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Mr. Jeffrey May
Director of Policy
U.S. Department of Commerce
Import Administration
Central Records Unit, Room B-099
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Attn: Privatization Methodology

Re: Notice of Proposed Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act and Request for Public Comment

Dear Mr. May:

On behalf of the Specialty Steel Industry of North America (SSINA), we submit these comments on the agency's proposed modification to its privatization methodology under section 123 of the Uruguay Round Agreements Act. 68 Fed. Reg. 13,897 (Mar. 21, 2003). This proposed modification was prompted by the decision of the Appellate Body of the World Trade Organization in the dispute involving Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212/AB/R (Dec. 9, 2002). For the reasons set forth

below, SSINA believes that the Department's proposed modification is inconsistent with U.S. law and, therefore, cannot be implemented absent a change in the statute.

Assuming arguendo that the agency modifies its privatization methodology to conform to the holding of the WTO despite its inconsistency with the U.S. statute, the agency should at a minimum ensure that the new methodology continues to permit the agency to countervail subsidies where government privatizations occur that are tainted by actions not consistent with the actions of normal, commercial sellers, including in particular the government's provision of subsidies concurrent with a privatization, the government's imposition of terms and conditions on a sale, and the government's actions that distort market principles, so that subsidies can continue to be countervailed in such instances.

I. THE DEPARTMENT'S PROPOSED MODIFICATION TO ITS PRIVATIZATION METHODOLOGY IS INCONSISTENT WITH THE STATUTE

The Department's proposed modification to its privatization methodology can only be adopted if it is not inconsistent with U.S. law. To the extent a change in a U.S. statute is required in order for the United States to implement the WTO decision, Congress must enact legislation modifying the statute, assuming it agrees to do so. Here, the agency has proposed a new methodology that is inconsistent with the U.S. statute, the Statement of Administrative Action (SAA), and the holding of the appellate court in Delverde Srl v. United States, 202 F.3d 1360 (Fed. Cir. 2000), reh'g granted in part (June 20, 2000). As such, this proposed methodology must either be modified to comport with the statute, or the agency must seek revised legislation before proceeding further with its proposed modification.

Specifically, as the agency recognizes, section 771(5)(F) of the statute states that "{a} change in ownership of all or part of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction." 19 U.S.C. § 1677(5)(F). The SAA sets forth the reason for the adoption of this provision as follows:

> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's-length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct and prevent such an extreme interpretation.

H. Doc. 103-316, at 928 (1994). As this language reflects, Congress went to great lengths to ensure that countervailing duty liability for subsidies would not be eliminated simply because subsidized assets are sold to an unrelated party in an arm's-length sale, calling such a proposal an "extreme interpretation" that was rejected.

The appellate court in Delverde echoed the conclusion set forth in the SAA that the statute "prohibits a per se rule" of the type the Department is proposing: "This provision {19 U.S.C. § 1677(5)(F)} clearly states that a subsidy cannot be concluded to have been extinguished solely by an arm's length change of ownership." 202 F.3d at 1366. Although Delverde rejected the agency's prior "gamma" methodology because it found that this methodology led to a per se rule that a change in ownership always requires a determination that a subsidy continues, the Court emphasized that a rule to the contrary -- that a change in ownership extinguishes subsidies solely by its arm's-length nature -- is equally inconsistent with U.S. law.

The methodology that the Department has proposed is directly inconsistent with the statute, the SAA and the Delverde court's holding, because it would find the extinguishment of subsidies solely by virtue of an arm's-length sale at fair market value. Whether or not the Department views its proposed methodology as required by the WTO's holding, in the end it cannot revise its methodology in a manner that is directly inconsistent with an existing statute, as interpreted by the SAA and the appellate court.

To the extent that the agency nonetheless continues its attempt to implement this WTO decision through its proposed methodology, despite its inconsistency with the U.S. statute, SSINA offers the following comments on various aspects of the methodology on which comments were solicited.

