UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Investigation
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February 22, 2019

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: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of cast iron soil pipe (soil pipe) 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: The Application of AFA to the Government of China's (GOC's) Responses on the Provision of Pig Iron, Ferrous Scrap, and Metallurgical Coke for Less Than Adequate Remuneration (LTAR)
Comment 2: Metallurgical Coke for LTAR Market Distortion
Comment 3: Whether Policy Loans to the Soil Pipe Industry are Countervailable
Comment 4: The Application of AFA to the Provision of Electricity for LTAR
Comment 5: Ocean Freight Benchmark Cost Calculation

INTERNATIONAL TRADE ADMINISTRATION

II. BACKGROUND

A. Case History

On July 2, 2018, Commerce published its *Preliminary Determination* for this investigation.[1] The selected mandatory respondents in this investigation are Yucheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd. (HengTong) and Kingway Pipe Co., Ltd (Kingway). 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 July 2, 2018, based on the Cast Iron Soil Pipe Institute's (the petitioner's) new subsidy allegations (NSA),[2] we initiated an investigation on two additional programs.[3]

Between September 26, 2018, and September 28, 2018, we conducted verification of the questionnaire responses of HengTong, and on November 7, 2018, we released the verification report.[4]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[5] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination is now February 22, 2019.

On December 17, 2018, Commerce released a Post-Preliminary Memorandum to address the NSA programs.[6] Interested parties timely submitted case briefs concerning case-specific issues on December 20, 2018.[7]

B. Period of Investigation

The period of investigation (POI) is January 1, 2017, through December 31, 2017.

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[1] *See Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30914 (July 2, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* the petitioner's Letter "Cast Iron Soil Pipe from the People's Republic of China: Additional Subsidy Allegations," dated May 16, 2018 (NSA).
[3] *See* Memorandum, "Countervailing Duty Investigation of Cast Iron Soil Pipe from the People's Republic of China: New Subsidy Allegations," dated July 2, 2018 (NSA Memorandum).
[4] *See* Memorandum, "Verification of the Questionnaire Responses of Yuncheng Jiangxian Economic Development Zone HengTong Casting Co. Ltd.," dated November 7, 2018 (HengTong Verification Report).
[5] *See* Memorandum "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[6] *See* Memorandum, "Post-Preliminary Analysis Memorandum in the Countervailing Duty Investigation of Cast Iron Soil Pipe from the People's Republic of China," dated December 17, 2018 (Post-Preliminary Memorandum).
[7] *See* the Government of China's (GOC) Case Brief, "Cast Iron Soil Pipe from the People's Republic of China, Case No. C-570-080: Case Brief," dated December 20, 2018 (GOC Case Brief); *see also* HengTong's Case Brief, "Cast Iron Soil Pipe from the People's Republic of China: HengTong's Comments on the Preliminary Determination," dated December 20, 2018 (HengTong Case Brief). We note that the petitioner did not submit case or rebuttal briefs.

III. SCOPE COMMENTS

Although HengTong requested an exclusion for epoxy coated soil pipe from the scope of the antidumping duty and countervailing duty investigations, we found in the *Preliminary Determination* that the plain language of the scope covers soil pipe regardless of the surface finish.[8] No party commented on our scope finding, and thus, for the final determination, we have left the scope language unchanged from the *Preliminary Determination* .

IV. 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 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.[9] 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.[10]

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.[11] Secondary information is defined as information derived from the petition that

[8] *See* Memorandum, "Cast Iron Soil Pipe from People's Republic of China: Preliminary Scope Comment Decision Memorandum" dated August 24, 2018.
[9] *See* section 776(b)(1)(B) of the Act.
[10] *See also* 19 CFR 351.308(c).
[11] *See also* 19 CFR 351.308(d).

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.[12]

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.[13] 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.[14]

Commerce relied on adverse facts available (AFA) with regard to several findings, including the AFA finding concerning Kingway, in the *Preliminary Determination* and the Post-Preliminary Memorandum. For a description of these decisions, *see* the *Preliminary Determination* and the Post-Preliminary Memorandum.[15] Commerce made no changes to its decisions in the *Preliminary Determination* and the Post-Preliminary Memorandum to use AFA. No interested party commented on our preliminary decision concerning Kingway and, therefore, for purposes of this final determination, we continue to assign this company a rate based entirely on AFA.[16] For further discussion regarding our analysis of the provision of pig iron, ferrous scrap, and metallurgical coke for LTAR, *see* Comment 1 below. For further discussion of the AFA determination regarding the provision of electricity for LTAR, *see* Comment 3 below.

V. 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*.[17] 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.[18]

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[12] *See* Statement of Administrative Action (SAA) Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol 1 (1994) at 870.
[13] *See* section 776(d)(1) of the Act.
[14] *See* section 776(d)(3) of the Act.
[15] *See* PDM at 4-16; *see also* Post-Preliminary Memorandum at 3-7.
[16] *See* AFA Rate Calculation Appendix, below.
[17] *See* PDM at 16.
[18] *Id.* at 16-18.

C. Denominators

Commerce made no changes to the denominators used in the *Preliminary Determination.*[19]

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.*[20]

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

We made no changes to our *Preliminary Determination* and our Post-Preliminary Memorandum with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below. For the descriptions, analyses, and calculation methodologies regarding these programs, see the *Preliminary Determination* and the Post-Preliminary Memorandum. 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. *Provision of Pig Iron for LTAR*

As discussed in Comment 1, we made no changes to the program rate for HengTong. The final subsidy rate for HengTong remains unchanged at 8.66 percent *ad valorem*.[21]

2. *Provision of Ferrous Scrap for LTAR*

As discussed in Comment 1, we made no changes to the program rate for HengTong. The final subsidy rate for HengTong remains unchanged at 1.58 percent *ad valorem*.[22]

3. *Provision of Metallurgical Coke for LTAR*

As discussed in Comment 1, we made no changes to the program rate for HengTong. The final subsidy rate for HengTong remains unchanged at 2.38 percent *ad valorem*.[23]

4. *Policy Loans to the Cast Iron Soil Pipe Industry*

We made no changes to the program rate for HengTong. The final subsidy rate for HengTong remains unchanged at 0.49 percent *ad valorem*.[24]

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[19] *Id.* at 18.
[20] *Id.* at 18-22.
[21] *Id.* at 22-23.
[22] *Id.* at 24-25.
[23] *Id.* at 25-26.
[24] *Id.* at 27-29.

