



SPECIALTY STEEL INDUSTRY OF NORTH AMERICA

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FOR IMMEDIATE RELEASE

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SPECIALTY STEEL INDUSTRY URGES U.S. REJECTION OF WTO DECISION AGAINST U.S. COUNTERVAILING DUTY LAW

(Washington, DC) (December 12, 2002) -- The Specialty Steel Industry of North America (SSINA) today denounced a recent World Trade Organization (WTO) decision, charging that it is an intrusion on U.S. sovereignty and lacks support in the international agreements. SSINA urged the U.S. to reject the decision, which faults Commerce Department subsidy findings in twelve cases.

A December 9 ruling issued by the WTO Appellate Body stated that the United States breached its international obligations by imposing countervailing duties based on subsidies given to various European steel producers that were later privatized. SSINA contends that the WTO analysis is fundamentally flawed and portends substantial, negative ramifications for both present and future investigations of subsidized steel companies. SSINA is urging the U.S. to announce that it will refuse to implement the decision.

Expressing sharp disappointment with the decision, SSINA counsel David A. Hartquist said, “A finding that the privatization of a steel company eliminates all past subsidies is simply an invitation for foreign governments to subsidize companies prior to sale.”

Hartquist added, “This is another example of the WTO wrongly creating rights and obligations that were never considered – much less approved – by negotiators, and constraining the rights of Members to act against injurious unfair trade practices.” SSINA member companies were petitioners in many subsidy cases involved.

The core disputed issue is whether the sale of the outstanding stock of a steel producer eliminates all past subsidies provided to that steel producer. The WTO Subsidies Agreement is silent on this question, leaving it to Members to conclude such a sale does not eliminate all past subsidies. The U.S. reasons that as long as the company subject to a CVD investigation is the “same person” that received the subsidies (in terms of general business operations, production facilities, assets and liabilities, and personnel), then the original subsidies remain countervailable until fully amortized. A later sale of outstanding stock would not interfere with the subsidy recipient’s continued enjoyment of whatever the original subsidies were spent on, such as new equipment, worker retraining, or debt retirement.

The appellate body, however, invented a new rule under which it must be assumed that a sale of

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a company at fair market value extinguishes all of its past subsidies. While the appellate body stated that this assumption was “rebuttable,” this is not true in practice. It cited no Subsidies Agreement provision mandating or even indirectly supporting its extreme view. In the absence of a clear, negotiated commitment obligating WTO Members to refrain from countervailing pre-privatization subsidies, the only legitimate option was to rule that countervailing such subsidies is permissible.

The decision of the appellate body directly affects twelve countervailing duty orders on a variety of carbon and specialty steel products from France, Italy, Sweden, the United Kingdom, Germany and Spain. The appellate body has also sought to give the decision even broader effect by ruling against the methodology used by the Commerce Department for addressing pre-privatization subsidies and recommending that a different methodology be applied in all future cases.

Roughly two-thirds of U.S. countervailing duty cases involve products made by companies that have undergone changes in ownership following receipt of subsidies. Adherence to this ruling could result in the termination or significant curtailment of subsidy findings in the majority of U.S. countervailing duty proceedings.

The decision can be correct only if U.S. officials signed an Agreement that curtails radically U.S. law, agreed to excuse billions of dollars of trade-distorting subsidies, and committed to change what would have been affirmative determinations in two-thirds of future CVD cases. Congress was promised the opposite result, however, and worked with the Administration to include a provision in the Uruguay Round Agreements Act specifying that a fair market value sale does not suffice to eliminate prior subsidies.

SSINA is urging Congress and the Administration to ensure that this decision does not give rise to any change in U.S. law or practice.

SSINA is a Washington, DC-based trade association representing virtually all continental specialty steel producers. Specialty steels are high technology, high value stainless and other specialty alloy products. While shipments of specialty steel account for only 2% of all steel shipped, annual revenues of approximately \$8 billion account for 14% of the total value of all steel shipped.

David A. Hartquist is an international trade attorney with the Washington, DC law firm of Collier Shannon Scott, PLLC.

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