i), the scheme would also need to ensure that the remission or drawback of import charges is not in excess of those actually levied on the imported inputs.

140. The fact that, under this hypothetical scheme, the Member decided to set a ceiling on the total exemption permitted based on the value of imported inputs, which will be consumed in the production of the exported product, would not necessarily disqualify this scheme from footnote 1. However, one would need additional facts about how the ceiling would affect the operation and design of the scheme and the exported product after the ceiling has been reached to see if it still complied with footnote 1.

⁷⁴ Annexes I, items (h) and (i) refer to "the exported product".

⁷⁵ See, e.g., Appellate Body Report, US – Softwood Lumber V, para. 93.

141. This hypothetical scheme contrasts with the DFIES's reward for export performance. Under the DFIES scheme, as explained above, "the remission or drawback of import charges" is completely disconnected from "those [actually] levied on imported inputs that are consumed in the exported product."

Q. 84. To the United States: Please describe, precisely and comprehensively, the normative benchmark against which the treatment you are challenging must be assessed to determine whether it amounts to the foregoing of revenue otherwise due. For each tenet of your description, please point to the precise portions of the evidence on the Panel's record that support it.

142. For the reasons explained in the U.S. response to Question 35, the U.S. does not believe that a "benchmark" analysis is required under these facts. In the event the Panel considers it should confirm its conclusion through a "benchmark" analysis, we describe the relevant "benchmark" for comparison.

143. The DFIES provides for an import duty exemption. This benefit is granted *contingent upon export performance*, namely, the FOB value of exports of a given product during the previous year. Below we identify the benchmark for this exemption.

144. The "benchmark" for comparison under the DFIES scheme is the treatment of exporters under the Customs Tariff Act, 1975, as amended.⁷⁶ A comparably situated exporter, all things being equal absent participation in the scheme, in India pays customs duties according to India's national tariff schedule while the DFIES is entitled to a duty exemption for export performance. The First Schedule to the Customs Tariff Act, 1975 lists the rate of duty for products subject to duties, as required by the Customs Act, 1962. The Customs Act of 1962 reads, "[e]xcept as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act of, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.⁷⁷

145. Accordingly, India forgoes revenue under the DFIES scheme because it does not collect the customs duty that it would otherwise assess.

EXCEPTIONS, DEROGATIONS, AND BURDENS

Q. 85. To both parties: In past disputes, panels and the Appellate Body have drawn a distinction between provisions that limit the scope of application of other provisions (which they have also referred to ''derogations'') and provisions that afford a justification for measures that would otherwise be inconsistent with other provisions (which they have also referred to as ''exceptions'').⁷⁸ Do you agree with

⁷⁶ Customs Tariff Act, 1975, as amended (Ex. US-07).

⁷⁷ Customs Act, 1962, Section 12 (Ex. US-08).

⁷⁸ See, e.g., Appellate Body Reports, *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, para. 5.56.

the point of view that only the latter are exceptions, whereas the former are not, or do you take the view that derogations, too, are exceptions?

146. As an initial matter, we would note that the DSU does not use either the term "derogation" or "exception." It is not clear how distinct those two concepts are. "Derogation" is defined as "[t]he lessening or impairment of the power or authority of, detraction from."⁷⁹ It defines "exception" as "a particular case or individual that does not follow some general rule. . ."⁸⁰ Both concepts appear to contemplate that something is carved out from a general rule, as opposed to demonstrating the scope of the general rule.

147. To a certain extent, the analytic approach used by some panels and in some appeals of trying to ascertain whether a provision is a "derogation" or an "exception" may be useful. Bearing in mind that it is an analytic approach and it is not a distinction found in the text of the covered agreements or in any interpretation agreed to by Members, there would appear to be some overlap between these concepts. It appears to primarily be useful in seeking to understand on which party the burden is appropriately placed in any given proceeding.

148. However, this does not depend on the terms "derogation" or "exception" in the abstract, but rather in a careful review of how various provisions relate and the situation of that particular proceeding. In some instances a provision will specify that notwithstanding the obligation in another provision, nothing prevents a Member from x.⁸¹ In other instances, a provision may specify that another provision or agreement does not apply to x.⁸² And there are other permutations.⁸³ It is not apparent that there is an obvious distinction among the various approaches, nor does the negotiating history indicate that Members were agreeing on something as a "derogation" as opposed to an "exception," or that it was a binary, mutually exclusive means to characterize the relationship between provisions. Accordingly, each situation needs to be approached with caution to avoid inferring consequences never agreed by Members.

Q. 86. To both parties: As a follow-up to the previous question, what is an exception?

- ⁸⁰ New Shorter Oxford English Dictionary, Volume 1, p. 872 (Thumb Index ed. 1993) (Ex. US-42).
- ⁸¹ See, e.g., Article XX of the GATT 1994, Article III:8(b) of the GATT 1994.

⁸² See, e.g., Article 1.5 of the Agreement on Technical Barriers to Trade ("The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures."), and Article III:8(a) of the GATT 1994.

⁸³ See, e.g., Article 2.2 of the SCM Agreement, Article 3.2 of the SPS Agreement, Article 2.2 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits."). There is nothing in the text to indicate that the use of the term "derogate" indicates that this automatically renders this provision a "derogation" in the sense that term has been used by some panels and in some appeals. It is noteworthy that Article 2.22 of the *Agreement on Preshipment Inspection* begins with the phrase: "By derogation to the provisions of Article 2" and also uses the term "exception" ("with the exception of part shipments").

⁷⁹ New Shorter Oxford English Dictionary, Volume 1, p. 642 (Thumb Index ed. 1993) (Ex. US-42).
149. One possible distinction could be that a derogation carves out the scope of that derogation from the rule,⁸⁴ whereas an exception does not follow the obligation or rule and is not confined by the scope of the obligation or rule. But the practical effect of a derogation and exception would be similar if not identical.

150. In any event, with respect to the burden of proof, to the extent that the concepts of "derogation" and "exception" are helpful in evaluating whether a provision is an affirmative defense, we recall the Appellate Body's statement that "the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence."⁸⁵

Q. 87. To both parties: If you consider that derogations are not themselves exceptions: does footnote 1 to the SCM Agreement provide for an "exception", or a "derogation"?

151. Footnote 1 is part of a definition. In this sense, because it is not part of an obligation, it would be neither a derogation nor an exception. Article 1 of the SCM Agreement sets out the definition of a subsidy; footnote 1 then clarifies that measures that fall within the scope of the footnote are also not within the definition of a subsidy.

Q. 88. To both parties: The Panel refers to the statements of the Appellate Body in EC – Tariff Preferences and Canada – Renewable Energy / Canada – Feed-in Tariff Program.⁸⁶ Do you consider that the burden of proof does, or does not, depend on the characterization of a provision as a "derogation" or an "exception"?

152. As we noted, the burden of proof does not depend on the characterization of a provision as a "derogation" or "exception." Instead, as one panel noted, the "usual rule regarding burden of proof in WTO proceedings, unless the text of the covered agreement indicates otherwise . . . [is] the initial burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defense. If that party adduces evidence sufficient to raise a presumption that what it asserts is correct, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut that presumption."⁸⁷

Q. 89. To both parties: In a dispute resting on an allegation of a subsidy under Article 1, which party bears the burden of proving that a measure does / does not

⁸⁴ See, e.g., US - FSC (*Panel*), para. 68 ("[t]he so-called 'exclusion' of 'extraterritorial income' from US taxation is a derogation from this prevailing domestic standard."); *India – Solar Cells (AB)*, para. 5.22 ("We do not consider that the scope of a derogation can extend beyond the scope of the obligation from which derogation is sought.").

⁸⁵ See US – FSC (21.5-EC) (AB) para. 126 citing US - Wool Shirts and Blouses (AB) para. 337.

⁸⁶ Appellate Body Reports, *EC – Tariff Preferences*, para. 88 (footnote omitted); *Canada – Renewable Energy/ Canada – Feed-in Tariff Program*, para. 5.56.

⁸⁷ US – Upland Cotton (Panel), para. 7.270.

meet the requirements in footnote 1 (including the relevant portions of Annexes I to III)?

153. The burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defense. The Appellate Body and panels have recognized this principle repeatedly, and this principle serves as the starting point for considering the allocation of the burden of proof.

154. In any event, it is India that is invoking footnote 1 as a defense to the U.S. claims, and so India bears the burden of proving that its measures meet the conditions of footnote 1.

155. With respect to Annexes I through III, it is India who asserts that the measures are justified under the Annexes, and so it is India that bears the burden of proving that its measures fall within the scope of the relevant provision. The United States has demonstrated that India's measures are not permissible duty drawback measures.

156. It does not follow that the complaining Member would establish its *prima facie* case of an inconsistency with the obligation, and *sua sponte*, raise the defense of the responding Member, and then attempt to disprove the defense it raised. Instead, using the "usual rule regarding burden of proof in WTO proceedings," the complaining party would attempt to establish a prima facie case of an inconsistency with an obligation. In its response, the responding party would raise any applicable defenses that it found appropriate based on the facts and law in those circumstances. If the responding Member establishes the elements of its defense, than the burden would shift to the complaining Member to show how the defense was not applicable.⁸⁸

Q. 90. To both parties: In a dispute resting on an allegation of a subsidy under Article 1, does one of the parties bear the burden of raising footnote 1 and, if so, which party?

157. Here, India is invoking footnote 1 as a defense to the U.S. claims. Therefore, the burden is on India to establish that its measures meet the conditions in footnote 1.

SINGLE SUBSTANTIVE MEETING

Q. 91. To both parties: The Panel recalls that, pursuant to footnote 1 to the timetable, it may schedule additional meetings if required. Do you consider that a second substantive meeting is necessary and, if so, why?

158. *See* Comments of the United States on the Responses of India on Questions 91 and 92 of the Panel Regarding the Holding of a Second Substantive Meeting submitted on March 18,

⁸⁸ See, e.g., Colombia – Textiles (Panel), para. 7.14 ("In the matter before us, and by application of the foregoing criteria, it lies with Panama to make a prima facie case for its claim that the measure at issue is inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994. If Panama is able to make a prima facie case for its claim, it would then be for Colombia to rebut the claim. Since Colombia invoked the general exceptions under Articles XX(a) and XX(d) of the GATT 1994, it lies with Colombia to adduce evidence and legal argument to prove that the measure at issue is justified under those exceptions. If Colombia is able to make a prima facie case for the exceptions claimed, it would then be for Panama to rebut them.").

2019; Response of the United States to Written Question Posed by the Panel Regarding whether to Hold a Second Substantive Meeting (Question 91) submitted on March 4, 2019.

QUESTIONS POSED BY INDIA TO THE UNITED STATES

Footnote 1 of the SCM Agreement

QUESTION 1: In para 41 of their Oral statement, the United States acknowledges that Annex II operates pursuant to a CVD investigation. India agrees. However, the United States uses this line of argumentation to suggest that this fact should preclude India from invoking Footnote 1, where no CVD investigation has been conducted. The United States is combining two different issues. India requests the United States to clarify.

