

**UNITED STATES-ANTI-DUMPING AND
 COUNTERVAILING MEASURES ON
 STEEL PLATE FROM INDIA**

Report of the Panel
 WT/DS206/R*

*Adopted by the Dispute Settlement Body
 on 29 July 2002*

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I. INTRODUCTION

1.1 On 4 October 2000 India requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade, 1994 (GATT 1994) and Article 17 of the Agreement on Implementation of Article VI of the GATT 1994 (AD Agreement) concerning, *inter alia*, the United States anti-dumping investigation on cut to length carbon quality steel plate.¹ The United States and India consulted on 21 November 2000, but failed to settle the dispute.

1.2 On 7 June 2001, India requested the Dispute Settlement Body (DSB) to establish a panel pursuant to Article XXIII:2 of the GATT 1994, Article s 4 and 6 of the DSU and Article 17 of the AD Agreement.²

1.3 At its meeting on 24 July 2001, the DSB established a panel in accordance with Article 6 of the DSU to examine the matter referred to the DSB by India in document WT/DS206/2. At that meeting, the parties to the dispute also agreed that the panel should have standard terms of reference. The terms of reference are, therefore, the following:

"To examine, in the light of the relevant provisions of the covered Agreements cited by India in documents WT/DS206/2, the matter referred by India to the DSB in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those Agreements".

1.4 On 16 October 2001, India requested the Director-General to determine the composition of the panel, pursuant to paragraph 7 of Article 8 of the DSU. On 26 October 2001, the Director-General composed the Panel as follows:³

Chairman: H.E. Mr. Tim Groser

Members: Ms. Salmiah Ramli

Ms. Luz Elena Reyes de la Torre

1.5 Chile, the European Communities and Japan reserved their rights to participate in the panel proceedings as third parties.

1.6 The Panel met with the parties on 23-24 January 2002 and on 26 February 2002. It met with the third parties on 24 January 2002.

1.7 The Panel submitted its interim report to the parties on 3 May 2002.

¹ WT/DS206/1.

² WT/DS206/2.

³ WT/DS206/3.

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II. FACTUAL ASPECTS

2.1 This dispute concerns the imposition by the United States of anti-dumping measures on certain cut-to-length carbon steel plate (steel plate) from India.

2.2 Based on an application filed by the US Steel Group, Bethlehem Steel, Gulf States Steel, Ipsco Steel, Tuscaloosa Steel and the United Steel Workers of America, the United States Department of Commerce (USDOC) initiated an anti-dumping investigation of imports of certain cut-to-length carbon steel plate from, *inter alia*, India, on 8 March 1999. The sole Indian respondent was the Steel Authority of India, Ltd. (SAIL). The dumping portion of the investigation was conducted by USDOC under the US anti-dumping statute and related USDOC regulations.⁴

2.3 On 29 July 1999, USDOC issued a preliminary determination of dumped sales. USDOC made its determination regarding SAIL on the basis of facts available, relying on the average of the two margins estimated in the application, and assigned SAIL a preliminary margin of 58.50 per cent.

2.4 On 29 July 1999, SAIL, by letter to USDOC, proposed a possible suspension agreement covering cut-to-length plate from India. On 31 August 1999, a meeting was held with counsel for SAIL, USDOC's Assistant Secretary for Import Administration, and other officials, to discuss the proposal. No suspension agreement was entered into.

2.5 On 29 December 1999, USDOC issued a final determination of dumped sales. USDOC found that SAIL had failed to cooperate to the best of its ability in responding to requests for information, and that the errors and lack of information rendered all of the data submitted by SAIL unreliable. USDOC therefore rejected SAIL's data in its entirety, and relied entirely on facts available ("total facts available") to determine SAIL's dumping margin. Having found that adverse inferences were appropriate because of SAIL's failure to cooperate, USDOC assigned the highest margin alleged in the application, 72.49 per cent, to SAIL.

2.6 On 10 February 2000, the US International Trade Commission issued a determination of material injury by reason of imports of the subject product from, *inter alia*, India, that had been found by USDOC to be dumped. On the same day, USDOC amended its final determination (in ways not relevant to this dispute) and issued the anti-dumping order.

