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January 16, 2007

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Ms. Susan H. Kuhbach
Senior Office Director
Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
14th and Constitution Ave., N.W.
Washington, D.C. 20230

Re: *Application of the Countervailing Duty Law to Imports from the People's Republic of China* (71 Fed. Reg. 75507): Nucor's Response to Request for Comment

Dear Ms. Kuhbach:

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 applicability of the countervailing duty law to imports from the People's Republic of China.¹ Nucor fully endorses the submissions filed on behalf of the Committee to Support U.S. Trade Laws ("CSUSTL") and the steel industry of the United States, and believes that the

¹ *Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comment*, 71 Fed. Reg. 75,507 (December 15, 2006).

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Department's current practice of not applying the CVD law to non-market economies should be reversed, at least with respect to China.

Nucor continues to be concerned about the threat posed to U.S. manufacturing from increasing volumes of unfairly subsidized Chinese imports. It believes that vigorous application of the CVD law to Chinese imports is essential to confront the growing threat of unfairly traded Chinese products and to protect U.S. industry from China's illegal and distortive trade practices. Nucor further believes that the Department is compelled by both domestic law and U.S. international obligations to apply the CVD law to Chinese imports. In essence, by requesting that it be exempt from application of the CVD law, China is asking the United States to violate its own laws as well as its international obligations.

As an initial matter, as a full participant in the world trading system, China has expressly agreed to be subject to countervailing duty investigations. Since its accession to the WTO in 2001, China has been subject to the disciplines of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). These disciplines, which China explicitly accepted as a condition of its entry to the WTO, include the possibility that CVD measures might be brought against Chinese imports by other WTO members. Additionally, China's WTO Accession Protocol confirms that the SCM Agreement permits WTO members to apply countervailing duty measures against non-market economy countries. Specifically, Article 15(b) of the Protocol provides that proceedings under Part V of the SCM Agreement (relating to countervailing duties) are applicable to China. These measures apply regardless of whether the WTO member applying the CVD law treats China as a non-market economy for purposes of its antidumping law.

Moreover, domestic law authorizes, even compels, application of the CVD law to China. The authorizing legislation for permanent normal trade relations (PNTR) with China explicitly authorizes the application of countervailing duty measures on Chinese imports. The statute, codified at 22 U.S.C. § 6941, authorizes additional appropriations for the Department of Commerce to, *inter alia*, “defend United States antidumping and countervailing duty measures with respect to products of the People’s Republic of China.”² Such language, which passed subsequent to the 1998 regulations in which Commerce last addressed this issue, evidences clear Congressional intent that the CVD law be applied to Chinese imports. The statute eliminates any discretion the Department had in applying the CVD law to Chinese imports, and makes such application mandatory.

The language also underscores Congress’s recognition that the SCM Agreement and China’s WTO Accession Protocol permit the application of countervailing duty measures against Chinese imports. Indeed, the PNTR legislation notes that in order for the United States to obtain the full benefit of the concessions made by China upon its accession, the “United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People’s Republic of China to the WTO.”³ A House Committee report on the bill specifically identified China’s adherence to WTO subsidy disciplines as one of the aspects of China’s WTO accession that would “benefit U.S. firms”⁴ and which therefore must be monitored and enforced.

² P.L. 106-286, §413(a)(1) (October 10, 2000), codified at 22 U.S.C. § 6943.

³ P.L. 106-286, §411(5) (October 10, 2000), codified at 22 U.S.C. § 6941.

⁴ H.R. Rep. 106-632, 106th Cong. 2d Sess. 12 (2000).

Application of the CVD law to China is also required to implement U.S. obligations under the WTO agreements in light of China's accession to the WTO. For example, application of the CVD law against Chinese imports may be required to avoid violating the most-favored nation ("MFN") requirement of Article 1 of the GATT 1994. As noted above, China's Accession Protocol explicitly confirms that Chinese imports are subject to countervailing duties regardless of whether China is treated as a non-market economy for antidumping purposes. By continuing to exempt China from application of the CVD law, the United States is conferring a substantial benefit on China. Moreover, there is no justification for this differential treatment in light of the fact that the Chinese Accession Protocol both expressly subjects Chinese imports to CVD measures, and permits the use of alternate methodologies to address the challenges of identifying and quantifying Chinese subsidies. Failure to apply the CVD law to China thus could potentially be found to be a violation of U.S. MFN obligations under Article I of the GATT 1994.

China's request that the Department exempt it from application of the CVD law – thereby violating our domestic law as well as our international obligations – should thus be ignored. The Department should also reject the concerns raised by the Chinese government regarding the application of the CVD law to China, including the purported risk of "double-counting" and the difficulties of identifying and quantifying subsidies. These concerns are little more than smoke screens designed to promote WTO-inconsistent approaches. As the Department has recognized, "there is no reason to assume such double counting would even exist."⁵ More importantly, except for out-of-country benchmarks, the WTO agreements do not permit the United States to

⁵ U.S. –China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties, GAO-05-474 at 45 (June 2005) (Letter from Timothy J. Hauser to Loren Yager commenting on draft GAO report).

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apply different subsidy calculations to China than it applies to other WTO members. Those raising this issue or suggesting alternate treatment are urging the United States to violate its MFN obligations under Article 1 of the GATT 1994. China's concern over difficulties identifying subsidies is equally specious given that the Chinese government itself has identified numerous countervailable subsidies both in its Accession Protocol and in its April 2006 subsidies notification to the WTO.

In summary, Nucor strongly urges the Department to use the full range of trade remedies available under the law – including application of the CVD law to China – to counter the massive threat to U.S. industry posed by unfairly subsidized Chinese imports. Not only is application of the CVD law to China compelled by the PNTR legislation and U.S. obligations under the WTO, it is also essential to the future health and prosperity of the U.S. steel industry.

Please do not hesitate to contact us should you have any questions.

Respectfully submitted,



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