



C-570-063
Investigation
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July 5, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: Wendy Frankel
Director, U.S. Customs and Border Protection Liaison Unit
for Antidumping and Countervailing Duty Operations
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination of the Countervailing Duty Investigation of Cast
Iron Soil Pipe Fittings from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of cast iron soil pipe fittings (soil pipe fittings) from the People's Republic of China (China), consistent with section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues

- Comment 1: Whether Commerce Should Use a Tier 1 Benchmark for Shanxi Xuanshi's Metallurgical Coke Benefit Calculation
- Comment 2: Whether Commerce Should Use a Tier 1 Benchmark for Shanxi Xuanshi's Iron Ore Benefit Calculation
- Comment 3: Whether Commerce Appropriately Averaged Tier 2 Iron Ore Benchmark Prices and Used the Appropriate Benchmark for Transportation
- Comment 4: Whether Commerce Overstated the Subsidy Rate for Policy Loans, Purchases of Electricity, Pig Iron, and Ferrous Scrap
- Comment 5: Whether Commerce Improperly Applied AFA to the Calculation of the Benefits Attributable to Guangzhou Premier for the Purchase of Pig Iron and Ferrous Scrap for LTAR
- Comment 6: Whether Commerce Should Consider Shanxi Xuanshi's Steel Scrap as a Subsidizable Input

Comment 7: Whether Commerce Erred in Its Policy Loan Benefits Calculation for Shanxi Xuanshi

Comment 8: Whether Commerce Erred in Its Electricity Benefits Calculation for Shanxi Xuanshi

II. BACKGROUND

A. Case History

On December 19, 2017, Commerce published its *Preliminary Determination* for this investigation.¹ The selected mandatory respondents in this investigation are Shanxi Xuanshi Industrial Group Co. Ltd. (Shanxi Xuanshi), Shijiazhuang Chengmei Import & Export Co., Ltd. (Shijiazhuang Chengmei), and Wor-Biz International Trading Co., Ltd. (Anhui) (Wor-Biz). In the *Preliminary Determination*, we aligned the final countervailing duty (CVD) determination with the final determination in the companion antidumping duty (AD) investigation, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4). On the same day, based on the Cast Iron Soil Pipe Institute's (the petitioner's) new subsidy allegations (NSA),² we initiated an investigation on seven additional programs.³

Following the *Preliminary Determination*, Wor-Biz submitted ministerial error allegations on December 18, 2017.⁴ On January 19, 2018, Commerce published an *Amended Preliminary Determination*, finding that the error alleged by Wor-Biz constituted a significant ministerial error that warranted a preliminary correction pursuant to 19 CFR 351.224(e).⁵ On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination of this investigation was set to July 5, 2018.⁶

Between March 19, 2018, and March 28, 2018, we conducted verification of the questionnaire responses of the Government of China (GOC), Shanxi Xuanshi, Wor-Biz and Wor-Biz's unaffiliated supplier Guangzhou Premier & Pinan Foundry Co., Ltd. (Guangzhou Premier), and on May 11, 2018, we released the verification reports.⁷

¹ See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Petitioner's Letter New Subsidy Allegation, dated November 1, 2017 (NSA).

³ See Memorandum regarding: New Subsidy Allegation, dated December 19, 2017 (NSA Memorandum).

⁴ See Wor-Biz's Letter, "Cast Iron Soil Pipe Fittings from the People's Republic of China: Request to Correct Ministerial Error in the Preliminary Determination," dated December 18, 2017.

⁵ See *Cast Iron Soil Pipe Fittings from China: Amended Preliminary Determination of Countervailing Duty Investigation*, 83 FR 2768 (January 19, 2018) (*Amended Preliminary Determination*).

⁶ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

⁷ See Memoranda, "Verification of the Questionnaire Responses of the Government of China," dated May 11, 2018 (GOC Verification Report); Memorandum, "Verification of the Questionnaire Responses of Shanxi Xuanshi

On April 19, 2018, Commerce released a *Post-Preliminary Analysis* to address the NSA programs.⁸ Interested parties timely submitted case briefs concerning case-specific issues on May 21, 2018.⁹ The petitioner submitted a rebuttal brief on May 30, 2018.¹⁰ We note that all comments related to the scope of this investigation are the subject of a final scope decision memorandum, dated concurrently with this memorandum.¹¹

B. Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to

Industrial Group Co., Ltd.,” dated May 11, 2018 (Shanxi Xuanshi Verification Report); Memorandum “Verification of the Questionnaire Responses of Wor-Biz International Trading Co., Ltd. (Anhui),” dated May 11, 2018 (Wor-Biz Verification Report); Memorandum “Verification of the Questionnaire Responses of Guang Zhou Premier & Pinan Foundry Co., Ltd.,” dated May 11, 2018 (Guangzhou Preimer Verification Report).

⁸ See Memorandum, “Post-Preliminary Analysis of Countervailing Duty Investigation: Cast Iron Soil Pipe Fittings from the People’s Republic of China,” dated April 19, 2018 (*Post-Preliminary Analysis*).

⁹ See GOC’s Letter, “Re: GOC Administrative Case Brief: Countervailing Investigation of Case Iron Soil Pipe Fittings from the People’s Republic of China (C-570-063),” dated May 21, 2018 (GOC Case Brief); Shanxi Xuanshi’s Letter, “Re: Cast Iron Soil Pipe Fittings from the People’s Republic of China; C-570-063; Case Brief,” dated May 21, 2018 (Shanxi Xuanshi Case Brief); Wor-Biz’s Letter, “Re: Cast Iron Soil Pipe Fittings from the People’s Republic of China: Wor-Biz’s Comments on the Preliminary Determination,” dated May 21, 2018 (Wor-Biz Case Brief).

¹⁰ See the Petitioner’s Letter, “Re: Case Iron Soil Pipe Fittings from the People’s Republic of China: Submission of a Rebuttal Brief,” dated May 30, 2018 (Petitioner Rebuttal Brief).

¹¹ See Memorandum, “Countervailing Duty and Less-Than-Fair-Value Investigations of Cast Iron Soil Pipe Fittings from the People’s Republic of China: Final Scope Memorandum” (Final Scope Memorandum), dated concurrently with this memorandum.

determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹² Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.¹³

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁴ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁵

Finally, under section 776(d) of the Act, when drawing an adverse inference in selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.¹⁶ When selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁷

Commerce relied on adverse facts available (AFA) with regard to several findings, including the AFA finding concerning Shijiazhuang Chengmei, in the *Preliminary Determination* and the *Post-Preliminary Analysis*. For a description of these decisions, see the *Preliminary Determination* and the *Post-Preliminary Analysis*.¹⁸ Except as discussed below with regards to Shanxi Xuanshi’s use of ferrous scrap, Commerce made no changes to its decisions in the *Preliminary Determination* and the *Post-Preliminary Analysis* to use AFA. No interested party commented on our preliminary decision concerning Shijiazhuang Chengmei, and so for purposes of this final determination we continue to assign this company a rate based entirely on AFA.¹⁹ For further discussion regarding our market distortion analysis for metallurgical coke and iron ore, see Comments 1 and 2 below. For further discussion of the AFA determinations regarding pig iron and ferrous scrap, see Comments 5 and 6 below.

¹² See section 776(b)(1)(B) of the Act.

¹³ See also 19 CFR 351.308(c).

¹⁴ See also 19 CFR 351.308(d).

¹⁵ See Statement of Administrative Action (SAA) Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol 1 (1994) at 870.

¹⁶ See section 776(d)(1) of the Act.

¹⁷ See section 776(d)(3) of the Act.

¹⁸ See *Preliminary Determination* at 5-24; see also *Post-Preliminary Analysis* at 3-13.

¹⁹ See AFA Rate Calculation Appendix, below.

Application of AFA: Provision of Ferrous Scrap for LTAR (Shanxi Xuanshi)

In the *Preliminary Determination*, Commerce did not calculate a subsidy rate for Shanxi Xuanshi's purchases of ferrous scrap for LTAR, based on Shanxi Xuanshi's questionnaire response, reporting that it did not purchase ferrous scrap during the POI.²⁰ At the beginning of verification, Shanxi Xuanshi attempted to amend the questionnaire it submitted to Commerce, with regards to the purchase of ferrous scrap, by submitting what it characterized as minor correction information about POI purchases of ferrous scrap. The information provided by Shanxi Xuanshi did not constitute a minor correction and we declined to accept the untimely new factual information. As discussed further in Comment 6 below, in examining Shanxi Xuanshi's reported non-use of certain subsidy programs, we found that Shanxi Xuanshi had purchased ferrous scrap for its production of soil pipe fittings, contrary to what it had reported in its questionnaire response. As evidenced by its ability at verification to provide factual information sought by Commerce, Shanxi Xuanshi possessed the records necessary to have timely presented complete and accurate information regarding its purchase of ferrous scrap, rather than wait until verification. Shanxi Xuanshi's failure to provide such information by the deadline means that necessary information is not on the record and demonstrates that it did not timely provide the information as requested. Thus, in accordance with section 776(a)(1) and (2)(B) of the Act, we find that the use of facts available is warranted. Further, we find that Shanxi Xuanshi did not act to the best of its ability to comply with our requests for information. Hence, pursuant to section 776(b) of the Act, we find that it is appropriate to apply AFA in determining the benefit received by Shanxi Xuanshi from the provision of ferrous scrap for LTAR. At Comment 6 we address comments from interested parties with regard to this issue.