2.7 SAIL challenged USDOC's final determination in the United States Court of International Trade (USCIT). SAIL argued that USDOC's decision was based on an incorrect interpretation of the applicable statute and regulations. SAIL also

⁴ The United States has a bifurcated system, under which different government agencies have responsibility for the dumping calculation and injury portions of the process. USDOC carries out the dumping calculations, and ultimately imposes any anti-dumping measures. The injury portion of the investigation is conducted by the United States International Trade Commission. Its investigation and the resulting determination of material injury in the steel plate case are not the subject of this dispute.

argued that USDOC erred in rejecting SAIL's data in its entirety and instead relying on total facts available, and in relying on adverse inferences. The USCIT upheld USDOC's interpretation of the applicable US statute and regulations as a "reasonable construction of the statute" and consistent with USDOC's "long standing practice of limiting the use of partial facts available". However, the case was remanded to USDOC for explanation of USDOC's decision that SAIL had failed to act to the best of its ability, which was the predicate for the decision to rely on adverse inferences in choosing the available facts on which SAIL's dumping margin was calculated.

2.8 On 27 September 2001, after the request for establishment in this dispute, USDOC issued its redetermination on remand, which is not at issue in this dispute. USDOC explained its decision that adverse inferences were appropriate in this case. USDOC explained that the use of some of the information supplied by SAIL, and partial facts available would allow a respondent to control the outcome of an anti-dumping investigation by selectively responding to questionnaires. The dumping margin of 72.49 per cent remained unaltered. The USCIT affirmed the redetermination on remand on 17 December 2001.

2.9 On 4 October 2000, India requested consultations with the United States pursuant to Article 4 of the DSU. Consultations were held on 21 November 2000, but the parties were unable to resolve the dispute. Subsequently, India requested the establishment of a panel on 7 June 2001.

III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

A. *India*

3.1 India requests that the Panel make the following findings:

- (a) That the anti-dumping duty order issued by USDOC in *Certain Cut-To-Length Carbon-Quality Steel Plate Products from India* on 10 February 2000 is inconsistent with the US obligations under Articles 2.4, 6.8, 9.3, 15 and Annex II, paragraphs 3, 5 and 7 of the AD Agreement, and Articles VI:1 and VI:2 of GATT 1994.
- (b) That sections 776(a), 782(d) and 782(e) of the Tariff Act of 1930 as amended (19 U.S.C. §§ 1677e(a), 1677m(d) and 1677m(e)) as such, and as interpreted by USDOC and the USCIT, are inconsistent with US obligations under Article 6.8 and Annex II, paragraph 3, 5 and 7 of the AD Agreement.
- (c) That sections 776(a), 782(d) and 782(e) of the Tariff Act of 1930 as amended (19 U.S.C. §§ 1677e(a), 1677m(d) and 1677m(e)) as applied by USDOC in the investigation leading to the final actions referenced above are inconsistent with US obligations under Articles 2.4, 6.8, 9.3, 15 and Annex II, paragraphs 3, 5 and 7 of the AD Agreement, and Article VI:2 of GATT 1994.

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3.2 India requests that the Panel recommend, pursuant to DSU Article 19.1, that the United States bring its anti-dumping duty order and the statutory provisions referred to above into conformity with the AD Agreement and Articles VI:1 and VI:2 of GATT 1994.

3.3 India further requests that the Panel exercise its discretion under DSU Article 19.1 to suggest ways in which the United States could implement the recommendations. In particular, India requests that the Panel suggest that the United States recalculate the dumping margins by taking into account SAIL's verified, timely submitted and usable US sales data, and also, if appropriate, revoke the anti-dumping order.

B. United States

3.4 The United States requests the Panel to find that India's claims are without merit and reject them.

IV. ARGUMENTS OF THE PARTIES

4.1 The arguments of the parties are set out in their submissions to the Panel. The parties' submissions are attached to this Report as Annexes (see List of Annexes, page 2517).

V. ARGUMENTS OF THE THIRD PARTIES

5.1 The arguments of the third parties, Chile, the European Communities, and Japan are set out in their submissions to the Panel and are attached to this Report as Annexes (see List of Annexes, page 2517).

VI. INTERIM REVIEW

6.1 Only India submitted comments on the interim report, on 17 May 2002. As provided for in the working procedures, the United States subsequently responded to India's comments, on 24 May 2002. The bulk of India's comments concerned typographical or grammatical errors. In response to those comments, the Panel corrected typographical and other clerical errors throughout the Report, and also corrected such errors it had itself identified, consistent with WTO editorial standards.

6.2 In addition to the above, India's comments repeated a request it had earlier made in comments on the descriptive part of the report, which had been circulated to the parties on 22 March 2002. India asserts that, for the reasons set out in its comments on the descriptive part, the text of paragraph 3.1 describing the measures and claims at issue, "does not properly reflect either India's claims or the measures addressed and clarified by India during the course of the proceed-

ing". India proposes that the Panel incorporate the changes India had proposed in its comments on the descriptive part of the report.

