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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for AD/CVD Enforcement II

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation: Certain Cold-Rolled Carbon Steel Flat Products from Taiwan

Summary

We have analyzed the case briefs, rebuttal briefs, and comments of interested parties, including several of the petitioners[1] and the respondent, for the final determination of this antidumping duty investigation covering certain cold-rolled carbon steel flat products (cold-rolled steel) from Taiwan. We recommend that you approve the positions we have developed in the Department Position sections of this memorandum.

Background

On May 9, 2002, the Department of Commerce (the Department) published the preliminary determination of the antidumping duty investigation of cold-rolled steel from Taiwan. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products from Taiwan*, 67 FR 31255 (*Preliminary Determination*). The only responding company is China Steel Corporation/Yieh Loong Enterprise Co., Ltd. (CSC/YL).[2] We verified the information submitted on the record by the respondent, and issued cost and sales verification reports on July 31, 2002, and August 20, 2002, respectively.

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[1] The petitioners in this investigation are Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (Bethlehem, *et al.*), LTV Steel Company, Inc., Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Corporation.

[2] These two affiliated companies have been collapsed for purposes of the Department's dumping analysis.

On August 29, 2002, we received case briefs from Bethlehem, *et al.*, from Nucor, and from CSC/YL. On September 4, 2002, we received rebuttal briefs from Bethlehem, *et al.* and from CSC/YL. Due to the finding of new factual information in CSC/YL's case brief and Bethlehem, *et al.*'s rebuttal brief, the Department instructed the parties to remove the new factual information and resubmit the briefs. Bethlehem, *et al.* submitted a revised rebuttal brief on September 11, 2002, and CSC/YL submitted a revised case brief on September 13, 2002. CSC/YL failed to remove certain new factual information in its September 13, 2002, brief, and resubmitted said brief on September 18, 2002. The period of investigation (POI) is July 1, 2000, through June 30, 2001.

List of Comments in the Issues and Decision Memorandum

I. ISSUES SPECIFIC TO SALES

Comment 1: Leeway Sales
Comment 2: Model Match Criteria

II. ISSUES SPECIFIC TO COSTS

Comment 3: Product-specific Costs
Comment 4: Scrap and By-Product Offset
Comment 5: Interest Expense
Comment 6: G&A Expense

<u>DISCUSSION OF ISSUES</u>

I. ISSUES SPECIFIC TO SALES:[3]

<u>Comment 1</u>: *Leeway Sales*

Bethlehem, *et al.* argue that leeway sales made by CSC/YL should be excluded from the Department's antidumping analysis on the grounds that these sales are outside the ordinary course of trade for the following three reasons. First, prices of prime leeway merchandise are, on average, lower than prices of prime non-leeway merchandise. Second, leeway sales are made as "spot sales" while non-leeway prime merchandise is sold made-to-order and sold according to customers' specifications. Third, discounts and rebates granted on sales of non-leeway prime

[3] The Calculation Memorandum from Martin Claessens to Charles Riggle (September 23, 2002) addresses various verification-specific issues that were addressed only in CSC/YL's briefs. These issues were stevedoring rates, warranty issues, the special discount, and the inner coil discount. Please see the Memorandum for a complete discussion and analysis.

merchandise are not granted on sales of prime leeway merchandise.[4]

In making this argument, Bethlehem, *et al.* cite to the Statement of Administrative Action (SAA) for the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1 (1994) at 834, which provides a non-exhaustive list of sales that might be considered as being outside the ordinary course of trade. Bethlehem, *et al.* specifically refer to two items from this list that they claim are applicable to the respondent's leeway sales: (1) merchandise sold at aberrational prices and (2) merchandise sold pursuant to unusual terms of sale.

