

**UNITED STATES - COUNTERVAILING MEASURES ON CERTAIN
HOT-ROLLED CARBON STEEL FLAT PRODUCTS FROM INDIA**

Request for Consultations by India

Revision

The following communication, dated 24 April 2012, from the delegation of India to the delegation of the United States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

1. India requests consultations with the United States of America ("United States") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") and Article 30 of the *Agreement on Subsidies and Countervailing Measures* (the "ASCM") with regard to the imposition of countervailing duties by the United States on Certain Hot Rolled Carbon Steel Flat Products From India ("subject goods").

2. The United States conducted countervailing duty (the "CVD") investigation (No. C – 533 – 821) and levied countervailing duties on the subject goods exported from India. The provisional measures were imposed with effect from 20 April 2001 and the final measures were imposed effective from 3 December 2001. The United States concluded a sunset review in 2007 and continued the duties for a further period of five years. The United States also conducted several Administrative Reviews (the "AR") to determine the CVD rate/s to be applied on the imports made during the relevant AR period. The measures continue to be in force. The request covers the countervailing duties and other measures, if any, applied on the subject goods from India through any notice, determination, decision memorandum, order, or any other instrument issued by the United States from time to time in connection with case No.C-533-821. A non-exhaustive list of such determinations, orders, etc issued by the United States in Case No.C-533-821 is enclosed as **Annex 1**. The measures covered in this request also include certain provisions of the United States Tariff Act, 1930 and the United States Code of Federal Regulations, Title 19 – Customs duties, Volume 3, Chapter III, Part 351 ("19 CFR 351") that are "as such" inconsistent with the provisions of the ASCM. The request also covers all the amendments, replacements, implementing acts or any other related measure in connection with the measures referred herein.

3. India considers that the following provisions of the United States Tariff Act, 1930 and the United States Code of Federal Regulations contained in 19 CFR 351 are "as such" inconsistent with Articles 12, 14, 15, 19 and 32 of the ASCM:

- (a) The United States Code of Federal Regulations contained in 19 CFR 351.511(a)(2)(i) to (iii) are "as such" inconsistent with Article 14(d) of the ASCM because they

require the adoption of benchmark prices (either Tier I or Tier II as the case may be) without first examining whether the remuneration for the provision of goods is adequate and is consistent with market principles.

- (b) The United States Code of Federal Regulations contained in 19 CFR 351.511(a)(2)(iv) requiring the use of 'delivered prices' are inconsistent "as such" with Article 14(d) of the ASCM because they disregard the prevailing market conditions in the country of provision of goods.
- (c) The United States Code of Federal Regulations contained in 19 CFR 351.511(a)(2)(iv) requiring the use of 'delivered prices' are inconsistent "as such" with Articles 19.3 and 19.4 of the ASCM because they lead to the imposition of inappropriate and / or excess countervailing duty.
- (d) Section 771 (7)(G) of the United States Tariff Act 1930 is "as such" inconsistent with Article 15.3 of the ASCM to the extent that it requires cumulation of imports from countries not subject to simultaneous CVD investigations, while determining injury for the purposes of imposition of CVD.
- (e) Section 776(b) of the United States Tariff Act 1930 and the implementing regulations contained in 19 CFR 351.308 are "as such" inconsistent with Article 12.7 of the ASCM because it requires the use of 'adverse facts available'.
- (f) To the extent the United States Tariff Act 1930 and the Code of Federal Regulations mentioned above are inconsistent with the provisions of the ASCM, the United States has failed to take all necessary steps to ensure the conformity of its laws with the provisions of the ASCM pursuant to Article 32.5 of the ASCM.

4. India also considers that the measures described in paragraph 2 above are inconsistent with, *inter alia*, Articles I and VI of the GATT 1994, Articles 1, 2, 10, 11, 12, 13, 14, 15, 19, 21 and 22 of the ASCM as briefly indicated below:

- (a) *In connection with the alleged provision of sale of High Grade Iron Ore for Less Than Adequate Remuneration:*
 - (i) The determination that the National Mineral Development Corporation (NMDC) is a "government authority" is inconsistent with Article 1.1(a)(1) of the ASCM because it is based on Government ownership and does not consider all the relevant factors.
 - (ii) The determination that the Government of India, through the NMDC, provided a financial contribution through sale of iron ore fines and lumps, is inconsistent with Article 1.1 (a) (1) of the ASCM.
 - (iii) The United States failed to establish that the sale of iron ore by the NMDC to producers of the subject goods, conferred a benefit within the meaning of Article 1.1(b) of the ASCM.
 - (iv) The determination regarding 'specificity'

