

Extract

## **ANTIDUMPING MANUAL Chapter 8, Section XVI**

### **XVI. NON-MARKET-ECONOMY COUNTRIES**

- A. Hierarchy for Valuing
  - B. NME Factor Valuation and Construction of NV
  - C. Separate rates
  - D. Market-Oriented Industry (MOI)
  - E. Sample Calculation for NV
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#### References:

The Tariff Act of 1930, as amended (the Act)

Section 771(18) - definition of a nonmarket economy (NME);  
factors considered in determining  
NME status; and other items

Section 773(c) - NME countries

Department of Commerce (DOC) Regulations and preamble to DOC proposed AD and CVD rules (61FR 7308, February 27, 1997)

19 CFR 351.408 - calculation of normal value (NV) for  
NME countries

SAA

None

One of the most complicated areas under the Act is the calculation of NV for cases involving NME countries. The presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. In addition, the fact that the currencies of these countries may not be convertible means that, even if a NV could be calculated in the country, it might not be expressed meaningfully in U.S. dollar terms. Always consult with your supervisor or program manager (PM) if you are assigned a NME investigation.

1. The country in your case, call it "X", has" NME country status if: (1) DOC has treated X as a NME country in past cases and no interested party contests NME treatment in your case or (2) there is no prior history of NME country treatment for X, but DOC nevertheless determines (in your case) that NME methodology is warranted. In making such a determination, DOC would consider the six factors in Section 771(18) of the Act and would give full consideration to all interested party comments and arguments. Situation 2 arises only where there is no case history, such as with North Korea.
2. For NME countries, section 773(c) of the Act requires that DOC normally calculate NV

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- using market economy (“**surrogate country**”) prices to value the NME country “**factors of production**” used to produce the subject merchandise. These factors include, but are not limited to 1) hours of labor required; 2) quantities of raw materials employed; 3) amount of energy and other utilities consumed; 4) representative capital costs, including depreciation. To these factor costs, DOC adds amounts for factory overhead, general, selling and administrative expenses, profits and packing.
3. The valuation of labor is different from the valuation of all other physical or material inputs because we set the rate for each year. (See 19 CFR 351.408(c)(3) and the preamble to the 2/27/97 proposed AD regulations.) This wage rate essentially is an average of wages prevailing in market-economy countries at the per capita GDP of the NME country.
  4. The statute requires that the country you use as a surrogate must be, to the extent possible, at a stage of economy development comparable to the NME country and a significant producer of comparable merchandise.
  5. The Office of Policy (OP) determines, primarily on the basis of per capita income, which market economy countries (any country not treated as a NME country under the law) are economically comparable to the NME and hence, qualify as potential surrogates. You must check with OP for a current list of potential surrogates in each investigation/review that you do. Once OP provides you with this list of 5 or 6 countries, your team must then determine, on the basis of interested party comments and input from USG industry experts, which, if any, of the countries on OP’s list is a significant producer of comparable merchandise.
  6. If the necessary price data is not available for factor valuation purposes, the statute allows you to base NV on the price at which merchandise comparable to the subject merchandise is exported from the surrogate country to other countries, including the United States. Since amendment of the current NME provision in 1988, we have not resorted to this alternative.

#### **A. Hierarchy for Valuing Factors of production**

Presently, the DOC considers it appropriate in NME cases to rely, to the extent possible, on publicly available information from the first choice surrogate country to value all factors of production (except labor). However, if the inputs used to produce the product under investigation or review are purchased by the NME respondent from market-economy suppliers and paid for in a market-economy currency, then our practice is to use the actual price paid for these inputs, where possible, before relying on surrogate country information. See Lasko Metal Products, Inc. v. United States, 43 F.3d 1442 (Fed. Cir. 1994). Where a portion of an input is purchased from a market- economy supplier and the remainder from a NME producer, the DOC normally will value the factor using the price paid to the

market-economy supplier.

In developing factor value information, we try to remain within one surrogate country to the extent possible. If there is no reliable information from the first choice surrogate country for a particular factor, we will attempt to use public data from another surrogate (see Final Determinations of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058 (May 18, 1992), and Sulfanilic Acid from the People's Republic of China, 57 FR 29705 (July 6, 1992)).