In arguing that leeway merchandise is "merchandise sold at aberrational prices," Bethlehem, *et al.* compare the average gross unit price of prime leeway sales to the average gross unit price of prime non-leeway sales as an indication that the average reported gross unit price of prime leeway products is lower than the average gross unit price of prime non-leeway.[5]

To demonstrate that leeway products constitute "merchandise sold pursuant to unusual terms of sale," Bethlehem, *et al.* state that various discounts are granted on prime non-leeway merchandise that are not granted on identical leeway merchandise.[6] Specifically, Bethlehem, *et al.* state that CSC/YL granted on-schedule delivery discounts and year-end rebates on a large majority of its non-leeway prime merchandise, but did not grant such price incentives on leeway products. Similarly, Bethlehem, *et al.* provide that CSC granted retroactive price rebates on various prime non-leeway sales, but did not grant comparable rebates on sales of leeway merchandise.[7]

Bethlehem, *et al.* continue their argument that CSC/YL's leeway products constitute merchandise sold pursuant to unusual terms of sale by stating that CSC/YL's non-leeway sales are sold made-to-order and sold based on customers' specifications, while, in contrast, leeway merchandise is sold as spot sales.[8]

Bethlehem, *et al.* point to *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18436-18437 (April 15, 1997) (*Cold-Rolled from Korea*) where the Department held that overrun sales of prime merchandise were outside the ordinary course of trade because there were notable differences in the relative profitability and selling practices between overrun and non-overrun

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[4] *See* Bethlehem, *et al.*'s August 29, 2002, case brief (Bethlehem, *et al. Case Brief)* at 10 through 15.

[5] *See id.*

[6] *See id.* at 11 and 12.

[7] *See id.*

[8] *See id.* at 11.

sales.[9] Bethlehem, *et al.* also cite, in contrast, *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38756, 38770-38771 (July 19, 1999), as an example of a case where the Department held that when the sales at issue were not sold at unusual prices, or sold pursuant to unusual terms of sale, such overrun sales were not outside the ordinary course of trade. Bethlehem, *et al.* argue that the circumstances of the instant investigation, as described above, in conjunction with the findings in *Cold-Rolled from Korea*, show that the Department should exclude leeway sales from its analysis.

CSC/YL argues that the Department should continue to use CSC/YL's leeway sales in its antidumping analysis for the following reasons. First, CSC/YL cites to the Department's sales verification report, in which the Department noted that leeway sales result from ordered products that do not meet the specifications of the customer placing the order. CSC/YL further states that leeway status can be caused by overrun, products that do not meet the original customer's specifications and cannot be diverted to another customer's order, products produced pursuant to an order that is subsequently cancelled, and products produced under internal orders and not able to be diverted to customers' orders.[10] Second, CSC/YL further explains that its leeway-classified merchandise still meets the industrial standards, even though it might not meet the specifications of a customer's particular order.[11] Lastly, CSC/YL states that it maintains distinct classifications for prime, secondary, and salvage merchandise, and that leeway merchandise is always classified as prime.[12]

CSC/YL also clarifies that leeway merchandise does not come with a mill sheet because such sales were made by lots, "mixing different sizes, specifications and uses together."[13] CSC/YL states that because it does not know the intended use in a sale "by lot," a mill sheet cannot be provided because mill sheets are directly tied to the intended use of the products.[14]

Addressing the comments made by Bethlehem, *et al.*, CSC/YL, in its rebuttal brief, acknowledges that sales discounts do not apply to leeway sales. Specifically, the on-schedule delivery discount cannot apply to leeway sales because leeway sales are spot sales and do not have regular quarterly or monthly orders issued in advance.[15] Second, CSC/YL states that because leeway sales by their very nature are already priced lower than non-leeway sales, sales of

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[9] *See id.* at 13 and 14.

[10] *See* CSC/YL September 18, 2002, case brief (*CSC/YL Case Brief*) at 1.

[11] *See id.* at 2.

[12] *See id.*

[13] *Id.*

[14] *See id.* at 2 and 3.

[15] *See* CSC/YL's September 4, 2002, rebuttal brief (*CSC/YL Rebuttal Brief)* at 14.

leeway merchandise do not require additional incentives, such as discounts or rebates, to promote the purchase of such products.[16]

Finally, CSC/YL states that leeway sales have existed for a long time as part of its home market sales practice, and its price list specifies prices of leeway sales, demonstrating that leeway sales are part of CSC/YL's normal, established business practice.

Department's Position:

According to section 771(15) of the Act, the term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The Department has further defined ordinary course of trade in section 351.102 of its regulations. That regulation specifies that sales or transactions may be considered outside the ordinary course of trade when "based on an evaluation of all the circumstances particular to the sales in question, such sales or transactions have characteristics that are extraordinary for the market in question" (emphasis added).[17] 19 CFR 351.102(b) also provides examples of sales that may be considered outside the ordinary course of trade, such as "sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price."