159. The United States has not argued, at paragraph 41⁸⁹ of its opening statement or elsewhere, that India may not invoke Footnote 1 because Annex II is intended as guidance for CVD investigations.

160. Rather, India is the party erroneously combining distinct concepts. In its Second Written Submission,⁹⁰ India incorrectly argued that the United States must apply "an examination within the meaning of Annex II, section II of the SCM Agreement" to demonstrate that the challenged schemes are not duty drawback schemes. Annex II, section II *is* limited to CVD investigations—which this dispute does not involve.

161. In any event, the United States has demonstrated the myriad of ways Footnote 1 is not applicable to the challenged Indian export subsidy schemes. The challenged schemes do not meet the fundamental elements of a duty drawback scheme. For example, there is a disconnect between the amount of remission of duty or tax and the actual amount of duty or tax accrued. In addition, there is no limiting of exemptions, remissions, and duty drawbacks to inputs consumed in exported products.

QUESTION 2: India requests the United States to clarify how or why it considers the "but for" test to be applicable in case of duty drawbacks?

162. For the reasons stated throughout, the challenged India export subsidy schemes do not qualify as proper duty drawback schemes to begin with. This question is moot.

In Re MEIS

QUESTION 3: The Paragraph 3.02 of the FTP merely lists what the scrips may be used for and does not mandatorily require that the scrips be used in such manner. United States alleges that the scrips are being sold for cash. Assuming,

⁸⁹ Opening Statement of the United States, para. 41:

India fails to mention that the section of Annex II it relies upon is one that is only applicable to a countervailing duty investigation. Annex II states: "[i]n examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement...." The plain language of the SCM Agreement shows that the guidelines of Annex II apply to countervailing duty investigations.

⁹⁰ India second written submission, paras. 38-41.

without admitting, that award of MEIS scrips amount to a direct transfer of funds, we request the United States to clarify how the MEIS 'mandates' a benefit.

163. India's question misses the point. Whether the scrips are sold for cash or are used by an MEIS participant to offset import duties, the scrips are value-bearing financial instruments provided by India. India confers a financial contribution and benefit when it provides the scrips to the MEIS participant.

In Re SEZ Scheme

QUESTION 4: With respect to the SEZ Scheme, the United States has limited the evidence produced to the text of the SEZ Scheme itself, in addition to subjective statements of public officials. As stated in India's written submissions, the positive NFE requirement does not mandate exports on the part of an SEZ Unit, and may be satisfied by undertaking domestic sales. Given that the United States has declined from producing any additional data or evidence to support its conclusion that the NFE requirement results in export contingency, how does the United States make such a claim?

164. Please see the U.S. Response to Q.69 of the Panel's questions above.

APPENDIX 1

U.S. RESPONSE TO PANEL Q.25

Statement of	If the item evidence	es the	If the item evidences the	character
Available	existence of the meas	ure:	of the measure as a subsi	dy:
Evidence Item				
Evidence Item 1. Highlights of the Foreign Trade Policy 2015-2020 Midterm Review	How? Yes. This policy document was issued contemporaneously with, and provides evidence of, a legal instrument, the Mid-term Foreign Trade Policy 2015-2020.	Relevant provisions or paragraphs passim	How? This policy document describes the export- contingent nature of the Merchandise Exports from India Scheme (MEIS). Describes MEIS as "a major export promotion scheme which seeks to promote export of notified goods manufactured/produced in India. MEIS incentives are available at 2, 3, 4, and 5% of the FOB value of exports." (p.4) Also describes an "across the board increase of 2% in existing MEIS incentive for exports by MSMEs /labor intensive industries" (p.4). Also boasts that "[s]cope and incentives as a percentage of exports under [MEIS] and [SEIS] enhanced" (p.13) and that "EOU units may import and/or procure from bonded warehouse in DTA or from international exhibition held in India without payment of Customs Duties and Integrated Tax and GST Compensation Cess" (p.14).	Relevant provisions or paragraphs pp. 4, 13, 14
2. Release of the Mid Term Review of Foreign Trade Policy 2015- 2020 Annual Incentives Increased by 2% Amounting to Over Rs	Yes. This policy document was issued contemporaneously with a legal instrument, the Mid-Term Foreign Trade Policy 2015-2020.	passim	This policy document describes the export- contingent nature of MEIS. Boasts that "the FTP review has focused on increasing the incentives for labour intensive MSME sectors. Export incentives under	p. 3

Statement of	If the item evidence	es the	If the item evidences the	character
Available Evidence Itom	existence of the meas			uy:
Available Evidence Item 8,000 cr for Labour Intensive/MSME Sectors	existence of the meas	ure:	of the measure as a subside India (MEIS) have been increased by 2% across the board for labour intensive MSME sectors leading to additional annual incentive of Rs 4,567 cr. This is in addition to already announced increase in MEIS incentives from 2% to 4% for Ready-made Garments and Made Ups in the labour intensive Textiles Sector with an additional annual incentive of Rs 2,743 cr Thus, incentives under the two schemes have been increased by 33.8% (Rs 8,450 cr) from the existing incentives of Rs 25,000 cr	dy:
			leading to boost in exports from the labour intensive sectors" (p.3)	
3. Foreign Trade Policy [1st April 2015 – 31st March 2020] Mid-term Review Updated as on 5 th December, 2017	Yes. This is the primary legal instrument which, together with the Handbook of Procedures (or HBP), lays out the objective and operation of three of the five programs at issue in this dispute: - Merchandise Exports from India Scheme (MEIS) - Export Promotion Capital Goods (EPCG) - Export Oriented Units (EOU) Scheme, Electronics Hardware Technology Parks (EHTP) Scheme, and (Bio- Technology Park) BTP Scheme (A subsequent notification also incorporated language regarding a fourth program, the Duty-Free Imports for Exporters program (DFIE)).	Chapter 3, Chapter 5, Chapter 6	The following is a non- exhaustive list of key excerpts: <u>MEIS (Chapter 3)</u> 3.03 "Objective of the Merchandise Exports from India Scheme (MEIS) is to promote the manufacture and export of notified goods/ products." 3.04 "Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign	Chapter 3, Chapter 5, Chapter 6

Statement of Available Evidence Item	If the item evidence existence of the measure	es the ure:	If the item evidences the of the measure as a subsi	character dy:
			less, unless otherwise	
			specified.	
			<u>EPCG (Chapter 5)</u>	
			5.01(a) "EPCG Scheme allows import of capital goods (except those specified in negative list in Appendix 5 F) for pre- production, production and post-production at zero customs duty. Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto 31.3.2018 only, leviable thereon under the subsection(7) and subsection (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as provided in the notification issued by Department of Revenue. (<i>note: subsequently extended via notification</i>) 5.01(c) "Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods, to	
			reckoned from date of issue of Authorisation.	
			5.04(a) "EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer/services rendered by him, for which the EPCG authorisation has been granted."	
			5.04(b) "EO under the scheme shall be, over and above, the average level of exports achieved by the	

Statement of Available	If the item evidence existence of the measure	es the ure:	If the item evidences the chan of the measure as a subsidy:	racter
Evidence Item			englissent in the succeding	
			applicant in the preceding	
			came and similar products	
			within the overall EQ period	
			including extended period if	
			any: except for categories	
			mentioned in paragraph	
			5.13(a) of HBP. Such	
			average would be the	
			arithmetic mean of export	
			performance in the	
			preceding three licensing	
			years for same and similar	
			products."	
			5.09 "With a view to	
			accelerating exports, in	
			cases where Authorisation	
			more of specific export	
			obligation and 100% of	
			Average Export Obligation	
			till date, if any, in half or	
			less than half the original	
			export obligation period	
			specified, remaining export	
			obligation shall be condoned	
			and the Authorisation	
			redeemed by RA concerned.	
			5.12(a) "Post Export EPCG	
			Duty Credit Scrip(s) shall be	
			intend to import capital	
			goods on full payment of	
			applicable duties, taxes and	
			cess in cash and choose to	
			opt for this scheme. (b)	
			Basic Customs duty paid on	
			Capital Goods shall be	
			remitted in the form of	
			freely transferable duty	
			credit scrip(s), similar to	
			those issued under Chapter	
			3 of FTP. (d) Duty remission	
			EO fulfilled.	
			EOU (Chapter 6)	
			6 00(a) "Units undertaking	
			to export their entire	
			production of goods and	
			services(except permissible	

Statement of	If the item evidence	es the	If the item evidences the	character
Available	existence of the meas	ure:	of the measure as a subsid	dy:
Evidence Item				
			sales in DTA), may be set	
			up under the Export	
			Scheme, Electronics	
			Hardware Technology Park	
			(EHTP) Scheme, Software	
			Cabama an Ria Tachnalagu	
			Dark (RTR) Schome for	
			manufacture of goods "	
			(b) Objectives of these	
			schemes are to promote	
			exports, enhance foreign	
			exchange earnings, attract	
			investment for export	
			production and employment	
			generation.	
			6.01(d)(i)	
			STP/ BTP unit may import	
			and / or procure, from DTA	
			or bonded warehouses in	
			DTA / international	
			exhibition held in India, all	
			types of goods, including	
			capital goods, required for	
			its activities(II) The	
			procurement from bonded	
			warehouse in DTA or from	
			international exhibition held	
			in India shall be without	
			payment of duty of customs	
			leviable thereon under the	
			First Schedule to the	
			Customs Tariff Act, 1975	
			and additional duty, if any,	
			leviable thereon under	
			Section 3(1), 3(3) and 3(5)	
			Act Such imports and/ or	
			procurements shall be made	
			without payment of	
			integrated tax and	
			compensation cess leviable	
			thereon under section 3(7)	
			and 3(9) of the Customs	
			Tariff Act, 1975 as per	
			notification issued by the	
			Department of Revenue and	
			such exemptions would be	
			available upto 31.03.2018	
			subsequent notification)	

Statement of Available Evidence Item	If the item evidence existence of the measure	es the ure:	If the item evidences the of the measure as a subside	character dy:
			period as per Para 6.04 of FTP, failing which it would be liable for penal action." <u>Appendix 6E (Form of Legal</u> <u>Agreement for</u> <u>EOU/EHTP/STP/BTP</u> "AND WHEREAS the unit has been permitted to import/purchase indigenously Plant and Machinery, raw materials, components, spares and consumables free of Import / Central excise duty as per details given at ANNEXURE-I And whereas a license has been granted to the unit by the Government, subject to the achievement of positive NFE as provided for in EOU Scheme." (p.1)	
5. Handbook of Procedures [1st April, 2015 – 31st March, 2020]	Yes. Together with the Foreign Trade Policy, the HBP is the legal instrument specifying procedures for participants in three of the five schemes: -Merchandise Exports from India Scheme (MEIS) (Chapter 3 - Export Promotion Captial Goods Scheme (EPCG) (Chapter 5) - Export Oriented Unit (and sector-specific schemes) (EOU) (Chapter 6)	Chapters 3, 5, and 6	This list of procedures describes the steps participants in MEIS, EPCG and EOU/EHTP/BTP schemes must follow to claim benefits under the programs and the ways in which the benefits may be utilized. The steps generally show that in order to obtain benefits, participants must satisfy various export performance requirements. <u>MEIS</u> HBP 3.01(b) "An application for claiming rewards under MEIS on exports (other than Export of goods through courier or foreign post offices using e- Commerce), shall be filed online, using digital signature, on DGFT website at http://dgft.gov.in with RA concerned in ANF 3A. The relevant shipping bills and e BRC shall be linked with the on line	Chapters 3, 5, and 6