II. FACTORS TO BE CONSIDERED IN THE DETERMINATION OF WHETHER A SALE IS AT FAIR MARKET VALUE

In defining fair market value, the Department should use the standard set forth in footnote 4 to its notice, specifically: "whether the government, in its capacity as seller, acted in a manner consistent with the usual sales practices of private, commercial sellers in that country." 68 Fed. Reg. 13,900. This standard properly takes into account the notion that a fair market value sale must reflect not only a price but also a behavior that is consistent with that of a non-governmental seller. By contrast, the concept of fair market value set forth in the text of the agency's notice, discussing the amount that a company is worth "under existing market conditions," wrongly permits the introduction of market distortions where existing conditions in a particular market are affected by government interventions. Thus, for example, where the agency is confronted with behavior such as the government's imposition of conditions on a sale requiring that certain employment levels or production output be maintained, or furnishes a

subsidy concurrent with the privatization to entice the sale, it should find such actions inconsistent with those of a commercial seller.[1]

To determine if fair market value was paid for a company, the Department has stated that it will examine "the process through which the sale was made." 68 Fed. Reg. at 13,900. Further, the agency proposes the consideration of the following four specific factors in this analysis: (1) artificial barriers to entry; (2) independent analysis; (3) highest bid; and (4) committed investment. Id. Our comments on each of these factors are set forth below, along with the suggestion that the Department add at least two new factors -- whether subsidies were provided in the course of privatization and whether the government maintains an indirect interest through government-controlled entities -- to the four factors listed as indicative of whether a sale occurs at fair market value.

A. Artificial Barriers to Entry

First, when inspecting the "barriers to entry," Commerce proposes to review whether the government imposed restrictions on foreign purchasers or unreasonable qualification requirements that suppressed interest in the company. Id. In undertaking this examination, the agency states that it is not the number of bidders per se, but rather, whether the market is

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[1] In this regard, we note that certain court decisions have referred to "full" market value or "full, fair market value," implying that there is a difference between fair market value and full market value, with the latter being somehow more comprehensive than the former. See, e.g., Allegheny Ludlum Corp. v. United States, Slip Op. 02-01 at 8 (Jan. 4, 2002). The Department should make clear that the terms fair market value and full market value are synonymous, and that a finding that fair market value has been paid for a company means that full market value has been paid. Indeed, the Department implicitly recognizes this fact in stating that payment of fair value involves payment of the "full amount" that the company or its assets were worth. 68 Fed. Reg. at 13,900. This fact should be made explicit in the agency's methodology.

contestable (i.e., whether anyone who wants to buy the company has a fair and open opportunity to do so). Id. n.6. While the Department should not impose a hard and fast rule on the number of bidders necessary to prove an open sale process, the agency should assume that sales that have only one or two bids that meet the terms and requirements for the sale do not involve a truly open bidding process.

In particular, in situations involving a limited number of bidders, or only one bidder that meets the requirements established, Commerce should attempt to ascertain whether there was a pre-ordained purchaser prior to the commencement of bidding, such that the bidding process was only for appearances. An "open" bidding process with a select number of participants should signal to the agency that the process was not competitive and open-ended.

In cases where there is only one legitimate, potential purchaser of the company, the Department must examine fully the relationship between the parties and the terms and conditions of the sale. For instance, if the government and the potential purchaser were involved in a contractual arrangement, such as a lease, prior to the sale, the agency must examine whether this agreement allowed for continued subsidization, such as the paying off of debt or use of other incentives, permitting the sale to occur at supposedly "fair market value."

B. Independent Analysis

Second, similar to the agency's regulations regarding equity infusions, the Department's privatization methodology specifically should state that absent an independent analysis conducted prior to the sale, the agency normally would find that the sale was not for fair market

value.[2] See 19 § C.F.R. 351.507(a)(4)(ii). Furthermore, Commerce must scrutinize the analysis to prove complete independence in the evaluation. For example, analyses which allow the government and/or other parties, such as the company itself or the purchaser, to comment on the report prior to finalization, should not be treated as independent. Instead, the analysis should examine the company based on the current market situation in the relevant industry, to assess the value of the enterprise based upon expected return and anticipated risks. Finally, as noted in the proposed methodology, the Department should examine the government's adherence to the recommendations in the analysis, demonstrating the government's attempt to maximize its return.

C. Highest Bid

The third factor the Department proposes to consider is whether the sale was made to the highest bidder. While acceptance of the highest bid would appear to be a straightforward factor in the proposed methodology, Commerce must consider the method of payment of this bid to find fair market value.[3] For instance, the government may offer financing to the purchaser, such that the government (or its agent) acts as a financier in the transaction. In such a scenario, in addition to examining whether a subsidy was granted in the course of the privatization (as discussed infra), the Department should find that the government did not receive full value for

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[2] Commerce, however, should not assume the converse to be true, i.e, a third-party analysis does not provide dispositive evidence that the sale was for fair market value.