In determining whether a sale is outside the ordinary course of trade, the Department does not rely upon one factor taken in isolation but, instead, considers "all of the circumstances particular to the sale in question." *See CEMEX, S.A. v. United States*, Slip. Op. 95-72 at 6 (CIT April 24, 1995). In this case, the Department examined: (a) the extent to which leeway merchandise sales[18] differed in physical characteristics or product usage from non-leeway merchandise sales; (b) whether the home market sales in question did, in fact, consist of prime merchandise; (c) whether the number of buyers of leeway merchandise sales in the home market and the sales volume of leeway sales were similar or dissimilar compared to non-leeway merchandise sales; (d) whether the price and profit differentials between leeway sales and non-leeway sales were dissimilar; and (e) whether the terms of leeway merchandise sales were unusual compared to non-leeway sales. In considering all of these factors, we found that leeway sales of cold-rolled carbon steel flat products were made in the ordinary course of trade.

We found no evidence on the record to indicate that there were any differences in product

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[16] *See id.*

[17] 19 CFR 351.102

[18] Note: while we have collapsed CSC and YL for purposes of the dumping analysis, and consider the collapsed entity to be a single respondent, only CSC had sales of leeway merchandise during the period of investigation.

characteristics between non-leeway and leeway sales. In fact, CSC/YL sold the same product control number as both leeway and non-leeway. And, as CSC/YL states in its case brief, leeway merchandise is prime merchandise which results from overrun products not meeting customers' original specifications, products produced after customers cancel their orders, and products produced under internal orders that CSC/YL was unable to divert to customers' orders.[19] No party in this investigation has disputed that leeway merchandise involves prime merchandise, nor argued that it is merchandise produced according to unusual product specifications. Further, record evidence establishes that the cost of producing leeway and non-leeway products of the same control number is the same. There is also nothing in the record to indicate that leeway sales reflect sales of products with different usage than the products sold as non-leeway. This is evidenced by the fact that there was a high number of buyers of leeway merchandise in relation to the number of buyers of non-leeway merchandise who, in many instances, were the same standard customers. (See CSC/YL's comparison market sales database used in the *Preliminary Determination*.) In addition, we note that in general the average quantity of leeway sales in each transaction is less than the average quantity of non-leeway sales of the same control number. However, we found various other instances in which the difference between the average quantity of sales of leeway and non-leeway for the same control number was insignificant.

Moreover, when comparing the prices of leeway sales[20] to the discounted prices of non-leeway sales, we found that the difference in prices was generally not significant. While we found that generally the average price for non-leeway sales was higher than the price for leeway sales of the same control number, we found that for some control numbers the average price for leeway sales transactions reflect higher prices than those of non-leeway sales. For further details, see CSC/YL's sales database and attachment to the Analysis Memorandum. With respect to profit, record evidence indicates that the average profit margin on leeway sales is generally lower than that of non-leeway sales. As noted above, the Department's regulations address abnormally high profit as a possible reason for excluding sales as outside the ordinary course of trade. In any event, we noted that the profit margin for some leeway sales was comparable to that of non-leeway sales for the same control number. Given the information on the record, we found no evidence that leeway merchandise was sold at aberrational prices or abnormally high profits. For further details, see the Analysis Memorandum from the Team to the File, dated September 23, 2002.

With respect to the terms of sale, we agree that the terms of sale for leeway merchandise sales differ from those of non-leeway merchandise sales in that leeway sales are spot sales that do not have regular quarterly or monthly orders issued in advance, and for which CSC/YL did not provide on-schedule delivery discount, whereas, non-leeway sales are made pursuant to specific orders. However, we do not find the difference in the terms of sale, by itself, between the two categories to be sufficient to warrant considering leeway sales outside the ordinary course of

[19] *See CSC/YL Case Brief* at 1.

[20] As noted above, the on-schedule delivery discount cannot apply to leeway sales because leeway sales are spot sales and do not have regular quarterly or monthly orders issued in advance.

trade.

