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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 THE ESTABLISHMENT OF A PANEL**

The following communication, dated 29 March 2018, from the delegation of India to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

My authorities have instructed me to request the establishment of a panel pursuant to Article 6 and 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), with respect to the failure of the United States to implement the recommendations and rulings of the Dispute Settlement Body ("DSB") in DS436, *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products From India* ("US – Carbon Steel (India)").

2. On 19 December 2014, the DSB adopted the recommendations and rulings of the Appellate Body<sup>1</sup> and the Panel<sup>2</sup> 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.

3. 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").

4. On 6 May 2016, India and the United States concluded an agreement on the procedures under Articles 21 and 22 of the DSU that would apply between them for the purposes of this dispute.

5. India considers that the United States has failed to implement the DSB's recommendations and rulings. Therefore, India filed a request for consultations on 5 June 2017. The parties held consultations on 13 July 2017 and 4 October 2017 but the consultations failed to resolve India's concerns regarding the United States' failure to implement the DSB's recommendations and rulings in this dispute.

7. 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 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,

<sup>1</sup> WT/DS436/AB/R.

<sup>2</sup> WT/DS436/R and WT/DS436/R/Add.1.

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.

8. India considers that the United States' failure to amend 19 USC § 1677(7)(G)(iii) is inconsistent with the DSB recommendations in this dispute 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.

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

- i. Article 1.1(a)(1) of the SCM Agreement because the United States erroneously concluded that NMDC is a public body;
- ii. 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;
- iii. 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;
- iv. 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;
- v. 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;
- vi. 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;
- vii. 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;
- viii. 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;
- ix. 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 an erroneous causal link analysis;
- x. 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;
- xi. 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;

- xii. Articles 21.1 and 21.2 of the SCM Agreement because the United States has countervailed new subsidy programmes titled "Mining rights of Iron Ore" and "Mining of Coal" in Section 129 proceedings, without examining whether such new subsidy programmes had a sufficiently close nexus with the subsidies that were the subject of the original investigation;
- xiii. 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;
- xiv. 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.

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

11. India requests that a panel be established under Article 21.5 of the DSU with the standard terms of reference, as set forth in Article 7.1 of the DSU, and asks that this request be placed on the agenda of the DSB meeting scheduled for 27 April 2018.

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**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.

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