[3] In fact, the proposed methodology acknowledges this condition, noting that the price was "paid in cash or close equivalent." 68 Fed. Reg. at 13,900. Our comments on this topic, therefore, seek to raise additional examples in which the agency should determine that full value was not paid for the company.

the company. Another example would be cases in which the government accepts as "payment" an asset at above market value.[4] Accordingly, the Department's proposed methodology should expressly state that fair market value would not be found in such instances.

D. Committed Investment

The final factor the Department proposes to consider is whether there was a "committed investment." In terms of the "committed investment" factor, Commerce should amend its proposed methodology and delete the reference to "price discounts or other inducements" as a condition for finding that the government did not receive a maximum return. See 68 Fed. Reg. at 13,900. A government's imposition of conditions upon the purchaser, in terms of future investments, retention of workers, maintenance of excess capacity, etc., should serve as sufficient evidence that the government is not acting as a normal commercial actor, even absent an explicit price discount. Further, given the current political environment and awareness of potential for countervailing duty liability, governments are unlikely to clearly offer "price discounts or other inducements" to a potential purchaser. The Department, therefore, should recognize that by seeking such commitments from the purchaser, the government is accepting willingly less than full market value for the company, and adjust its analysis to focus solely on the conditions.

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[4] See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 Fed. Reg. 38,742, 38,745 (July 19, 1999) (where the Department examined the use of "privatization currencies," government bonds and other debt instruments that the Government of Brazil accepted at full redeemable value for payment, but that traded at a substantial discount on the market).

E. Concurrent Subsidies

In addition to these four factors, the agency should examine whether subsidies were provided in the course of privatization in its analysis of fair market value. The Department has long-recognized that subsidies provided in the context of a privatization "can, in our experience, be considerable and can have a significant influence on the transaction value." See Preamble to CVD Regulations, 63 Fed. Reg. 35,355 (1998). Case precedent demonstrates that governments frequently attempt to "clean up" both companies and their respective balance sheets prior to sale through, for example, large-scale debt forgiveness, improvement of facilities, and/or assumption of severance costs for redundant workers. Although governments characterize this assistance as efforts to make the company more attractive to buyers, governments more regularly are catering to broader political and social goals. In fact, the governmental assistance often precedes any determination of the "value" of the company and shows a willingness to absorb substantial financial costs to maintain companies as on-going concerns regardless of the future sale price of the company. The Department's proposed methodology, therefore, should recognize that the provision of subsidies prior to or during privatization proves that the privatization did not occur at fair market value.

F. Government Indirect Interest or Control

A further factor the agency should consider in determining whether a sale has occurred at fair market value is whether the government has maintained an indirect interest in the company following the sale, particularly through government-controlled entities. Where the government has maintained control, even indirectly, over some shares in the company, the government may still be in a position to control the company and is not in the same position as a non-

governmental seller. This factor, therefore, should mitigate against a finding that the sale is at fair market value.

III. FACTORS TO BE CONSIDERED IN DETERMINING WHETHER MARKET DISTORTIONS EXIST

The Department's proposed methodology indicates that subsidies may continue to be found notwithstanding a privatization at arm's length for fair market value if "the broader conditions necessary for the transaction price to fairly and accurately reflect the subsidy benefit were not present, or were severely distorted by government action (or, where appropriate, inaction)." 68 Fed. Reg. 13,897, 13,900. In undertaking this step of its proposed analysis, the Department states that it would focus on the government acting as the government, not as a seller. Id. Thus, the Department will consider whether the market was so distorted by government action that the transaction price was meaningfully different from what it would have been without government action. Id.