5. *Provision of Electricity for LTAR*

We made no changes to the program rate for HengTong. The final subsidy rate for HengTong remains unchanged at 1.58 percent *ad valorem*.[25]

B. Programs Determined Not to Confer a Measurable Benefit

1. "Other Subsidies"

We continue to find that HengTong, through its cross-owned company, Quwo HengTong, received certain grants during the AUL period, but prior to the POI.[26] However, these benefits do not pass the "0.5 percent test" provided in CFR 351.524(b)(2), and they are allocated to the year of receipt. Thus, Commerce finds that they provide no benefits during the POI.[27]

2. Programs Determined Not to Be Used

We made no changes to the *Preliminary Determination* or the Post-Preliminary Memorandum with regard to the following programs determined not to be used by HengTong during the POI.[28]

1. Treasury Bond Loans
2. Preferential Loans for State-Owned Enterprises (SOEs)
3. Preferential Lending to Soil Pipe Producers and Exporters Classified as "Honorable Enterprises"
4. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
5. Debt-to-Equity Swaps
6. Exemptions for SOEs from Distributing Dividends
7. Loan and/or Interest Forgiveness for SOEs
8. Preferential Income Tax Reductions for High and New Technology Enterprises (HNTE)
9. Preferential Deduction of R&D Expenses for HNTEs
10. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
11. Preferential Income Tax Policy for Enterprises in the Northeast Region
12. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
13. Income Tax Benefits for Domestically Owned Enterprises Engaging in Research and Development
14. VAT and Tariff Exemptions for Purchasers of Fixed Assets Under the Foreign Trade Development Fund
15. Import Tariff and VAT Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
16. Deed Tax Exemptions for SOEs Undergoing Mergers or Restructuring
17. Provision of Land to SOEs for LTAR

[25] *See* Post-Preliminary Memorandum at 6-7.
[26] *See* HengTong April 16, 2018 Affiliation Response at Exhibit 6.
[27] For the description and analysis of this program, *see* PDM at 29.
[28] *Id.* at 30; *see also* Post-Preliminary Memorandum at 9-10.

18. Provision of Iron Ore for LTAR
19. Provision of Coking Coal for LTAR
20. State Key Technology Project Fund
21. Foreign Trade Development Fund Grants
22. Export Assistance Grants
23. Grants to Loss-Making SOEs
24. Export Interest Subsidies
25. Grants for Energy Conservation and Emission Reduction
26. Grants for the Retirement of Capacity
27. Grants for Relocating Production Facilities
28. Provision of International Ocean Shipping Services for LTAR

3. Program Deferred Until a Subsequent Administrative Review

1. Provision of Land-use Rights for LTAR in the Jiangxian Economic Development Zone

For the reasons discussed in the Post-Preliminary Memorandum, we are deferring our examination of this program until an administrative review of this proceeding, should a CVD order be issued, and should HengTong be subject to such a review as a mandatory respondent.[29]

VII. ANALYSIS OF COMMENTS

Comment 1: The Application of AFA to the GOC's Responses on the Provision of Pig Iron, Ferrous Scrap, and Metallurgical Coke for LTAR

The GOC's Case Brief:

- Commerce incorrectly applied AFA to find that all producers that supplied HengTong are government authorities that provided financial contributions.[30]
- Commerce does not explain in the *Preliminary Determination* why the information provided is insufficient to allow Commerce to determine whether these producers are government authorities.[31]
- The GOC acted to the best of its ability in providing information regarding the producers of pig iron, ferrous scrap, and metallurgical coke.[32]
- A private organization in a private company does not make the private company a "government authority." There are no "facts otherwise available" on the record that Commerce can rely on that suggest that Chinese Communist Party (CCP) involvement in a private company is sufficient to transform the company into a government authority.[33] The

[29] *See* Post-Preliminary Memorandum at 8-9.
[30] *See* GOC Case Brief at 3-7.
[31] *Id.* at 6, citing to *Trust Chem Co- Ltd. v. United States*, 819 F.Supp.2d 1373,1378 (CIT 2012) (citing *Cleo Inc. v. United States*, 501 F.3d 1291, 1296 (Fed. Cir. 2007)).
[32] *Id.* at 3-7.
[33] *Id.* at 7-12.

facts presented in the Input Producer Appendices in the GOC's initial questionnaire response directly refute this claim.[34]

- In particular, the GOC disputes the assessment in Commerce's Public Bodies Memorandum that the presence of CCP party groups and committees, or primary party organizations, in private companies represents a "significant" CCP presence and is relevant to whether an otherwise private company is a government authority. The GOC asserts that the Public Bodies Memorandum does not state that the CCP exerts control over private companies through primary party organizations.[35]
- Commerce's application of AFA and finding of the pig iron and ferrous scrap inputs to be specific are not supported by substantial evidence and are contrary to law.[36] Commerce's application of AFA to find that pig iron and ferrous scrap inputs are specific is unlawful, because the GOC explained that it did not have access to the requested information.[37] Even if Commerce has the legal basis to apply AFA, it cannot lawfully find the inputs of pig iron and ferrous scrap specific on the basis of AFA alone.[38]
- Commerce's determination that the ferrous scrap market in China is distorted is not supported by substantial evidence and is otherwise not in accordance with the law.[39]
- Specifically, Commerce's use of AFA is unlawful because the GOC specifically reported in its response that it did not maintain statistics on the ferrous scrap industry, and it was not reasonable to conclude that less than full cooperation was shown by the GOC.[40]

HengTong's Case Brief:

- Commerce's application of AFA to HengTong's pig iron, ferrous scrap, and metallurgical coke purchases in the *Preliminary Determination* was inappropriate because Commerce made no finding as required by statute that HengTong failed either to respond to an information request in a timely manner, withheld information from Commerce, provided information to Commerce that could not be verified, or had otherwise impeded Commerce's investigation.[41]
- The administrative record, however, shows HengTong reported the identity of all of its suppliers of pig iron, ferrous scrap, and metallurgical coke, and in cases where the supplier was not the producer, HengTong also provided the identity of the producer.[42]