For the above-referenced reasons, and based on an evaluation of all the circumstances particular to the leeway sales of the foreign like product, we determined that these sales are not outside the ordinary course trade; as stipulated in section 771(15) of the Act and section 351.102 of the Department's regulations. Therefore, we continue to include such sales in our antidumping analysis.

Comment 2: *Model Match Characteristics*

CSC/YL argues that the Department should use CSC/YL's suggested sub-categories with respect to commercial quality in the model match characteristics of its antidumping analysis. The respondent states that its subcategories reflect distinct levels of hardness, which are used in various end-uses, and that classification in the different subcategories results in the products being sold at different prices. In order to illustrate the different end-uses, CSC/YL states that "the primary use of A1 is to make pipes for furniture or exhibitional {sic} purposes . . . A2 is mainly for lampshade . . . A4 is primarily for bicycle frames."[21]

Bethlehem, *et al.* state that the respondent has given no evidence to overturn the Department's preliminary finding on this issue, and that the Department should continue to use its original model match criteria.[22]

Department's Position

We agree with Bethlehem, *et al.* CSC/YL is merely restating its position, addressed by the Department in the preliminary determination. The respondent has provided no additional information that would lead us to reconsider the previous decision. As we stated in the *Preliminary Determination*, 67 FR 31255, 31257, the Department established model match criteria that already take into consideration hardness. No record evidence warrants a change from the *Preliminary Determination*.

II. ISSUES SPECIFIC TO COSTS

Comment 3: *Product-Specific Costs*

CSC/YL argues that the Department should use its reported product-specific costs.[23] The respondent claims that there is no evidence that costs are under-reported and, even if costs were under-reported, the impact on the reported CONNUM-specific costs would be insignificant.

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[21] *CSC/YL Case Brief* at 4.

[22] *See* Bethlehem, et al.'s September 11, 2002 rebuttal brief at 1.

[23] *See CSC/YL Case Brief at 11.*

CSC/YL argues that the use of broad average product-specific costs is consistent with its internal accounting policies and is accurate, stating that it normally calculates only average cost for financial statement purposes.

CSC/YL contends that it maintains its unified product code (UPC) and standard product code (SPC) systems to assist in pricing decisions and profitability analysis. CSC/YL states that it does not calculate the detailed UPC/SPC product-specific costs at intermediary stages of production. Instead, all intermediary stages of production are valued at an average cost through that point and this average cost is transferred to the next stage.[24] At the final production stage, the company calculated the average cost through that stage, multiplied this average by the quantity of subject merchandise produced, then allocated this total to the subject merchandise using the relative product-specific standard costs for subject merchandise based on its UPC/SPC system.[25] Furthermore, CSC/YL states that the UPC/SPC data do not exist for every product that it makes but, instead, is created only when needed. CSC/YL contends that during the course of the proceeding there were no objections by the Department or the petitioners to CSC/YL's description of its cost reporting methodology. The respondent cites to four instances where CSC/YL identifies its response methodology, and also claims that the Department accepted the same average-cost approach in the last investigation in 1999.

Nucor argues that CSC/YL's standard costs were not verified.[26] Bethlehem, *et al.* and Nucor state that they have repeatedly highlighted that CSC/YL's costs were implausibly low. Bethlehem, *et al.* and Nucor state that at verification the Department found why CSC/YL's cost were so low: instead of allocating the total cost accumulated at each cost center to subject and non-subject merchandise in a manner that accounted for physical characteristic differences, CSC/YL simply allocated process center costs based on weight. Bethlehem, *et al.* and Nucor contend that this methodology shifts costs either from the subject merchandise to non-subject merchandise or *vice versa*. Bethlehem, *et al.* and Nucor note that the verification report states that because products of varying dimensions and qualities are produced at the same process centers, allocating total costs between subject and non-subject products based on weight of output appears to be inappropriate. Bethlehem, *et al.* and Nucor argue that if the cost of a product that undergoes significantly more processing than an average product is removed from the cost center at the average cost, then the pool of cost allocated by the UPC/SPC standards is under-reported.