This step in the analysis is based on the Appellate Bodies' rejection of the Dispute Settlement Panel' absolute *per se* rule that privatization sales automatically lead to the extinguishment of subsidies. 68 Fed. Reg. 13,897, 13,899. Both the Department and the Appellate Body recognize that certain types of government involvement in the economy, and in the privatization process in particular, create market distortions that cause the continuing existence of subsidies following privatization. Id. The Department states that "{t}he Appellate Body identified examples of circumstances where the conditions necessary for 'market prices' to fairly and accurately reflect subsidy benefits are not present, or are 'severely affected' by the government's economic and other policies." Id. The Department went on to cite a passage from the Appellate Body's decision explaining this issue:

> Markets are mechanisms for exchange. Under certain conditions (e.g., unfettered interplay of supply and demand, broad-based access to information on equal terms, decentralization of economic power, an effective legal system guaranteeing the existence of private property and the enforcement of contracts), prices will reflect the relative scarcity of goods and services in the market. Hence, the actual exchange value of the continuing benefit of past non-recurring financial contributions bestowed on the state-owned enterprise will be fairly reflected in the market price. However, such market conditions are not necessarily always present and they are often dependent on government action.
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> Of course, every process of privatizing public-owned productive assets takes place within the concrete circumstances prevailing in the market in which the sale occurs. Consequently, the outcome of such a privatization process, namely the price that the market establishes for the state-owned enterprise, will reflect those circumstances. However, governments may choose to impose economic or other policies that, albeit respectful of the market's inherent functioning, are intended to induce certain results from the market. In such circumstances, the market's valuation of the state-owned property may ultimately be severely affected by those government policies, as well as by the conditions in which buyers will subsequently be allowed to enjoy property.
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> The Panel's absolute rule of ``no benefit'' may be defensible in the context of transactions between two private parties taking place in reasonably competitive markets; however, it overlooks the ability of governments to obtain certain results from markets by shaping the circumstances and conditions in which markets operate. Privatizations involve complex and long-term investments in which the seller--namely the government--is not necessarily always a passive price taker and, consequently, the ``fair market price'' of a state-owned enterprise is not necessarily always unrelated to government action. In privatizations, governments have the ability, by designing economic and other policies, to influence the circumstances and the conditions of the sale so as to obtain a certain market valuation of the enterprise.

Id. citing AB Report at paras. 122-124.

Thus, both the Department and the Appellate Body recognize that sufficient government involvement in the economy in general, and in the privatization process in particular, can create a

situation where a privatization will not lead to the extinguishment of subsidies. If the Department adopts a new methodology, in order to be consistent with the Appellate Body decision, the Department must commit to a thorough investigation of each market distortion that affects privatization. Because such distortions are likely to vary from case-to-case, the Department should leave itself discretion to adapt its analysis to the circumstances of each case.

Under the Department's proposed methodology, if a party can demonstrate market distortion, the presumption of extinguishment will be eliminated. The non-exhaustive list of factors the Department suggests it will consider include, but are not limited to: (1) whether basic conditions exist for a properly functioning market and sector of the economy, (2) the use of government incentives to make the sale more attractive to potential purchasers or particular purchasers, (3) legal requirements concerning worker retention and other factors that distort the market price of the company or its assets, and (4) price distortions caused by large subsidies to other companies in the industry. Id.

In footnote nine of its request for comments, the Department recognizes that the first factor listed above, "basic conditions," may "intersect" with the Department's practice regarding non-market economies in countervailing duty cases. It is critical to recognize that the Department's general practice is not to apply countervailing duties to non-market economy companies, following the holding by the Court of Appeals for the Federal Circuit (CAFC) in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (1986); see also Countervailing Duties: Final Rule, 63 Fed. Reg. 65,348, 65,360 (Nov. 25, 1998). The "basic conditions" indicating that no market economy exists (as listed in the Department's notice) would, of course, also indicate

the existence of a non-market economy and the corollary non-application of CVD law.[5] Thus, in essence, companies in non-market economies would not be subject to countervailing duty laws until the Department designated their country a market economy. At that point, the Department would effectively recognize that the basic conditions indicating a lack of a market economy would cease to exist and the Department would find that an arm's length privatization would erase prior subsidies. Consideration of the "basic conditions" factor of market distortion therefore does not make sense and it should be omitted from the Department's analysis of this issue.

The next two factors, government incentives and legal requirements that distort market conditions, both closely resemble the factors examined in the prior section to analyze whether a sale is made at fair market value. To the extent these market distortions are caused by the government acting as the government, then adoption of the "market distortion" perspective suggested for this section of the methodology is appropriate. Such an approach takes into account the unique position of a government seller with power to control the public purse and to create laws, regulations and other market conditions that make a particular sale possible. Through legislation or more informal rulemaking, a government can create legal and social conditions that could make a sale palatable to workers or others, even though the sale would not be palatable if only market forces and private parties were involved. The provision of additional

[5] While the Department theoretically could find countervailable subsidies to a "market-oriented industry" within a non-market economy, it has never done so. See Final Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans from the People's Republic of China, 57 Fed. Reg. 24,018, at Comment 1 (June 5, 1992); Preliminary Countervailing Duty Determination, Oscillating and Ceiling Fans from the People's Republic of China, 57 Fed. Reg. 10,011 (March 23, 1992).

subsidies by the government to facilitate the sale of a company (e.g., debt forgiveness) by making the company more attractive to potential purchasers constitutes a distortion of the market.