[34] *Id.* at 9-12, and GOC initial questionnaire response at Exhibit LTAR-7, Exhibit LTAR-8, Article 31 and 32, Exhibits PI-l, p. 11, FS-l, p. 11, and PI-l, at 11, FS-1, at 13-14 and FS-1 and MC-1, at 13-14.
[35] *Id.* citing to Memorandum to The File from Annathea Cook, International Trade Compliance Analyst, Enforcement and Compliance, "Countervailing Duty Investigation of Cast Iron Soil Pipe from the People's Republic of China: Public Bodies Memorandum," dated July 25, 2018, (Public Bodies Memorandum 2012).
[36] *See* GOC Case Brief at 3-30.
[37] *Id.* at 16.
[38] *Id.*
[39] *Id.* at 24-30.
[40] *Id.* at 21.
[41] *See* HengTong Case Brief at 5.
[42] *Id*.

- Commerce should only analyze the purchases from state-owned enterprises to determine if any benefit was received from a governmental authority for purchase of raw material inputs at LTAR.[43]
- Commerce's application of facts available with respect to the pig iron, ferrous scrap, and metallurgical coke purchased at LTAR was due solely to the actions, or inactions, of the GOC.[44]

Commerce's Position:

As discussed in greater detail in the *Preliminary Determination* and below, we reach the following findings. Based on the record of this proceeding, we find that any majority government-owned input producers of pig iron, ferrous scrap, and metallurgical coke that supplied HengTong are "authorities" within the meaning of section 771(5)(B) of the Act. Additionally, pursuant to sections 776(a) and (b) of the Act, we find that any non-majority government-owned input producers of pig iron, ferrous scrap, and metallurgical coke that supplied HengTong are "authorities" within the meaning of section 771(5)(B) of the Act. As such, we find that the provision of pig iron, ferrous scrap, and metallurgical coke each constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

Further, based on the record of this proceeding, we find that the GOC's provision of metallurgical coke for LTAR is specific, in accordance with section 771(5A)(D)(iii)(II) of the Act.[45] Additionally, pursuant to sections 776(a) and (b) of the Act, we find that the GOC's provision of ferrous scrap and pig iron for LTAR is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Finally, based on the record of this proceeding, we find that the domestic markets for pig iron[46] and metallurgical coke are distorted through the intervention of the GOC and, accordingly, are relying on external benchmark prices for determining the benefit from the provision of these inputs at LTAR.[47] Pursuant to sections 776(a) and (b) of the Act and the record of this proceeding, we find that the domestic market for ferrous scrap is distorted through the intervention of the GOC and, for this reason, we are relying on external benchmark prices for determining the benefit from the provision of this input at LTAR.

Input Producers Are Authorities

As explained in the *Preliminary Determination*,[48] we asked that the GOC provide information regarding the specific companies that produced the pig iron, ferrous scrap, and metallurgical coke that HengTong purchased during the POI. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are "authorities" within the

[43] *See* GOC Case Brief at 6.
[44] *Id.*
[45] We note that neither the GOC nor HengTong challenged this decision in their briefs.
[46] We note that neither the GOC nor HengTong challenged this decision in their briefs.
[47] The GOC's comments on our market distortion finding for metallurgical coke are addressed in Comment 2 below.
[48] *See* PDM at 22, 24, and 25.

meaning of section 771(5)(B) of the Act. In our initial and supplemental questionnaire to the GOC, Commerce requested certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises.[49]

Commerce sought information from the GOC that would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[50] In response to the Initial Questionnaire, HengTong provided a list of its producers and suppliers of pig iron, ferrous scrap, and metallurgical coke.[51] The GOC provided exhibits with limited ownership information and information from its Enterprise Credit Information Publication System (ECIPS) for the producers reported.[52] As explained in the *Preliminary Determination*,[53] while Commerce made attempts to obtain ownership and management information for all of the respondents' pig iron, ferrous scrap, and metallurgical coke producers, the GOC did not provide the requested information.

Specifically, for the producers of pig iron, ferrous scrap, and metallurgical coke identified by HengTong, the GOC did not provide a complete response to Commerce's questions regarding these producers. The GOC provided summary data denoting the business registration information and basic shareholder information for a number of producers, but did not provide detailed information (*e.g.*, company by-laws, articles of incorporation, licenses, capital verification reports, *etc*.) that was specifically requested by Commerce.[54] Nor did the GOC elect to supplement its initial filing when Commerce presented it with a second opportunity to respond.[55] Further, the GOC stated in its questionnaire response, and reiterated in its case brief, that the information obtained from the ECIPS "is authoritative evidence of the ownership structure of enterprises in China,"[56] suggesting this was sufficient to understand the ownership structure of these producers. These responses lacked the necessary information Commerce requested and hindered Commerce's ability to determine whether the producers constitute "authorities."

The GOC did not identify publicly whether the individual input producers that supplied HengTong are majority government-owned or non-majority government-owned enterprises. In the Input Producer Appendix of the Initial CVD Questionnaire, however, we requested certain information (*e.g.*, articles of incorporation and capital verification reports) for both types of enterprises.[57] The GOC did not provide the articles of incorporation or capital verification reports for any producers, regardless of whether they were majority government-owned or non-

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[49] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* letter from Commerce to the GOC, "Cast Iron Soil Pipe from the People's Republic of China: Request for Additional Information," dated May 18, 2018, *see also* GOC June 18, 2018 Supplemental Questionnaire Response (GOC SQR) at 4.
[50] *See* Public Bodies Memorandum; *see also* letter from Commerce to the GOC dated March 28, 2018, "Countervailing Duty Questionnaire" (Initial CVD Questionnaire), at Section II, "Input Producer Appendix;" *see also* GOC SQR at 2-24.
[51] *See* HengTong's IQR at Exhibits 8, 11, and 12.
[52] *Id.*
[53] *See* PDM at 10-11.
[54] *Id*. at Exhibits PI-10, PI-11, FS-03, FS-04, MC-05, and MC-06.
[55] *See* GOC SQR.
[56] *Id*. at Exhibits PI-01, FS-01, and MC-01, *see also* GOC Case Brief at 5-7.
[57] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix."

majority government-owned. As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.[58] Record evidence also demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.[59] Therefore, in light of our prior findings and the GOC's failure to provide rebuttal information to the contrary, we determine that any majority government-owned input producers that supplied HengTong are "authorities" within the meaning of section 771(5)(B) of the Act.

