

Anshan Iron & Steel Company, Ltd., et al. v. United States of America and United States Steel Corporation and Gallatin Steel Company, et al.

Slip Op. 04-121 (CIT September 22, 2004)

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND
SUMMARY**

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (“the Court”) in *Anshan Iron & Steel Company, Ltd., et al. v. United States of America and United States Steel Corporation and Gallatin Steel Company, et al.*, Slip Op. 04-121 (CIT September 22, 2004) (“Anshan II”). In accordance with the Court’s instructions, the Department has re-examined the one remanded issue of Remand Results. See Final Results of Redetermination Pursuant to Remand (November 7, 2003) (“Remand Results”). Specifically, the Department has: 1) reopened the record in this case to admit TATA’s complete financial statement; and 2) based on an analysis of this new information, reconsidered its methodology in assigning surrogate values to Respondents’ self-produced factors in this investigation.

BACKGROUND

On September 28, 2001, the Department published its Final Determination, covering the period of investigation (“POI”) April 1, 2000 through September 30, 2000. See Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products from the People’s Republic of China, 66 FR 49632 (September 28, 2001) (“Final Determination”) and the accompanying Issues and Decision Memorandum. The investigation involved Bethlehem Steel Corp., Gallatin Steel Corp., Ipsco Steel Inc., LTV Steel Corp.,

National Steel Corp., Nucor Corp., Steel Dynamics, Inc., U.S. Steel Group, Weirton Steel Corp., and the Independent Steel Workers Union (collectively “Petitioners”); and Anshan Iron & Steel Company, Ltd., New Iron & Steel Company, Ltd., and Angang Group International Trade Corporation (“Anshan”); Benxi Iron & Steel Company, Ltd., Benxi Steel Plate Company, Ltd., and Benxi Iron & Steel Group International Economic and Trade Company Ltd. (“Benxi”); and Shanghai Baosteel Group Corporation, Baosteel America, Inc., and Baosteel Group International Trade Corporation (“Baosteel”) (collectively “Respondents”). Respondents contested various aspects of the Final Determination.

On July 16, 2003, the Court issued its opinion and remanded to the Department two aspects of its Final Determination for reconsideration: (1) with respect to the Department’s decision to assign surrogate values to Respondents’ self-produced factors, the Court ordered the Department to either provide an adequate explanation for its deviation from previous practice, or assign surrogate values to Respondents’ inputs into its self-produced factors; and (2) with respect to the Department’s decision not to treat defective hot-rolled sheet as a byproduct, the Court ordered the Department to adjust Baosteel’s factors-of-production calculations by including defective sheet as merchandise under investigation. *See Anshan Iron & Steel Company, Ltd., et al. v. United States of America, Bethlehem Steel Corporation, et al., and Gallatin Steel Company, et al.*, Slip Op. 03-83 (CIT July 16, 2003) (“Anshan I”). On November 7, 2003, the Department issued its Remand Results. On September 22, 2004, the Court issued its opinion, affirming in part and remanding in part the Department’s remand results. The Court ordered the Department: 1) to reopen the record in this case, admit TATA’s complete financial statement,

and consider that information in its redetermination; and 2) reconsider its factors-of-production analysis by either providing an adequate explanation for its deviation from previous practice, or assigning surrogate values to Respondents' factors of production for their self-produced intermediate inputs.

On December 7, 2004, the Department issued its draft remand results to interested parties. See Draft Results of Redetermination Pursuant to Court Remand, dated December 6, 2004 (“Draft Results”). On December 13, 2004, Anshan and United States Steel Corporation (“U.S.Steel”) submitted comments on the Draft Results. As a result of comments received, the Department has made one change to its Draft Results (see Comment 2 below).

VALUATION OF SELF-PRODUCED INTERMEDIATE INPUTS

In accordance with the Court's instructions, the Department has reconsidered its decision to assign surrogate values to Respondents' self-produced factors - electricity and the industrial gases: oxygen, nitrogen, and argon - in the Final Determination. On remand, the Department has determined that, based on an analysis of the complete TATA financial statement, TATA produces its own electricity and the industrial gases oxygen, nitrogen, and argon. As each of the Respondents also self-produces these factors, the valuation of the inputs into the production of these self-produced factors results in a more accurate calculation of normal value. Therefore, as explained below, the Department has recalculated Respondents' normal value to assign surrogate values to each of the inputs into Respondents' self-produced factors.