6.3 The United States considers that the Panel was correct in rejecting India's earlier request, and that the Panel should reject this request as well. In the United States' view, India's suggested modifications to paragraph 3.1 misstate the legal claims that India had set forth in its request for establishment of this panel. The United States comments that the Panel appears to have drawn paragraph 3.1 verbatim from paragraph 179 of India's first written submission, and thus the United States sees no reason for India to assert that the paragraph is inaccurate.

6.4 We considered this matter earlier in connection with India's comments on the descriptive part, and concluded at that time to leave paragraph 3.1 as originally drafted. As the United States correctly points out, the text of paragraph 3.1 of the report is taken verbatim from India's first submission. There does not seem to be any basis at this juncture to change the text of the report. Thus, we consider that it accurately reflects the relief sought by India. While India's arguments evolved over the course of the proceeding, this does not affect the measures and/or the claims before the Panel as to which relief was requested. The revised text proposed by India in its comments on the descriptive part is an entirely new formulation of its request for relief, which does not appear in any of India's earlier submissions. We see no reason to provide an opportunity to refine the request for relief of the complaining party at the end of the proceeding. Changes to the request for relief at this late stage might give rise to misunderstandings concerning the scope of the matter before the Panel, which was defined by the terms of the request for establishment. We therefore have decided to maintain paragraph 3.1 as originally drafted.

6.5 India objects to the use of the terms "specifically object" and "specific objection" in paragraphs 7.25 and 7.26 of the report to describe the United States' response to India's intention to resurrect a claim it had explicitly abandoned in its first submission. India states that in its recollection, the United States raised no objection, specific or otherwise, to India's raising the abandoned claim, while the text as currently drafted implies that there was some "general" objection.

6.6 The United States believes the report need not be changed in this respect.

6.7 The Chairman, at the beginning of the first meeting of the Panel with the parties, invited the United States to express any views it might have on this matter. The representative of the United States commented as follows: "Mr. Chairman, we believe that the original decision on the part of India to abandon the claim speaks volumes about its importance and peripheral nature in this dispute. On the other hand, we don't deny that this is something which is in the terms of reference and that this is the first panel meeting and there are opportunities to present new evidence, so we do not oppose it on that basis".

6.8 This statement could be interpreted as raising no objection at all, as India asserts. At the time, however, we understood the United States' view to be that while it viewed India's action with disfavor, it did not consider that there was a legal objection to India's action – that is, that while the United States "objected"

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to India's action in a general sense, it would not pursue any legal objection. As the report is based on, and reflects our understanding of, the arguments and positions of the parties, and the United States does not consider that our characterization of its position is incorrect, we have determined to make no change in this regard.

6.9 India made a series of comments regarding paragraphs 7.26 and 7.29 of the report. India notes its view that actual or theoretical prejudice to the due process rights of third parties appears to be a fundamental underpinning for the Panel's decision on the issue of the abandoned claim. In this regard, India considers that the interim report omits several facts regarding information (and due process) provided to the third parties by India. India request that the Panel take note that India provided certain information to the third parties in connection with India's intention to resurrect the abandoned claim, that neither the United States nor any third party objected to these procedures, and that the Panel did not seek the views of third parties in this context. In addition, India considers that paragraph 7.26 is misleading in that it gives the impression that the third parties addressed all the issues in this dispute, and would have addressed India's abandoned claim.

6.10 The United States objects to India's request that the Panel include information about the approach taken by India in its effort to resurrect the abandoned claim. As a general matter, the United States notes that the "facts" that India seeks to have added to the Panel's report are designed to create the impression that the third parties in this dispute were not prejudiced by India's actions – ignoring the broader systemic concern raised by the panel. Moreover, the United States notes that as India is raising this issue at the interim review stage, the third parties are not in a position to express any contrary views on the matter.

6.11 With respect to the "facts" themselves, the United States suggests that the relevant fact is that India failed to obtain agreement from all concerned that it could re-assert a claim that it had explicitly abandoned in its first submission. The United States asserts India cannot shift that burden to other parties by saying that they "failed to object" to procedures which India had invented out of whole cloth, and that any failure by the United States to object is therefore simply irrelevant.

6.12 Furthermore, the United States questions some of the factual assertions made by India. Finally, the United States disagrees with India that the Panel should modify the last sentence of paragraph 7.26. The United States believes the sentence is accurate and does not create the "misleading impression" that India asserts. The United States considers that the scope of the third parties' submissions is clear from the submissions themselves.

6.13 We accept as accurate the facts recited by India, although we have not undertaken to verify them ourselves. However, fundamentally, these facts do not affect our decision not to issue a ruling on India's abandoned claim. Our decision was not based on actual prejudice to any party or third party in this case, and thus is unaffected by any facts or argument as to efforts to avoid any prejudicial effect or the lack of any objection by other parties to the proceeding. Our concern,