For any non-majority government-owned input producers that supplied HengTong, the GOC also did not identify the individual owners, members of the board of directors or senior managers of the producers who were CCP officials during the POI, and it did not respond to our other requests for information pertaining to ownership or management of the producers by CCP officials. For example, in a supplemental questionnaire to the GOC, we reiterated our request from the Input Producer Appendix of the Initial CVD Questionnaire for information on CCP involvement in the input producers.[60] The GOC responded to this request as follows:

> As described in GOC's IQR, GOC submits that the facts presented in its initial questionnaire response and related WTO jurisprudence demonstrate that the 'nine entity' questions in the initial questionnaire are irrelevant to this proceeding and do not go to whether the suppliers at issue are 'public bodies' for purposes of the Department's LTAR analysis.[61]

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP's involvement in China's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.[62] Accordingly, because Commerce did not receive complete information on the identity of the input producers, there is insufficient record information to allow Commerce to determine whether these producers are "authorities."

Regarding the information Commerce requests on CCP officials, the GOC states in its case brief that it disputes Commerce's presumption that the presence of CCP party groups and committees or primary party organizations in private companies is relevant to whether an otherwise private company is a government authority.[63] The GOC argues that CCP officials are prohibited from "concurrently holding a position in an enterprise or any other profit-making organization," as

[58] *See* Public Bodies Memorandum at 35-36, and sources cited therein.
[59] *Id.*
[60] *See* letter from Commerce to the GOC dated June 6, 2018, "Request for Additional Information," at 2 and 6-8.
[61] *See* GOC SQR at 5.
[62] *See* Public Bodies Memorandum.
[63] *See* GOC Case Brief at 8.

specified in the *Company Law of China* and the *Civil Servant Law*.[64] However, the GOC also acknowledges that Commerce has dismissed this argument in the past. Specifically, we have previously found that CCP officials "can, in fact, serve as owners, members of the board of directors, or senior managers of companies."[65] In a prior proceeding, Commerce found that the GOC's basis for this assertion rests on the *Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs* (ZHONG FA (1993) No. 8), which reflects the CCP's intent to model its personnel management system after the *Civil Servant Law*, including restrictions on enterprise employment.[66] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[67] Thus, the rule only applies to a subset of party and government officials. The GOC has not defined the "specified officials" that this rule applies to, nor the officials to which it does not apply.[68]

This finding illustrates that CCP officials are able to serve as owners, members of the board of directors, or managers of input producers. With respect to this finding, we also note that the GOC has acknowledged, on the record of this proceeding, that the Public Bodies Memorandum plainly states that the CCP "may exert varying degrees of control {in private companies} in different circumstances.[69] Additionally, in *PC Strand from China*, Commerce determined that, "{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies."[70] We understand "National Party Conference" to be a reference to the "National Party Congress," which is described in the Public Bodies Memorandum as "the highest leading body of the Party."[71] Commerce considers representatives of the National Party Congress to be relevant government officials for purposes of the CVD law and an "authorities" analysis.

If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not indicate that it had attempted to contact the CCP.[72] Instead, the GOC chose not to

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[64] *Id.* at 12.
[65] *See Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*), and accompanying Issues and Decision Memorandum (IDM) at 53.
[66] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (dated September 3, 2014) (*Oil Country Tubular Goods from China*), and accompanying IDM at Comment 7.
[67] *Id*.
[68] *Id*.
[69] *See, e.g.*, GOC May 11, 2018 IQR at Exhibit PI-1, 10-11.
[70] *See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) and accompanying IDM (*PC Strand from China*) at Comment 8.
[71] *See Oil Country Tubular Goods from China* IDM at Comment 7.
[72] *See* Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission

respond to our questions regarding CCP officials for any input producer. Specifically, the GOC argued that "the nine entities {(*i.e.*, GOC or CCP entities)} questions are irrelevant to this investigation as well as to the issue of whether the suppliers in this investigation are 'public bodies' for the purposes of {Commerce's} LTAR analysis."[73] Therefore, we do not consider the GOC to have cooperated to the best of its ability. We also note that, in accordance with its statutory obligation to conduct CVD investigations, Commerce has the discretion to determine information needed to conduct its investigation.[74] Further, this discretion has been upheld by the courts.[75]

Commerce's policy and practice with respect to "government authorities," or "public bodies," in China is well-established, as indicated above. In prior proceedings, Commerce has addressed this same argument in great detail, and consistently stated that understanding the role and functions of CCP officials within Chinese enterprises is relevant to Commerce's analysis.[76] Thus, Commerce's request for such information from the GOC was based on Commerce's established practice.

In sum, the GOC did not provide the information we requested regarding CCP officials' involvement in the operations of any non-majority government-owned input producers. As described above, the GOC also did not provide the requested details on the producers' operations (*e.g.*, company by-laws, articles of incorporation, licenses, annual reports, *etc*.). For these reasons, we have no basis to revise the preliminary AFA finding that any non-majority government-owned producers are "authorities" within the meaning of section 771(5)(B) of the Act. Thus, we determine that requested information that is necessary for our "authorities" analysis under section 771(5)(B) is not available on the record and that it is necessary to fill the informational gap by applying facts available, pursuant to section 776(a) of the Act. Further, as discussed above, we find that application of AFA is warranted, pursuant to section 776(b) of the Act, because the GOC did not cooperate by acting to the best of its ability to comply with these requests for information. Due to the GOC's noncooperation, we infer that CCP officials were present as owners, managers, and directors in the relevant companies, and that control by the CCP is control by the government for purposes of the CVD law. Consequently, we determine that the non-majority government-owned domestic producers of pig iron, ferrous scrap, and

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(as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

[73] *See* GOC SQR at 5.

