

tion to the petition by a majority of the U.S. industry. Quebec had argued that Commerce's determination that the Quebec Industrial Development Corporation (SDI) program provided benefits to a "specific" enterprise or industry was improper. It was argued that the sole basis for the specificity determination was a finding of disproportionate use of the SDI program, and that Commerce had failed to consider and weigh the other three factors contained in its Proposed Regulations. The panel concluded that Commerce's reliance on the "disproportionality" factor to find specificity was within Commerce's discretion. The panel found that Commerce had considered the other factors, but found them unnecessary for its determination.

Quebec submitted that Commerce should have conducted its "disproportionality" analysis on an industry-by-industry rather than an enterprise-by-enterprise basis. The panel found that although Commerce has statutory discretion to conduct an analysis by enterprise rather than by industry, it nevertheless had a duty to justify its choice by giving a cogent explanation for the exercise of its discretion.

In its final determination, Commerce allocated the benefits of the SDI grant for the purchase of pollution control equipment over 14 years—the average life of assets in the magnesium industry, according to the 1977 Class Life Asset Depreciation Range System developed by the Internal Revenue Service (IRS). Quebec argued that Commerce should have used the depreciation period used by Norsk instead of the IRS table. The panel stated that Commerce must consider the IRS tables and the producer records, in a manner that satisfies the standard articulated in the *Ipsco* case of "an allocation period which will accurately reflect the commercial and competitive benefit received by the plaintiffs," and that Commerce must provide a satisfactory explanation in support of whatever decision it reached. The panel was also satisfied with Commerce's explanation concerning the use of IRS tables to determine the useful life of equipment bought with an SDI subsidy. This action was seen as a reasonable exercise of discretion in view of Commerce's stated review of available financial records.

SDI entered into a grant contract in which it agreed to reimburse NICI for interest payments made on outstanding debt obligations. The SDI grant was calculated as a percentage of the cost of pollution control equipment. Quebec asserted that because the interest payments made on the outstanding debt obligations were directly tied to recurring interest payments, Commerce should have treated the assistance as a recurring grant. The panel affirmed Commerce's determination that the assistance was authorized and disbursed in one act—meaning that it should be deemed a non-recurring grant.

Quebec submitted that Commerce should only have countervailed the portion of the SDI grant that was above the line of proportionality because countervailing duty law was intended to simply offset the benefit conferred and not to penalize firms that received subsidies. The panel, however, affirmed Commerce's decision to countervail the entire grant in accordance with its past practice and its Proposed Regulations.