Statement of Available Evidence Item	If the item evidence existence of the meas	ces the ure:	If the item evidences the of the measure as a subsi	character dy:
			application."	
			<u>EPCG</u>	
			HBP 5.10 "Conditions for fulfillment of Export Obligation - In addition to conditions in paragraph 5.04 of FTP, the following conditions shall also be applicable for fulfilment of export obligation: (<i>list</i> <i>follows</i>)	
			<u>EOU</u>	
			HBP 6.01(f) "LoP/LoI shall specify item(s) of manufacture/service activity, annual capacity, projected annual export for first five years in dollar terms, Net Foreign Exchange (NFE) earnings, limitations, if any, regarding sale of finished goods, by- products and rejects in DTA and such other matter as may be necessary and also impose such conditions as may be required."	
6. Public Notice 31/2015-20, Amendments in paragraph (7) of Appendix-6B of Appendices and Aayat Niryat Forms of FTP 2015-2020	Yes. This amends, and provides evidence of, a legal instrument, the Mid-term Foreign Trade Policy 2015-2020.	passim	This document was added to reflect the fact that the export-contingent EOU program was amended.	p. 1
7. Public Notice No. 25/2015- 2020, Removal of mandatory warehousing requirements for EOUs, STPIs, EHTP etc Amendment in (i) paras 6.06, 6.20 and 6.40 of Hand Book of Procedures(HBP) 2015-2020:	Yes. This amends, and provides evidence of, a legal instrument, the Mid-term Foreign Trade Policy 2015-2020.	Preamble	This document was added to reflect the fact that the export-contingent EOU program was amended.	p. 1 – 5

Statement of Available Evidence Item	If the item evidence existence of the meas	ces the ure:	If the item evidences the of the measure as a subsi	character dy:
and (ii) Appendix 6E, 6G,6H, 6M,5C and ANF 6A, ANF 6B of Appendices and Aayat Niryat Forms of FTP 2015-2020- reg.				
8. 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	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Para. 2 Para. 3	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	p. 1 Table 1 Table 2
 9. Public Notice 27/2015-2020, Subject: Merchandise Exports from India Scheme (MEIS)- Additions/amend ments 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 	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Preamble	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	p. 1 Table 1 Table 2
10. Harmonised and Consolidated Table 2 of Appendix 3B as per Public Notice No. 61/2015-20 dated 07.3.2017	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Preamble	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	Table
11. Public Notice 1/2015/2020	Yes. This amends, and	Preamble	This public notice updates	p. 1

Statement of Available Evidence Item	If the item evidence existence of the meas	ces the ure:	If the item evidences the of the measure as a subsi	character dy:
Subject: Amendments in Product Description in MEIS Schedule Table 2 of Appendix 3B	legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.		eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	
12. Public Notice 17/2015-2020 Subject: Harmonising MEIS Schedule in the Appendix 3B (Table 2) with ITC (HS), 2017	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Para. 2 Para. 4	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	p. 1 Annexure
13. Public Notice 22/2015-2020 Subject: Corrections/Ame ndments in Table 2 of Appendix 3B Foreign Trade Policy 2015-20	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Preamble	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	p. 1 Table
14. Public Notice 42/2015-2020 Subject: Amendment in Appendix 3B of the Foreign Trade Policy 2015-20	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Preamble	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	p. 1 Table
15. Public Notice 44/2015-2020 Subject: Amendments to Appendix 3B Foreign Trade Policy 2015-20	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Preamble	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export	p. 1 Table 3 Annexure

Statement of Available Evidence Item	If the item evidences the existence of the measure:		If the item evidences the character of the measure as a subsidy:	
			performance and benefits are based the product being exported and the country to which it is exported.	
16. Public Notice 60/2015-2020 Subject: Amendments/Cor rections in Table 2 of Appendix 3B Foreign Trade Policy 2015-20	Yes. This amends, and provides evidence of, a legal instrument, Appendix 3B of Foreign Trade Policy 2015-2020.	Preamble	This public notice updates Appendix 3B, which lists eligible products and corresponding reward rates under MEIS. Appendix 3B also demonstrates that program participation is contingent upon export performance and benefits are based the product being exported and the country to which it is exported.	Paragraph 2 Paragraph 3 Paragraph 4
17. Public Notice No. 04/2015- 2020, 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 EPCG(EPCG) Scheme	Yes. This amends, and provides evidence of, a legal instrument, the Mid-term Foreign Trade Policy 2015-2020.	Para. 1	This document was added to reflect the fact that the export-contingent EPCG program was amended.	Paragraph 2 Table
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	Yes. This revises, and provides evidence of, a legal instrument, the Mid-term Foreign Trade Policy 2015-2020.	passim	This document was added to reflect the fact that the export-contingent EPCG program was amended.	Box 10 Box 16 Box 18

Statement of Available Evidence Item	If the item evidence existence of the meas	ces the ure:	If the item evidences the of the measure as a subsi	character dy:
EPCG Authorisation] as contained in the Appendices & Aayat Niryat Forms of FTP 2015-20 – reg.				
19. Policy Circular No. 03/2015-20, Relief in Average Export Obligation in terms of Para 5.19 of Hand Book of Procedures of FTP 2015-20	Yes. This revises, and provides evidence of, a legal instrument, the Mid-term Foreign Trade Policy 2015-2020.	Preamble	This document was added to reflect the fact that the export-contingent EPCG program was amended.	Paragraph 3 Annexure
20. Public Notice 47/2015-2020 Amended Appendix 5E and 5F	Yes. This revises, and provides evidence of, a legal instrument, the Mid-term Foreign Trade Policy 2015-2020 and attached Appendices.	Preamble	This document was added to reflect the fact that the export-contingent EPCG program was amended.	Appendix-5E (revised) Appendix-5F (revised)
21. The Special Economic Zones Act, 2005 No. 28 of 2005, issued June 23, 2005, Gazette of India, Extraordinary Part II Section I	Yes. This is a legal instrument which is the main governing document of the Special Economic Zones (SEZ) Scheme.	Preamble	Chapter VI describes some of the benefits available under the SEZ Scheme, in the form of various duty exemptions and sales and purchase tax exemptions. Each form of benefit is a financial contribution from the Government of India in the form of foregone revenue.	Chapter VI
22. The Special Economic Zones Rules incorporating amendments up to July, 2010	Yes. Together with the SEZ Act, the SEZ Rules describe the operational requirements companies must follow while applying for, participating in and exiting from the SEZ scheme.	passim	Non-exhaustive excerpts of interest to a subsidy analysis include: Rule 9: Providing that "exemptions, drawbacks and concessions" will be available for approved SEZ units; Rule 27: providing that "a unit may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing	Chapter-VI Chapter-IV

Statement of Available	If the item evidence existence of the meas	es the ure:	If the item evidences the character of the measure as a subsidy:
			export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio- technology Park unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi- finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations" According to subsection (5), an SEZ unit may also "import or procure from Domestic Tariff Area, all types of goods and services, without payment of duty, taxes or cess for creating a central facility for use by Units in Special Economic Zone" Rule 53: Lays out calculation of Net Foreign Exchange for the SEZ unit, where (Exports – Imports) must be greater than zero for the SEZ to avoid
23. Special Economic Zones (Amendment) Rules, 2010, G.S.R. 501(E)	Yes. This amends the SEZ Rules, which, together with the SEZ Act, describe the requirements companies must abide by while applying for, participating in and exiting from the SEZ scheme. Both the SEZ Act and SEZ Rules are governing measures of the SEZ scheme	passim	This document was added to Form-C5 reflect the fact that the Form-C6 export-contingent SEZ program was amended.
24. Special Economic Zones	Yes. This amends the SEZ Rules, which,	passim	This document was added toArt. 1(b) reflect the fact that the

Statement of Available Evidence Item	If the item evidence existence of the meas	ces the ure:	If the item evidences the of the measure as a subsi	character dy:
(Amendment) Rules, 2017, G.S.R. 585(E)	together with the SEZ Act, describe the requirements companies must abide by while applying for, participating in and exiting from the SEZ scheme. Both the SEZ Act and SEZ Rules are governing measures of the SEZ scheme.		export-contingent SEZ program was amended.	
25. Notification 15/2017- Integrated Tax (Rate)	Yes. This notification is a legal instrument altering benefits available within a Special Economic Zone as described in the Special Economic Zones Act, 2005 No. 28 of 2005.	Preamble Para. 2	Via this notification, SEZ program participants enjoy exemptions from integrated goods and services tax.	Preamble
26. Income Tax Act, 1961, as amended	Yes. The Income Tax Act is a legal instrument that functions as the tax code for India. Section 10A and 10AA provide benefits for SEZs.	Section 10A and 10AA	Section 10A and 10AA provide that SEZ units may claim income tax exemptions on export profits during the first 10 years of operation.	Section 10A and 10AA
27. Notification No. 50/2017- Customs	Yes. Notification 50/2017 is the primary legal instrument providing exemptions from import duties for exports of certain targeted products under the Duty Free Imports for Exporters Scheme.	passim	This policy document indicates benefit available to program participants in the form of import duty exemptions, subject to demonstrated export performance. A financial contribution exists in the form of revenue foregone by the Government of India.	Conditions 10, 21, 28, 32, 33, 36, 60, 61, 101

APPENDIX 2

DFIES PRODUCT LISTS

List 21

Product Name	Product Description	Capital Good?
Cell cultivation devices, namely, roller bottle systems and spinner flasks	Laboratory equipment used to grow cells. ⁹¹	yes
CO2 Incubator	Equipment used to mimic a cell's natural environment at a certain temperature and humidity. ⁹²	yes
DNA/Oligonucleotides Synthesizers	A machine used to produce artificial polynucleotides or oligonucleotides. ⁹³	yes
Electrophoresis System- (Protein & DNA; 2D)	Equipment used DNA, RNA and protein separation based on their size/mass and/or electrical charge. ⁹⁴	yes
ELISA Reader	Equipment used for reading antibody tests. ⁹⁵	yes
ELISA Washer	Laboratory instruments designed to control the procedure of washing experimental samples arranged in plate-based formats. ⁹⁶	yes
Fluorimeters	Devices used for precise quantitation of biological molecules. ⁹⁷	yes
Low temperature freezer (-70 degrees and less)	Freezers used to preserve biological samples. ⁹⁸	yes