[74] *See* sections 782 (c) and (d) of the Act.

[75] *See e.g.*, *Fabrique De Fer De Charleroi S.A. v. United States*, 155 F.Supp.2d 801, 807-808 (CIT 2001) (sustaining Commerce's application of AFA as well as its request for information and affirming Commerce's discretion to determine whether a suggested alternative form of information was sufficient); *see also Reiner Brach GmbH & Co. KG v. United States*, 206 F.Supp.2d 1323, 1336 (CIT 2002) (stating that "In striving to obtain accurate and complete information, Commerce has discretion to determine if it is imposing an unreasonable burden by requiring that the information be submitted in a particular form").

[76] *See Aluminum Foil from China* IDM at 55; *see also Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) and accompanying IDM at Comment 1; *see also Oil Country Tubular Goods from China* IDM at Comment 7.

metallurgical coke for which the GOC failed to provide information about CCP membership are "authorities" within the meaning of section 771(5)(B) of the Act.

The GOC's Provision of Ferrous Scrap and Pig Iron Inputs Is Specific

As explained in the *Preliminary Determination*, Commerce asked the GOC to provide information about the industries that purchase pig iron and ferrous scrap. Specifically, the GOC was instructed to:

> Provide a list of industries in {China} that purchase {the input} directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.[77]

Commerce requests such information for purposes of its *de facto* specificity analysis. As we explained in the *Preliminary Determination,* and as we continue to find below, the GOC did not provide the information we requested.

For pig iron, the GOC reported in its initial questionnaire response that "{it} does not collect or maintain statistics on the purchase volume of pig iron on an industry basis, and thus cannot provide the required list of industries in {the} PRC that purchase pig iron directly, or the amounts (volume and value) purchased by these industries."[78] Although the GOC provided some general information regarding the consumption of the inputs, the information provided was inadequate for the purposes of the Commerce's analysis. For pig iron, the GOC simply indicated that "Pig iron is the building block of the iron and steel industry. ... There are vast number{s} of uses for pig iron. The types of consumers that may purchase pig iron are highly varied in the world and Chinese markets."[79] The GOC response contained similar language with respect to ferrous scrap.[80] Additionally, the GOC asserted that the scope of pig iron and ferrous scrap usage is too broad to be considered "specific" to the industry under consideration. Commerce requires more systematic and verifiable data (*e.g.*, consumption and purchase) for its analysis.[81] Thus, following the GOC's initial questionnaire response, Commerce issued a supplemental questionnaire again requesting purchase and consumption data based on a consistent industry classification. Despite this direct guidance, the GOC did not provide the information requested, nor did the GOC explain what steps it took to obtain or compile the information, or provide any

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[77] *See* PDM at 12; *see also* Initial CVD Questionnaire at Section II.
[78] *See* GOC IQR at 25.
[79] *See* GOC IQR at 23-26.
[80] *Id.* at 36-37.
[81] *See Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016) and accompanying Issues and Decision Memorandum at Comment 13.

suggested alternative form of providing the information.[82] Instead, the GOC's supplemental response merely directed Commerce to the very same information that Commerce found insufficient and necessitated issuance of the supplemental questionnaire.[83]

The GOC continues to assert that it has acted to the best of its ability in providing the requested information because it did not have access to such information.[84] We disagree.

As an initial matter, we note that the GOC has previously provided, and Commerce has verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.[85] Moreover, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and which is intended to bring clarity to companies registered in China.[86] Based on this experience, we are aware that this system is a national-level internal portal that holds certain information regarding any Chinese-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that "Pursuant to Article 3.1 of {the Circular of the State Council on Printing and Issuing the Reform Proposals for the Registered Capital Registration System (Guo Fa (2014) No.7)}, the ECIPS was established requiring authorities to publish details regarding the registration, filings, supervision, and administration of enterprises and other entities. The system is kept up to date. Therefore, the information obtained from ECIPS provides authoritative evidence of the ownership structure of enterprises in China."[87] Additionally, in this same investigation, the GOC reported that there were many varied uses for, and industries that consumed, coke (a broader category of metallurgical coke). Yet, the GOC was able to provide information from a GOC-maintained database concerning the industries consuming coke. The GOC has not explained why this same or similar information is not available for pig iron or ferrous scrap. Therefore, in light of the fact that information related to the list of industries in China that directly purchase other inputs appears readily available to the GOC, we find that the GOC has not provided an adequate explanation for its failure to provide such information for pig iron and ferrous scrap.

The GOC disagrees with Commerce's findings in the *Preliminary Determination* regarding information available from the China Association of Metalscrap Utilization (CAMU). The GOC explained that CAMU collects the ferrous scrap consumption data from numerous producers.[88]

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[82] *See* section 782(c)(1) of the Act.
[83] *See* GOC First Supplemental Questionnaire Response (dated June 18, 2018) at 4-5, and 8-14.
[84] *See* GOC Case Brief at 16-21.
[85] *See e.g.*, Citric Acid from China; 2013 Review.
[86] *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 Preliminary Decision Memorandum 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).
[87] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" at 1 and Exhibit LTAR-6.
[88] *See* GOC IQR at 32.

The GOC states in its case brief that nothing in the GOC's response suggests that the CAMU knows the identity of the producers of ferrous scrap, or that the GOC has access to that information.[89] However, if the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.

Additionally, as discussed in the *Preliminary Determination*, Commerce did not ask that the GOC to provide pig iron or ferrous scrap usage data for each of the potentially numerous narrowly-drawn end-user categories. Rather, Commerce asked that the GOC provide information on purchases by industry, using "whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry."[90] For example, an International Standard Industrial Classification (ISIC) category at the 2-digit level would encompass the soil pipe industry (*e.g.*, ISIC Category 24 "Manufacture of basic metals").[91] A National Economy Industry Classification (NEIC) 2-digit category would appear to do so as well (*e.g.*, NEIC Category 33 "Industry of Metal Products").[92] A number of the more nuanced sector classifications, at the 3- or 4-digit level, would encompass the soil pipe industry, as well. The GOC did not provide usage data pursuant to *any* classification grouping. Rather, the GOC submitted lists of industrial categories without further description, discussion of the methodology used to collect such data, or the source of all data collected.[93] Accordingly, Commerce was precluded from examining and considering the actual relative consumption of pig iron or ferrous scrap by industrial sector, as the GOC provided no data. The GOC addresses none of these points in its case brief. Instead the GOC points to its statements that it did not have access to the information requested and claims that it did cooperate to the best of its ability. However, the GOC did not provide the requested information, nor did it explain what efforts it made to compile this information.

