

QUESTIONS TO THE UNITED STATES ON TN/RL/W/24

The following communication, dated 10 December 2002, has been received from the Permanent Mission of India.

During the last meeting of the Disciplines Study Group held at the OECD Secretariat on 12-13 September 2002, the United States had submitted a paper "Addressing Market Distortions in the Global Steel Sector" SG/STEEL(2002)23. Subsequently the United States also shared this paper with the Negotiating Group on Rules at the WTO (TN/RL/W/24). With a view to obtaining a better understanding of the issues contained in this paper, India seeks the following clarifications from the United States:

"Noting that the HLG has pointed to the WTO as an appropriate setting for pursuing better disciplines on at least some of the market distortions affecting trade in and production of steel"

1. Could the United States clarify whether there is any difference between "disciplines on trade distorting practices" and "disciplines on market distortions affecting trade"?
2. Why in the view of the United States is WTO an appropriate setting for pursuing better disciplines on market distortions affecting production of steel?
3. Could the United States specify the agreement that may be relevant at the WTO for disciplines on market distortions affecting production of steel?
4. Could the United States explain why it has chosen to discuss issues relating to disciplines on market distortions affecting trade in steel at the OECD? Would the United States agree that such discussions, wherein all WTO Members are not participating, cannot be an inclusive process and could adversely affect the interests of Member countries? As there may be a thin line between discussions and negotiations at OECD on issues covered under the various WTO Agreements, why, in the view of the United States, does this situation not violate the provisions of Article III:2 of the Marrakesh Agreement Establishing the WTO?

"how the results of our work could best be formulated into a coherent package and transmitted to appropriate fora for serious consideration and action".

5. Could the United States clarify the manner in which the results of works at the OECD on Steel issues, that are transmitted to the WTO, could be taken into consideration by the NG Rules?

"Subsidies or those measures with a subsidy-like effect"

6. Could the United States explain with illustrations what is meant by “those measures with a subsidy – like effect”?
7. Could the United States identify some of the measures “with a subsidy – like effect” on which any proposed disciplines may be included in the ASCM? Why in the view of the United States are disciplines on such measures not already included in the ASCM?
8. Is the United States seeking to include in the ASCM disciplines on “measures with a subsidy – like effect” even though such measures may not be considered a “subsidy” under Article 1 of the ASCM?
9. Is the United States proposing changes in “basic concepts and principles of the ASCM” whereby disciplines would be included in the ASCM based on effects of a measures irrespective of whether a financial contribution exists?

“Participants recognize that no single forum can adequately address the concerns identified and, therefore, agree to pursue an integrated approach to the issues in reference to work being done in – or within the competence of – the OECD, WTO and other fora, as appropriate”

10. Could the United States identify the specific concerns which can be adequately addressed at the WTO?

“we believe that the disciplines must extend beyond subsidies to address a broader range of distorting practices and measures”

11. Could the United States clarify whether WTO is an appropriate forum for conducting negotiations on disciplines to address a broader range of distorting process and measures extending beyond subsidies?
12. Could the United States identify the specific distorting practices and measures beyond subsidies for which WTO is an appropriate forum for improving disciplines?
13. Could the United States identify the specific distorting practices and measures beyond subsidies for which WTO is not an appropriate forum for improving disciplines?
14. Could the United States specify provision of any agreement in the WTO relevant to disciplines for preventing distortions, apart from those caused by subsidies?

“We should also be fashioning disciplines with the goal not only of preventing distortions, but also encouraging restructuring, rationalization and adjustment”.

15. Could the United States clarify whether disciplines for “encouraging restructuring, rationalisation and adjustment” can be addressed at the WTO under the mandate in paragraph 28 of Doha Ministerial Declaration?

“Addressing – perhaps through strengthened subsidies disciplines – preferential access to financing and steel production inputs, as well as circumstances in which governments absolve steel firms of generally applicable obligations”

16. Could the United States clarify whether “strengthened subsidies disciplines” refers to the disciplines under the ASCM?

17. Could the United States clarify whether “strengthened subsidies disciplines” would be generic in nature or be limited to steel issues? If latter be the case, then how does the United States reconcile this with the fact that there is no mandate for the WTO to undertake sectoral negotiation on steel issues?
18. What in the view of the United States is the difference between “clarifying and improving disciplines” and “strengthened disciplines”?
19. If “clarifying and improving disciplines” can result in “strengthened disciplines” would be United States agree that this would be equally applicable to the Anti-Dumping Agreement and the ASCM?
20. Could the United States clarify why, in its view, the provisions ASCM are inadequate to address “preferential access to financing and steel production inputs” and government measures that “absolve steel forum of generally applicable obligations.
21. Could the United States clarify whether special exemptions to the steel industry from the obligations contained in the domestic environmental laws and regulations of the country concerned that all other domestic manufacturers must meet would constitute an example of the government absolving steel firms of “generally applicable obligations”?

“Participants would agree to pursue liberalization of market access in the steel sector aggressively as part of the Doha negotiations, not only to open up markets but also to reduce the scope for dumping out of sanctuary markets”

22. Could the United States clarify the linkage between “liberalization of market access” and reducing the “scope for dumping out of sanctuary markets”?

“It is logical to assume that the use of these remedies would decline in conjunction with the elimination of inefficient excess capacity and distortive trade measures internationally”

23. Could the United States point to any empirical evidence confirming that use of trade remedies would decline in conjunction with inefficient excess capacity?

Development Dimension

24. India notes that the US proposal does not take into consideration the development dimension which is an issue crucial to developing countries. Any discipline on trade distorting measures which may be agreed to must take into consideration the flexibilities available to developing countries under the Subsidies Agreement. The development dimension has been specifically recognised in the Doha Ministerial Declaration as the needs of developing and least-developed countries would be taken into account during the negotiations. Would the United States clarify its position on the development dimension and the need to preserve the flexibility available to developing countries under the Subsidies Agreement? How, in the view of the United States, should the needs of developing and least-developed countries be taken into consideration in any improvements and clarifications on trade distorting measures which may be agreed by various countries?