⁹¹ See, e.g., <u>https://www.labmanager.com/lab-product/2011/11/co-sub-2-sub-incubators-</u>

⁹² See, e.g., <u>https://www.labcompare.com/General-Laboratory-Equipment/75-CO2-Incubator-Cell-Culture-Incubator/</u>

⁹³ See http://groups.molbiosci.northwestern.edu/holmgren/Glossary/Definitions/Def-D/DNA_Synthesizer.html

⁹⁴ See e.g., <u>https://www.biocompare.com/Lab-Equipment/7120-Electrophoresis-Systems/</u>

⁹⁵ See <u>https://www.theclassroom.com/elisa-reader-7573969.html</u>

⁹⁶ See, e.g., <u>https://www.labcompare.com/Microplate-Instrumentation/311-Microplate-Washer-ELISA-Plate-Washer/</u>

⁹⁷ See <u>https://www.denovix.com/blog/the-working-principle-of-a-fluorometer/</u>

⁹⁸ See, e.g., <u>https://www.labrepco.com/product-category/cold-storage-products/freezers-cold-storage-products/low-temp-ultra-low-temp-freezers-40comma-86comma-</u>

^{150/?}s=&paged=1&facet%5Bproduct cat taxonomy id%5D%5B%5D=6525&action=solr search&solr tax id=6525&pg=1

Spectrophometers (including Nuclear Magnetic Resonance Spectrometers) Cartridges and membranes for ultra-filtration, micro-filtration,	Instruments used to analyze the molecular structure of a material through the interaction of nuclear spins placed in a magnetic field. ⁹⁹ A filter that removes small synthetic organic compounds,	yes yes
reverse osmosis, sterile filtration and viral removal	bacteria, viruses and parasites. ¹⁰⁰	
Centrifuges – tubular, explosion proof, disk stack	Laboratory equipment used for continuous separation of liquids or of very fine particles from liquids. ¹⁰¹	γes
LC-MS machines	Systems used to identify, characterize and quantify compounds such as drug metabolites, environmental toxins and food additives. ¹⁰²	yes
Micro-array equipment including scanners, microfluidic station, arrayers, bio-analyzers, micro- array chips and bio chips	Tools used for genotyping, antibody detection and comparative genome analysis. ¹⁰³	yes
Proteomic Analysers and proteomic lab systems	Systems of laboratory equipment used to analyze the structure and composition of proteins. ¹⁰⁴	yes
Flow Cytometer/FACs	A device used in a number of cell analysis applications ranging from phenotyping to cell health and viability. ¹⁰⁵	yes
Protein Purification System	Equipment used to isolate one or multiple proteins from a complex mixture. ¹⁰⁶	yes

⁹⁹ See, e.g., <u>https://www.jeol.co.jp/en/products/category_nmr.html</u>

¹⁰⁰ See, e.g., <u>http://www.filterwater.com/p-204-10-uf-membrane-filter-cartridge.aspx</u>

¹⁰¹ See, e.g., <u>https://northstarengineered.com/explosion-proof-centrifuges</u>

¹⁰² See, e.g., <u>https://www.thermofisher.com/us/en/home/industrial/mass-spectrometry/liquid-chromatography-mass-spectrometry-lc-ms/lc-ms-systems.html</u>

¹⁰³ See, e.g., <u>https://www.biocompare.com/Lab-Equipment/6580-Microarray-Equipment/</u>

¹⁰⁴ See, e.g., <u>https://www.thermofisher.com/us/en/home/industrial/mass-spectrometry/proteomics-protein-mass-spectrometry.html</u>

¹⁰⁵ See, e.g., <u>https://www.thermofisher.com/us/en/home/life-science/cell-analysis/cell-analysis-learning-center/molecular-probes-school-of-fluorescence/flow-cytometry-basics/flow-cytometry-fundamentals/how-flow-cytometer-works.html</u>

¹⁰⁶ See, e.g., <u>https://us.vwr.com/store/category/protein-purification-systems/594317</u>

Gel Documentation System	Equipment used to record and measure labeled nucleic acid and protein. ¹⁰⁷	yes
Enzyme linked immune SPOT(ELISPOT) reader system	Laboratory equipment used to read membrane type plates. ¹⁰⁸	yes

List 22

Product Name	Product Description	Capital Good?
UV/Visible spectrophotometer, either with PDA and /or kinetics measurement and low bandwidth.	Equipment used to analyze molecular absorption through separation of the different wavelengths of light. ¹⁰⁹	yes
Preparative chromatographic system	Equipment used for mixture separation for laboratory sample preparation. ¹¹⁰	yes
Chiral columns and other HPLC columns for specific application	A tool measuring enantiomeric purity. ¹¹¹	yes
X-ray diffraction equipment	Equipment used to analyze various types of substances from fluids, to powders and crystals. ¹¹²	yes
Capillary electrophoresis	Equipment used to separate molecules. ¹¹³	yes
Robotic sample processing system	Robotic automation equipment used to prepare samples in a laboratory setting. ¹¹⁴	yes
Particle size analyzers, laser diffraction, lights scatterings and photo correlation spectroscopy types	Tools used to determine the size and distribution of particles making up a material. ¹¹⁵	yes

- ¹⁰⁹ See, e.g., <u>http://www.rsc.org/publishing/journals/prospect/ontology.asp?id=CMO:0001803&MSID=C2TA00406B</u>
- ¹¹⁰ See, e.g., <u>https://www.labcompare.com/Laboratory-Analytical-Instruments/147-Preparative-HPLC-System/</u>
- ¹¹¹ See, e.g., <u>https://www.sciencedirect.com/topics/chemistry/chiral-chromatography</u>

¹⁰⁷ See, e.g., <u>https://www.biocompare.com/Bio-Imaging-Microscopy/Gel-Documentation-Gel-Doc-Gel-Imaging-Systems/</u>

¹⁰⁸ See, e.g., <u>http://www.elispot.com/products/reader-systems/</u>

¹¹² See, e.g., <u>https://www.rigaku.com/en/products/xrd</u>

¹¹³ See, e.g., <u>https://www.jove.com/science-education/10226/capillary-electrophoresis-ce</u>

¹¹⁴ See, e.g., <u>https://www.labmanager.com/business-management/2015/03/automating-sample-preparation</u>

¹¹⁵ See, e.g., <u>https://www.labcompare.com/Laboratory-Analytical-Instruments/32-Particle-Size-Analyzer-Particle-Analyzers-Particle-Sizer/</u>

Atomic absorption Spectrophotometer	An instrument used to analyze the concentration of elements in a liquid sample based on energy absorbed from certain wavelengths of light. ¹¹⁶	yes
Tensiometer	A device for measuring the surface tension of a liquid and/or the interfacial tension between two liquids. ¹¹⁷	yes
Moisture balance	An instrument used for moisture determination. ¹¹⁸	yes
Elemental analyzer	A device utilized for carbon, nitrogen, hydrogen and sulfur analysis. ¹¹⁹	yes
High Precision Auto Titrator	A machine used to determine the concentration of a substance in a solution. ¹²⁰	yes
TOC analyzer	Equipment which measures the amount of total organic carbon present in a liquid or water sample. ¹²¹	yes
Ion Chromatograph	A device used to separates ions and polar molecules. ¹²²	yes
Spectrofluorimeter. Luminescence meter	Devices used to detect and quantify fluorophores. ¹²³	yes
Parenteral particle counting system	A device that measures and counts the amount of a particular substance in liquids to meet current regulatory requirements.	yes

¹¹⁶ See, e.g., <u>https://www.labcompare.com/Spectroscopy/Atomic-Absorption-Spectrophotometer/</u>

¹¹⁷ See, e.g., <u>https://www.kruss-scientific.com/services/education-theory/glossary/tensiometer/</u>

¹¹⁸ See, e.g., <u>https://www.pce-instruments.com/us/weighing-equipment/scales-and-balances/moisture-balance-kat_152623_1.htm</u>

¹¹⁹ See, e.g., <u>https://www.ru.nl/science/gi/facilities-activities/elemental-analysis/cn-elemental/</u>

¹²⁰ See, e.g., <u>https://www.labcompare.com/Chemical-Analysis-Equipment/1010-Titration-Equipment/</u>

¹²¹ See, e.g., <u>https://www.labcompare.com/Laboratory-Analytical-Instruments/21-Total-Organic-Carbon-Analyzer-TOC-Analyzers/?search=TOC+analyzer</u>

¹²² See, e.g., <u>https://www.thermofisher.com/us/en/home/industrial/chromatography/ion-chromatography-ic.html</u>

¹²³ See, e.g., <u>https://www.labcompare.com/Spectroscopy/Fluorescence-Spectrophotometer/?search=Spectrofluorimeter.</u>+

¹²⁴ See, e.g., <u>https://www.pmeasuring.com/en/products/liquid/apss-2000-pharmaceutical-system</u>

Particle shape analyzer	A digital imaging system used for particle shape analysis. ¹²⁵	yes
FT-NIR Spectrophotometer	Device used to identify and characterize chemicals and compounds in a test sample. ¹²⁶	yes
FT-Raman Spectrophotometer	A device used to provide information on molecular vibrations and crystal structures. ¹²⁷	yes
Spectropolarimeter	A device used for the determination of the rotatory power of solutions at different wavelengths. ¹²⁸	yes
Adsorption gas apparatus	A device used for measuring a surface area, pore size distribution, and density of powdered materials. ¹²⁹	yes
Freezing point apparatus	A device used to determine the temperature below which solid hydrocarbon crystals form in aviation fuels. ¹³⁰	yes
Hot stage microscope	Equipment used to study polymorphic transformations, phase changes, sublimation, purity, recrystallization, waters of hydration, decomposition, or other thermal processes. ¹³¹	yes
Osmometer	A device for measuring the osmotic strength of a solution, colloid, or compound. ¹³²	yes

- ¹²⁶ See, e.g., <u>https://www.azom.com/materials-equipment.aspx?cat=125</u>
- ¹²⁷ See, e.g., <u>https://www.nanophoton.net/raman/raman-spectroscopy.html</u>
- ¹²⁸ See, e.g., <u>https://www.merriam-webster.com/medical/spectropolarimeter</u>
- ¹²⁹ See, e.g., <u>https://www.labcompare.com/Laboratory-Analytical-Instruments/1448-Gas-Adsorption-Analyzer/</u>

¹²⁵ See, e.g., <u>https://www.retsch-technology.com/products/</u>

¹³⁰ See, e.g., <u>https://www.gogenlab.com/equipment-instruments/petroleum-testing-equipment/freezing-point-apparatus/freezing-point-apparatus</u>

¹³¹ See, e.g., <u>https://www.microtrace.com/technique/hot-stage-microscopy/</u>

¹³² See, e.g., <u>http://www.elysia-raytest.com/en/cataloglight/c26~osmometer</u>