I. TATA FINANCIAL STATEMENT

In accordance with the Court's order, the Department reopened the record in this investigation to admit TATA's complete financial statement for 2000-2001. See Memorandum to the File from Catherine Bertrand, Senior Case Analyst, dated December 1, 2004, which placed the TATA Steel 94th Annual Report 2000-2001 ("TATA Financial Statement") on the record of this proceeding. As an initial matter, the Department notes its objection to the Court's order to reopen the administrative record of this investigation to consider information that was not before the Department at the time of its analysis in the Final Determination.¹ Nevertheless, the Department is complying with the Court's order, and has placed TATA's financial statement for 2000-2001 on the administrative record of this proceeding. The complete financial statement encompasses 128 pages. The Department has carefully reviewed this document to determine the extent to which it establishes whether TATA self-produced any of the four factors.

A. Production of Electricity

An analysis of TATA's Financial Statement reveals that TATA Steel and its subsidiaries (collectively "TATA") both purchased and produced electricity during the fiscal year period April 1, 2000 through March 31, 2001. Form A of the TATA Financial Statement indicates that TATA consumed 2,366,660,000 kwh of electricity during the fiscal year. Of that total consumption figure, 1,281,040,000 kwh of electricity was self-produced and the remainder (1,085,620,000 kwh) was purchased. Consequently, we find that during the fiscal year TATA self-produced 54% of its total electricity consumption. See TATA Financial Statement at 14.

¹ Significantly, as noted in the Remand Results, at the time of the Department's Final Determination there was no evidence on the administrative record that the surrogate company, TATA, produced electricity, and no evidence that the surrogate company self-produced industrial gases.

B. Production of Oxygen, Nitrogen, and Argon

Unlike electricity, which was specifically reported under Form A of TATA's Financial Statement, there is no section of the statement specifically dedicated to the usage and production of the industrial gases oxygen, nitrogen, and argon. However, there are several instances in the financial statement where gas usage and production is referenced. Section A (a)(v) to the Annexure 'A' to Director's Report which generally discusses energy conservation measures taken by TATA states that "Electric energy was conserved at Industrial Gases Department by commissioning semi high pressure oxygen and nitrogen system." See TATA Financial Statement at 13. Additionally, Annexure 'A' to Director's Report indicates that TATA was engaged in certain industrial gas recovery operations such as improving L.D. gas recovery and conserving steam at Blast Furnaces and Coke Plants. See Id. Form B of the TATA Financial Statement also details particular technology innovations at TATA in the last five years. Improvements related to industrial gases include commissioning a third converter and gas cleaning equipment at LD 2, use of surplus by-product gases in boilers to save coal and reduce captive power cost, and commissioning gas fire facilities at Boiler No. 3 of Power House No. 4. See Id. at 16. These reports suggest that TATA has achieved some level of integration in its production of steel (certainly with respect to electricity and the recovery and reuse of by-product gases). Moreover, based on the information in Annexure 'A' that indicates TATA commissioned a semi-high pressured oxygen and nitrogen system, we find that, at a minimum, TATA produces oxygen and nitrogen in its production of steel.

There is scant evidence in TATA's Financial Statement regarding whether TATA

produced the industrial gas argon. However, we find it reasonable to infer that TATA produced the industrial gas argon based on the record evidence that TATA produced the industrial gases oxygen and nitrogen. The information on the record indicates that Respondents produce all three gases from the same facility. Specifically, according to the Baosteel Group Verification Report, Baosteel employs specific production machinery, called an air-separation plant, which produces all three industrial gases. See Verification of Sales and Factors of Production for Shanghai Baosteel Group Corporation (“Baosteel Group”) in the Antidumping Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products from the People’s Republic of China (“PRC”) (“Baosteel Group Verification Report”) (July 16, 2001), at 17 and Verification Exhibit 16. Also, because air is primarily composed of oxygen, nitrogen, and argon, we find it reasonable to infer that a machine that produces oxygen and nitrogen also produces argon. The TATA Financial Statement establishes that TATA has machinery that produces the industrial gases oxygen and nitrogen and did so during the period covered by the financial statement. Moreover, we know from verified information collected from Respondents that the industrial gases oxygen, nitrogen, and argon are produced at the same facility. Therefore, we find it reasonable to infer that because TATA produced the industrial gases oxygen and nitrogen, TATA also produced the industrial gas argon.