Bethlehem, *et al.* and Nucor also contend that it is impossible to determine the magnitude of the distortion because the standard costs for non-subject products are not on the record. Because the information necessary to determine the appropriate costs allocable to the subject merchandise is not on the record, Bethlehem, *et al.* and Nucor claim the Department must resort to facts

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[24] *See CSC/YL Case Brief at 11*

[25] *See CSC/YL Case Brief* at 11

[26] *See Nucor August 28, 2002, case brief (Nucor Case Brief) at 1.*

available. Additionally, Bethlehem, *et al.* and Nucor assert that CSC/YL never disclosed the fact that it had allocated costs between subject and non-subject products based upon weight. Bethlehem, *et al.* and Nucor contend that because of CSC/YL's failure to submit costs that reflect the different physical characteristics, CSC/YL has failed to act to the best of its ability to provide the requested data. Therefore, Bethlehem, *et al.* and Nucor conclude that Department's use of adverse facts available is warranted. Bethlehem, *et al.* and Nucor argue that the Department should use, as facts available for all products, the highest reported average cost of manufacture (COM) reported by CSC/YL in exhibit D-22, and that figure should be adjusted for scrap and by-products, as discussed in the next section.

<u>Department's Position</u>

We agree in part with Bethlehem, *et al.* and Nucor in that CSC/YL failed to report product-specific costs using the relative standard costs of both subject and non-subject merchandise. As noted in the verification report, instead of taking the total cost accumulated at each cost center and allocating these costs to subject and non-subject merchandise based in their relative standard cost of production, CSC/YL allocated process center costs between subject and non-subject merchandise based on the respective weight of production. In CSC/YL's normal cost accounting system, the company calculates an average cost for all products produced at a given cost center. The cost of finished products at each cost center reflects the average cost of production. All products requiring additional processing are sent to the next production stage at the average cost of production of the previous stage. This methodology does not account for the differences in cost at each cost center associated with varying physical characteristics. CSC/YL totaled the overall average cost it allocated to subject merchandise and apportioned it to specific products based on its UPC/SPC standards.

Contrary to their assertions, CSC has the ability to generate standard costs for their non-subject merchandise produced in the same cost centers as the subject merchandise. CSC/YL had to retrieve the standard costs for subject merchandise from its accounting system, and would have had to do the same exercise for the non-subject products. While the non-subject, product-specific standards did not exist in readily usable form, they were available for extraction from their system. Even though CSC/YL's UPC/SPC system has product-specific standard costs for the non-subject merchandise, CSC/YL did not use the standard costs to allocate total actual costs. That is, CSC/YL did not take the total cost accumulated at each cost center and allocate those costs to the subject and non-subject merchandise produced at each cost center using the relative standard costs of each product. Instead, CSC/YL allocated process center specific costs between subject and non-subject merchandise based on the respective weight of production. Because products of varying dimensions and qualities are produced at the same process centers and differences in cost are not a function of weight, allocating total cost between subject and non-subject products based on weight of output is inappropriate. The process center where this appears to be of most significance is the continuous annealed cold-rolling line.[27] A large percentage of the output of this production stage was transferred to other process centers, some of

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[27] *See Cost Verification Report at 2*

which ultimately produced subject merchandise, while the remainder produced non-subject products.

Nevertheless, we disagree with Bethlehem, *et al.* and Nucor that this allocation methodology flaw warrants the use of adverse facts available. It appears that the rolling costs (both hot and cold) are the most significantly impacted. Because there is no way to determine whether non-subject merchandise was appropriately valued or whether costs were shifted to those products, as facts available, we have adjusted the cost of the subject merchandise produced at the continuous annealing cold-rolling line to reflect an additional cost needed to distinguish dimension.

We disagree with CSC/YL that Bethlehem, *et al.*, Nucor, and the Department never questioned the allocation methodology. We issued a supplemental section D questionnaire on April 1, 2002, and received responses. We then verified the information on the record and found that CSC/YL could have allocated process-center costs to the products based on usage or the UPC/SPC standard costs. Verification is not the time to obtain new information; it is the time to test the reasonableness of the methodology used to derive the information already provided. This is precisely what the Department has done. We also disagree with the respondent that simply because the Department accepted this methodology in a prior proceeding, it should blindly accept it in this case. As articulated in *Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 64 FR 12927, 12945-48 (March 16, 1999) and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot- Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil* 64 FR 38756, 38789 (July 19, 1999), the Department is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a prior investigation, as suggested by CSC/YL.