Porosity analyzer	A device used to analyze pore size and pore size distribution. ¹³³	yes
Sample separation instrument	A medical device used to separate various cell types from a range of samples. ¹³⁴	yes
Automated Sampling devices	A device used for faster, sterile and error free sample transfer. ¹³⁵	yes
Surface area analyzer	Used to evaluate a surface area by nitrogen adsorption measured as a function of relative pressure. ¹³⁶	yes
Multiple organic synthesizer	A machine used for performing multiple chemical reactions simultaneously. ¹³⁷	yes
Focused Microwave oven for organic synthesis	Equipment used for heat assisted organic synthesis. ¹³⁸	yes
Immersion Cooling Probe for 100C	Equipment used for continuous uncontrolled low temperature cooling. ¹³⁹	yes
High Pressure Hydrogenator	Equipment used for hydrogenation of molecules at a high pressure (AKA high pressure reactor). ¹⁴⁰	yes
Gas generators	Equipment used to generate nitrogen or hydrogen. ¹⁴¹	yes
Automated dissolution test apparatus	Device used to test drug release behavior of pre-formulations. ¹⁴²	yes
Stability chambers conforming to ICH guidelines	Equipment used to test and store various substances in specific	yes

¹³³ See, e.g., <u>https://www.a-star.edu.sg/Portals/72/fckeditor/uploadfiles/C-094%20SNFC%20Factsheet%20-</u> %20BET%20ASAP%202020.pdf

¹³⁸ See, e.g., <u>http://www.rsc.org/images/MICROWAVE%20FEATURE_tcm18-134356.pdf</u>

- ¹⁴⁰ See, e.g., <u>https://www.helgroup.com/reactor-systems/hydrogenation-catalysis/</u>
- ¹⁴¹ See, e.g., <u>https://www.peakscientific.com/why-a-gas-generator/</u>

¹³⁴ See, e.g., <u>https://www.stemcell.com/products/brands/robosep-cell-separation-instrument.html</u>

¹³⁵ See, e.g., https://www.capsugel.com/biopharmaceutical-technologies/modular-automated-sampling-technology-mast

¹³⁶ See, e.g., <u>https://www.micromeritics.com/Product-Showcase/Surface-Area.aspx</u>

¹³⁷ See, e.g., <u>https://www.peptide.com/the-solution-i-114.html</u>

¹³⁹ See, e.g., <u>https://assets.thermofisher.com/TFS-Assets/LED/brochures/EK-immersion-coolers-brochure-BRTCEKCOOLERS.pdf</u>

¹⁴² See, e.g., <u>https://www.americanpharmaceuticalreview.com/25305-Pharmaceutical-Laboratory-Equipment-and-Instruments/25255-Dissolution-Testing-Analysis-Equipment/</u>

	temperature and/or humidity conditions. ¹⁴³	
Rotational visco meter and Rheometer	Devices used to measure viscosity of a particular substance or material. ¹⁴⁴	yes
Assembly for iontophoresis studies	Equipment which uses an electric current to deliver a medicine or other chemical through the skin.	yes
Ultra filtration equipment	Equipment used to produce high quality potable water through membrane filtration. ¹⁴⁵	yes
Diffusion Cell Apparatus	A device used for measuring the in vitro drug release from creams, ointments and gels. ¹⁴⁶	yes
Densitometer	Device used for the measurement of liquid density. ¹⁴⁷	yes
Sustained release apparatus	A device that measures drug release process. ¹⁴⁸	yes
Suppository testing device	Equipment used for tablet testing. ¹⁴⁹	yes
Zeta potential analyzer	A device used to predict the stability of particle. ¹⁵⁰	yes
Ultracentrifuge	A high speed centrifuge used to determine the relative molecular masses of large molecules in high polymers and proteins. ¹⁵¹	yes

¹⁴⁵ See, e.g., <u>http://www.westech-inc.com/en-usa/products/ultrafiltration-membrane-system</u>

¹⁴³ See, e.g., <u>http://www.cszindustrial.com/Products/Stability-Chambers.aspx</u>

¹⁴⁴ See, e.g., <u>https://blog.viscosity.com/blog/viscometers-vs-rheometers-whats-the-difference</u>

¹⁴⁶ See, e.g., <u>https://orchidscientific.com/product/diffusion-cell-apparatus/</u>

¹⁴⁷ See, e.g., <u>https://www.mt.com/us/en/home/products/Laboratory_Analytics_Browse/density-</u> <u>meter.html?cmp=sea_04010127&SE=GOOGLE&Campaign=MT_ANA-DERE_EN_US&Adgroup=DE-</u> <u>Densitometer&bookedkeyword=densitometer&matchtype=e&adtext=291097964774&placement=&network=g&kclid=_k_EAIaIQobChMI6</u> <u>JiuqdXc4AIVCoTICh2SsQVEEAAYAiAAEgJOEPD_BwE_k_&gclid=EAIaIQobChMI6JiuqdXc4AIVCoTICh2SsQVEEAAYAiAAEgJOEPD_BwE</u>

¹⁴⁸ See, e.g., <u>https://www.semanticscholar.org/paper/Comparison-of-Dissolution-Profiles-for-Sustained-of-Prabhu-Marathe/e11b6fcdcbf0a4898cebad18e76bdda3e3e4721d</u>

¹⁴⁹ See, e.g., <u>https://www.erweka.com/products/physical-testers/suppository-tester.html</u>

¹⁵⁰ See, e.g., <u>http://www.horiba.com/scientific/products/particle-characterization/zeta-potential-analysis/</u>

¹⁵¹ See, e.g., <u>https://www.biology-online.org/dictionary/Ultracentrifuge</u>

Inverted microscope with fluorescence microscopy and photographic attachments	Microscope used for advanced images. ¹⁵²	yes
Transilluminator	Devices used in microbiology to view DNA. ¹⁵³	yes
Modular protein electrophoresis apparatus	A machine where DNA, RNA and protein can be separated based on their size/mass and/or electrical charge.	yes
Nucleic Acid sequencer	Equipment used for nucleic acid sequencing. ¹⁵⁴	yes
Imaging densitometer	Equipment used to measure the density of a particular substance using advanced imaging technology. ¹⁵⁵	yes
Fast protein liquid chromatography	A system used to analyze or purify protein mixtures. ¹⁵⁶	yes
U.V. Crosslinker	An instrument, to bond the DNA to a medium using shortwave ultraviolet energy. ¹⁵⁷	yes
Probe Sonicator	A device used for ultrasonic liquid processing. ¹⁵⁸	yes
Scintillation Counters (Y and B)	An instrument for detecting and measuring ionizing radiation. ¹⁵⁹	yes
CO2 incubator	A device used to grow and maintain microbiological cultures or cell cultures. ¹⁶⁰	yes

¹⁵² See, e.g., <u>https://www.olympus-lifescience.com/en/landing/microscopy-</u> solutions/?gclid=EAlalQobChMI0MHP9Nnc4AIVk7XACh1bIA4KEAAYAiAAEgJIFPD_BwE

¹⁵³ See, e.g., <u>https://www.instructables.com/id/UV-Transilluminator/</u>

¹⁵⁴ See, e.g., <u>http://www.whatisbiotechnology.org/exhibitions/sanger/path</u>

¹⁵⁵ See, e.g., <u>http://www.bio-rad.com/webroot/web/pdf/lsr/literature/4000188.pdf</u>

¹⁵⁶ See, e.g., <u>https://www.ncbi.nlm.nih.gov/pubmed/20978981</u>

¹⁵⁷ See, e.g., <u>https://www.uvp.com/ultraviolet-crosslinkers</u>

¹⁵⁸ See, e.g., <u>https://www.sonicator.com/?gclid=EAIaIQobChMIoMm02uLc4AIVD6lpCh2oCwQ9EAAYASAAEgKwVvD_BwE</u>

¹⁵⁹ See, e.g., <u>https://www.britannica.com/science/scintillation-counter</u>

¹⁶⁰ See, e.g., <u>https://www.labcompare.com/General-Laboratory-Equipment/75-CO2-Incubator-Cell-Culture-Incubator/</u>

Incubator shake for bacterial	A device used to stimulate the	yes
culture	bacterial growth in an incubator	
	by shaking. ¹⁶¹	
Polymerase chain reaction	A machine used for DNA	Ves
machine	rosparch ¹⁶²	yes
machine		
Cell harvester	A device used for cell harvesting	yes
	and filtration. ¹⁶³	
Speed Vac	Centrifugal equipment used for	yes
	removing solvents and	
	concentrating samples while	
	maintaining sample integrity. ¹⁶⁴	
Hybridizing Oven	Equipment used for agitation and	yes
	incubation in molecular biology. ¹⁶⁵	
Protein sequencer	A device used to analyze the	ves
	amino acid sequence of a	,
	protein or peptide. ¹⁶⁶	
	P	
Confocal microscope	A microscope used for increasing	yes
	optical resolution and contrast. ¹⁶⁷	
Amino acid analyzer	A device used for measurement of	yes
	amino acids in foods and	
	biological samples. ¹⁶⁸	
Peptide synthesizer	A device used for peptide	yes
	synthesis. ¹⁶⁹	
Phosphor imager	Device used to measure the light	Ves
	emitted from electrons ¹⁷⁰	yes
Fluorescence activated cell sorter	A device used to separate	yes
	biological cells. ¹⁷¹	

¹⁶¹ See, e.g., <u>https://www.biocompare.com/Lab-Equipment/19614-Laboratory-Incubator-Shakers-Standard/</u>

¹⁶² See, e.g., <u>https://www.terrauniversal.com/applications/polymerase-chain-reaction-pcr-x-php</u>

¹⁶³ See, e.g., <u>http://www.inotechintl.com/index.php/cell-harvester</u>

¹⁶⁴ See, e.g., <u>https://www.thermofisher.com/us/en/home/life-science/lab-equipment/speedvac-vacuum-concentrators.html</u>

¹⁶⁵ See, e.g., <u>https://us.vwr.com/store/product/4787134/vwr-hybridization-ovens</u>

¹⁶⁶ See, e.g., <u>https://www.biocompare.com/21924-Protein-Sequencers/655503-Protein-Sequencer/</u>

¹⁶⁷ See, e.g., <u>https://www.lasertec.co.jp/en/products/principle/principle1.html</u>

¹⁶⁸ See, e.g., <u>https://www.biocompare.com/Lab-Automation-High-Throughput/9669-Amino-Acid-Analyzers/</u>

¹⁶⁹ See, e.g., <u>https://www.biotage.com/product-group/peptide-synthesis-instruments</u>