IV. SUBSIDIES VALUATION

A. Allocation Period

Commerce made no changes to the allocation period, which was 15 years, and the allocation methodology used in the *Preliminary Determination*.²¹ No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

B. Attribution of Subsidies

Commerce made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies.²²

²⁰ See Shanxi Xuanshi's October 4, 2017 Initial Questionnaire Response (Shanxi Xuanshi October 4, 2017 IQR) at 22-23.

²¹ See *Preliminary Determination* PDM at 24.

²² *Id.* at 25-27.

C. Denominators

During verification, Shanxi Xuanshi reported minor adjustments to its total sales and total export sales of subject merchandise during the POI and average unit life (AUL).²³ For the final determination, Commerce used these revised figures to calculate the countervailable subsidy rates for Shanxi Xuanshi, where appropriate.²⁴ Commerce made no changes to the sales denominators used to calculate the countervailable subsidy rates of the other mandatory respondent, Wor-Biz.

D. Loan Interest Rate Benchmarks and Discount Rates

Commerce made no changes to the loan interest rate benchmarks and discount rates used in the *Preliminary Determination*.²⁵

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

We made no changes to our *Preliminary Determination* and our *Post-Preliminary Analysis* with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below and to the extent we incorporated revised denominators for Shanxi Xuanshi, where appropriate.²⁶ For the descriptions, analyses, and calculation methodologies regarding these programs, see the *Preliminary Determination* and the *Post-Preliminary Analysis*. Except where noted below, the parties did not raise any issues regarding these programs in their case briefs. The final program rates are as follows:

1. *Policy Loans to the Cast Iron Soil Pipe Fittings Industry*

We made certain changes to the *Preliminary Determination* with regard to this program. Specifically, we (1) revised the principal amounts, the amount of interest paid, and interest rates for one of Shanxi Xuanshi's loans to reflect minor corrections submitted during verification,²⁷ and (2) revised the denominator for its calculations, as mentioned above in Section IV.C. Except for these changes, we made no revisions to the *Preliminary Determination* with regard to this program, as further discussed in Comments 4 and 7 below. The rate for Shanxi Xuanshi is now 5.01 percent *ad valorem*.²⁸ The rate for Wor-Biz remains unchanged at 1.24 percent *ad valorem*.

²³ Shanxi Xuanshi Verification Report at VE-1.

²⁴ See Memorandum, "Countervailing Duty Investigation of Cast Iron Soil Pipe Fittings from China: Final Determination Calculations for Shanxi Xuanshi Industrial Co., Ltd.," dated concurrently with this memorandum (Shanxi Xuanshi Final Calculation Memorandum).

²⁵ See *Preliminary Determination* PDM at 27-31.

²⁶ See section IV.C. above.

²⁷ See Shanxi Xuanshi Verification Report at VE-1.

²⁸ For the description and analysis of this program, see *Preliminary Determination* PDM at 31-34.

2. *Provision of Ferrous Scrap for LTAR*

As discussed in Comment 6 below and Section III above, we determined that the application of AFA is warranted for Shanxi Xuanshi's use of ferrous scrap for LTAR during the POI. With the application of AFA, the rate for Shanxi Xuanshi is now 4.45 percent *ad valorem*.²⁹ Except for this change, we made no revisions to the *Preliminary Determination* with regard to this program, as further discussed in Comments 4, 5, and 6 below. The rate for Wor-Biz, which was amended in the *Amended Preliminary Determination*, remains unchanged at 4.45 percent *ad valorem*.

3. *Provision of Pig Iron for LTAR*

As discussed in Comments 4 and 5, we made no changes to the program rate for Wor-Biz, which was amended in the *Amended Preliminary Determination*. The final subsidy rate for Wor-Biz remains unchanged at 0.49 percent *ad valorem*.³⁰

4. *Provision of Electricity for LTAR*

We made certain changes to the *Preliminary Determination* with regard to this program. As mentioned in Comment 8 below, we have added VAT to the 'non-production use' and the 'other fees and adjustments' categories of electricity. In addition, we included the adjustment fee and maintenance fee amounts because these amounts were included as part of Shanxi Xuanshi's monthly electricity payment. Furthermore, we added VAT to the adjustment fee and maintenance fee for the benefits calculation.³¹ We also revised the denominator in the calculations, as mentioned above in Section IV.C. For a further discussion of the revisions in the calculation, see the Shanxi Xuanshi Final Calculation Memorandum. Except for these changes, we made no revisions to the *Preliminary Determination* with regard to this program, as further discussed in Comment 4 below.³² The final subsidy rate for Shanxi Xuanshi is now 3.44 percent *ad valorem*, and the final subsidy rate for Wor-Biz remains unchanged at 0.86 percent *ad valorem*.

5. "Other Subsidies"

We continue to find that the respondents received the following non-recurring grants during the POI or AUL period.³³

²⁹ For the description and analysis of this program, see *Preliminary Determination* PDM at 34-35.

³⁰ For the description and analysis of this program, see *Preliminary Determination* PDM at 35-36.

³¹ See Memorandum, "Shanxi Xuanshi Industrial Group Co. Ltd.; Calculations for the Final Determination," dated concurrently with this memorandum (Shanxi Xuanshi Final Calculation Memorandum).

³² For the description and analysis of this program, see *Preliminary Determination* PDM at 37-38.

³³ See Shanxi Xuanshi's November 14, 2017 Second Supplemental Questionnaire Response at Exhibit CVDS-2; Wor-Biz's October 6, 2017 Initial Questionnaire Response at Exhibit 10; See also *Preliminary Determination* PDM at 38-39.

a. Grants

Shanxi Xuanshi

- (1) Promotion Funds for Coordinated Development of Foreign Trade and Economic Region
- (2) Brand Building Funds for Medium, Small and Micro-Sized Enterprises, 2016
- (3) Interest Discount Funds

Wor-Biz

- (1) Aid for Middle and Small Enterprise for Developing International Market
- (2) Bonus to Middle and Small Enterprise
- (3) Bonus for Foreign Trade
- (4) Assistance Fund
- (5) Foreign Trade Promotion Fund in 2016
- (6) Fund to Middle and Small Enterprise for Developing Markets
- (7) Bonus for the Company's Sports Brand in Exhibition

We made no changes to the *Preliminary Determination* with regard to these programs, except for the revision of the denominator in the calculations, as mentioned above in Section IV.C.³⁴ The final cumulative *ad valorem* subsidy rate for Shanxi Xuanshi remains unchanged at 0.12 percent, and the final cumulative subsidy rate for Wor-Biz remains unchanged at 0.23 percent *ad valorem*.

b. Direct Taxes

We made no changes to the *Preliminary Determination* with regard to this program. The final subsidy rate for Wor-Biz remains unchanged at 0.10 percent *ad valorem*.

6. *Provision of Metallurgical Coke for LTAR*

As discussed in Comment 1, we made no changes to the *Post-Preliminary Analysis* with regard to this program, except for the revision of the denominator in the calculations, as mentioned above. The final subsidy rate for Shanxi Xuanshi remains unchanged at 9.86 percent *ad valorem*.³⁵

7. *Provision of Iron Ore for LTAR*

We made certain changes to the *Post-Preliminary Analysis* with regard to this program. We (1) revised the freight charges for some of Shanxi Xuanshi's iron ore purchases to reflect the minor corrections Shanxi Xuanshi submitted during verification,³⁶ and (2) revised the denominator in the calculations, as mentioned above in Section IV.C. Except for these changes, we made no

³⁴ For the description and analysis of this program, see *Preliminary Determination* PDM at 38-39.

³⁵ For the description and analysis of this program, see *Post-Preliminary Analysis* at 15-16.

³⁶ See Shanxi Xuanshi Verification Report at VE-1.

revisions to the *Post-Preliminary Analysis* with regard to this program, as discussed in Comments 2 and 3 below. The final subsidy rate for Shanxi Xuanshi is now 11.99 percent *ad valorem*.³⁷

B. Programs Determined Not to Confer a Measurable Benefit to Shanx Xuanshi or Wor-Biz

1. “Other Subsidies”

We made no changes to the *Preliminary Determination* with regard to the following programs determined not to confer a measurable benefit to Shanxi Xuanshi or Wor-Biz during the POI.³⁸

Shanxi Xuanshi

- a. Patent Assistance Funds
- b. Party Construction Fund for the Year 2015
- c. Supporting Funds for Circulating Program
- d. Government Awards for Brand Name Product in Shanxi Province
- e. Financial Funds Introduction
- f. Supporting Funds for Private Economy Development of SME
- g. Funds for Energy Saving Technology Improvement Project in Smelting Section
- h. Special Fund for Foreign Economic Development (on International Operation Capacity Enhancement), the First Tranche of the Year 2015
- i. Special Fund for Foreign Economic Development (on International Operation Capacity Enhancement), the Second Tranche of the Year 2015

Wor-Biz

- a. Assistance on Credit Insurance
2. Programs Determined Not to Be Used by Wor-Biz or Shanxi Xuanshi

We made no changes to the *Preliminary Determination* and the *Post-Preliminary Analysis* with regard to the following programs determined not to be used by Shanxi Xuanshi or Wor-Biz during the POI.³⁹

1. Export Loans
2. Treasury Bond Loans
3. Preferential Loans for State-Owned Enterprises
4. Preferential Lending to CISPFP Producers and Exporters Classified as “Honorable Enterprises”
5. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
6. Debt-to-Equity Swaps
7. Exemptions for State-Owned Enterprises (SOEs) from Distributing Dividends to the State

³⁷ For the description and analysis of this program, see *Post-Preliminary Analysis* at 14-15.