II. Conclusion

As explained in its Remand Results, the Department’s practice in valuing self-produced factors has been to examine the evidence on the record of each case and determine the most accurate valuation of self-produced factors to generate the most accurate result. Based on the

evidence on the record at the time of the Department's Final Determination, the Department found that there was a mismatched situation between the factors self-produced by Respondents and the factors self-produced by TATA, the surrogate company used to derive the financial ratios applied to Respondents' cost of manufacture. See Remand Results at 6. As explained in the Remand Results, "this disparity causes the generation of understated financial ratios and an understatement of normal value because the Department would not be capturing a significant element of cost." See Id. at 14. Consequently, in the Final Determination, the Department determined to value Respondents' self-produced factors oxygen, nitrogen, argon, and electricity through the use of surrogate valuation.

However, for purposes of these remand results and based on the Court's instructions, the Department has determined that the valuation of the inputs into the production of the self-produced factors electricity and the industrial gases oxygen, nitrogen, and argon results in a more accurate calculation of normal value. This reversal in the Department's determination is due entirely to the presence of new information on the record that indicates that the source of the surrogate financial data, TATA, produced half of its electricity and likely produced some, if not all, of the industrial gases oxygen, nitrogen, and argon it consumed in the production of steel during the period from which the financial data is derived. Because the surrogate financial company produced the factors that Respondents self-produced, the capital costs associated with producing these factors are necessarily captured in the surrogate financial ratios applied to Respondents, thereby eliminating the concern present in the Final Determination about the

understatement of normal value due to different production facilities used by Respondents and the surrogate company.

We note that our determination to value the inputs into these self-produced factors based on this new information is consistent not only with our rationale provided in the Final Determination, but also with the Department's general policy on valuing self-produced factors which was recently articulated in the investigation Frozen Fish from Vietnam. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 4986 (January 31, 2003) ("Frozen Fish from Vietnam"). In Frozen Fish from Vietnam, we affirmed and clearly articulated the Department's general policy on valuing self-produced factors. Frozen Fish from Vietnam identified two exceptions to valuing the inputs into the factors of production that a respondent uses to produce the subject merchandise: (1) where a respondent reports factors used to produce an intermediate input that accounts for a small or insignificant share of total output, and the increased accuracy in our overall calculations that would result from valuing each of those factors may be so small so as to not justify the burden of doing so; and (2) where it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. See Frozen Fish from Vietnam at 4993-4994.

Based on the new evidence on the record, we do not find that exceptions to the Department's general practice with respect to the valuation of self-produced inputs apply in this

investigation. Consequently, for these remand results, the Department has determined to value the inputs into the self-produced factors electricity, oxygen, nitrogen, and argon.

WEIGHTED-AVERAGE DUMPING MARGIN

As a result of this redetermination, the Department has recalculated the dumping margins for Baosteel, Benxi, and Anshan. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)	
	Determination on 2 nd Remand	Final
Baosteel.....	12.39.....	64.20
Benxi.....	57.19.....	90.83
Anshan.....	31.09.....	69.85
PRC-Wide Rate	90.83.....	90.83

Upon a final and conclusive court decision affirming this remand redetermination, the Department will publish notice of its amended final determination in the Federal Register and instruct U.S. Customs and Border Protection to collect duties in accordance with the determination.

COMMENTS

1. The Department Should Acknowledge That Its Original Determination Was Based On An Assumption That Could Not Be Supported

Respondent Anshan maintains that there was specific data in the TATA report that directly contradicts the Department's original determination that "there was a mismatched situation between the factors self-produced by Respondents and the factors self-produced by TATA" and that "this disparity causes the generation of understated financial ratios and an understatement of normal value because the Department would not be capturing a significant element of cost."² Moreover, Anshan claims that because there was no evidence of any mismatch, the Department's original determination was no more than an assumption. Anshan argues that the Department should acknowledge the facts "as they really are" and further acknowledge that the substantial evidence standard prohibits it from making assumptions without foundation.

Department's Position

We disagree with Anshan that our determination in the Final Determination regarding Respondents' self-produced energy factors was based on an assumption that could not be supported. In its Final Determination, the Department relied on the information available to it regarding TATA steel (i.e., the excerpts of the TATA annual report submitted by Petitioners in a June 19, 2002, submission) and the information regarding use by Respondents of large capital

² Citing Draft Results at 6.

equipment installations to produce these energy factors in making its determination that there was a mismatched situation between the factors self-produced by Respondents and the factors self-produced by TATA. Although Anshan claims in its brief that there was specific evidence in the TATA financial statements provided which contradicts the Department's determination, Anshan provides no citations to this information in its brief. In its Remand Results, the Department stated "since TATA's financial statement information on the record of this case does not contain any evidence that the company produced the four factors other than TATA's sale of power, the Department cannot reasonably conclude that TATA self-produced electricity based on the record of the investigation." See Remand Results at 12. The Department continues to find its decision in the Final Determination was correct based on the information on the record at the time of its determination.