## **B. NME Factor Valuation and Construction of NV**

Factors of production are inputs such as materials, labor, and energy used in producing a product. Material inputs are measured in the number of physical units used in the production of the product, i.e., tons, pounds, gallons. Labor is measured in terms of hours and we distinguish between direct and indirect labor. Energy is measured in terms of quantities used, e.g., BTUs (gas), kilowatt hours (electricity), gallons (fuel oil).

The NME questionnaire requires information on the quantity of inputs actually used to produce the subject merchandise in the NME. If the NME exporter is a trading company, we will normally require factors information from each of the factories supplying that trading company with exports of the subject merchandise to the US. Where there are a large number of factories involved in the production of the merchandise, we may limit our questionnaire to only the largest suppliers.

### **1. Valuation of Materials and Energy**

We rely almost exclusively on publicly available data sources to value input factors and have developed an index of such sources employed in previous NME investigations and reviews. (See Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC, and Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from NME Countries Other Than the PRC, located in the Central Records Unit, B-099). Parties should be encouraged to submit factor values. Where we have several surrogate values from which to choose, we make our selection based on the quality and contemporaneity of the data.

A primary quality concern is the extent to which the surrogate factor price corresponds to the NME factor of production. In many cases, an exact match is not possible, e.g. we must match no. 2 fuel oil to the price of no. 4 fuel oil, or we must use the price of a basket of goods that includes, but is not limited to, the NME factor. If subject merchandise is energy intensive, we should use the price of energy to large users in the surrogate country. Note that we value factors of production using price contemporaneous with the POI/POR, regardless of when the subject merchandise was

actually produced (see Beryllium Metal from Kazakstan: Final Determination of Sales at Less Than Fair Value, 62 FR 2648 (January 17, 1997)). If the values are not contemporaneous with the POI or POR, we adjust them using wholesale price indices from publicly available sources. Moreover, to the extent possible, we use tax-and duty exclusive factor prices. Further, factor values should be prices that are broadly available in the surrogate economy. For example, if we have information on what a particular producer pays for an input and also have information on what producers economy-wide pay for the same input, we would choose the latter (all other things being equal).

Where we cannot develop publicly available data in the surrogate country, we use data from other sources, including that supplied through our Foreign Commercial Service office in our embassy in the surrogate country. We may also use information from the petition as **facts available**.

a. Materials

To obtain a cost figure, we multiply the surrogate factory price by the factor input quantity, including a wastage factor, if applicable.

If a by-product or a co-product is generated in the manufacturing process, we allow a credit for it in accordance with generally accepted accounting principles (see Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China, 59 FR 28053 (May 31, 1994)).

b. Labor

We value labor hours using regression-based wage rates that are up- dated once a year. These wage rates are posted on IA's web page.

We calculate direct labor cost by multiplying the labor hour input and the regression based wage rate.

Indirect labor may not need to be valued separately if it is included in the surrogate value for factory overhead (see below).

c. Energy and Utilities

Most production processes use a variety of energy sources. These may include the use of electricity, steam, natural gas, oil or water. We value these inputs

by determining the amount of each energy source or utility used in the production process and applying the appropriate per-unit surrogate values.

If energy is not an important production factor it may not be necessary to quantify this input separately. In this situation, energy may be included in the surrogate value for factory overhead, (see below). If it is included in overhead, do not double count energy and utilities.

## 2. Factory Overhead, General Expenses and Profit

Factory overhead, general expenses, and profit are included in the constructed value. Until recently, we have been unable to obtain published surrogate information to value these cost elements. However, in two 1996 investigations involving products from the PRC, we used publicly available financial statements of producers of comparable merchandise from the surrogate country (see Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 62 FR 14057 (March 29, 1996), and Bicycles). For factory overhead general expenses and profit, it is important to fine tune the information as much as possible to surrogate producers of the identical (or similar) merchandise rather than more broadly aggregated data.

### a. Factory Overhead

The most important component of factory overhead is depreciation. It can also include supervisory and indirect labor, maintenance, and energy. Normally, factory overhead is expressed as a percentage of the cost of goods sold.

### b. General Expenses

Included in general expenses are selling and administrative expenses (SG&A). We use actual SG&A expense amounts obtained from published data sources. When the published information we have been able to obtain from the surrogate country does not distinguish between direct and indirect selling expenses, we do not make an adjustment for differences in circumstances of sale in EP cases. We will only deduct these items when calculating CEP if we can break out direct and indirect expenses on the NV side. (see, Bicycles at 19031, and Preliminary Results of Antidumping Duty Administrative review: Tapered Roller Bearings and Parts Thereof from the People's Republic of China, 61FR 40613 (August 5, 1996)).