¹⁷⁰ See, e.g., <u>http://www.els.net/WileyCDA/ElsArticle/refld-a0002973.html</u>

¹⁷¹ See, e.g., <u>https://aip.scitation.org/doi/abs/10.1063/1.1685647</u>

Fermenter	Containers used to grow bacteria and fungi. ¹⁷²	yes
Spray drier	A device used for rapidly turning liquid into powder. ¹⁷³	yes
Protein purification set up	An automatic system used in laboratories for protein purification. ¹⁷⁴	yes
Stimulator	A device used for human or animal biological research. ¹⁷⁵	yes
Two channel organ bath (with two channel recorder accessories a. Isotonic transducer; b. Isomeric transducer; c. pressure transducer)	Device used for passive muscle stimulation and preparation. ¹⁷⁶	yes
Plethymsometer	A device used for measuring of small volume changes. ¹⁷⁷	yes
Blood pressure monitor	A device used to measure blood pressure.	yes
Blood pressure manual scanner	Device used to monitor blood pressure. ¹⁷⁸	yes
Auto analyzer	An instrument used for automatic flow analysis. ¹⁷⁹	yes
Biofuge	A centrifuge used in bioresearch. ¹⁸⁰	yes

¹⁷³ See, e.g.,

- ¹⁷⁵ See, e.g., <u>https://www.biopac.com/product-category/research/stimulation/stimulators/</u>
- ¹⁷⁶ See, e.g., <u>https://radnoti.com/d_product/tissue-organ-bath-systems/tissue-bath-systems/two-channel-tissue-bath-system/</u>

- ¹⁷⁸ See, e.g., <u>https://www.omronhealthcare.ca/wp-content/uploads/BP786CANN-IM_EN.pdf</u>
- ¹⁷⁹ See, e.g., <u>http://www.seal-analytical.com/Products/SegmentedFlowAnalyzers/AA3HRAutoAnalyzer/tabid/59/language/en-</u> <u>US/Default.aspx</u>

¹⁷² See, e.g., <u>https://www.bbc.com/bitesize/guides/zfydmp3/revision/3</u>

¹⁷⁴ See, e.g., <u>https://www.ncbi.nlm.nih.gov/pubmed/16483795</u>

¹⁷⁷ See, e.g., <u>https://www.harvardapparatus.com/plethysmometer.html</u>

¹⁸⁰ See, e.g., <u>https://www.labx.com/product/biofuge-centrifuge</u>

Passive avoidance apparatus with controller	A device used to assess short-term or long-term memory on small laboratory animals. ¹⁸¹	yes
Auto stainer	Laboratory device used to automate immunohistochemistry staining. ¹⁸²	yes
Microtome	A device used to cut extremely thin slices of material. ¹⁸³	yes
Tissue embedding machine	A machine used for tissue imbedding of paraffin. ¹⁸⁴	yes
4 channel auto track system	A device used for cell detection and tracking. ¹⁸⁵	yes
Blood cell counter	A device used for blood count determination. ¹⁸⁶	yes
Blood flow meter	A device used to monitor the blood flow in various blood vessels and to measure cardiac output. ¹⁸⁷	yes
Stereotaxic microscope	A microscope for surgical use. ¹⁸⁸	yes
Microdialysis (pull-push counter)	A device used to measure proteins in larger samples. ¹⁸⁹	yes
Radiotelemetric monitoring system	A remote system to monitor a person's body vitals. ¹⁹⁰	yes
High speed refrigerated research centrifuge	A device used for laboratory centrifugation. ¹⁹¹	yes

¹⁸¹ See, e.g., <u>https://www.harvardapparatus.com/compact-passive-avoidance-panlab.html</u>

¹⁸² See, e.g., <u>https://www.mlo-online.com/automated-slide-stainers.php</u>

¹⁸³ See, e.g., <u>https://www.sciencedirect.com/topics/neuroscience/microtome</u>

¹⁸⁴ See, e.g., <u>http://www.ihcworld.com/products/KEDEE-Embedding.htm</u>

¹⁸⁵ See, e.g., <u>https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3850979/</u>

¹⁸⁶ See, e.g., <u>https://www.ncbi.nlm.nih.gov/pubmed/1344154</u>

¹⁸⁷ See, e.g., <u>https://www.brainkart.com/article/Blood-Flow-Meter 11864/</u>

¹⁸⁸ See, e.g., <u>https://www.wpiinc.com/blog/post/using-a-microscope-with-a-stereotaxic-frame</u>

¹⁸⁹ See, e.g., <u>https://www.criver.com/products-services/discovery-services/vivo-pharmacology/neuroscience-translational-tools/microdialysis/push-pull-microdialysis-proteins-peptides-antibodies?region=3601</u>

¹⁹⁰ See, e.g., https://patents.google.com/patent/US4958645A/en

¹⁹¹ See, e.g., <u>https://www.nuaire.com/himac-cr22n-high-speed-refrigerated-centrifuge</u>

PH meter (3 decimal reading)	A device used to read the PH and temperature simultaneously. ¹⁹²	yes
Microscope phase contrast	A high precision microscope used in biological and medical research. ¹⁹³	yes
Microscope polarizing	A microscope which uses polarized light for bio-research. ¹⁹⁴	yes
Vacuum rotary evaporators with digital display and control, different sizes	A device used for distilling. ¹⁹⁵	yes
Freeze drier (Lyophilizer)	A device used for removal of ice or other frozen solvents. ¹⁹⁶	yes
Precision pipetting devices	A device used to measure the volume of liquid in a laboratory setting. ¹⁹⁷	yes
Refrigerated bath	A device used for refrigerated circulation in biological research. ¹⁹⁸	yes
Low temperature circulatory bath (-33C)	Equipment used for biological sample processing at low temperatures. ¹⁹⁹	yes
Magnetic stirrer with precision temperature control and digital display	A device used for mixing solutions with glycerin viscosity level. ²⁰⁰	yes
Thermostatic blocks (Dry bath) with or without magnetic stirring facility	A device used for viscosity testing. ²⁰¹	yes

¹⁹² See, e.g., <u>http://www.directindustry.com/industrial-manufacturer/precision-ph-meter-115343.html</u>

¹⁹³ See, e.g., <u>https://www.azooptics.com/Article.aspx?ArticleID=691</u>

¹⁹⁴ See, e.g., <u>https://www.keyence.com/landing/lpc/vhx-digital-microscope-polarization-dic.jsp?aw=google-kaenVH195103bb&k_clickid=96f549c3-b6f4-428e-8238-</u>

486cec18ec46&gclid=EAIaIQobChMI3K3qm Hc4AIVQlcNCh0trwZAEAAYASAAEgKDVfD BwE

¹⁹⁵ See, e.g., <u>https://www.ika.com/en/Products-Lab-Eq/Rotary-Evaporators-Rotary-evaporator-distilling-distillation-csp-35/</u>

¹⁹⁶ See, e.g., https://harvestright.com/?gclid=EAIaIQobChMIn9fw1vHc4AIVmsDICh3dlg_fEAAYASAAEgI6lvD_BwE

¹⁹⁷ See, e.g., <u>https://www.dutscher.com/data/pdf_guides/en/UG_020-Impact-of-pipetting-techniques.pdf</u>

¹⁹⁸ See, e.g., <u>http://www.techne.com/product.asp?dsl=198</u>

¹⁹⁹ See, e.g., <u>https://www.thomassci.com/scientific-supplies/Constant-Temperature-Bath</u>

²⁰⁰ See, e.g., <u>https://www.toolots.com/lab-</u>

equipment.html?gclid=EAIaIQobChMI_02pqfPc4AIVjaOzCh3bEABAEAAYASAAEgImtvD_BwE_

²⁰¹ See, e.g., <u>https://ru.vwr.com/store/product/4526856/multiposition-stirring-block-heaters-drybath-15-100-and-15-250</u>

Section 229

Product Name	Product Description	Capital Good?
Air and electric operated screw driver with hose and couplings	Pneumatic tool used in construction to drive screws. ²⁰²	yes
Tool bits, for motorizer and screw driver	A part incorporated into a screw driver or motorizer used to screw various types of screws. ²⁰³	yes
Glue applicator	A tool used in construction for precise application of glue. ²⁰⁴	yes
Moisture measuring tool	A tool used in construction to measure moisture for mold prevention and other reasons. ²⁰⁵	yes
Air operated guns and tools for inserting fasteners for brands, flexi-points, pins, staples, nails and hinges.	A pneumatic tool used in construction to insert staples, pins, nails and hinges. ²⁰⁶	yes
Power operated mitre saw	A cutting tool used in carpentry. ²⁰⁷	yes

List 1

	Product Description	Capital Good?
Food tenderizers A	A tool used to tenderize meat. ²⁰⁸	yes

List 23

Product Name	Product Description	Capital Good?
Aminoacid Analyzer	A device used for measurement of amino acids in foods and biological samples.	yes

²⁰² See, e.g., <u>https://www.grainger.com/searchBar=true&searchQuery=Air+and+electric+operated+screw+driver</u>

- ²⁰³ See, e.g., <u>https://www.indiamart.com/proddetail/motorizer-drilling-bits-19009991588.html</u>
- ²⁰⁴ See, e.g., <u>https://www.grainger.com/search?searchBar=true&searchQuery=glue+applicator</u>
- ²⁰⁵ See, e.g., <u>https://www.lowes.com/pd/General-Tools-Instruments-Digital-Moisture-Meter/3136919</u>

²⁰⁶ See, e.g., <u>https://www.stanleyengineeredfastening.com/tools-and-systems/power-tools-and-systems</u>

²⁰⁷See e.g. <u>https://www.familyhandyman.com/tools/miter-saws/how-to-use-a-power-miter-saw/</u>
 ²⁰⁸See, e.g., <u>http://www.foodsharkmarfa.com/best-meat-tenderizers/</u>

Analytical Balances	Highly sensitive lab instruments	yes
	designed to accurately measure mass. ²⁰⁹	
Anemometers	An instrument used to measure the speed or velocity of air (gases). ²¹⁰	yes
Anesthesia Equipment	Equipment used for anesthesia. ²¹¹	yes
Atomic Absorption Spectrophotometer	An instrument used to analyze the concentration of elements in a liquid sample based on energy absorbed from certain wavelengths of light.	yes
Atomizer	A pneumatically powered device used to aerosolize medications. ²¹²	yes
Attrition Measurement Equipment	Equipment used to measure the attrition rate of substances under particular exposure factors. ²¹³	yes
Auto Analyzer clinical chemistry	Equipment used to automatically analyze multiple samples of different substances in a laboratory. ²¹⁴	yes
Auto ignition test apparatus	A device used to determine hot and cool flame ignition temperatures in chemical liquids and solids. ²¹⁵	yes
Auto radiography equipment	Equipment used to detect radioactive materials by using X- ray photographic films. ²¹⁶	yes

²¹¹ See, e.g., <u>https://accessanesthesiology.mhmedical.com/content.aspx?bookid=871§ionid=51860166</u>

²⁰⁹ See, e.g., <u>https://www.adamequipment.com/aeblog/what-are-analytical-balances</u>