Thus, in light of the above, we continue to find that the GOC has not cooperated to the best of its ability, in accordance with section 776(b) of the Act.

The GOC also argues that Commerce's application of AFA was unsupported by record evidence and failed to consider relevant evidence to the contrary.[94] For instance, the GOC asserts that the scope of pig iron and ferrous scrap usage is too broad to be considered "specific" to the industry under consideration. We disagree. Commerce has previously considered, and rejected, the arguments now made by the GOC. For instance, in *Steel Sinks from China*, Commerce noted that simply because an input is consumed by multiple industries, that does not undermine a finding of specificity.[95] There, Commerce explained that where "potential users of

[89] *See* GOC Case Brief at 20-21.
[90] *See Preliminary Determination* at 12, citing Initial CVD Questionnaire at II-9.
[91] *Id.*, citing GOC IQR at Exhibit PI-7.
[92] *Id.*, citing GOC IQR at Exhibit PI-6.
[93] *See* GOC May 11, 2018 IQR at Exhibits PI-1, PI-10, PI-11, FS-3 and FS-4
[94] *See* GOC Case Brief at 21-24.
[95] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 46717 (August 6, 2012) (*Steel Sinks from China*), unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013).

stainless steel products fall into 20 or 32 different industry classifications using ISIC and Chinese national economy industry classifications {NEIC}," the stainless steel input could still be considered specific to the industry in question.[96] Similarly, in *Citric Acid from China*, Commerce considered whether sulfuric acid, steam coal and calcium carbonate were specific to the industry under consideration.[97] As here, the GOC argued, for example, that these inputs are "widely used across virtually all sectors of industry in China," thus undermining a finding of specificity.[98] Commerce rejected that argument, noting that a number of broad industry classifications were predominant users of such inputs. For example, with respect to sulfuric acid, Commerce found that fertilizer producers and the "chemical industry" were predominant users of the input; accordingly, Commerce found that sulfuric acid was specific to the industry in question.[99]

Consistent with the cases cited above, and as discussed in the *Preliminary Determination*, the larger industry grouping to which soil pipe producers belong (*e.g.*, manufacture of basic metals; industry of metal products, *etc.*) is likely to be a substantial consumer of pig iron and ferrous scrap.[100] In this case, however, the GOC did not provide, *inter alia*, the required data on the relative consumption of pig iron and ferrous scrap at any industry level, thus precluding Commerce from conducting its *de facto* specificity analysis. Rather, the GOC provided selected and limited information (*i.e.*, lists of industrial categories without further description, discussion of the methodology used to collect such data, or the source of all data collected), which further precluded Commerce from conducting an accurate and complete analysis. We note that it is the province of Commerce, not the GOC, to determine in the first instance what information is necessary for Commerce's analysis.[101]

Finally, the GOC contends that Commerce cannot lawfully find the inputs of pig iron and ferrous scrap specific on the basis of AFA alone.[102] However, in applying facts otherwise available with an adverse inference, Commerce, pursuant to section 776(a) of the Act, is relying on facts that are otherwise available on the record of this investigation, including the initiation checklist.[103]

Therefore, consistent with past proceedings,[104] we determine that necessary information is not available on the record, and that the GOC has withheld information that was requested of it.

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[96] *Id.*
[97] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) (*Citric Acid from China*), and accompanying Issues and Decision Memorandum at Comment 1.
[98] *Id.*
[99] *Id.*
[100] *See Preliminary Determination* at 13, citing GOC IQR at 36-37 and Exhibit PI-06.
[101] *See Acciai Speciali Terni S.p.A. v. United States*, 26 CIT 148, 167 (2002); *PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1367-1370 (Ct. Int'l Trade 2007).
[102] *See* GOC Case Brief at 16.
[103] *See* Countervailing Duty Initiation Checklist: Cast Iron Soil Pipe from the People's Republic of China, dated February 15, 2018 (CVD Initiation Checklist).
[104] *See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination Wind Towers from China*, 77 FR 75978 (December 26, 2012) (*Wind Towers from China*) at Comment 13; *see also Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative*

Thus, we must rely on "facts available" in making our final determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In light of the above, we find that the GOC's provision of pig iron and ferrous scrap is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

The Ferrous Scrap Market is Distorted

As explained in the *Preliminary Determination*, we continue to find, on the basis of AFA and record evidence, that the GOC's involvement in the ferrous scrap market in China results in significant distortion of the prices of ferrous scrap such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of ferrous scrap for LTAR.[105] This determination resulted, in part, from the GOC's refusal to provide requested information regarding the ferrous scrap industry in China.[106] Specifically, we asked the GOC to provide data and information related to ferrous scrap suppliers subject to GOC ownership or control and the percentage of the total volume and value of domestic production of ferrous scrap accounted for by such suppliers. The GOC reported that it did not maintain such information. Thus, the GOC did not provide the information requested, nor did the GOC explain what steps it took to obtain or compile the information, or provide any suggested alternative form of providing the information.[107]

As discussed in the *Preliminary Determination*, in past proceedings, the GOC has demonstrated that it has the ability, through the State Statistics Bureau or other sources (*e.g.*, industry associations), to report data concerning the production of a wide variety of inputs.[108] Specifically, as discussed above, the GOC has previously provided, and Commerce has verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.[109] Moreover, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and

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Countervailing Duty Determination, 83 FR 32075 (July 11, 2018) (*Cast Iron Pipe Fittings from China*), and accompanying IDM; *see also Aluminum Foil from China* IDM.

105 *See* PDM at 14-16.