### c. Profit

We rely on actual profit amounts from published data in the surrogate country.

Profit is usually found in published company financial statements (see Bicycles at 19031).

### 3. Packing

Packing for shipment to the United States is valued in the surrogate country based on factor amounts for materials and labor supplied by the NME respondent.

### C. Separate rates

Individual dumping margins are automatically assigned to exporters in market-economy country cases. In NME cases, however, exporters must pass a “separate rate” test to receive their own, individual dumping margins. Those exporters that do not pass this test receive the NME country-wide dumping margin.

In Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China ("Sparklers"), 56 FR 20588 (May 6, 1991), and amplified in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China ("Silicon Carbide"), 59 FR 22585 (May 2, 1994), DOC set out the elements of this separate rate test. It essentially requires that the exporter demonstrate that its export activities, on both a de jure and de facto basis, are not subject to government control. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities would include 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, and 2) any legislative enactments devolving central control of export trading companies.

Relevant evidence for the de facto determination includes: 1) whether the export prices are set by or are subject to the approval of a government authority, 2) whether the respondent has the authority to negotiate and sign contracts and other agreements, 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. The DOC has found that “ownership by all the people,” where private property/ownership does not yet exist on a large scale, does not itself imply anything about government control over export activities.

In situations where the NME respondent’s ownership is located outside the NME, the DOC does not perform a **separate rates** analysis for the NME respondent because it is beyond the jurisdiction of the NME government. Accordingly, these types of NME respondents are given separate rates. See Final Determinations of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China, 60 FR 22359, 22361 (May 5, 1995), and Bicycles from the People's Republic of China (“Bicycles”), 61 FR 19026, 19027 (April 30, 1996).

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#### **D. Market-Oriented Industry (MOI)**

Section 773(c)(1) of the Act allows the DOC, in certain circumstances, to use the market- economy methodology described in section 773(a) to determine NV in an NME case. To identify those situations where we would use our market economy methodology and calculate NV based on domestic prices or costs in the NME, we developed the **market oriented industry** (“MOI”) test.

Under the current MOI test, an affirmative finding of a market-oriented industry requires:

- o For the merchandise under investigation or review, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production or allocation of production of the merchandise, whether for export or domestic consumption in the non-market-economy country, would be an almost impossible barrier to finding a MOI.
- o The industry producing the merchandise under investigation or review should be characterized by private or collective ownership. There may be state-owned enterprises in the industry, but substantial state ownership would weigh heavily against finding a MOI.
- o Market determined prices must be paid for all significant inputs whether material or non-material (e.g., labor and overhead) and for all but insignificant proportions of all the inputs accounting for the total value of the merchandise under investigation or review. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation or review pay a state-set price for the input or if the input is supplied to the producers at government direction.

Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, the producers of the merchandise under investigation or review will be treated as NME producers and the NV will be calculated in accordance with section 773(c) of the Act.

### E. Sample Calculation for NV

The sample calculation shown below is a very simple example of the type of factors valuation calculation that is done in investigations or reviews involving merchandise from a NME country.

The product is widgets from NME country A, and the surrogate is country B

<u>Factor in Country A</u>	<u>Factor Amount (including waste) Used in Country A</u>	<u>Value in Country B</u>
Steel rod	100 lbs	\$0.35 per lb.
Plastic molding	2 lbs	\$2.50 per lb.
Labor:	45 min	\$10 per hr.
Factory overhead goods sold		20% of cost of
SG&A		20% of foregoing
Profit		5% of foregoing
Export Packing + packing labor	carton	2.00 per piece and straps

<u>Factor</u>	<u>Calculation of Value</u>	<u>Per Unit Amount</u>
Steel	100 lbs X \$.35 per lb.	\$35.00
Plastic	2 lbs X \$2.50 per lb.	\$ 5.00
Labor	45 min. X \$10 per hr.	\$ 7.50
Subtotal		\$49.50
Factory Overhead	49.50 X .20	<u>\$ 9.90</u>
Subtotal		\$59.40
SG&A	59.40 X .20	<u>\$11.88</u>
Subtotal		\$71.28
Profit	71.28 X .05	\$ 3.56
Packing		<u>\$ 2.00</u>
NV	(Materials + labor + factory overhead) SGA + profit	\$76.84

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