³⁸ See *Preliminary Determination PDM* at 40-41.

³⁹ See *Id.* at 40-41; see also *Post-Preliminary Analysis* at 16.

8. Loan and Interest Forgiveness for SOEs
9. Preferential Income Tax Program for High and New Technology Enterprises
10. Preferential Deduction of R&D Expenses for High and New Technology Enterprises
11. Income Tax Benefits for Domestically Owned Enterprises Engaging in Research and Development
12. Preferential Income Tax Policy for Enterprises in the Northeast Region
13. Reduction in Exemption from Fixed Assets Investment Orientation Regulatory Tax
14. Preferential Income Tax Subsidies for Foreign Invested Enterprises (FIEs) – Export Oriented FIEs
15. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
16. VAT and Tariff Exemptions for Purchases of Fixed Assets under the Foreign Trade Development Fund
17. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
18. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
19. Provision of Land to SOEs for Less than Adequate Remuneration
20. The State Key Technology Fund
21. Foreign Trade Development Fund Grant
22. Export Assistance Grants
23. Subsidies for Development of Famous Export Brands and China World Top Brands
24. Grants to Loss-Making SOEs
25. Export Interest Subsidies
26. Grants for Energy Conservation and Emission Reduction
27. Grants for Retirement of Capacity
28. Grants for Relocating Production Facilities
29. Financial Support for Xuanshi Soil Pipe Project (Shanxi Xuanshi)
30. Hefei City Special Financial Support for Exporters: Loans (Wor-Biz)
31. Provision of Coking Coal for LTAR
32. Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone, and
33. VAT Refunds for FIEs on Purchases of Chinese-Made Equipment

VI. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Use a Tier 1 Benchmark for Shanxi Xuanshi's Metallurgical Coke Benefit Calculation

GOC's Case Brief:

- Commerce normally measures the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions (Tier 1) in the country in question, based on 19 CFR 351.511(a)(2)(i). Commerce made a number of errors in Commerce's market distortion analysis for metallurgical coke in its *Post-Preliminary Analysis Memo*.

- According to Commerce’s regulations, Commerce will use world market prices (Tier 2) for the good or service if there is no usable market-determined prices.⁴⁰
- The Preamble to Commerce’s CVD regulations (the Preamble)⁴¹ indicates a strong preference to use Tier 1 benchmarks in conducting the LTAR benefit analysis. The Preamble explains that “such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.”⁴² A market distortion finding should only be made when “it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market.”⁴³
- The focus on whether “actual transaction prices are significantly distorted” is consistent with World Trade Organization (WTO) Dispute Settlement Body (DSB) determinations. According to the DSB, Commerce must find that there is evidence of a direct impact on the in-country price in order to find that the market is distorted. Further, Commerce cannot presume that government intervention in the market necessarily results in price distortions.⁴⁴
- Similarly, the WTO Appellate Body determined that Commerce must determine whether in-country prices are market determined. Furthermore, in order to conduct such an analysis to determine whether in-country benchmarks are distorted, Commerce may have to examine the structure of the relevant market, such as the nature of the entities operating in that market, their respective market shares, as well as any entry barriers.⁴⁵
- The majority-state-owned producers of metallurgical coke in China accounted for 36, 37, and 36 percent of domestic production during 2014, 2015, and 2016, respectively.
- Consistent with the statutory and regulatory provisions of U.S. law and WTO decisions, Commerce must demonstrate with record evidence that a “certain circumstance” in the market in this case causes distortion and provide a reasoned and adequate explanation as to how government intervention distorts the price of the inputs at issue. In particular, Commerce did not adequately explain how the Chinese government’s minority ownership and minimal imports of metallurgical coke distorts the price of the input.
- To the contrary, evidence on the record, such as Decree 11 of State Development & Planning Commission, 2001, the Price Law of China, shows that prices are dictated by market forces and not by any plan that sets levels of production by SOEs.
- Record evidence also shows that well over 400 of the 640 to 756 metallurgical coke producers from 2014 to 2016 were ultimately not owned or controlled by the government.⁴⁶
- This case is also significantly different and distinguishable from cases where Commerce provided evidence of actual government distortion, as in *Softwood Lumber from Canada*, where a few large, government entities were the price leaders in the market and the smaller,

⁴⁰ See GOC Case Brief at 4 (citing 19 CFR 351.511(a)(2)(ii)).

⁴¹ See GOC Case Brief at 4 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998)).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See GOC Case Brief at 5 (citing *United States - Countervailing Duty Measures on Certain Products from China*, WT/DS437/RW (March 21, 2018) at para. 7.205-6).

⁴⁵ See GOC Case Brief at 6 (citing *United States - Countervailing Measures on Certain Products from China*, WT/DS437/AB/R (December 18, 2014) at para. 4.62).

⁴⁶ See GOC Case Brief at 8 (citing GOC October 4, 2018 Initial Questionnaire Response (GOC October 4, 2018 IQR) at Exhibits E-7 and E-8). See also GOC’s January 3, 2018 New Subsidy Allegation Questionnaire Response (GOC NSAR) at 24.

private companies were the price takers unable to avoid the price distortion.⁴⁷ Additionally, in that case, Commerce supported its decision by enumerating additional evidence on the record, which Commerce here does not even attempt to do.

Commerce's Position:

Commerce's long-standing practice is to utilize a benchmark outside of the country of provision when record evidence indicates that the high level of the government's share of the market of the good in question, along with other factors, results in a distortion of that market.⁴⁸ Such a finding is consistent with the *CVD Preamble*, which states that government involvement in a market may, in certain circumstances, have a distortive effect on the price of a good even when the government provider accounts for less than a majority of the market.⁴⁹ The GOC's arguments regarding this matter have been previously addressed and rejected by Commerce.⁵⁰ Out-of-country benchmarks are required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).⁵¹ Additionally, the GOC's reliance on WTO/DS437 to argue for in-country benchmarks is misplaced. The Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law "unless and until such ruling has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).⁵² Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.⁵³ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of Commerce's discretion in applying the statute.⁵⁴

Concerning metallurgical coke, the GOC has reported that SOEs accounted for a substantial share of metallurgical coke production in China (*i.e.*, 36 percent) during the POI. This percentage is similar to that observed in *Cylinders from China* in which Commerce declined to use in-country seamless tube steel benchmarks due to the distortive effect caused by the market share held by state-owned seamless tube steel producers, in light of the added fact that imports of

⁴⁷ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*).

⁴⁸ See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

⁴⁹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*).

⁵⁰ See, *e.g.*, *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Racks from China*), and accompanying IDM at Comment 8; *Line Pipe from China* IDM at Comment 5; and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from China*), and accompanying IDM at Comment 7.

⁵¹ See *CWP from China* IDM at Comment 7.

⁵² See *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (CAFC 2005).

⁵³ See, *e.g.*, 19 U.S.C. §3533, 3538.

⁵⁴ See, *e.g.*, 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

seamless tube steel as a share of domestic consumption were insignificant.⁵⁵ Moreover, the record in this investigation includes other indicators of distortive government involvement in the metallurgical coke market. In particular, the record information shows that the GOC imposed export licensing requirements on coke.⁵⁶ Such export restraints discourage exportation of the good, thus artificially increasing the supply of metallurgical coke in the domestic market, lowering domestic prices. Moreover, similar to *Cylinders from China*, the share of imports in the domestic market of the good in question, at less than one percent, is insignificant, further indicating that the government plays a predominant role through its involvement in the market. In addition, while the GOC reported that no export tariffs or quotas *per se* were imposed on coke during the relevant period, the *Iron and Steel Plan* states that “export of such preliminary processed products as coke...with high energy-consumption and serious pollution shall be restricted and the tax refund for export of these products shall be decreased or cancelled,” indicating that the government exercises other forms of control over the market.⁵⁷

The GOC asserts that the large number of non-affiliated metallurgical coke producers in the Chinese market ensures that there is little to no strategic interaction among firms and, thus, that the competitive nature of these firms means that their pricing decisions are driven by their costs and not by any strategic influence of the GOC’s alleged control of firms. As we have explained in prior CVD proceedings involving China, the GOC, in making this argument, fails to realize that our position is not driven by a finding of collusion between private and state-owned wire rod producers.⁵⁸ Rather, because of its substantial market presence, the GOC becomes a price leader; hence, private metallurgical coke suppliers compete, not with other private producers, but with the GOC-controlled entities.⁵⁹ Therefore, consistent with Commerce’s practice, we are using out-of-country benchmarks for metallurgical coke where actual transaction prices are significantly distorted because of the predominant role of the government in the market.⁶⁰

Regarding the GOC’s contention that a large number of private metallurgical coke producers ensure that the domestic market for metallurgical coke is not distorted by the involvement of state-owned firms, we find the argument unpersuasive, in light of the government’s significant market share and, as noted above, the additional indicators of distortive government involvement in the market.

On this basis, we continue to find that it is appropriate to continue to use Tier 2 benchmarks, as described under 19 CFR 351.511(a)(2)(ii), when determining whether benefits were conferred under the provision of metallurgical coke for LTAR program.

⁵⁵ See *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Cylinders from China*), and accompanying IDM at 19.