106 *Id*. We note that page 15 of the PDM included an errant reference regarding our request, in the context of determining specificity for the ferrous scrap for LTAR program, that the GOC "provide the amounts (volume and value) purchased by the classification of which the mandatory respondent companies operate, as well as the totals purchased by every other industry classification which purchases the inputs." Our findings with respect to the distortion of the ferrous scrap market are discussed herein.

107 *See* section 782(c)(1) of the Act.

108 *See, e.g., Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying Preliminary Decision Memorandum at 14-15 (unchanged in *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014)) (*Crystalline Silicon Photovoltaic Products from China*).

109 *See e.g.*, Citric Acid from China; 2013 Review.

which is intended to bring clarity to companies registered in China.[110] Based on this experience, we are aware that this system is a national-level internal portal that holds certain information regarding any Chinese-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership.

The GOC asserts that it is not reasonable to conclude that less than full cooperation was shown by the GOC because it reported that it did not maintain statistics on the ferrous scrap industry.[111] However, as discussed in the *Preliminary Determination*, and for the reasons above, we disagree. We continue to find that the GOC did not put forth maximum effort to provide information that is responsive to our requests.

Additionally, as discussed in the *Preliminary Determination*, record evidence demonstrates the existence of export tariffs on ferrous scrap.[112] We further explained that export tariffs can increase the domestic quantity of ferrous scrap that is available in China with the result that such measures will suppress domestic prices.

Therefore, consistent with the *Preliminary Determination*, we determine that the GOC, having failed to provide the data we requested, has withheld information that was requested of it, and that the use of facts available is warranted, pursuant to section 776(a)(2)(A) of the Act. Moreover, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, and thus, the application of AFA pursuant to section 776(b) of the Act is warranted. For these reasons and based on the record evidence discussed above, we determine, as AFA, that the domestic market for ferrous scrap is distorted through the intervention of the GOC, and we are, therefore, relying on an external benchmark for determining the benefit from the provision of ferrous scrap at LTAR, in accordance with 19 CFR 351.511(a)(2)(ii).

Application of AFA to the GOC Penalizes Hengtong

We disagree with HengTong's contention that the application of AFA was not appropriate in this instance, where the GOC failed to provide requested information. As an initial matter, we note that our findings discussed above are not entirely based on AFA. For instance, our determination that any majority government-owned input producers that supplied HengTong are "authorities" within the meaning of section 771(5)(B) of the Act is based on our prior findings and the GOC's failure to rebut those findings. For the remaining findings discussed above, *i.e.*, our determination that any non-majority government-owned input producers that supplied HengTong are also "authorities" within the meaning of section 771(5)(B) of the Act, our specificity findings

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[110] *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 Preliminary Decision Memorandum 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).
[111] *See* GOC Case Brief at 24-27.
[112] *See Preliminary Determination* PDM at 15 citing GOC IQR at 35.

for pig iron and ferrous scrap, and our market distortion finding for ferrous scrap, our application of AFA was appropriate. Specifically, as explained in the *Preliminary Determination*, and discussed above, because of the GOC's failure to provide the requested information, which was necessary for our respective analysis, and to cooperate to the best of its ability, Commerce properly relied on the facts available to replace the missing information, with an adverse inference, in accordance with section 776(a) and 776(b) of the Act.[113]

In the present case, HengTong is a company within the country of China, and HengTong directly benefited from subsidies the GOC provided. 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 provides a mechanism for remedying sales at less than fair value to aid in the protection of U.S. industry.[114]

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.[115]

As discussed above, we requested information from the GOC to determine whether pig iron, ferrous scrap, and metallurgical coke were provided to the respondents for LTAR. Our requests particularly sought to obtain information relating to the specificity and financial contribution elements of a countervailable subsidy, as well as information to determine the appropriate benchmark for our benefit analysis. 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 requests for necessary information. The GOC is the only party which possessed the requested information that would enable Commerce to conduct its full analysis of

[113] *See Preliminary Determination* PDM at 10-16.
[114] *See Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1373 (Fed. Cir. 2014) (*Fine Furniture*).
[115] *Id.*

these allegations, and the GOC affirmatively and repeatedly refused to provide that information to Commerce.[116] 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).[117]

Furthermore, we did not rely on the facts available or AFA to address a gap in information that was submitted by HengTong. Instead, we applied AFA in the context of the authorities and specificity analyses concerning pig iron, ferrous scrap, and metallurgical coke, 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 regard to ferrous scrap, as noted above. Having made affirmative determinations in those analyses, we were able to use HengTong'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, ferrous scrap, and metallurgical coke for LTAR programs used by HengTong.

Comment 2: Metallurgical Coke Market Distortion

The GOC's Case Brief:

- The preliminary determination is not supported by substantial evidence and is otherwise not in accordance with law, because the government suppliers accounted for less than a majority of the market and there are no other meaningful indicia of distortion that support Commerce resorting to a tier-two benchmark.[118]
- A tier-two benchmark is only to be used when "there is no usable market determined price with which to make the comparison under paragraph (a)(2)(i)."[119] Commerce disregarded available tier-one market determined prices from HengTong's private suppliers.
- In *Maverick Tube*, the Court of Appeals for the Federal Circuit found that Commerce had not adequately supported its finding of distortion in a case where the government suppliers of the input accounted for less than a majority of the market and Commerce had not identified other indicia of distortion.

[116] *See* Preliminary Determination PDM at 10-16.
[117] *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.
[118] *See* GOC Case Brief at 27-29.
[119] *Id.* at 28.

Commerce's Position:

Commerce's long-standing practice is to use 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.[120] 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.[121] In past cases, Commerce has examined factors such as government export restraints (*e.g.*, export quotas, export licensing requirements, and export taxes) and low import levels as additional evidence that the market for a good was subject to government distortion, including cases where record evidence did not show definitively that government-controlled producers accounted for a majority of the market.[122] Commerce has previously addressed and rejected the GOC's arguments on this issue.[123] Out-of-country benchmarks are necessary 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).[124]

Concerning metallurgical coke, the GOC has reported that SOEs accounted for a large share of metallurgical coke production in China during the POI, but less than a majority of the market (the specific percentage is business proprietary information).[125] In accordance with the CVD Preamble and consistent with proceedings where SOEs account for a significant percentage of the market, Commerce has examined whether additional indicia of market control exists that would cause distortion.[126] For comparison, in *Cylinders from China*, Commerce declined to use

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[120] *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 IDM at Comment 5.