<u>Comment 4</u>: *Scrap and By-Product Offset*

Bethlehem, *et al.* and Nucor argue that the reported scrap recovery amount (TOTSCRAP) is unsupported by the record and is grossly overstated. Bethlehem, *et al.* and Nucor argue that the production of cold-rolled steel was small in relation to CSC/YL's total production, while most of its recoveries were allocated to the subject merchandise. Bethlehem, *et al.* and Nucor contend that there is no justification, nor has CSC/YL suggested one, for allocating nearly all recoveries to subject products. Bethlehem, *et al.* and Nucor contend that, to correct this error, the Department should recalculate recoveries in the TOTSCRAP field.[28]

Bethlehem, *et al.* and Nucor note that most of CSC/YL's claimed offset was for coke oven gas (COG) and blast furnace gas (BFG), which CSC/YL uses internally, primarily for cutting and welding. Bethlehem, *et al.* and Nucor also argue that CSC/YL did not sell either gas on the market. Therefore, the question of how these gasses were valued is important. Bethlehem, *et al.* and Nucor argue that there is nothing on the record to confirm that all of the gases not consumed in the steelmaking process were in fact consumed in the cutting and welding process of

[28] *See Bethlehem, et al. Case Brief at 4.*

presumably non-subject merchandise. Bethlehem, *et al.* and Nucor argue that if they were not fully consumed, then CSC/YL should not receive full credit for the amount of gases recovered but not consumed. Bethlehem, *et al.* and Nucor argue that because the vast majority of the gas recovered is not consumed for subject merchandise, an inflated value for these gases has the effect of substantially understating the cost of the subject merchandise, even if the same unit values were used for recovery and consumption.

CSC/YL argues that the Department should continue to allow CSC/YL's reported recovery amounts in the TOTSCRAP field. CSC/YL explained how the TOTSCRAP field reconciled to its normal accounting records and to exhibits D-21 and D-34.b. of its March 19, 2002 and April 16, 2002 questionnaire responses. CSC/YL argues that by only comparing the "total COM" column between the two exhibits, Bethlehem, *et al.* and Nucor fail to quantify the majority of the recoveries which have normally been treated as offsets to raw material cost. CSC/YL argues that the amount of the scrap yield attributable to subject merchandise (i.e. the aggregate amount reported in TOTSCRAP) is in line with the cost of subject merchandise and ratio of the total production cost for all products contrary to what Bethlehem, *et al.* and Nucor contend in their briefs.

CSC/YL argues that COG and BFG are used almost entirely in the production process of subject and non-subject merchandise. According to CSC/YL, COG has been used as fuel in the production process through indirect cost centers in the utilities department, mainly in the iron-making and liquid steel process. The COG has also been used in the hot strip mill, internal power generation and plate and wire rod production, with a small percentage used in the cold-rolled production. BFG has been used as fuel in the production process through the same indirect cost centers in the utilities departments, but is used mainly in the internal power generation, in iron-making and in the liquid steel process. CSC/YL argues that the record shows that both the recovery and inputs are valued at similar standard costs.

Department's Position

We disagree with Bethlehem, *et al.* and Nucor that CSC/YL's total scrap recoveries relative to production of subject merchandise were overstated. The total recoveries for all products can be calculated as the sum of differences in both the "total COM" column and the "internal transfer" column between exhibits D-21 and D-34.b. of CSC/YL's submissions as stated by CSC/YL. We reviewed CSC/YL's calculation of the scrap offset for selected CONNUMs at verification. We found that scrap revenue is calculated for each production stage (see Cost Verification Report page 19). We tied the total scrap revenue of each production stage to CSC/YL's allocation cost reports. We also tied the scrap revenue reported for the liquid steel stage to the unit cost table for the liquid steel stage (see Cost Verification Report page 19). We noted that the total per-unit scrap revenue at the liquid steel stage included iron scrap, steel scrap and by-products, including mixed scrap, tar, ammonia, light oil, COG, BFG, electricity and sulphur (see Cost Verification Report page 19).

