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Page: 1/7

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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY INDIA

REQUEST FOR CONSULTATIONS

The following communication, dated 5 June 2017, from the delegation of India to the delegation of the United States of America and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

My authorities have instructed me to request consultations with the United States of America ("United States"), under paragraph 1 of the *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding*¹ reached between the United States and India read with Article 21.5 of the Dispute Settlement Understanding ("DSU"), with respect to the measures taken by the United States to comply with the recommendations of the WTO Dispute Settlement Body (DSB) in DS436, *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India* ("US – Carbon Steel (India)").

Paragraph 1 of the *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding* reached between the United States and India states that, "[s]hould India consider that the situation described in Article 21.5 of the DSU exists, India will request consultations" with the United States². As set out below, India considers that the measures taken by the United States to comply with the recommendations and rulings adopted by the DSB in *US – Carbon Steel (India)* are not consistent with such adopted recommendations and the covered agreements, and therefore, requests that the United States enter into consultations.

On 19 December 2014, the DSB adopted the recommendations and rulings of the Appellate Body³ and the Panel⁴ in *US – Carbon Steel (India)*. The DSB found that the United States imposed countervailing duties on Indian exports of certain hot-rolled carbon steel flat products in a manner that breached the obligations of the United States under the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and recommended that the United States bring its measures into conformity with its obligations under the SCM Agreement.

On 24 March 2015, the United States and India informed the DSB that they had agreed that the reasonable period of time for the United States to implement the DSB recommendations and rulings, would expire on 18 April 2016. Pursuant thereto, the United States engaged in redeterminations under Section 129 of its Uruguay Round Agreements Act, 1994 ("URAA"). India considers that the United States has failed to implement the DSB's recommendations and rulings.

The measures at issue in this request include the measures identified in India's original request for establishment of a panel (WT/DS436/3) (13 July 2012), to the extent that the DSB made

¹ Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

² WT/DS436/16, para. 1 at page 2. Footnote 1 to this paragraph states: "The Parties agree that under Article 21.5 of the DSU, consultations are not obligatory."

³ WT/DS436/AB/R.

⁴ WT/DS436/R and WT/DS436/R/Add.1.

recommendations and rulings in respect of those measures. Those measures are set forth in Annex 1. The measures at issue also include Section 129 determinations as set forth in Annex 2, as well as any closely connected measures that the United States has issued or adopted in connection with the measures mentioned either in Annex 1 or Annex 2.

India considers that the United States' failure to amend 19 USC § 1677(7)(G)(iii) is inconsistent with the DSB recommendations as well as Articles 15.1, 15.2, 15.3, 15.4 and 15.5 of the SCM Agreement because the provision continues to require the United States International Trade Commission ("USITC") to cumulate the effects of subsidized imports with the effects of dumped, non-subsidized imports.

In addition, the measures at issue are inconsistent with the DSB recommendations and with the following provisions of the SCM Agreement and the General Agreement on Tariffs and Trade, 1994 ("GATT 1994"):

1. Article 1.1(a)(1) of the SCM Agreement because the United States erroneously concluded that NMDC is a public body;
2. Articles 2.1(c) and 2.4 of the SCM Agreement because the United States erroneously concluded that the alleged programmes titled "sale of high grade iron ore by NMDC", "Mining rights of Iron Ore" and "Mining of Coal" are *de facto* specific;
3. Article 12.1 of the SCM Agreement because the United States (i) failed to provide a "*notice of the information which the authorities require*"; (ii) failed to seek relevant information from India; and (iii) rejected relevant information voluntarily provided by the Government of India;
4. Article 12.8 of the SCM Agreement because the United States failed to inform all interested Members and interested parties of the essential facts under consideration which form the basis for the decision as to whether to apply definitive measures;
5. The chapeau to Article 14 and Article 14(d) of the SCM Agreement because the United States erroneously excluded (i) available in-country benchmarks for iron ore; and (ii) NMDC's export prices, as benchmarks for consideration, when determining benefit conferred by the alleged programmes titled "sale of high grade iron ore by NMDC" and "Mining rights of Iron Ore", and did not also adequately explain the rejection of such benchmarks;
6. The chapeau of Article 14 and Article 14(b) of the SCM Agreement because the United States continues to impose countervailing duties ("CVD") based on the SDF programme without accounting for the borrower's cost in obtaining loans under that programme;
7. Articles 15.1 and 15.2 of the SCM Agreement because the United States has not considered the existence of a link or relationship or explanatory force between the import of the alleged subsidized imports and the price of the domestic like products;
8. Articles 15.1 and 15.4 of the SCM Agreement because the United States has not examined and evaluated the existence of a link or relationship or explanatory force between the alleged subsidized imports and the state of the domestic industry;
9. Articles 15.1 and 15.5 of the SCM Agreement, as well as Article VI of the GATT 1994 because the United States has engaged in a faulty causal link analysis;
10. Article 19.3 of the SCM Agreement because the United States unilaterally terminated the CVD rate agreed between JSW and the USDOC in the *Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision*, 75 FR 80455 dated December 22, 2010 and between Tata and the USDOC in the *Amended Final Results of Countervailing Duty Administrative Review Pursuant to Court Decision*, 76 FR 77775 dated December 14, 2011