²¹⁰ See, e.g., <u>https://www.omega.com/prodinfo/anemometers.html</u>

²¹² See, e.g., <u>https://medical-dictionary.thefreedictionary.com/atomizer</u>

²¹³ See, e.g., <u>http://www.freepatentsonline.com/4761990.html</u>

²¹⁴ See, e.g., <u>https://www.thomassci.com/equipment/medical-equipment//Semi-Automatic-Clinical-Chemistry-Analyzer</u>

²¹⁵ See, e.g., <u>https://dekra-insight.com/en/topic/resources/1634-ctl19-auto-ignition-test-apparatus</u>

²¹⁶ See, e.g., <u>https://www.omicsonline.org/open-access/autoradiography-detection-and-analysis-of-radioactive-entities-2155-6180-1000361.php?aid=93116&view=mobile</u>

Auto-titrator	Device used to determine the concentration of various substances. ²¹⁷	yes
Automatic cover slipper	A machine used to seal and label medical containers. ²¹⁸	yes
Automatic side strainer	Strainers used to remove debris from pipelines. ²¹⁹	yes
Automatic Tissue processor	An instrument used for dehydration and filtration of human, animal and plant tissues. ²²⁰	yes
Ball tube distillation apparatus	Equipment used for distillation of air sensitive substances with high boiling points. ²²¹	yes
Basic Glove boxes	Boxes designed for lab work with moisture or oxygen sensitive materials. ²²²	yes
Basic orbital and Horizontal Shakers	Mixing equipment used in laboratories to mix chemicals at various speeds and temperatures. ²²³	yes
Biolistic (Gene gun)	A device used in genetic engineering to insert the genetic material into the cells. ²²⁴	yes
Biological Oxidizer	A device used to convert biodegradable organic compounds into carbon dioxide and water. ²²⁵	yes

²²⁰ See, e.g., <u>http://www.smscientific.com/histopathology-equipments-manufacturers/automatic-tissue-processor.php</u>

²¹⁷ See, e.g., <u>https://www.labcompare.com/Chemical-Analysis-Equipment/1010-Titration-Equipment/</u>

²¹⁸ See, e.g., <u>https://us.vwr.com/store/category/coverslippers/8287813</u>

²¹⁹ See, e.g., <u>https://fil-trek.com/products/strainers/</u>

²²¹ See, e.g., <u>https://pubs.acs.org/doi/abs/10.1021/ed041p279?journalCode=jceda8</u>

²²² See, e.g., <u>https://coylab.com/products/basic-glove-boxes/</u>

²²³ See, e.g., <u>https://www.fishersci.com/us/en/products/I9C8L351/shakers-rockers-rotators.html</u>

²²⁴ See, e.g., <u>https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2649370/</u>

²²⁵ See, e.g., http://rto.american-environmental.us/TEAM VOC Biological Oxidizer System.html

Biopsy punches	Surgical instruments used to collect various cells for analysis. ²²⁶	yes
Blood cell counter	A device used to count blood cells. 227	yes
Blood flow meter	A surgical device used to monitor the blood flow. ²²⁸	yes
Blood sampling equipment	Systems used for blood drawing and for phlebotomy. ²²⁹	yes
Body composition analysis equipment	Machines used to track muscle, fat and water in a human body. ²³⁰	yes
Bottom/ top dispenser	A system used to dispense fluids. ²³¹	yes
Brookfield viscometer	Device used to measure viscosity. ²³²	yes
Butane fuel micro-torches	Medical torch used in laboratories and in dental welding. ²³³	yes
Cardiac monitor	Device used to monitor heart activity. ²³⁴	yes
Centrifuges and Ultra Centrifuge	A high speed centrifuge used to determine the relative molecular mass of large molecules in high polymers and proteins.	yes
Chilling incubators	A temperature controlled incubator used for crystallizations and hybridizations. ²³⁵	yes

²²⁶ See, e.g., <u>https://www.wpiinc.com/surgical-instruments/surgical-accessories/biopsy-punches</u>

²²⁷ See, e.g., <u>https://www.radiometer.com/en/products/hematology/white-blood-cell-count</u>

²²⁸ See, e.g., <u>https://www.transonic.com/products/surgical/</u>

²²⁹ See, e.g., <u>https://www.ncbi.nlm.nih.gov/books/NBK138666/</u>

²³⁰ See, e.g., <u>https://learn.inbodyusa.com/elevate-your-business?gclid=EAIaIQobChMI-</u>

pPT2Kjp4AIVCJyzCh10GgmIEAAYASAAEgKSV_D_BwE#utm_source=google&utm_medium=cpc&utm_campaign=bodycomp

²³¹ See, e.g., <u>https://www.fisnar.com/products/?gclid=EAIaIQobChMIm7SKq9Hr4AIVIbCzCh1plwM0EAMYASAAEgJClfD_BwE</u>

²³² See, e.g., <u>https://www.brookfieldengineering.com/products/viscometers</u>

²³³ See, e.g., <u>http://www.empiredentalsupplies.com/Laboratory-Products/Torch/Defend-Micro-Torch-and-Butane-Refill/p-266-549-5407/</u>

²³⁴ See, e.g., <u>https://www.heartelearning.org/labyrinths?id=47869&parent=47592&sessID=lab583806320fb707.18890281</u>

²³⁵ See, e.g., <u>http://www.adaptivesciencetools.com/in35.html</u>
Coating Apparatus	A machine used for coating tablets. ²³⁶	yes
Crusher (tissue)	A device used for cell destruction. ²³⁷	yes
Crystal freezing microtone and Ultramicrotone	A high precision slicing instrument. ²³⁸	yes
Densitometer	Device used for the measurement of liquid density.	yes
Differential scanning calorimeter	Instrument used for monitoring heat flux. ²³⁹	yes
Digital boiling point/melting point/Freezing point apparatus	Device used to determine the melting point and the boiling point of various substances. ²⁴⁰	yes
Digital camera	High precision cameras used on medical imaging applications. ²⁴¹	yes
Digital PH meter	A device used for measuring the PH level. ²⁴²	yes
Dry Ice maker	A device used to make dry ice. ²⁴³	yes
Dust generator and measurement apparatus	Device used for monitoring and measuring dust or aerosol in laboratories. ²⁴⁴	yes
Dyno Mill	Laboratory device used for grinding. ²⁴⁵	yes
Electronic Top loading Balance	A weight measuring scale used in the laboratory. ²⁴⁶	yes

²³⁶ See, e.g., <u>https://www.lfatabletpresses.com/articles/types-tablet-coating-machines</u>

- ²³⁹ See, e.g., <u>https://www.tainstruments.com/products/thermal-analysis/differential-scanning-calorimeters/</u>
- ²⁴⁰ See, e.g., <u>https://www.fishersci.com/us/en/products/I9C8L5CL/melting-point-apparatus.html</u>
- ²⁴¹ See, e.g., <u>https://www.ptgrey.com/medical-and-life-sciences-digital-cameras</u>

²⁴² See, e.g., <u>https://www.instrumart.com/categories/6071/ph-orp-</u>

meters?gclid=EAIaIQobChMI7tDgj67p4AIVD7bICh1QIQ2NEAAYAiAAEgLWAfD_BwE#filters=f288-1101

²⁴³ See, e.g., <u>https://www.thomassci.com/scientific-supplies/Dry-Ice-Maker</u>

²³⁷ See, e.g., <u>http://cellcrusher.com/</u>

²³⁸ See, e.g., <u>https://www.thomassci.com/scientific-supplies/Microtome</u>

²⁴⁴ See, e.g., <u>https://www.pce-instruments.com/us/measuring-instruments/test-meters/dust-measuring-device-pce-instruments-dust-particle-measuring-device-pce-mpc-10-det_5850105.htm</u>

²⁴⁵ See, e.g., <u>https://www.eskens.com/en/producten/dyno-mill-multi-lab-laboratorium-grinding-mill/</u>

²⁴⁶ See, e.g., <u>https://www.labcompare.com/General-Laboratory-Equipment/44-Top-Loading-Balance/</u>

Electrophoresis unit	Equipment used for DNA, RNA and protein separation based on their size/mass and/or electrical charge.	yes
Electroporator	An instrument that enables uncontaminated modification of bacteria and other microorganisms. ²⁴⁷	yes
Elemental analyzer	A device utilized for carbon, nitrogen, hydrogen and sulfur analysis.	yes
Elisa reader monoclonal antibody production equipment.	A device interpreting test results of antibody production and purification. ²⁴⁸	yes
Encapsulation equipment	A pharmaceutical system used to fill medication into capsules. ²⁴⁹	yes
Flame photometer	Device used to analyze inorganic chemicals. ²⁵⁰	yes
Flash point apparatus	An instrument that determines the flash point of a sample. ²⁵¹	yes
Flack Chromatographic system	Equipment used for sample separation. ²⁵²	yes
Fluid Bed Drier lab model	A device used to break up and mix wet samples. ²⁵³	yes
Focused Microwave oven for organic synthesis	Equipment used for heat assisted organic synthesis.	yes
Freeze drier	A device used for removal of ice or frozen solvents.	yes
Freezing point apparatus	A device used to determine the temperature below which solid hydrocarbon crystals form.	yes

²⁴⁷ See, e.g., <u>http://www.bio-rad.com/en-us/product/micropulser-electroporator?ID=83527990-34fb-4b33-b955-ca53b57bf8b9</u>

²⁴⁸ See, e.g., <u>https://www.thermofisher.com/us/en/home/life-science/antibodies/custom-antibodies/custom-antibody-production/custom-monoclonal-antibody-production/antibody-validation-screening-elisa-testing.html</u>

²⁴⁹ See, e.g., <u>https://www.capsugel.com/encapsulation-equipment</u>

²⁵⁰ See, e.g., <u>https://www.coleparmer.com/c/flame-photometers</u>

²⁵¹ See, e.g., <u>https://www.labcompare.com/Petroleum-Testing-Equipment/6285-Flash-Point-Tester/</u>

²⁵² See, e.g., <u>https://www.biocompare.com/Lab-Equipment/7110-Chromatography-Systems/</u>

²⁵³ See, e.g., <u>http://www.sherwood-scientific.com/fbds/501.html</u>

Freezing rack for metabolic cages	A storage system used for separation of substances in animal testing. ²⁵⁴	yes
Gas detectors with masks, cartridges, gas monitors	Device used for air monitoring. ²⁵⁵	yes
Gel dryer and Gel documentation and analysis system	Systems used to record and measure labeled nucleic acid and protein. ²⁵⁶	yes
Laboratory granulator	Device designed for accurate granulation and mixing. ²⁵⁷	yes
Plant growth chambers	Equipment used in microbiology to grow plants in a controlled humidity and temperature environment. ²⁵⁸	yes
Health monitors for dogs and higher animals	A device with built in GPS used to track an animal's activity level and effect of medication. ²⁵⁹	yes
High vacuum pumps	A high pressure range device used in biological research laboratories for faster filtration and distillation. ²⁶⁰	yes
High pressure autoclave	A device that uses steam to sterilize medical instruments. ²⁶¹	yes
High pressure hydrogenator	A device used in microbiology for organic synthesis by hydrogenation. ²⁶²	yes
High pressure reactor-autoclave	A device that uses steam to sterilize medical instruments.	yes
High speed refrigerated research centrifuge	A temperature controlled laboratory centrifuge.	yes