⁵⁶ Although the licensing requirements noted by the GOC are for the broader classification of coke, coke is a direct material used in the production of metallurgical coke, which in turn affects the price of metallurgical coke. See GOC’s January 23, 2018 Supplemental NSA Questionnaire Response (GOC’s January 23, 2018 NSA SQR) at 8-9.

⁵⁷ See GOC November 3, 2017 First Supplemental Questionnaire Response (GOC November 3, 2017 SQR) at Exhibit S-2.

⁵⁸ See *Racks from China* IDM at Comment 8.

⁵⁹ *Id.*

⁶⁰ See *Softwood Lumber from Canada*, and accompanying IDM at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

Comment 2: Whether Commerce Should Use a Tier 1 Benchmark for Shanxi Xuanshi's Iron Ore Benefit Calculation

GOC's Case Brief:

- Commerce lacks the authority to apply facts otherwise available or any adverse inference under sections 776(a) and (b) of the Act because there is no information which requires an AFA finding of market distortion for the iron ore for LTAR program.
- The issues raised by Commerce in the *Post-Preliminary Analysis Memo* concerning the GOC's failure to use its Enterprise Credit Information System (ECIP System) to evaluate corporate ownership and control and the GOC's Iron and Steel Plan, did not warrant AFA or a finding that the iron ore market is distorted. Therefore, Commerce should reverse its application of AFA regarding market distortion in the Chinese iron ore market.
- Under the statute, as a prerequisite for the use of an adverse inference, Commerce must first find that the use of facts otherwise available is appropriate.⁶¹ In addition, the use of facts otherwise available is only appropriate to fill gaps to complete CVD calculations,⁶² which the Statement of Administrative Action also notes.⁶³
- The GOC provided data from the National Bureau of Statistics (NBS) that the domestic production and consumption of iron ore by the majority-state-owned producers accounted for 27, 27, and 29 percent of domestic production during 2014, 2015, and 2016, respectively.⁶⁴ In addition, imports were a significant player in the market, unlike metallurgical coke.⁶⁵
- It is unclear how Commerce determined that the GOC's minority ownership is accessible to the GOC through its Enterprise Credit Information Publicity System (ECIP System) and why Commerce only rejected iron ore data as unreliable when the GOC provided the same verified information with respect to metallurgical coke. The ECIP System cannot be searched by production input and does not have production data. Also, even if the system could be searched by production input, there is no certainty that the input description in the system would be the same as the description of the specific input alleged in a particular case.
- Commerce should have clearly requested the GOC to confirm the ownership information for the iron ore market through the ECIP System, if Commerce wanted to confirm the ownership status of each identified SOE through the ECIP System. In addition, Commerce has arbitrarily accepted information from the ECIP System in some instances, while refusing it in other instances.
- Commerce does not provide a reasoned basis to establish any connection between the *Iron and Steel Plan* and the GOC's overarching involvement in the iron ore industry when other record evidence directly contradicts this conclusion and specifically indicates that government ownership in, and control of, iron ore was a mere 29 percent. Furthermore, no

⁶¹ See GOC Case Brief at 12 (citing *Shandong Huarong Mach. Co. v. United States*, 435 F. Supp. 2d 1261, 1289 (CIT 2006)).

⁶² See GOC Case Brief at 12 (citing *Ningbo Dafa Chem. Fiber Co. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2009)).

⁶³ See GOC Case Brief at 13 (citing SAA, H.R. Doc. 103-316, vol 1 (1994) at 869).

⁶⁴ See GOC Case Brief at 14 (citing GOC NSAR at 31).

⁶⁵ *Id.*

direct evidence is provided to show the impact on the price of iron ore resulting from the *Iron and Steel Plan*.

Petitioner's Rebuttal Brief:

- Commerce properly applied a Tier 2 benchmark and should use the same benchmark for its final determination because Commerce will normally compare the government price to market determined prices, including prices from actual imports.⁶⁶ In this case, Commerce determined that the domestic market was distorted and used a Tier 2 benchmark and should not make any changes in the final.

Commerce's Position:

The GOC failed to fully cooperate with Commerce's requests for information necessary to complete our analysis of the iron ore market in China. The application of AFA was, therefore, warranted under sections 776(a) and (b) of the Act. Regarding iron ore, Commerce requested that the GOC provide the "percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a *majority* ownership or a controlling management interest, either directly or through other Government entities."⁶⁷ We also requested that the GOC provide the "percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains *some, but not a majority*, ownership interest or *some, but not a controlling*, management interest, either directly or through other Government entities."⁶⁸ In addition, we requested that the GOC provide information from the "Enterprise Credit Information Publicity System" to help determine if the necessary information detailing the GOC's minority ownership interests in iron ore producers is accessible to the GOC.⁶⁹ Although the GOC responded to the question regarding its *majority* ownership interests, the GOC did not respond to the question on minority interest, stating that it did not collect this information.⁷⁰ However, the GOC stated that the ECIP System is authoritative evidence of the ownership structure of enterprises in China.⁷¹ Furthermore, the GOC has stated that all companies operating within China have a profile in the ECIP System, regardless of whether they are private or an SOE.⁷² Accordingly, based on this information, in the the *Post-Preliminary Analysis Memo* we concluded that the necessary information detailing the GOC's *minority* ownership interests in iron ore producers is accessible

⁶⁶ See Petitioner Rebuttal Brief at 5 (citing 19 CFR 351.511(a)(2)(i)).

⁶⁷ See Commerce Letter re: New Subsidy Allegations Questionnaire, dated December 13, 2017 (GOC NSAR) at 4 (emphasis added).

⁶⁸ *Id.* at 4 (emphasis added).

⁶⁹ See Commerce Letter re: Cast Iron Soil Pipe Fittings from the People's Republic of China: Countervailing Duty Investigation, dated January 9, 2018 at 3.

⁷⁰ See GOC NSAR at 31.

⁷¹ See GOC October 4, 2018 IQR at 18-19.

⁷² See *See Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying PDM at 21-22 (unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017), and accompanying IDM) (*Stainless Steel Sheet and Strip from the People's Republic of China*).

to the GOC and is apparently subject to public disclosure – notwithstanding their claim to the contrary. As such, we concluded that the GOC failed to cooperate to the best of its ability, and that the application of AFA pursuant to section 776(b) of the Act is warranted. As AFA, we preliminarily found that the GOC’s involvement in the iron ore industry through enterprises in which it owns an interest is significant.⁷³

Regarding whether Commerce should have verified the ECIP System to determine if the GOC could use the system to report ownership by SOEs, Commerce does not typically verify a negative response when a party chooses not to respond to a questionnaire. Consistent with this practice, we stated the following in the cover letter of the GOC’s verification agenda:

Please note that verification is not intended to be an opportunity for submission of new factual information. New information will be accepted at verification only when: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.

In this case, as noted above, the GOC did not respond to the question on minority interest, stating that it did not collect this information. Therefore, because the GOC did not provide the necessary information detailing the GOC’s minority ownership interests in iron ore producers, even though this information was available to it, we did not verify the ECIP System. Given the GOC’s statements in this proceeding that the ECIP System is authoritative evidence of the ownership structure of enterprises in China and that all companies operating within China have a profile in the ECIP System, verifying the ECIP System could have resulted in the verifiers being presented with untimely new factual information that should have been reported in response to Commerce’s minority ownership question, and which would not be accepted at verification.

Finally, despite the GOC’s denial that it did not encourage iron ore production through domestic policies, the *Iron and Steel Plan* in the case record demonstrates the strategic importance of the iron ore industry to the GOC’s plans for its iron and steel industries. This document provides evidence of robust government initiatives to support and coordinate the development of domestic and foreign iron ore sources.⁷⁴ One example of such initiatives is export controls, which divert domestic iron ore to domestic consumption. The information in the *Iron and Steel Plan* therefore constitutes some of the facts available on the record upon which Commerce may rely in applying AFA. Moreover, the record shows that during the POI, the GOC imposed a 10-percent export tariff on iron ore.⁷⁵ Export tariffs increase the domestic quantity of iron ore that is available in China, by redirecting potential iron ore exports to the domestic market, consequently suppressing domestic prices.

For the foregoing reasons, we are continuing to apply AFA to our market distortion analysis, and we determine that there is a market distortion with regard to the iron ore industry. On this basis, we continue to find that it is appropriate to continue to use Tier 2 benchmarks, as described

⁷³ See *Post-Preliminary Analysis* at 12.

⁷⁴ GOC November 3, 2017 SQR at Exhibit S-2.

⁷⁵ See GOC NSAR at 34.

under 19 CFR 351.511(a)(2)(ii), when determining whether benefits were conferred under the provision of iron ore for LTAR program.