COG and BFG together represent the largest percentage of the scrap recovered. We obtained a worksheet showing the inventory movements of by-products during the POI. We tied select figures in the worksheet to CSC/YL's allocation cost reports. We tied the per-unit value of BFG shown on the worksheet to the per-unit value reported in the unit cost table for the liquid steel stage which was used to calculate the reported cost. CSC/YL uses the same values for the production and consumption of COG and BFG in its accounting system. We did not find any discrepancy with CSC/YL's calculation of its scrap offset and therefore, have not made any adjustment for the final determination.

Comment 5: ***Interest Expense***

Nucor argues that the consolidated audited financial statements should be used to calculate the interest expense ratio of both CSC and YL, but they argue that the net interest expense needs to be adjusted to include the exchange losses on long-term loans.[29]

CSC/YL argues that Bethlehem, *et al.* and Nucor did not give any reason for including the foreign exchange losses on long-term loans in the calculation of the interest expense ratio. CSC/YL argues that the Department verified that the foreign exchange losses on long-term loans was of a financing nature (in relation to syndicate loans and corporate bonds) and, in accordance with the Department's practice, should not be taken into account.[30]

Department's Position

We agree with CSC/YL that the long-term portion of foreign exchange losses on long-term loans should not be included in the interest expense ratio calculation. It is the Department's practice to include only the short-term portion of foreign exchange gains and losses. As explained in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31430 (June 9, 1998) (Comment 24), "the Department includes in the cost of production the amortized portion of foreign exchange losses resulting from loans," in other words the current portion.

The Department's practice with regard to recognizing only those foreign exchange gains and losses associated with current debt, is that the debt that is payable within one year is likely to be repaid at an exchange rate approximating the rate at the time the gain or loss is measured. Including in the current costs the foreign exchange effects of future repayment of debt is not appropriate for the dumping analysis. This can be illustrated by the following example. A company with foreign denominated debt records the debt transaction in its local currency at the exchange rate in effect on the date of the debt transaction (*e.g.*, receipt of debt, principal payment, interest payment). This exchange rate is likely to differ throughout the life of the loan, resulting in exchange gains and losses. While the principal payments in terms of the foreign currency do not change, the equivalent amount of local currency needed to satisfy the debt does change over time. At the end of each year, the company revalues its foreign denominated liabilities based on the exchange rate in effect on the balance sheet date which also results in

[29] *See Nucor Case Brief at 17.*

[30] *See CSC/YL Rebuttal Brief at 12.*

foreign exchange gains and losses. This foreign exchange difference relates to the entire outstanding debt and not just the debt payable within one year. Because we are only calculating costs for one year, we have not included the exchange gains and losses related to the debt repayments that will be made more than one year from the end of the POI.

Because all of CSC's and YL's loans were long-term loans, we did not include the foreign exchange losses on loans in the calculation of the financial expense ratio calculation.

Comment 6: *G&A Expense*

Bethlehem, *et al.* and Nucor argue that all non-operating revenue offsets should be excluded from CSC/YL's G&A expense ratio. Bethlehem, *et al.* and Nucor state that the rental income was for land with the related expenses recorded as overhead in the cost of sales and that this revenue does not relate to the production of the subject merchandise. Bethlehem, *et al.* and Nucor further contend that the Department's practice is to exclude G&A offsets that do not relate to the production of subject merchandise, citing *Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 781, 783 (January 7, 1994).[31]

Bethlehem, *et al.* and Nucor argue that the gain on short-term investment was from a gain on mutual funds related to the investment activities of the company, and therefore, should be not be included as an offset in the G&A calculation. Bethlehem, *et al.* and Nucor also state that the gain on physical inventory attributable to raw materials, the revenue from the sale of scrap, the revenue from compensation which CSC/YL receives from the late delivery of supplies, the revenue from fines CSC/YL receives from speeding in the compound and fines it imposes for late construction and breaching contracts, and the negative "loss for market price decline inventory" should not be included as offsets to CSC/YL'S G&A rate calculation, because these items are not related to the production of subject merchandise.

Bethlehem, *et al.* and Nucor argue that YL's G&A expense should be recalculated to include only the net foreign exchange gains attributable to accounts payable, including those for "short-term loans - accounts payable" and the net foreign exchange gain on YL's "forward bill of exchange." According to Bethlehem, *et al.* and Nucor, all other exchange gains must be excluded from YL's G&A ratio calculation.