²⁵⁴ See, e.g., <u>https://www.braintreesci.com/prodinfo.asp?number=3m12d100</u>

²⁵⁵ See, e.g., <u>https://afcintl.com/</u>

²⁵⁶ See, e.g., <u>https://www.biocompare.com/Bio-Imaging-Microscopy/Gel-Documentation-Gel-Doc-Gel-Imaging-Systems/</u>

²⁵⁷ See, e.g., <u>http://www.medicalexpo.com/medical-manufacturer/laboratory-granulator-46775.html</u>

²⁵⁸ See, e.g., <u>http://www.conviron.com/</u>

²⁵⁹ See, e.g., <u>https://www.veterinarypracticenews.com/how-to-use-dog-collar-monitors-in-your-vet-practice/</u>

²⁶⁰ See, e.g., <u>https://www.fishersci.com/us/en/products/J9Y9EAOL/vacuum-pumps.html</u>

²⁶¹ See, e.g., <u>https://ehs.princeton.edu/book/export/html/380</u>

²⁶² See, e.g., <u>https://www.parrinst.com/products/hydrogenation/</u>

High throughput organic	A device that performs several	yes
biological screening equipment	simultaneously. ²⁶³	
Hybridizing oven	Equipment used for agitation and incubation in molecular biology.	yes
Image analyzer and imaging densitometer	Equipment used to measure the density of a particular substance using advanced imaging technology.	yes
Implantable plant	Definition not found	Uncertain
Incubators	Equipment used in microbiology research for storing samples of various testing materials in a controlled environment. ²⁶⁴	yes
Inductive coupling plasma equipment	Equipment used for traced elemental analysis. ²⁶⁵	yes
Infrared temperature sector	A device used to measure infrared temperature. ²⁶⁶	yes
Inhalation chambers with accessories	Medical devices used by asthma patients for breathing. ²⁶⁷	yes
Inverted microscope with fluorescence microscopy with photographic attachment	Microscope used for advanced images.	yes
Laser particle size analyzer, Particle shape analyzer, Surface area analyzer	Tools used to determine the size and distribution of particles in a substance or material.	yes
Liquid scintillation counter	An instrument for detecting and measuring ionizing radiation.	yes

²⁶⁷ See, e.g.,

²⁶³ See, e.g., <u>https://www.omegascientific.com.sg/index.php/products/lab-automation/high-throughput-synthesizers</u>

²⁶⁴ See, e.g., <u>https://www.thermofisher.com/us/en/home/life-science/lab-equipment/microbiological-incubators-environmental-chambers/microbiological-incubators.html</u>

²⁶⁵ See, e.g., <u>https://www.thermofisher.com/us/en/home/industrial/spectroscopy-elemental-isotope-analysis/trace-elemental-analysis.html?gclid=EAIaIQobChMI6P7W45br4AIVzsDICh3QsAz_EAAYAyAAEgLk7fD_BwE&ce=E.19CMD.DL105.16198.01&cid=E.19CMD.DL105.01&cid=E.19CMD.DL105.01&cid=E.19CMD.DL105.01&cid=E.19CMD.DL105.01&cid=E.19CMD.DL105.01&cid=E.19CMD.DL105.01&cid=E.19CMD.DL105.0</u>

²⁶⁶ See, e.g., <u>https://www.industrial-needs.com/measuring-instruments/temperature-meters.htm</u>

https://www.vitalitymedical.com/catalogsearch/result/?q=Inhaler+Chambers&matchtype=b&network=g&device=c&adposition=1o1&key word=%2Binhaler%20%2Bchambers&gclid=EAIaIQobChMI0_aBxZfr4AIVOouzCh3HTg3SEAMYASAAEgJMYfD_BwE

Low temperature Circulation bath	Equipment used for cooling samples in a laboratory setting. ²⁶⁸	yes
Micro soxlet extractors	Device used for extraction of analytes. ²⁶⁹	yes
Microscope and Microtome blades disposable	Accessories used with tissue cutting equipment. ²⁷⁰	yes
Reaction calorimeter	Device used to measure biomolecule stability. ²⁷¹	yes
Otoscope	A tool used to examine the condition of the ear canal and eardrum. ²⁷²	yes
Peristaltic pump	Pumps used for dosing and metering. ²⁷³	yes
Photo tachometer	A device used to diagnose circulatory problems. ²⁷⁴	yes
Polarimeter	A device for determining the polarization direction of the light or the rotation of an optically active substance. ²⁷⁵	yes
Porometer and Porosity analyzer	A device used to analyze pore size and pore size distribution.	yes
Potentiometer	An instrument used to measure the internal resistance of a cell. ²⁷⁶	yes
Precision vacuum contactor	Device used for starting a motor of control a pump. ²⁷⁷	yes
Probe sonicator	A device that is used for ultrasonic liquid processing.	yes

²⁶⁸ See, e.g., <u>https://www.thermofisher.com/order/catalog/product/179104241600</u>

²⁶⁹ See, e.g., <u>https://www.thomassci.com/Equipment/Extraction-Apparatus/ /Micro-Soxhlet-Extraction-Apparatus</u>

²⁷⁰ See, e.g., <u>https://www.thomassci.com/scientific-supplies/Disposable-Microtome-Blades</u>

- ²⁷³ See, e.g., <u>https://www.watson-marlow.com/us-en/range/watson-marlow/</u>
- ²⁷⁴ See, e.g., <u>https://www.azosensors.com/article.aspx?ArticleID=310</u>

²⁷¹ See, e.g., <u>https://www.malvernpanalytical.com/en/products/product-range/microcal-</u>

range/index.html?creative=317673360709&keyword=microcalorimeter&matchtype=b&network=g&device=c&gclid=EAIaIQobChMlkPTv7Z 7r4AIVjozICh2U6gQ4EAAYBCAAEgKSIfD_BwE

²⁷² See, e.g., <u>https://medlineplus.gov/ency/imagepages/8771.htm</u>

²⁷⁵ See, e.g., <u>https://www.kruess.com/en/campus/polarimetry/what-is-a-polarimeter/</u>

²⁷⁶ See, e.g., <u>https://www.elprocus.com/potentiometer-construction-working-and-applications/</u>

²⁷⁷ See, e.g., <u>https://literature.rockwellautomation.com/idc/groups/literature/documents/wp/500-wp001</u> -en-p.pdf

Protein purification machine	Equipment used to isolate one or multiple proteins from a complex mixture.	yes
Radio detector, radioimmunoassay equipment, Gamma counter for hormonal assay	Equipment used to analyze small molecules, peptides and proteins in biological samples. ²⁷⁸	yes
Refractometer and rotary evaporators	Devices used for measuring concentration of specific substances and for distillation. ²⁷⁹	yes
Rheometer	Device used to measure viscosity of a particular substance or material.	yes
Rotary microtomes, rotary evaporators	Devices used for thin slicing and distillation. ²⁸⁰	yes
Silverstone homogenizer	A laboratory mixer used for homogenizing, mixing and dissolving. ²⁸¹	yes
Spectrofluorimeter Luminescence meter	Devices used to detect and quantify fluorophores.	yes
Spheriodizer	A device used for manufacturing spheroidal shaped granules. ²⁸²	yes
Spinning band distillation apparatus	Laboratory equipment used to separate mixtures of liquids and for distillation. ²⁸³	yes
Spray drier	A machine used for rapidly turning liquid into powder.	yes
Submersible magnetic stirrer	A device used for mixing solutions with glycerin viscosity level.	yes

²⁷⁸ See, e.g., <u>http://www.perkinelmer.com/category/radioimmunoassay-ria-kits</u>

²⁷⁹ See, e.g., <u>https://www.fishersci.com/us/en/products/I9C8L5FQ/refractometers.html</u>

²⁸⁰ See, e.g., <u>https://www.labce.com/spg605374</u> instrumentation for microtomy rotary microtome par.aspx

²⁸¹ See, e.g., <u>http://www.silverson.com/</u>

²⁸² See, e.g., <u>http://www.feingold.org/Research/PDFstudies/Tibrewala2003-patent.pdf</u>

²⁸³ See, e.g., https://www.fractional-distillation.com/spinning-band-distillation.html

Super critical fluid	A system used to analyze and	yes
chromatography system	purify low to moderate molecular	
	weight molecules. ²⁸⁴	
Sustained release apparatus	A device that measures the drug	Voc
Sustaineu release apparatus	rologo procoss	yes
	release process.	
Syringes	Tools used to inject substances. ²⁸⁵	yes
Tattooing instrument	A surgical instrument of medical	yes
	and non-medical application used	
	for marking. ²⁸⁶	
Tintemator	A manufing instrument used to	
Intometer	A measuring instrument used to	yes
	substance from the color it violds	
	with specific reagents ²⁸⁷	
	with specific reagents.	
Tissue embedder	Equipment use for microtome	yes
	sectioning. ²⁸⁸	
Transilluminator	Devices used in microhiology to	
Transiliuminator	Devices used in microbiology to	yes
	view DNA.	
Zeta potential analyzer	A device used to predict the	yes
	stability of particle.	
	.	
Ultrasonic cleaners	Equipment used to sterilize	yes
	laboratory tools.200	
Oscilloscope	A laboratory instrument used to	yes
	display and analyze the waveform	
	of electronic signals. ²⁹⁰	
Ultrafiltration equipment	A water filtration system used in	yes
	pharmaceutical and biochemistry	
	TIEIOS.	

²⁸⁴ See, e.g., <u>https://www.labcompare.com/Chemical-Analysis-Equipment/1281-Supercritical-Fluid-Chromatography-System-SFC-Systems/</u>

²⁸⁵ See, e.g., <u>https://www.sigmaaldrich.com/labware/labware-products.html?TablePage=9569712</u>

²⁸⁶ See, e.g., <u>https://www.sciencedirect.com/science/article/pii/0002961062900193</u>

²⁸⁷ See, e.g., <u>https://www.vocabulary.com/dictionary/tintometer</u>

²⁸⁸ See, e.g., <u>https://www.thermofisher.com/order/catalog/product/A81000001</u>

²⁸⁹ See, e.g., <u>https://www.toolots.com/lab-equipment/ultrasonic-cleaners.html?gclid=EAIaIQobChMIzKbcq83r4AIVBeDICh0-oAD1EAAYAiAAEglhXvD_BwE</u>

²⁹⁰ See, e.g., <u>https://whatis.techtarget.com/definition/oscilloscope</u>

²⁹¹ See, e.g., <u>https://www.pureaqua.com/ultrafiltration-uf-systems/</u>