Comment 3: Whether Commerce Appropriately Averaged Tier 2 Iron Ore Benchmark Prices and Used the Appropriate Benchmark for Transportation

Shanxi Xuanshi's Case Brief:

- Commerce should use the purchase price for non-Chinese iron ore to determine the benefit, instead of a surrogate benchmark with artificially inflated transportation charges and artificially inflated iron ore prices.
- The purchased foreign iron ore does not represent speculative values but actual costs for comparison purposes.
- Commerce should use as the iron ore benchmark price the data submitted by Shanxi Xuanshi because the data were provided directly from official export statistics from Brazil, whereas the petitioner's data from Brazil are from an unofficial source. Also, the petitioner's export values are overstated. In addition, Commerce's practice is to use data from official export statistics in antidumping duty cases.
- Regarding the transportation cost used for the benchmark prices for iron ore and metallurgical coke, Commerce added general benchmark transportation charges to the material costs to calculate a "delivered" price as well as international ocean freight. However, this calculation is unreasonable and greatly overstates the costs of transportation.
- The truck size of approximately 12 metric tons used by Commerce in the benchmark calculation does not reflect actual usage, because the iron ore and metallurgical coke used by Shanxi Xuanshi are transported in trucks that carry 36 to 40 metric tons.
- Commerce should have used the *sigma* capped distance for the delivery of iron ore and metallurgical coke for transportation, rather than the distance from the port to Shanxi Xuanshi.
- Commerce also should not have included ocean freight in its calculation of transportation costs, because the question presented to Commerce is not the cost of the actual imported products, but rather what the cost of the input would have been if not subsidized.

Petitioner's Rebuttal Brief:

- Shanxi Xuanshi actually purchased the non-Chinese iron ore from a domestic trader, which would not make it an actual import in accordance with Commerce's regulations. In addition, the price Shanxi Xuanshi paid for non-Chinese ore would include the Chinese company's markup, and be subject to the same price distortion resulting from Chinese government participation in the market that caused Commerce to reject Tier 1 benchmarks.
- Commerce considers product similarity in determining the benchmark price, in accordance with the regulations.⁷⁶ In this case, Shanxi Xuanshi did not specifically purchase imported iron ore as noted in Commerce's verification report.⁷⁷ Further, Commerce has recognized that variations in iron ore grades, particle characteristics, and iron content concentrations are

⁷⁶ See Petitioner Rebuttal Brief at 7 (citing 19 CFR 351.511(a)(2)(i)).

⁷⁷ See Petitioner Rebuttal Brief at 7 (citing Shanxi Xuanshi Verification Report at VE-9, pages 1-11).

significant for purposes of calculating adequacy of remuneration.⁷⁸ Therefore, the benchmark Shanxi Xuanshi proposes is not a usable Tier 1 benchmark under Commerce's regulations.

- In using the Tier 2 benchmark for the *Post-Preliminary Analysis*, Commerce properly averaged the data provided by the petitioner and the official export data from Brazil, because Commerce's Tier 2 regulations call for averaging data sources where needed to account for product differences.⁷⁹
- With regard to transportation charges, Commerce should reject Shanxi Xuanshi's argument because it is erroneous for several reasons.
- If there are any aberrational transportation prices, that is because the suggested benchmark transportation prices are from China, a distorted market.
- Shanxi Xuanshi's assertion that iron ore and coke are transported in trucks that carry 36 to 40 metric tons⁸⁰ is not supported by record evidence.
- Shanxi Xuanshi's claim that Commerce should have used the *sigma* capped distance for the delivery of iron ore and coke for transportation, rather than the distance from the port to Shanxi Xuanshi, misses the point. There is no reason to believe Shanxi Xuanshi would have purchased the domestic iron ore, which would have been more expensive. Shanxi Xuanshi would have been equally likely to turn to available prices on the international market, which would have included both ocean freight and ocean shipping.

Commerce's Position:

Commerce has determined that it is appropriate to apply a Tier 2 benchmark price in measuring the benefit of the provision of iron ore for LTAR, because we have found market distortion in the iron ore market. Commerce generally relies on actual transaction prices (*i.e.*, Tier 1), under section 19 CFR 351(a)(2)(i). However, in the present case, we have found that the iron ore market is distorted. For this reason, we are comparing the government-determined price of iron ore to a world market price because an actual market-determined price is not available. Where there is more than one world market price available on the record, it is Commerce's practice to average the available prices.⁸¹ Commerce's regulations state that "{w}here there is more than one commercially available world market price, {Commerce} will average such prices to the extent practicable."⁸² The regulations do not call for the use of official export statistics, only "commercially available" statistics. In this particular case, both the petitioner and Shanxi Xuanshi provided usable world market prices. Because the parties provided two different world market prices, we averaged the two world market prices from different sources to come up with a Tier 2 benchmark price to compare to the Chinese government price.

⁷⁸ See Petitioner Rebuttal Brief at 7 (citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at IV.A.3 and Comment 12).

⁷⁹ See Petitioner Rebuttal Brief at 5 (citing 19 CFR 351.511 (a)(2)(ii)).

⁸⁰ See Petitioner Rebuttal Brief at 5 (citing Shanxi Xuanshi Case Brief at 4).

⁸¹ See 19 CFR 351.511(a)(2)(ii).

⁸² *Id.*

With regard to benchmark information concerning transportation expenses, Commerce's practice is to use a delivered price to measure the adequacy of remuneration under section 19 CFR 351.511(a)(2)(ii). Because no party submitted benchmark transportation prices, we placed documentation on the record, which was used to calculate the ocean freight benchmark in the *Preliminary Determination*.⁸³ Shanxi Xuanshi did not submit any comments regarding this data, or provide any alternative benchmark data, in its NSA responses. As for Shanxi Xuanshi's contention that the question before us is not the cost of the actual imported products, but rather what the input would cost if not subsidized, this comment is misplaced in the context of our benchmarking methodology. Pursuant to 19 CFR 351.511(a)(2)(iv), when measuring adequate remuneration with a Tier 2 benchmark under 19 CFR 351.511(a)(2)(ii), the benchmark should reflect the price that the company would pay if it imported the good. Accordingly, to adjust the comparison price to reflect the price that Shanxi Xuanshi would have paid if it imported iron ore, we have included expenses such as ocean freight, import duty, value-added tax, and inland freight.⁸⁴

Moreover, Shanxi Xuanshi's suggestion to apply a *sigma* cap is misplaced. The practice of applying a *sigma* cap is a practice in our non-market economy antidumping cases.⁸⁵ It does not comport with our CVD practice. In the initial CVD questionnaire, Commerce requests that parties provide each firm's freight expenses per metric ton for transporting an input from the nearest seaport to the firm's factory complexes to use in a benchmark calculation.⁸⁶ We use this distance to calculate a world market price because the distance indicated best represents the cost of transportation without any government influence.⁸⁷ Therefore, we are continuing to use the distance from the nearest seaport to Shanxi Xuanshi's factory in our benchmark calculation for transportation.

Comment 4: Whether Commerce Overstated the Subsidy Rate for Policy Loans, Purchases of Electricity, Pig Iron, and Ferrous Scrap for LTAR

Wor-Biz's Case Brief:

- In the *Preliminary Determination*, Commerce did not offset the benefits calculated for policy loans, purchases of electricity, pig iron, and ferrous scrap.
- In the case of a loan, a benefit is conferred "if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market."⁸⁸ To the extent that the actual interest rate on a loan exceeded the applicable benchmark rate, Commerce determined that there was a zero benefit for those repayments and did not offset

⁸³ See Memorandum, "Countervailing Duty Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China, Placing Information on the Record," dated December 11, 2017.

⁸⁴ See 19 CFR 351.511(a)(2)(iv).

⁸⁵ See <https://enforcement.trade.gov/questionnaires/questionnaires-ad.html>.

⁸⁶ See Commerce Letter re: Countervailing Duty Questionnaire, dated August 21, 2017 (Initial CVD Questionnaire) Section III at 14-15.

⁸⁷ See *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at 39.

⁸⁸ See Wor-Biz Case Brief at 2 (citing section 771(5)(E)(ii) of the Act).

this amount of calculated benefits by any negative benefit.

- With respect to electricity, pig iron, and ferrous scrap purchases, a benefit is conferred if the purchases of those inputs from a governmental authority is made at LTAR.⁸⁹ When Commerce calculated the total program benefits for each LTAR program (electricity, pig iron and ferrous scrap), Commerce added all calculated benefits where the benchmark price exceeded actual prices paid. Commerce did not offset this amount of calculated benefits by any negative benefit, *i.e.*, the amount by which the actual price for a purchase of electricity, pig iron, or ferrous scrap during the POI exceeded the appropriate benchmark price.
- For purposes of the final determination, Commerce should include all the negative benefit amounts with all the calculated positive benefit amounts and calculate a net benefit that reflects both those transactions where the price or loan payment amount exceeds the appropriate benchmark, as well as those transactions where the benchmark exceeds the actual loan repayment or transaction price.

Commerce's Position:

We disagree with Wor-Biz's arguments that Commerce should allow negative values in the benefit calculation to offset the overall benefit. The policy loans, electricity, pig iron, and ferrous scrap for LTAR benefit and benchmark methodologies applied in the *Preliminary Determination* are consistent with Commerce's regulations and practice.⁹⁰ As Commerce explained in *Geogrid Products*, in a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by negative benefits from other transactions.⁹¹ There is no offsetting credit for transactions that did not provide a subsidy benefit. Such an adjustment is not contemplated under the statute and is inconsistent with Commerce's practice.⁹² Therefore, we have made no modifications to the final results calculations for Wor-Biz in terms of allowing "negative" values to offset the overall benefit.

Comment 5: Whether Commerce Improperly Applied AFA to the Calculation of the Benefits Attributable to Guangzhou Premier for the Purchase of Pig Iron and Ferrous Scrap for LTAR

Wor-Biz's Case Brief:

- In the *Preliminary Determination*, Commerce applied AFA with respect to Guangzhou Premier's purchases of pig iron and ferrous metal sold at LTAR. Commerce's application of AFA, however, was inappropriate because Commerce made no finding, as required by statute,⁹³ that Wor-Biz or Guangzhou Premier had either failed to respond to a request for

⁸⁹ See Wor-Biz Case Brief at 3 (citing section 771(5)(E)(iv) of the Act).