- is inconsistent with Article 2.1 of the ASCM because the provision of iron ore is not limited to certain enterprises.
 - is inconsistent with Article 2.1(c) of the ASCM because it fails to consider all the mandatory factors listed thereunder.
 - is inconsistent with Article 2.4 of the ASCM because it is not based on positive evidence.
- (v) The United States' failure to collect all relevant information is inconsistent with Article 12.1 of the ASCM.
- (vi) The United States' failure to determine the adequacy of the actual remuneration, or lack thereof, for the provision of iron-ore, is inconsistent with Article 14(d) of the ASCM.
- (vii) The benchmark prices 'as applied' for calculation of the amount of subsidy, are inconsistent with Article 14(d) of the ASCM because the United States disregarded the NMDC prices.
- (viii) The rejection of the export prices of the NMDC as a benchmark price is inconsistent with Article 14(d) of the ACSM.
- (ix) The adoption of 'delivered prices' as the basis for determining benchmark prices in the various administrative reviews is inconsistent with Article 14(d) of the ASCM because it disregards the prevailing market conditions for iron-ore in India.
- (x) The adoption of world market prices (Tier II prices) for iron ore lumps in respect of one exporter in the AR 2006, even when actual market prices in India (Tier I prices) were available on the records of the case, is inconsistent with Article 14(d) of the ASCM.
- (b) *In connection with the Captive Mining of Iron Ore:*
- (i) The determination that mining rights granted by the Government of India are "captive" and are 'de facto' specific is contrary to the facts on record and does not meet the requirements of Article 12.5 of the ASCM.
- (ii) The determination that the grant of 'mining rights' amounts to provision of goods (i.e. provision of iron ore), is inconsistent with Article 1.1 (a)(1)(iii) of the ASCM because the grant of 'mining rights' cannot be equated to provision of goods.
- (iii) The United States' failure to determine the adequacy of the actual remuneration, or lack thereof, for the grant of 'mining rights', is inconsistent with Article 14(d) of the ASCM.
- (iv) The determination that mining rights granted to steel producers constituted a 'financial contribution', is inconsistent with Article 1.1 (a) (1) of the ASCM.

- (v) The United States failed to establish that the grant of mining rights conferred a 'benefit', within the meaning of Article 1.1 (b) of the ASCM.
 - (vi) The determination that the grant of mining rights is 'de facto specific', is inconsistent with Article 2 of the ASCM because it is not limited to steel producers.
 - (vii) The calculation of the amount of subsidy is inconsistent with Article 14(d) of the ASCM because of the incorrect benchmarks applied for calculation.
- (c) *In connection with the Captive Mining of Coal:*
- (i) The determination that the grant of 'mining rights' amounts to provision of goods (i.e. provision of coal), is inconsistent with Article 1.1 (a)(1)(iii) of the ASCM because grant of 'mining rights' cannot be equated to provision of goods.
 - (ii) The United States' failure to determine the adequacy of the actual remuneration, or lack thereof, for the grant of 'mining rights', is inconsistent with Article 14(d) of the ASCM.
 - (iii) The determination that the mining rights granted to steel producers constituted a 'financial contribution' is inconsistent with Article 1.1.(a) (1) of the ASCM.
 - (iv) The United States failed to establish that the grant of mining rights conferred a benefit within the meaning of Article 1.1 (b) of the ASCM.
 - (v) The determination that granting captive mining rights of coal to steel producers is 'de jure specific' is inconsistent with Article 2 of the ASCM because the grant is based on objective criteria or conditions.
 - (vi) The calculation of the amount of subsidy is inconsistent with Article 14(d) of the ASCM because of the incorrect benchmarks applied for the calculation.
- (d) *In connection with the operation of the Steel Development Fund (SDF):*
- (i) The determination that the operation of the SDF constituted a financial contribution by the Government is inconsistent with Article 1.1 (a) of the ASCM because SDF comprises contributions made and mandated by the participating steel producers themselves.
 - (ii) The determination that the operation of the SDF conferred a 'benefit' is inconsistent with Article 1.1 (b) of the ASCM.
 - (iii) The United States' failure to collect all relevant information is inconsistent with Article 12.1 of the ASCM.
 - (iv) The calculation of the amount of benefit is inconsistent with Articles 14 and 19.4 of the ASCM because it is incorrect and not adequately explained.

(e) *In connection with the injury determination:*

- (i) The cumulation of imports for determination of injury is inconsistent with Article 15.3 of the ASCM because the United States included imports from countries not subject to simultaneous CVD investigation.
- (ii) The determination of injury is inconsistent with Article 15 of the ASCM because such determination covers both subsidized imports and non-subsidized imports.
- (iii) The demonstration of causal link is inconsistent with Article 15.5 of the ASCM because the United States did not segregate injury caused due to factors other than the subsidized imports.