CSC/YL states that the Department correctly included the foreign exchange gains on accounts payable; however, this amount is the result of netting the exchange gains, the exchange loss and the unrealized gains. Thus, CSC/YL argues, the Department should increase the foreign exchange gains by the unrealized gains that were excluded. CSC/YL argues that all non-operating revenue items should be included as offsets in the calculation of the G&A expense ratio calculation.[32]

[31] *See Bethlehem, et al. Case Brief at 7.*

[32] *See CSC/YL Rebuttal Brief at 13.*

Specifically, CSC/YL claims that the rental revenues were for land with the related expenses recorded as overhead in the cost of revenues; therefore, the Department should not accept Bethlehem, *et al.* and Nucor's allegations. In addition, CSC/YL argues that the inventory gain was realized from the inventory check of raw materials, which is clearly related to the production and sale of subject merchandise. As to other items, CSC/YL states that the revenue from the sale of waste includes the sale of recycled metal, copper bit, recycled galvanized materials, old rolls, rubber tubes, old canvas conveyor belts, mill scale, etc. CSC/YL notes that this miscellaneous scrap results from the production process.

CSC/YL maintains that the revenue from compensation was attributable to compensation CSC/YL receives for the late delivery of supplies. CSC/YL argues that the delay in delivery was clearly related to CSC/YL's ordinary course of business in procuring the necessary materials and supplies for production. Finally, CSC/YL argues that the revenue from the sale of supplies should be included as an offset because the related cost of the factory supplies has already been included in the factory overhead and, as such, when such supplies are sold, the revenue should be recognized to reduce G&A.

<u>Department's Position</u>

We agree in part with Bethlehem, *et al.,* and Nucor, and in part with the respondent. It is the Department's practice to include offsets to G&A, as long as they relate to the general operations of the company as a whole. The offsets do not have to be related directly to the production of subject merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196, 73209 (December 29, 1999) which states that G&A expenses are those expenses which relate to the general operations of the company as a whole, rather than to the production process.

It is also the Department's practice to exclude investment-related gains, losses and expenses in the calculation of G&A. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561, 33567 (June 28, 1995). We agree that the rental income, the gain on physical inventory, the revenue from the sale of waste and the revenue from compensation should be included as offsets to G&A. The rental income related expenses were included in CSC/YL's overhead. The gain on physical inventory was realized on raw materials used in the production process. The revenue from the sale of waste was for miscellaneous scrap which was generated during the production process. The revenue from compensation was received for the late delivery of supplies and, in effect, reduces the cost of those materials used in the production process, as does the revenue received from the sale of supplies. We have included the miscellaneous other revenue as an offset because it does not relate to any particular area of operations.

We agree with Bethlehem, *et al.* and Nucor that the gain on short-term investment should be excluded because it relates to the investment activities of CSC/YL and not to the general operations of the company. We have included the revenue from fines because it relates to the general operations of the company as a whole. We agree that the negative amount for "loss for market price decline inventory" should not be allowed to reduce G&A expense. According to

CSC/YL, it has a policy of writing down inventory to the lower of cost or market in accordance with the generally accepted accounting principles (GAAP) of Taiwan. CSC/YL maintains an account where it adjusts the value of inventory every month. At year-end, the write-ups exceeded the write-downs and CSC/YL recorded a negative loss for market price decline in inventory. This is contrary to GAAP, and thus, we have excluded this offset from the calculation of the G&A expense ratio.

Finally, we agree with Bethlehem, *et al.* and Nucor with regard to the foreign exchange gains/losses offset and have recalculated YL's G&A expense to include only the net foreign exchange gains attributable to accounts payable, including those for "short-term loans - accounts payable" and the net foreign exchange gain on YL's "forward bill of exchange" which was attributable to accounts payable. It is the Department's practice to include in G&A the foreign exchange gains and losses attributable to accounts payable (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea*, 64 FR 17342 (April 9, 1999) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia* 64 FR 73164, 73174 (December 29, 1999)). The Department includes these foreign exchange gains and losses in the calculation of the G&A rate because they are the direct result of purchasing inputs for the manufacturing process.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the *Federal Register*.

AGREE____ DISAGREE____

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Faryar Shirzad
Assistant Secretary
for Import Administration

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Date