To the extent the Department adopts a new methodology, we therefore endorse an intensive analysis of government actions taken to make sales more attractive to potential buyers when such actions would not normally (or could not) be taken by non-government sellers. In situations where such incentives and legal requirements distort the market, the Department should reject the presumption of extinguishment of subsidies due to an arm's length sale for fair market value and should find that subsidies continue to exist following privatization. We also agree that the presence of other heavily subsidized companies would severely distort the market price of a company and lead to a similar rebuttal of the presumption of extinguishment.

Finally, if the Department implements this new methodology, it should leave room for flexibility in this analysis by not artificially limiting the list of factors that could be found to distort a market to those included in its notice. The factors that distort a market for a privatization sale are difficult to predict in advance of obtaining some practical experience in this area. One can imagine a number of methods that could be used to affect purchasers' incentives. Therefore, the Department's methodology should cite the Appellate Body's language recognizing the need to analyze factors that could distort the market and indicate that this portion of the analysis will be conducted on a case-by-case basis as the new policy is implemented.

IV. ADDITIONAL ISSUES PRESENTED BY THE PROPOSED METHODOLOGY

The Department recognizes that there are many details of the proposed methodology that require further elaboration and has solicited input on certain issues. 68 Fed. Reg. 13,901. SSINA's comments on those issues follow.

A. Continuing Benefit Amount

In instances in which the privatization did not result in the extinguishment of the benefits of pre-privatization subsidies, the Department seeks comment on how it should quantify the amount of the benefit from those subsidies the company continues to enjoy. Where the Department finds that a privatization has not taken place in an arm's-length, fair market value sale, then it must revert to its "baseline presumption" that non-recurring subsidies benefit the recipient over the allocation period that corresponds to the average useful life of the recipient's assets. In such circumstances, therefore, the unallocated portion of the subsidy must continue to be allocated to the company's assets and must continue to be countervailed at the same level as if no privatization had occurred.

This result is the only logical result of the Department's "presumption" methodology, where the baseline analysis logically and properly, consistent with longstanding agency principles, assumes a continuing benefit associated with an allocated subsidy absent some event that disrupts that benefit stream. The event that has been identified by the WTO that would disrupt the benefit stream is a privatization for fair market value. Where such an event has not occurred, therefore, the initial benefit allocation should govern and no diminution of the subsidy should result.

B. Concurrent Subsidies

The issue of concurrent subsidies is of critical importance to the Department's analysis of whether privatization extinguishes subsidies. As discussed in sections II and III above, any time that a government provides a subsidy concurrent with or immediately preceding a privatization, the Department should conclude that no sale at fair market value has occurred and/or that a distortion of the market has taken place. The government's intervention in providing a subsidy to affect the privatization distorts the market value and price of the company and eliminates any conclusion that the sale was akin to a normal commercial transaction between non-government sellers and purchasers.

Perhaps in recognition of this fact, subsidization that occurs concurrently with a sale is expressly recognized in the Subsidies Code as a unique situation, with an exception provided only for developing countries that provide subsidies concurrently with a privatization. See SCM Code, Article 27.13. The clear implication of this Code provision is that subsidies provided concurrently with a privatization by non-developing countries are countervailable; otherwise, no exception would be needed.

Moreover, even if the Department adopts the view that allocated subsidies provided to a company that is later privatized at fair market value are no longer allocable and countervailable, at a minimum the Department must recognize that subsidies provided in the context of a privatization are new subsidies to the new company[6] and are countervailable. Indeed, failure to

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[6] Although the agency refers to subsidies that might go to the new "owner" in discussing concurrent subsidies, in fact subsidies go to companies and not to owners as the agency has long-recognized. See, e.g., 19 C.F.R. § 351.525. As the Department stated to the Court in one of the privatization appeals, "other longstanding, court-approved Commerce methodologies involved in
(...continued)

countervail such subsidies will merely encourage governments that plan to privatize state-owned enterprises to provide substantial finding and/or debt forgiveness immediately prior to the sale to ensure that a sale takes place, thereby introducing additional distortions into the market. Failure to address these concurrent subsidies under the agency's proposed methodology would be legally indefensible as these subsidies most definitely distort the market and such an approach would promote, rather than discourage, the provision of subsidies to companies as part of future privatizations.

