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NME Request for Comments

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The Honorable Carlos M. Gutierrez
Secretary of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th and Constitution Ave., N.W.
Washington, D.C. 20230

Dear Secretary Gutierrez,

On behalf of Nucor Corporation ("Nucor"), we hereby submit the following response to the Department of Commerce's ("the Department" or "Commerce") request for comments on the surrogate country selection methodology it employs in antidumping proceedings involving non-market economy ("NME") countries.¹

¹ See *Surrogate Country Selection in Proceedings Involving Non-Market Economy Countries; Request for Comment*, 72 Fed. Reg. 40,842 (Dep't of Commerce July 25, 2007) ("Request for Comments").



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I. SURROGATE COUNTRY METHODOLOGY

The Department requested comments regarding three aspects of its surrogate country selection methodology: 1) how the Department should the initial list of economically comparable countries, how this list should be balanced, and how many countries should be included, 2) whether certain countries should be excluded from the list based on a general lack of necessary data, and 3) how to evaluate and weigh the production experiences and data availability of countries in cases where there may be more than one country with significant production and reliable data.

A. Construction of the Surrogate Country List

The Department's statutory mandate grants broad discretion in surrogate country selection, especially with respect to judging the economic comparability between a prospective surrogate and the subject NME country. The current system is effective, yields accurate results, and should not be changed radically. However, there is potential for streamlining the process while allowing for increased accuracy.

Currently, the Department relies on a list of potential surrogate countries prepared by the Office of Policy for each investigation and review involving a NME country.² The Office of Policy chooses these potential surrogates on the basis of each country's GNI as reported in the World Bank's World Development Report.³ The Office of Policy typically only identifies potential surrogate countries whose per capita GNI is less than that of the subject NME country.

² See *Non-Market Economy Surrogate Country Selection Process*, Import Administration Policy Bulletin No. 04.1(Mar. 1, 2004) ("Policy Bulletin No. 04.1").

³ See *id.*



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Consistent with its statutory mandate, however, the Department may and should consider potential surrogates with GNIs greater than that of the subject NME country as well. This approach is wholly consistent with the Department's mandate to identify potential surrogate countries that are "at a level of economic development comparable to that of the nonmarket economy country."⁴ Indeed, if GNI is the sole factor of comparable development, a country that is slightly less economically developed than the NME country should be indistinguishable from a country that is slightly more economically developed than the NME country.

However, while Commerce should seek more balance in identifying economically comparable surrogates, it should also increase the size of its sampled countries from five or six to perhaps ten or more as a means of ensuring a plentitude of surrogate country choices both above and below the NMEs GNI. Restricting the list of potential surrogates to five countries is arbitrary and may not always produce choices that will pass additional considerations such as significant production and data availability. Therefore, while Commerce should increase the number of choices, the number of choices should not be steadfast, merely sufficient to provide coverage within an unspecified range of economic comparability.

In sum, per capita GNI should remain at the base of the Department's determination of economic comparability. Yet, Commerce should not adopt a specific band or range of GNI comparability. Rather, the Department should approach GNI flexibly and on a case-by-case basis, cognizant that a country with a greater GNI than that of the subject country may serve as an effective surrogate.

⁴ 19 U.S.C. § 1677a.



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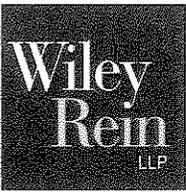
B. Exclusion of Certain Countries Due to Data Constraints

While Commerce should expand and balance the list of potential surrogate countries, it should not waste resources reviewing and comparing countries that, despite being economically comparable, would ultimately never be selected because the data is unreliable, lacks specificity, or is otherwise not suitable. For example, if published import data is shown to be consistently inaccurate for a large number of categories, or if revisions correcting inaccuracies in previously published data are not performed on a timely basis such that Commerce is constantly frustrated in seeking contemporaneous data, Commerce should decline to find that the country is a suitable choice when it develops its list of economic comparable countries.

Likewise, Commerce should automatically disregard countries where the import data is not categorized with enough specificity to ensure meaningful values for individual surrogates. Commerce goes to great lengths to seek out a detailed bill of materials such that it fully and accurately captures all factors of production on a company-specific basis. It would be nonsensical to erase the specificity of the factor data by giving preference to a country with surrogates lacking that same specificity, when more accurate data is available.

For example, in the recently completed review of Wooden Bedroom Furniture from China, Commerce correctly selected Indian import data over Philippine import data because the Indian data contained 21 categories of lumber while the Philippine data contained only ten.⁵ Moreover, the Philippine data largely

⁵ See Memorandum from Stephen Claeys to David Spooner re: Issues and Decision Memorandum for the 2004-2005 Administrative Review, *Wooden Bedroom Furniture from the People's Republic of China* at cmt 1C (Aug. 8, 2007).



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consisted of basket categories such as “coniferous wood” or “other woods” whereas the Indian data contained data matching the level of specificity of the input wood such as beech, pine, birch, etc. By definition, basket categories average out differences between sub-categories and should be avoided when more specific data is available. Commerce should always give preference to data maintained at a more detailed level (i.e., HTS data at the 10-digit level over the eight or six digit levels) or with more specificity (i.e., specific inputs over basket categories).

Finally, Commerce should ignore countries where it finds that the data is otherwise unreliable. For example, a particular country’s local GAAP may allow unusual treatments of certain expenses such that income statements are inappropriate to use in developing surrogate financial ratios, or the income statement format may simply lack the specificity required to allow Commerce to distinguish overhead, G&A, and profit. Commerce might also disregard a country with known aberrations affecting an entire sector, such as the heavily-subsidized energy sector in the Russian Federation, or where trade barriers, such as large export or import taxes, significantly distort the market prices.

C. Analysis of Otherwise Comparable Countries

It is likely that, notwithstanding the exclusion of countries with unreliable data, Commerce will have a pool of candidates with reliable data and significant production. The Department would be well within its statutory purview to look beyond countries that are “closest” to the NME country in terms of per capita income to consider additional factors. In fact, once a country is on the list, Commerce should further discriminate by looking through a new lens.



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Significant production levels may not always guarantee that the inputs likely to be used in that production are also significantly imported. Thus, Commerce should, in appropriate circumstances, consider other factors that may be more relevant to the quality of the data, such as the potential surrogates' relative economy size, the relative size of their domestic markets, and their levels of integration into global markets relative to the level of the NME. All other things being comparable, there may be good reason to favor larger countries, larger markets, and higher levels of integration over their inverse, particularly when seeking a surrogate for China. For example, there may be situations where India remains an appropriate surrogate for China, even if its GNI is not as comparable as that of some other countries, due to comparability of populations, size of economy, volume of imports, or other factors.

In closing, Nucor supports the current surrogate country selection methodology. The system is working. However, Commerce can improve the accuracy by bringing balance to the choices, expanding the list of choices, and by giving preference to choices with larger populations and markets, and equivalent integration. Commerce can streamline its methodology by eliminating countries with errant data issues.



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Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Alan H. Price" or "Timothy C. Brightbill", written over a horizontal line.

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