(f) *In connection with other issues:*

- (i) The application of the 'adverse facts available' standard in determining the subsidy margin is inconsistent with Article 12.7 of the ASCM.
- (ii) The inclusion of new subsidies in an administrative review is inconsistent with Articles 11, 21, 22.1 and 22.2 of the ASCM.
- (iii) The failure to invite India for consultations before including New Subsidy Allegations within the scope of the Administrative Reviews, is inconsistent with Articles 13.1 and 13.2 of the ASCM.
- (iv) The amount of countervailing duty applied is inconsistent with Articles 19.3 and 19.4 of the ASCM because it is not in appropriate amounts and is in excess of the amount of subsidy, if any.
- (v) As a consequence of the inconsistencies mentioned above, the countervailing duties applied in this case are inconsistent with Article 10 of the ASCM and Article VI of the GATT 1994.

5. India considers that these violations nullify or impair the benefits accruing to it under those Agreements.

6. India reserves its right to raise additional claims and legal matters in relation to the measures at issue and their application, during the consultations.

7. In view of the above, India looks forward to the reply from the United States within the prescribed time limit. India proposes that the date and venue of the consultations be mutually agreed.

Annex – 1

Original Investigation

1. Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Determination With Final Antidumping Duty Determinations: *Certain Hot-Rolled Carbon Steel Flat Products From India*., 66 FR 20240-01, April 20, 2001.
2. Issues and Decision Memorandum - Final Results of the Countervailing Duty Investigations: *Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 ITADOC 49635, September 21, 2001.
3. Final Affirmative Countervailing Duty Determination: *Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635-01, September 28, 2001.
4. Injury Determination: *Hot Rolled Steel Products from China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 701-TA-405-408 and 731-TA-899-904 and 906-908, Pub. 3468, United States International Trade Commission, November 2001.
5. Amended Final Results of Countervailing Duty Orders: *Certain Hot-Rolled Carbon Steel Flat Products From India and Indonesia*, 66 FR 60198-01, December 3, 2001.
6. Countervailing Duty Order in the Investigation: *Certain Hot Rolled Carbon Steel Flat Products from India*, January 8, 2002.

Administrative Review: POR April 20, 2001 through December 31, 2002

7. Preliminary Results of Countervailing Duty Administrative Review: *Certain Hot-Rolled Carbon Steel Flat Products from India*, 69 FR 907-01, January 7, 2004.
8. Issues and Decision Memorandum - Final Results of the Countervailing Duty Investigation: *Certain Hot-Rolled Carbon Steel Flat Products From India*, 69 ITADOC 26549, May 6, 2004.
9. Final Results of Countervailing Duty Administrative Review: *Certain Hot-Rolled Carbon Steel Flat Products from India*, 69 FR 26549-01, May 13, 2004.

Administrative Review: POR January 1, 2004 through December 31, 2004

10. Preliminary Results of Countervailing Duty Administrative Review: *Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 FR 1512-01, January 10, 2006.
11. Issues and Decision Memorandum - Final Results of Administrative Review of the Countervailing Duty Order : *Certain Hot-Rolled Carbon Steel Flat Products from India*, 71 ITADOC 28665, May 10, 2006.
12. Final Results of Countervailing Duty Administrative Review: *Certain Hot-rolled Carbon Steel Flat Products from India*, 71 FR 28665-01, May 17, 2006.

Sunset Review

13. Issues and Decision Memorandum - Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders: *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand*, 71 ITADOC 70960, December 7, 2006.
14. Final Results of the Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders: *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand*, 71 FR 70960-03, December 7, 2006.

15. Injury Determination - Hot Rolled Steel Products from China, India, Indonesia, Kazakhstan, Argentina, Romania, South Africa, Taiwan, Thailand, and Ukraine, 701-TA-404-408 and 731-TA-898-902 and 904-908(Review), Pub. 3956, United States International Trade Commission, October 2007.
16. Continuation of Antidumping Duty and Countervailing Duty Orders - Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine, 72 FR 73316-03, December 27, 2007.

Administrative Review: POR January 1, 2006 through December 31, 2006

17. Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 73 FR 1578-02, January 9, 2008.
18. Issues and Decision Memorandum - Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From India, 73 ITADOC 40295, July 7, 2008.
19. Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From India, 73 FR 40295-02, July 14, 2008.

Administrative Review: POR January 1, 2007 through December 31, 2007

20. Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 73 FR 79791-01, December 30, 2008.
21. Issues and Decision Memorandum - Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 74 ITADOC 20923, April 29, 2009.
22. Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 74 FR 20923-01 May 6, 2009.

Administrative Review: POR January 1, 2008 through December 31, 2008

23. Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 75 FR 1496-01, January 11, 2010.
 24. Issues and Decision Memorandum - Final Results of Countervailing Duty Administrative Review: Certain Hot Rolled Carbon Steel Flat Products from India, 75 ITADOC 43488, July 19, 2010.
 25. Final Results of Countervailing Duty Administrative Review – Certain Hot Rolled Carbon Steel Flat Products from India, 75 FR 43488-01, July 26, 2010.
-