C. Private Sales

The Department's new methodology addresses only government-to-private sales of a company, consistent with the holding of the WTO, which focused in all 12 cases at issue on privatizations. The Department's question as to what ramifications this holding might have on private-to-private sales should not be the subject of the Department's modified methodology pursuant to section 123, as private-to-private sales were not addressed by the WTO.

D. Partial or Gradual Sales

The Department further inquires as to what percentage of shares or assets sold should be the threshold for triggering application of the methodology, and how it should handle situations in which incremental sales occur. We do not believe that the partial sale of shares or assets

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measuring the benefit of a subsidy confirm that it is the benefit to the company that is the producer under investigation rather than the benefit to the company's owners that is being measured pursuant to United States CVD law." See Defendant's Memorandum in Opposition to Plaintiffs' Motion for Judgment Upon the Agency Record, Acciai Speciali Terni, S.p.A. v. United States, Ct. No. 01-00051, Oct. 5, 2001, at 16 n.12. Although certain dicta in the WTO decision suggested that subsidies were given to owners and not to companies, that was not the holding of the WTO and does not require implementation or alteration of longstanding agency practice recognizing subsidies go to companies not owners.

should provide any basis for reexamining an allocated benefit stream. Nothing in the WTO's decision addresses partial sales because each situation presented involved the sale of an entire company. Thus, the WTO holding does not require the agency to revise its methodology to address this situation. Moreover, the agency has stated that the baseline presumption of a continued benefit from unallocated subsidies is only rebutted where a privatization occurred in which the government sold its ownership of all or substantially all of a company or its assets. Partial sales by a government of less than all of a company do not satisfy the initial prerequisite for altering the basic presumption that unallocated subsidies continue to benefit the company.

E. Effective Control

Similarly, the Department asks what factors should be considered in determining whether the government has relinquished "effective control" over a company or assets that it sold, suggesting perhaps that the "use or direct" standard of its cross-ownership provision be considered. 68 Fed. Reg. at 13,901. First, we disagree that the issue should be whether the government has relinquished "effective" control of a company, the inquiry instead should require that the government have "no" ownership whatsoever of the company and no right in any way to exert control over the company in order to consider whether the privatization has eliminated subsidies. Where any continued ownership or control is found, such as through the government's holding of special shares, that finding itself should nullify any finding of extinguishment of subsidies. Second, "use or direct" standard applied in cross-ownership situations should not be applied in a privatization context, as very different factors are at play.

F. Holding or Parent Companies

The final, difficult issue that the agency has identified as one that should be examined in the privatization context is the question of holding or parent companies, where ownership changes at a level removed from the actual respondent in a particular case. Application of the agency's new privatization methodology should never be triggered when there are changes in ownership of holding companies or parent companies that are removed, often several times, from the actual respondent in the case. Where ownership of holding companies changes hands, there is no effect on the subsidy provided to the company that is an actual respondent in a case to warrant a finding of extinguishment of the subsidy. Moreover, as the agency is well aware, injection of holding companies into the mix of companies involved in a countervailing duty case, followed by ownership transfers by those companies, presents rampant opportunities for cosmetic changes that involve no real change to the company at issue and no real effect on the subsidy. Accordingly, the agency should require that there be a privatization of the company that is the actual respondent in a case before its privatization methodology becomes an issue.

V. CONCLUSION

For the foregoing reasons, we urge the agency: (1) to revise the fundamental principles of its proposed privatization methodology to ensure that it is not inconsistent with the U.S. statute; (2) if the proposed methodology is adopted, to limit the application of the new methodology to the situation addressed by the WTO and not to expand it broadly to address other circumstances; (3) to reject the presumption of extinguishment of countervailable subsidies when

evidence of market distortion is found; and (4) to ensure in particular that subsidies provided concurrently with or in order to effectuate a privatization remain actionable.

Respectfully submitted,

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