11. Articles 21.1 and 21.2 of the SCM Agreement because the United States continues to impose CVD based on new subsidy programmes countervailed during administrative reviews, without examining whether such new subsidy programmes had a sufficiently close nexus with the subsidies that were the subject of the original investigation;
12. Articles 21.1 and 21.2 of the SCM Agreement because the United States has effectively countervailed new alleged programmes titled "Mining rights of Iron Ore" and "Mining of Coal";
13. Articles 22.3 and 22.5 of the SCM Agreement, because the United States failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material, all relevant information on matters of fact and law and the reasons which led to the imposition of final measures, and the reasons for the acceptance or rejection of relevant arguments or claims;
14. Article 10 of the SCM Agreement and Article VI of the GATT 1994 as a consequence of the breaches of the SCM Agreement described above.

India considers that the measures at issue cause nullification or impairment of benefits accruing to it under those Agreements.

We look forward to receiving your reply to this request and to fixing a mutually convenient date and venue for consultations, which, consistent with paragraph 1 of the *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding*, shall not be beyond fourteen (14) days from the date of circulation of this request.

India reserves its rights in respect of all other aspects of the United States' purported compliance with the recommendations and rulings of the DSB in this matter, and reserves its rights to raise further factual and legal issues during the course of consultations.

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.

The request also covers all the amendments, replacements, implementing acts or any other related measure in connection with the measures referred above.

Annex 2

In relation to the proceedings by the United States Department of Commerce:

1. Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Commencement of Compliance Proceedings Pursuant to Section 129 of the Uruguay Round Agreements Act, 80 FR 57336 dated September 23, 2015.
2. Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436): Preliminary Determination of Facts Available dated March 17, 2016.
3. Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436): Preliminary Determination on Other Issues dated March 18, 2016.
4. Preliminary Determination – No Change: Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2004 and DS436-2007).
5. Calculations for Preliminary Determination: JSW Steel Limited (JSW) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2006).
6. Calculations for Preliminary Determination: Tata Steel Ltd. (Tata) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2008).
7. Final Determination - Section 129 Proceeding: United States - Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 14, 2016.
8. Calculations for Final Determination: Essar Steel India Limited (Essar) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2006).
9. Calculations for Final Determination: Essar Steel India Limited (Essar) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2007).
10. Calculations for Final Determination: Ispat Industries Limited (ISPAT) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2006).
11. Calculations for Final Determination: JSW Steel Limited (JSW) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2006).
12. Calculations for Final Determination: Tata Steel Ltd. (Tata) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2006).
13. Calculations for Final Determination: Tata Steel Ltd. (Tata) - Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (WTO/DS436) dated April 21, 2016 (DS436-2008).
14. Certain Hot-Rolled Carbon Steel Flat Products from India: Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act, 81 FR 27412 dated May 6, 2016.

15. Amended cash deposit instructions for certain hot-rolled carbon steel flat products from India pursuant to the final determination under Section 129 (C-533-821) dated May 13, 2016.

In relation to the proceedings by the United States International Trade Commission

16. Letter from the Chairman of the USITC to USTR Ambassador dated October 23, 2015.
17. Hot-Rolled Steel Products from India; Scheduling of a Countervailing Duty Proceeding Under the Uruguay Round Agreements Act (URAA), Investigation No. 701-TA-405 (Section 129 Consistency Determination), United States International Trade Commission, 80 FR 75132, dated December 1, 2015.
18. Hot-rolled Steel products from India, Investigation No. 701-TA-405 (Section 129 Consistency Determination), United States International Trade Commission, Publication 4599 dated March 7, 2016.

Others

19. Section 19 United States Code 1677 (7)(G)(iii)
20. Dispute Settlement Body, Minutes of the Meeting dated 21 July 2016, WT/DSB/M/383, dated October 11, 2016.

The list also covers all the amendments, replacements, implementing acts or any other related measure in connection with the measures referred above.