2. The Department Made A Clerical Error in Recording Anshan's Margin In The Draft Results

Anshan states that the Department reported the incorrect weighted-average dumping margin for Anshan in the Draft Results. Anshan notes that both the computer output and the analysis memorandum for Anshan indicate that Anshan's weighted-average dumping margin is 31.09 percent.

Department's Position

We agree with Anshan and have corrected this clerical error for purposes of these final remand results.

3. The Department Should Revise Its Methodology for Valuing Electricity to Minimize Distortion

U.S. Steel argues that the Department's revised methodology for valuing Respondents' electricity in the Draft Results creates a significant distortion. Specifically, U.S. Steel claims that because Baosteel and Benxi self-produce all or virtually all of the electricity that each consumes while TATA self-produces only 54 percent of the electricity it consumes, the distortion that the Department referred to in its Remand Results still exists. U.S. Steel maintains that the capital costs associated with the generation of electricity by Respondents will not be captured in the financial ratios of the surrogate, TATA. U.S. Steel explains that the denominator in the financial ratios will include the cost of a significant amount of purchased electricity, making it larger than it would have been had TATA self-produced all of its electricity, while the numerator will contain lower depreciation and other overhead than would have been the case if TATA had self-produced all of its electricity. As a result of these understated financial ratios, U.S. Steel alleges that the normal value for Baosteel and Benxi will be understated. To mitigate this alleged distortion, U.S. Steel proposes that the Department use the methodology from the Draft Results to value 54 percent of Baosteel and Benxi's electricity production, and should value the remainder using the methodology from the Remand Results. In the alternative, U.S. Steel proposes that the Department adjust the numerator and the denominator of TATA's financial ratios to be equivalent to the experience of Respondents Benxi and Baosteel. For Anshan, U.S. Steel proposes an additional adjustment to the surrogate ratio for overhead and depreciation that

reflects the relative ratio of electricity self-produced by Anshan. At Attachment 1 to its submission, U.S. Steel provides the suggested calculations.

Respondents Anshan and Benxi argue that the U.S. Steel proposal goes too far, and the best information is what the Department used in the Draft Results. Respondents note that TATA has electricity-generating equipment and that it sells electricity. Citing the excerpt of TATA's financial statement filed by Petitioners, Respondents state that this document shows that TATA had significant income from the "Sale of power and water." Moreover, Respondents maintain that the U.S. Steel proposal would have the Department conduct a machine-by-machine comparison of TATA's equipment with that of Benxi's to ensure that there is no more production equipment and machinery subject to depreciation in one company versus the other. Respondents state that the Department has not done this and, based on the record of this case, could not do this. Respondents argue that unless there is a one-for-one correlation between TATA and Benxi's equipment, there will be a mismatch in the depreciation attributable to one company as opposed to the other, and that which way this distortion cuts is entirely unknowable in any given case. With respect to Anshan, Respondents maintain that the value of electricity used by Anshan is more appropriately based on surrogate valuation of the inputs to electricity. Citing 19 CFR 351.408(c)(1), Respondents state that when a significant portion of one of a non-market economy producer's inputs is purchased from a market economy, the value should be used to value all usage of the input. Respondents maintain that this same logic applies to Anshan and that Anshan's electricity costs are best determined based on its verified cost to produce electricity.

Department's Position

We disagree with Petitioner that the Department should revise its treatment of electricity. As an initial matter, we note that the comparison of Respondents' overall production facilities to the surrogate producer's production facilities is an inherently imprecise exercise. This necessarily results in the application of surrogate financial ratios which approximate rather than exactly match the experience of the Respondent. While the use of surrogates necessarily results in a certain degree of imprecision, the Department nevertheless strives to reach as accurate a result as possible. Accordingly, the Department's longstanding practice seeks to match surrogate companies with respondents as closely as possible at the company level. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 67 FR 36570 (May 24, 2002), and Accompanying Issues and Decision Memorandum at Comment 5 (where the Department disregarded financial ratio information from one potential surrogate company - TATA - because its production process was less similar to that of Respondents than that of other potential surrogate companies).