⁹⁰ See, e.g., *Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) (*Geogrid Products*), and accompanying IDM at Comment 8.

⁹¹ See *Geogrid Products* IDM at Comment 8.

⁹² *Id.*; see also *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005), and accompanying IDM at Comment 43.

⁹³ See Wor-Biz Case Brief at 5 (citing section 776(a)(2) of the Act, and *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F.Supp. 2d 1270, 1280 (CIT 2005)).

information in a timely manner, withheld information from Commerce, provided information to Commerce that could not be verified, or had otherwise impeded Commerce's investigation. In addition, Commerce is not permitted to resort to AFA, unless Commerce makes an additional finding that a party "failed to cooperate by not acting to the best of its ability to comply with a request for information" before drawing adverse inferences.⁹⁴

- Because Commerce did not make a finding that Wor-Biz and Guangzhou Premier met any of the four conditions which would allow Commerce to use facts otherwise available, Commerce did not have sufficient grounds to consider whether to draw an adverse inference with respect to that information. Moreover, Commerce's discussion of facts available with respect to pig iron and ferrous scrap was limited to the action, or inaction, of the GOC. Therefore, Commerce improperly applied AFA to Guangzhou Premier for the purchase of pig iron and ferrous scrap at LTAR.

Commerce's Position:

We disagree with Wor-Biz's contention that the application of AFA was not appropriate in this instance, where the GOC failed to provide requested information. Here, because the GOC did not provide the requested information, Commerce was forced to select from the facts available to replace missing information. Commerce did so in accordance with section 776(a) and 776(b) of the Act. As noted in the *Preliminary Determination*, the GOC did not provide information necessary for Commerce to assess whether the producers that supplied pig iron and ferrous scrap purchased by Wor-Biz were authorities or whether the provision of the inputs was specific within the meaning of sections 771(5)(B) and 771(5A) of the Act, respectively.⁹⁵ The GOC also did not provide information relating to the ferrous scrap industry necessary to assess whether the market was distorted.⁹⁶

In the present case, Wor-Biz is a company within the country of China, and Wor-Biz directly benefits from subsidies the GOC provides. Commerce did not select among the facts available and apply an adverse inference to punish the cooperating plaintiff, but rather to provide a remedy for the GOC's failure to cooperate.

Further, as stated in *Fine Furniture*,

The purpose of section {776(b) of the Act}, according to the URAA Statement of Administrative Action ("SAA"), which "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the URAA," . . . is to encourage future cooperation by "ensuring that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." H.R. Doc. No. 103-316, vol. 1, at 870, *reprinted in* 1994 U.S.C.C.A.N. 4040. Additionally, by authorizing Commerce to provide a reasonable estimate based on the best facts available, accompanied by a reasonable adverse inference used in place of missing information, this statute

⁹⁴ See Wor-Biz Case Brief at 6 (citing section 776(b) of the Act).

⁹⁵ See *Preliminary Determination* PDM at 11-15.

⁹⁶ *Id.* at 15-17.

provides a mechanism for remedying sales at less than fair value to aid in the protection of U.S. industry.⁹⁷

Concerning the collateral impact on a company from the use of AFA as a result of non-cooperation by the government, the CAFC in *Fine Furniture* concluded that

{a}lthough it is unfortunate that cooperating respondents may be subject to collateral effects due to the adverse inferences applied when a government fails to respond to Commerce's questions, this result is not contrary to the statute or its purposes, nor is it inconsistent with this court's precedent.⁹⁸

We requested information from the GOC to determine whether pig iron and ferrous scrap were provided to the respondents for LTAR. Our request particularly sought to obtain information relating to the specificity and financial contribution elements of a CVD subsidy. The record of this investigation shows that the GOC withheld information with respect to these programs and thus failed to cooperate to the best of its ability in responding to a request for necessary information. The GOC is the only party which possessed the requested information that would enable Commerce to conduct its full analysis of this allegation, and the GOC affirmatively and repeatedly refused to provide that information to Commerce.⁹⁹ In a CVD investigation, we require information from both the foreign producers and exporters of merchandise under investigation and the government of the country where those producers and exporters are physically located. When the government fails to provide requested information concerning alleged subsidy programs, we must rely on the facts available and may apply AFA; typically, there is other information available on the record that supports a finding that a financial contribution exists under the alleged program and that the program is specific (*e.g.*, information provided in the petition).¹⁰⁰

Furthermore, in the *Preliminary Determination* we did not rely on the facts available or AFA to address a gap in information that was submitted by Wor-Biz. Instead, we applied AFA in the context of the authorities and specificity analyses concerning pig iron and ferrous scrap, as noted above, because the GOC did not provide certain information that Commerce deemed necessary. In addition, we applied AFA to the market distortion analysis with regards to ferrous scrap as noted above. Having made affirmative determinations in those analyses, we were able to use Wor-Biz's purchase information of ferrous scrap and pig iron to determine the amount of benefit that it received.

Therefore, it is not inconsistent with precedent to apply AFA when a government fails to respond to Commerce's questions. Accordingly, for the final determination, we are continuing to apply AFA with respect to the financial contribution, specificity and market distortion aspects of the pig iron and ferrous scrap for LTAR programs used by Wor-Biz's unaffiliated supplier, Guangzhou Premier.

⁹⁷ *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014) (*Fine Furniture*).

⁹⁸ *Id.*

⁹⁹ See Preliminary Determination PDM at 11-17.

¹⁰⁰ See *Certain Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at Comment 8.

Comment 6: Whether Commerce Should Consider Shanxi Xuanshi's Steel Scrap as a Subsidizable Input

Shanxi Xuanshi's Case Brief:

- Shanxi Xuanshi, at the start of verification, presented to Commerce a letter containing certain pre-verification corrections relating to new information. Commerce rejected the new information, which prevented Shanxi Xuanshi from commenting on it in its case brief. It is not proper for Commerce to avoid administrative and judicial review of its actions by rejecting certain data and failing to retain a copy for the record.
- To the extent Commerce rejects facts offered in pre-verification corrections or elsewhere, it must establish procedures permitting parties to comment on whether or not such information was properly rejected by Commerce.
- The waste steel/steel scrap used by Shanxi Xuanshi is not of the type of ferrous scrap described in the Initial Questionnaire, Supplemental Questionnaire, or the Initiation Notice. In particular, Shanxi Xuanshi does not use ferrous scrap as a raw material (*i.e.*, input) in the production of its iron base material. Rather, Shanxi Xuanshi uses ferrous scrap as an adjusting material (*i.e.*, auxiliary material), and uses it to adjust the level of carbon in the casting process. Therefore, Shanxi Xuanshi did not report this product in its response to the Initial Questionnaire.
- Although Commerce did not take the actual data for the usage of waste steel/steel scrap, the total purchase of waste steel is included in the verification exhibits.¹⁰¹
- To the extent that Commerce decides to apply a countervailing duty for use of ferrous scrap, it should take into account the small amount of steel scrap used in the casting process and that such scrap was not a raw material in the production of the merchandise under consideration.

Petitioner's Rebuttal Brief Comments

- Shanxi Xuanshi is free to describe and characterize the evidence that Commerce rejected, which it did in its case brief.
- Nothing in the Petition, Initiation Notice, or Questionnaire limited the investigation to scrap used in an early stage of the soil pipe fittings production process. Shanxi Xuanshi should have provided timely and accurate information about its receipt of scrap, and Commerce should apply adverse facts available because Shanxi Xuanshi did not do so.
- It is immaterial whether Shanxi Xuanshi used the scrap as what Shanxi Xuanshi characterizes as an "input" or not. As long as Shanxi Xuanshi received a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, *i.e.*, a good or service, and received a benefit to the extent the financial contribution was provided for LTAR, Shanxi Xuanshi should have reported the receipt of such financial contribution.
- Because Shanxi Xuanshi withheld information and did not attempt to correct the response until the outset of verification, Commerce should use facts otherwise available and apply an adverse inference.

¹⁰¹ See Shanxi Xuanshi Case Brief at 5 (citing Shanxi Xuanshi Verification Report at Verification Exhibits 10 and 16).

Commerce's Position:

At the beginning of Shanxi Xuanshi's verification, company officials attempted to place new information on the record regarding purchases of ferrous scrap. This information was contradictory to Shanxi Xuanshi's response to Commerce's Initial Questionnaire,¹⁰² in which it reported having purchased no ferrous scrap during the POI.¹⁰³ To the extent that this would correct the record information for Shanxi Xuanshi with regard to the program, this information was due at an earlier date prior to the *Preliminary Determination*, in the initial questionnaire response. Because the deadline for the initial questionnaire response had passed, we declined to accept the new information.¹⁰⁴ In addition, we note that the cover letter to the verification agenda explains the following:

Please note that verification is not intended to be an opportunity for the submission of new factual information. Information will be accepted at verification only when the information makes minor corrections to information already on the record or when information is requested by the verifiers, in accordance with the agenda below, to corroborate, support, and clarify factual information already on the record.¹⁰⁵

Shanxi Xuanshi explained that it incorrectly assumed that the ferrous scrap it purchased was not the type of material described in the CVD Initiation Checklist. However, Commerce's request covered any and all purchases of ferrous scrap during the POI, with no qualifications as to its actual usage in production or its usage in any particular stage of production.¹⁰⁶

In our verification report, we noted the following:

In order to verify non-use of the other LTAR programs, we requested a list of all inputs purchased by Shanxi Xuanshi during the POI. We noted that the list included "recycled steel," which was alternately described as 'steel scrap'. See VE-10. Shanxi Xuanshi officials explained that they used steel scrap in the production of subject merchandise during the POI. Company officials stated that they use low-carbon steel scrap. They explained that the steel scrap is added in the production process to adjust the carbon content of the pig iron produced. See VE-16. Shanxi Xuanshi officials stated that the recycled steel/steel scrap is used for the production of both pipes and fittings.¹⁰⁷

¹⁰² See Initial CVD Questionnaire at Section III, 14.