Although the Department selects the most appropriate surrogate(s) for financial ratio information, it also has a longstanding practice of seeking to avoid adjusting those financial ratios. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR

63842, 63850-1 (November 17, 1998). The principle reason for this practice is that, typically, there is insufficient information available regarding the financial statements from which the ratios are derived to enable such adjustments to produce a more accurate result. In such cases, it is difficult to determine whether such adjustments would produce more accuracy or introduce distortions.

In this instance, the weight of the evidence suggests that TATA maintained during the relevant period substantial facilities to produce electricity based on the fact that it self-produced 54 percent of its electricity needs. Because TATA produced such a significant percentage of its electricity needs, it is reasonable to conclude that the TATA Financial Statement reflects the capital costs attendant to significant self-production of electricity. Therefore, it is appropriate to value Respondents' inputs into their self-production of electricity, which is also significant, because the capital costs incurred by Respondents connected with their self-production of electricity will be reflected in the surrogate company's financial statement. We note that the Department is adhering to its longstanding aversion to the adjustment of the surrogate financial ratios. This is primarily because there is insufficient information available on the record to precisely measure the differences in the capital costs between TATA and Respondents. Moreover, given the factual conclusion that TATA and the Respondents are all significant self-producers of electricity, any approximations that might be used to adjust the ratios would be more likely to generate distortions, given the inherently imprecise approximations involved in using the statutorily mandated system of surrogate valuation.

With respect to Respondents' comments on the calculation of electricity costs for Anshan, we have continued to calculate Anshan's electricity cost using the same methodology as in the Draft Results, which relies on the factors-of-production data Anshan reported to the Department.

4. The Department Should Revise Its Methodology for the Valuation of the Industrial Gas Argon

U.S. Steel argues that there is no substantial evidence on the record that TATA produces the industrial gas argon. U.S. Steel claims that it is unreasonable for the Department to infer that TATA produces argon because of the facilities used by Respondents. Consequently, based on this alleged lack of evidence, U.S. Steel argues that it is improper for the Department to value the inputs to produce argon. U.S. Steels states that to avoid creating a distortion, the Department should value argon as a purchased factor.

Department's Position

We disagree with Petitioner. Although there is scant evidence in the TATA Financial Statement of whether TATA produced the industrial gas argon, we continue to believe that it is reasonable to infer that TATA produced the industrial gas argon based on the record evidence that TATA produced the industrial gases oxygen and nitrogen. Information on the record of this proceeding indicates that Respondents produce all three gases at the same facility. Specifically, according to the Baosteel Group Verification Report, Baosteel employs specific production machinery, called an air-separation plant, which produces all three industrial gases. See Baosteel

Group Verification Report, at 17 and Verification Exhibit 16. The TATA Financial Statement establishes, and Petitioners do not dispute, that TATA has machinery that produces the industrial gases oxygen and nitrogen. Moreover, we know from verified information collected from Respondents that the industrial gases oxygen, nitrogen, and argon are produced at the same facility. Therefore, we find it reasonable to infer that because TATA produced the industrial gases oxygen and nitrogen, TATA also produced the industrial gas argon.

5. The Department Should Correct A Ministerial Error

U.S. Steel claims that in calculating the interest expense ratios, the Department included selling, general, and administrative (“SGA”) expenses in the denominator of the ratio calculation but applied the ratio to a base that included only the total cost of manufacture and depreciation, but not SG&A. To correct this error, U.S. Steel proposes that the Department either (i) eliminate SG&A from the denominator of the financial expense ratio and recalculate the ratio, or (ii) apply the ratio calculated with SG&A in the denominator to a base that includes the SG&A.

Department’s Position

We do not find it appropriate for the Department to consider this comment at this late stage in the proceeding. We note that this is the first time that Petitioners have raised this allegation of a ministerial error with respect to the calculation of interest expenses. The Department utilized this calculation methodology in both its preliminary and final determination.

Petitioners had an opportunity to comment on this methodology, but elected not to do so.³

Moreover, Petitioners determined not to bring this issue before the Court. Accordingly, because Petitioners failed to exhaust their administrative remedies with respect to the calculation of interest expenses, the Department is not considering Petitioner's allegation, and whether the methodology used by the Department to calculate interest expense constitutes a clerical error.

James J. Jochum
Assistant Secretary
for Import Administration

Date

³ We note that in the Final Determination, Petitioners argued that the Department should apply the calculated SG&A and interest ratios to an amount that includes depreciation as a part of the cost of manufacture. See Final Determination and Accompanying Issues and Decision Memorandum at Comment 7.