¹⁰³ See Shanxi Xuanshi's October 4, 2018 Initial Section III Questionnaire Response (Shanxi Xuanshi IS3QR) at 23.

¹⁰⁴ See Shanxi Xuanshi October 4, 2017 IQR at 23.

¹⁰⁵ See Commerce's Letter, re: Countervailing Duty Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China; Shanxi Xuanshi Industrial Group Co., Ltd.: Verification of Questionnaire Responses, dated March 7, 2018 at 2.

¹⁰⁶ See Initial CVD Questionnaire at Section III, 14 ("Using the attached Microsoft Excel template "Input Purchases," please report all of your purchases during the POI. Submit this information in electronic format using Microsoft Excel, and include a printout of the electronic file in your response").

¹⁰⁷ See Shanxi Xuanshi Verification Report at 13.

Regardless of whether Shanxi Xuanshi considered ferrous scrap a raw material (input) or an auxiliary material, the company should have reported the purchases of ferrous scrap, or, at a minimum, should have requested further clarification. Commerce provided Shanxi Xuanshi with contact information if the company needed assistance.¹⁰⁸ Furthermore, verification serves as an opportunity for Commerce to verify the accuracy of a respondent's responses, not to remedy fundamental mis-reporting, such as reported non-use of a program which was actually used. Therefore, Shanxi Xuanshi should have reported its purchases of scrap, as requested.

Regarding Shanxi Xuanshi's concern that Commerce did not take the actual data for the usage of ferrous scrap or place on the record the quantity of ferrous scrap, Shanxi Xuanshi's failure to report its POI purchases of this input by the deadline for the initial questionnaire did not constitute a minor clerical error that could be remedied by submitting a minor correction. The purchase data it offered as a minor correction at verification constituted untimely new factual information for which other parties would have no opportunity to rebut or clarify. Commerce's regulations provide that it will reject untimely information.¹⁰⁹ We therefore properly rejected the proffered purchase data.

Accordingly, we find it necessary to rely on facts available because Shanxi Xuanshi failed to provide information concerning the purchases of ferrous scrap by the deadline for the submission of such information.¹¹⁰ Additionally we find that AFA is warranted because Shanxi Xuanshi's failure to timely report the request information demonstrates that it did not cooperate to the best of its ability.¹¹¹ Therefore, we are applying the rate calculated for Wor-Biz for this program, which is 4.45 percent.

Comment 7: Whether Commerce Erred in its Policy Loan Benefits Calculation for Shanxi Xuanshi

Shanxi Xuanshi's Case Brief:

- Commerce examined policy loans which were stated to be provided by State Controlled and Policy Banks for the purpose of capital improvement.¹¹² Most of the loans obtained by Shanxi Xuanshi were not policy loans. They were obtained for the purpose of purchasing raw materials and leasing equipment.
- In calculating the benefit, Commerce treated all loans obtained by Shanxi Xuanshi as policy loans. However, the loans received by Shanxi Xuanshi for the purpose of purchasing raw materials were not to promote and support the growth of favored industries, but rather, they were, at most, to support ongoing operations of the company.
- The amount of money paid by Shanxi Xuanshi for the lease of equipment should not be considered loans, because the interest and any obligation related to the lease are directly tied to a specific article and are part of the purchase price of the goods. As such, any "loans" that

¹⁰⁸ See Initial CVD Questionnaire at 3.

¹⁰⁹ See 19 CFR 351.302(d).

¹¹⁰ See section 776(a)(2)(B).

¹¹¹ See section 776(b).

¹¹² See Shanxi Xuanshi Case Brief at 6 (citing CVD Initiation Checklist at pages 7-8).

were for the lease of equipment are not, in fact, policy loans of the type specified in the initiation notice.

- The benchmark used by Commerce should be adjusted to ensure that it comports with reality and the actual cost of credit. In the *Preliminary Determination*, Commerce used as benchmarks various rates based on renminbi (RMB) long and short-term loans plus certain adjustments and a factor for inflation. However, the inflation was already reflected in the underlying rate, and thus, the rates should not have been adjusted for inflation.
- The loans obtained by Shanxi Xuanshi were secured either by the raw materials or by the leased goods. Secured loans, by their very nature, present less risk, and thus bear a lower rate of interest, but Commerce did not take this into account when coming up with its benchmark data.
- The rates selected by Commerce as a benchmark is absurd in that China is being hit with a benchmark rate which is far in excess of the reported benchmark rates for U.S. loans.

Petitioner's Rebuttal Brief:

- Shanxi Xuanshi is incorrect in stating that policy loans are only for the purposes of “capital improvement.”
- Commerce’s benefit analysis focuses on whether the government bestows a benefit on the recipient, not how the recipient uses the benefit. Nothing in Commerce’s initiation notice or questionnaires limited its investigation to benefits used for certain purposes.
- Loans for purchases of raw materials or the lease of equipment may indeed promote the growth of industry.
- Shanxi Xuanshi complains that the benchmark interest rates were excessive, and that some of the loans it received were secured loans, which have lower credit risk than unsecured loans.¹¹³ Shanxi Xuanshi’s arguments are rather abstract, in that many factors affect creditworthiness, and thus interest rates, and Shanxi Xuanshi does not offer sufficient concrete details to support its arguments.
- Shanxi Xuanshi argues that because China owns large quantities of U.S. government bonds, the benchmark interest rate for loans in yuan terms should not be much higher than the interest rate for loans in dollar terms. This argument does not have merit because the yuan is not a fully convertible currency, and the dollar is. It is not surprising that these may differ greatly. Also, Shanxi Xuanshi does not offer practical alternatives to Commerce’s long-standing methodology regarding policy loans.

Commerce’s Position:

In the *Preliminary Determination*, we noted that Shanxi Xuanshi reported having loans from Chinese State-Owned Commercial Banks (SOCBs) that were outstanding during the POI.¹¹⁴ We also noted that these loans provided countervailable subsidies under a policy lending program directed at the soil pipe fittings industry. In addition, we noted that record information, such as the National 12th Five-Year Plans of Economic and Social Development (2011-2015) and

¹¹³ *Id.*

¹¹⁴ See *Preliminary Determination* PDM at 32.

National 13th Five-Year Plans of Economic and Social Development (2016-2020), indicates that the GOC placed great emphasis on targeting the soil pipe fittings industry for development throughout recent years.¹¹⁵ Moreover, the GOC encourages compliance with the development policies for the iron and steel industry, which includes the soil pipe fittings industry.¹¹⁶

Moreover, record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the soil pipe fittings industry. As noted above, the GOC has placed an emphasis on the development of the steel industry through investment projects and the formulation and enforcement of policies on public finance, taxation, credit, land, import and export.¹¹⁷ In laying out this strategy, the GOC has identified specific products selected for development. For example, the GOC implemented the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the 11th Five-Year Plan. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the “encouraged investment industries,” including iron and steel, that the GOC supports with encouragement policies, including financing.¹¹⁸

Accordingly, we determine there is a program of preferential policy lending specific to the iron and steel industry, including soil pipe fittings producers, within the meaning of section 771(5A)(D)(i) of the Act. We also determine that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. Furthermore, Commerce has repeatedly affirmed its finding in *CFS from China* that the Chinese banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government’s use of banks to effectuate policy objectives.¹¹⁹ Additionally, as noted in the *Preliminary Determination*, Commerce has recently conducted a re-assessment of the lending system in the PRC, concluding that, despite reforms to date, the GOC’s role in the system continues to fundamentally distort lending practices in the PRC in terms of risk pricing and resource allocation, precluding the use of interest rates in the PRC for CVD benchmarking or discount rate purposes.¹²⁰ Accordingly, we treat all lending from SOCBs and commercial banks as financial contributions that confer a benefit and, thus, we are calculating a benefit from all loans provided by such banks in China.

Even if a loan is obtained for the purpose of purchasing raw materials and leasing equipment, Commerce includes the loan in its benefit calculation. Our benefit analysis focuses on the

¹¹⁵ See GOC October 4, 2018 IQR at Exhibit B-8 (Chapter 9), Exhibit B-9; see also GOC SQR at Exhibit S-4 (Chapter V).

¹¹⁶ See GOC SQR at Exhibit S-2.

¹¹⁷ See GOC October 4, 2018 IQR at Exhibit B-15 (Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment (No. 40 (2005)) (Decision 40) at Chapter III, Article 12 of Decision No. 40).

¹¹⁸ See Decision 40 at Articles 13 and 17.

¹¹⁹ See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying IDM at Comment 8.

¹²⁰ See *Preliminary Determination PDM* at 28.

benefit to the recipient from the government's provision of the loans, not on how the recipient uses the benefit. As the *CVD Preamble* states:

We have generally stated that we will not trace the use of subsidies through a firm's books and records. Rather we analyze the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or *some of its own funds that were freed up as a result of the subsidy*, for the stated purpose or the purpose that we evince.¹²¹

Therefore, we request companies to report all loans in the questionnaire (regardless of purpose). We request that respondents “{r}eport all financing to {their} company that was outstanding at any point during the POI, regardless of whether {they} consider the financing to have been provided under this program.”¹²² In this case, Shanxi Xuanshi reported having loans from SOCBs during the POI, and thus it is appropriate for us to consider the benefit conferred to the company. We note that although Shanxi Xuanshi used the loan to purchase raw materials and lease equipment, it used these raw materials and leasing equipment to produce soil pipe fittings.¹²³

In addition, we do not agree with Shanxi Xuanshi that the benchmark interest rates are excessive. In accordance with section 771(5)(E)(ii) of the Act, the benchmark rate should be a market-based rate. Moreover, the loans provided by Chinese SOCBs and commercial banks reflect significant government intervention in the banking sector and do not reflect rates in a functioning market.¹²⁴ Furthermore, we placed benchmark market-based rate information on the record to use in our benefit calculation.¹²⁵ For the final determination, we continue to include all of Shanxi Xuanshi's loans and use the benchmark rates in the benefits calculation which were used in the *Preliminary Determination*.

Comment 8: Whether Commerce Erred in Its Electricity Benefits Calculation for Shanxi Xuanshi

Shanxi Xuanshi's Brief:

- Commerce erred in its calculation of electricity. First, Commerce did not adjust the “non-production use” and the “other fees and adjustments” categories of electricity to include VAT. For the final results, Commerce should ensure that it has increased all of Shanxi Xuanshi's prices by the amount of VAT.
- Second, Commerce should have included an adjustment fee and a maintenance fee in the total amount paid by Shanxi Xuanshi for electricity. These were fees paid by Shanxi Xuanshi as part of its electrical service and should have been used to adjust the basic fee paid by Shanxi Xuanshi.

¹²¹ See *CVD Preamble*, 63 FR at 65403 (emphasis in original).

¹²² See Initial CVD Questionnaire, Section III at 8.

¹²³ Shanxi Xuanshi Case Brief at 6-7.

¹²⁴ See *CFS from China* IDM at Comment 10.

¹²⁵ See Memorandum, “Countervailing Duty Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China: Interest Rate Benchmark Memorandum,” dated December 11, 2017.

Commerce's Position:

We agree with Shanxi Xuanshi and have made certain changes to the electricity benefit calculation for Shanxi Xuanshi, in order to ensure that our calculation is made on a comparable basis. Because VAT is included in the other categories of electricity as well as in the benchmark price, we have added VAT to the 'non-production use' and the 'other fees and adjustments' categories of electricity. In addition, we have included the adjustment fee and maintenance fee amounts because these amounts were included as part of Shanxi Xuanshi's monthly electricity payment. Furthermore, we have added VAT to the adjustment fee and maintenance fee for the benefits calculation.¹²⁶

VII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree

7/5/2018

X 

Signed by: GARY TAVERMAN

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source
1.	Policy Loans to soil pipe fittings Industry	5.01%	Calculated – Shanxi Xuanshi
2.	Export Loans		
3.	Treasury Bond Loans		
4.	Preferential Loans for State-Owned Enterprises		
5.	Preferential Lending to CISPF Producers and Exporters Classified as “Honorable Enterprises”		
6.	Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program		
7.	Debt-to-Equity Swaps	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹²⁷
8.	Exemptions for SOEs from Distributing Dividends to the State	0.58%	Highest Rate for Same Program Based on Benefit Type ¹²⁸
9.	Loan and Interest Forgiveness for SOEs	2.32%	Highest Rate for Similar Program Based on Benefit Type ¹²⁹
10.	Preferential Income Tax Program for High and New Technology Enterprises	25%	Income Tax Rate ¹³⁰
11.	Preferential deduction of R&D Expenses for High and New Technology Enterprises		
12.	Income Tax Benefits for Domestically Owned Enterprises Engaging in Research and Development		
13.	Preferential Income Tax Policy for Enterprises in the Northeast Region		
14.	Reduction in Exemption from Fixed Assets Investment Orientation Regulatory Tax		

¹²⁷ See *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates PRC Final*).

¹²⁸ *Id.*

¹²⁹ See *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008).

¹³⁰ See *Certain Tool Chests and Cabinets from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 43331 (September 15, 2017).

15.	Preferential Income Tax Subsidies for FIEs – Export Oriented FIEs		
16.	Small Low-Profit Enterprise Income Tax Preferential		
17.	Income Tax Credits for domestically owned companies purchasing Domestically Produced Equipment	0.55%	Highest Rate for Similar Program Based on Benefit Type ¹³¹
18.	VAT and Tariff Exemptions for Purchases of Fixed Assets under the Foreign Trade Development Fund	9.71%	Highest Rate for Similar Program Based on Benefit Type ¹³²
19.	Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	9.71%	Highest Rate for Same Program Based on Benefit Type ¹³³
20.	Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71%	Highest Rate for Similar Program Based on Benefit Type ¹³⁴
21.	Provision of Land to SOEs for LTAR	13.36%	Highest Rate for Similar Program Based on Benefit Type ¹³⁵
22.	Provision of Pig Iron for LTAR	0.49%	Calculated – Wor-Biz
23.	Provision of Ferrous Scrap for LTAR	4.45%	Calculated – Wor-Biz
24.	Provision of Electricity for LTAR	3.44%	Calculated – Shanxi Xuanshi
25.	The State Key Technology Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹³⁶
26.	Foreign Trade Development Fund Grant	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹³⁷
27.	Export Assistance Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹³⁸

¹³¹ See *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012).

¹³² See *New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 (October 19, 2010), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*Off-the-Road Tires PRC*).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ See *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008).

¹³⁶ See *Chlorinated Isocyanurates PRC Final*.

¹³⁷ *Id.*

¹³⁸ *Id.*

28.	Subsidies for Development of Famous Export Brands and China World Top Brands	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹³⁹
29.	Grants to Loss-Making SOEs	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴⁰
30.	Export Interest Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴¹
31.	Grants for Energy Conservation and Emission Reduction	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴²
32.	Grants for Retirement of Capacity	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴³
33.	Grants for Relocating Production Facilities	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴⁴
34.	Patent Assistance Funds	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴⁵
35.	Brand Building Funds for Medium, Small and Mircro-sized Enterprises, 2016	0.02%	Calculated – Shanxi Xuanshi
36.	Party Construction Fund for the year 2015	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴⁶
37.	Special Fund for Foreign Economic Development (on International Operation Capacity Enhancement) the first Tranche of the year 2015	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴⁷
38.	Special Fund for Foreign Economic Development (on International Operation Capacity Enhancement), the Second Tranche of the year 2015	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁴⁸

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

39.	Promotion Funds for Coordinated Development of Foreign Trade and Economic Region	0.09%	Calculated – Shanxi Xuanshi
40.	Supporting Funds for Circulating Program	0.58%	Highest rate for Highest Rate for Similar Program Based on Benefit Type ¹⁴⁹
41.	Government Awards for Brand Name Product in Shanxi Province	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁵⁰
42.	Financial Funds Introduction	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁵¹
43.	Supporting Funds for Private Economy Development of SME	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁵²
44.	Funds for Energy Saving Technology Improvement Project in Smelting Section	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁵³
45.	Aid for middle and small enterprise for developing international market	0.09%	Calculated – Wor-Biz
46.	Bonus to middle and small enterprise	0.04%	Calculated – Wor-Biz
47.	Bonus for foreign trade	0.04%	Calculated – Wor-Biz
48.	Assistance on credit insurance	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁵⁴
49.	Assistance fund	0.01%	Calculated – Wor-Biz
50.	Foreign trade promotion fund in 2016	0.01%	Calculated – Wor-Biz
51.	Fund to middle and small enterprise for developing markets	0.01%	Calculated – Wor-Biz
52.	Bonus for the company's sports brand in exhibition	0.04%	Calculated – Wor-Biz

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

53.	Certificate of Shanxi Brand Name Product	0.58%	Highest Rate for Similar Program Based on Benefit Type ¹⁵⁵
54.	Interest Discount Funds	0.01%	Calculated – Shanxi Xuanshi
55.	Provision of Iron Ore for LTAR	11.99%	Calculated – Shanxi Xuanshi
56.	Provision of Metallurgical Coke for LTAR	9.86%	Calculated – Shanxi Xuanshi
57.	Provision of Coking Coal for LTAR	5.51%	Highest Rate for Similar Program Based on Benefit Type ¹⁵⁶
58.	VAT Refunds for FIEs on Purchases of Chinese-Made Equipment	9.71%	Highest Rate for Similar Program Based on Benefit Type ¹⁵⁷
59.	Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone ¹⁵⁸	See footnote below.	
Total <i>Ad Valorem</i> Rate		133.94%	

¹⁵⁵ *Id.*

¹⁵⁶ See Based on post-prelim analysis in *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010)

¹⁵⁷ See *Off-the-Road Tires PRC*.

¹⁵⁸ The AFA rate for this program is included as part of the AFA rate for income tax programs established in the preliminary determination, which is 25 percent.