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

[122] *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) (*Kitchen Racks from the PRC*), and accompanying Issues and Decision Memorandum at 15 ("Analysis of Programs - Provision of Wire Rod for Less Than Adequate Remuneration"), in which Commerce found that wire rod imports accounted for only 1.53 percent of the volume of wire rod available in the Chinese market during the POI. *See also Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum at 22, in which Commerce found that imports of papermaking chemicals as a share of domestic consumption were insignificant.

[123] *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 Issues and Decision Memorandum 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 Issues and Decision Memorandum at Comment 7.

[124] *See CWP from China* IDM at Comment 7.

[125] *See Preliminary Determination* PDM at 26, citing GOC IQR at 47.

[126] *See CVD Preamble*, 63 FR 65348, 65377; *see also Cast Iron Pipe Fittings* and accompanying IDM at Comment 1; *see also 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.

in-country seamless tube steel benchmarks due to the distortive effect caused by the market share of 38 percent held by state-owned seamless tube steel producers, in light of the added fact that imports of seamless tube steel as a share of domestic consumption were insignificant.[127] As we stated in the *Preliminary Determination*, business proprietary information submitted by the GOC in this investigation shows that import penetration in the Chinese metallurgical coke market is low.[128] Similar to *Cylinders from China*, we find that this low share of imports in the domestic market of the good in question further indicates that the government plays a predominant role through its involvement in the market.

Moreover, the GOC's National Development and Reform Commission's (NDRC) developmental policy for the iron and steel industry states the following: "The export of such preliminarily processed products as coke, iron alloy, pig iron, waste steel and steel base (ingot) with high level energy-consumption and serious pollution shall be restricted and the tax refund for export of these products shall be decreased or canceled."[129] Thus, notwithstanding the GOC's statement that no export tariffs or quotas *per se* were imposed on metallurgical coke during the relevant period, the *Iron and Steel Plan* provides additional evidence of the GOC's distortive government involvement in the metallurgical coke market in China through its policy of export restrictions. This is consistent with our finding in *Cast Iron Pipe Fittings from China*, where Commerce found that the GOC has imposed export licensing requirements on coke.[130] Such export restraints discourage exportation of the good, thus, artificially increasing the supply of metallurgical coke in the domestic market, lowering domestic prices. Thus, evidence on this record and our findings in prior proceedings further demonstrate the GOC's distortive government involvement in the metallurgical coke market in China.

As we have explained in prior CVD proceedings involving China, our position is not driven by a finding of collusion between private and state-owned producers.[131] 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.[132] 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.[133] On this basis, we continue to find that it is appropriate to continue to use tier-two 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.

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[127] *See Cylinders from China* and accompanying IDM at 19.
[128] *See Preliminary Determination* PDM at 26, citing GOC IQR at 46.
[129] *See* the petitioner's letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Cast Iron Soil Pipe from the People's Republic of China," dated January 26, 2018 (the Petition) at Volume III, Exhibit III-14 (National Development and Reform Commission, *Development Policy for the Iron & Steel Industry* (*Iron and Steel Plan*)).
[130] *See Cast Iron Pipe Fittings from China* IDM at 13.
[131] *See Racks from China* at Comment 8; *Cast Iron Pipe Fittings from China* IDM at 13.
[132] *See Cast Iron Pipe Fittings from China* IDM at 13.
[133] *See e.g., Racks from China* at Comment 8; *Line Pipe from China* IDM at Comment 5; *see also Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."; *see also CWP from China* and accompanying IDM at Comment 7.

Comment 3: Whether Policy Loans to the Soil Pipe Industry are Countervailable

The GOC's Case Brief:

- There is no evidence on the record that supports the finding that loans issued by state owned Chinese banks (SOCBs) to the soil pipe industry are *de jure* specific.[134]
- The definition of *de jure* specificity contained in 771(5A)(D)(i) of the Act states, "the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry."[135]
- Although Commerce states that record information indicates that the GOC promoted the soil pipe industry in recent years, there is no reference to the soil pipe industry, or any variant thereof, contained in the plans Commerce cited in the *Preliminary Determination*.[136]
- As reported by the GOC in its initial questionnaire response, the issuance and approval of all loans negotiated between SOCBs and members of the soil pipe industry was based on criteria brought forth during negotiations between commercial banks and borrowers. Additionally, SOCBs are free of any requirement to implement GOC industrial policies.[137]
- SOCBs are subject to the Capital Rules for Commercial Banks, which constrains them from making lending decisions that are not based on market principles.[138]
- There is also no evidence on the record that supports the finding that loans issued by SOCBs to the soil pipe industry are *de facto* specific under 771(5A)(D)(iii) of the Act, because there is no evidence on record that indicates that SOCBs extended preferential short-term loans specific to only the iron and steel industry.[139]
- While Commerce does cite to language in the *Iron and Steel Plan* that pertains to medium- and long-term lending by SOCBs, this language does no pertain to short-term lending, which is at issue here. The language also does not limit GOC lending to the iron or steel industry, in particular.[140]

Commerce's Position:

Consistent with the *Preliminary Determination*, we continue to find that the loans received by cast iron soil pipe producers from SOCBs were made pursuant to government directives.[141] We disagree with the GOC's contention that Commerce erred in countervailing policy lending in the *Preliminary Determination*. In general, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals.[142] We find this standard has been met in the instant investigation.

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[134] *See* GOC Case Brief at 31.
[135] *Id*.
[136] *Id*.
[137] *Id*. at 33.
[138] *Id*.
[139] *Id.* at 34.
[140] *Id*. at 34.
[141] *See, e.g., Cast Iron Pipe Fittings from China* IDM at Comment 7.
[142] *Id.*

Commerce has found, in this and in a prior proceeding, that the GOC, through SOCBs, encourages the development of the iron and steel industry, including cast iron soil pipe producers.[143] The record of this proceeding continues to support this finding. For example, the "*12th Five-Year Outline of the Guidelines for National Economic Development of the People's Republic of China*" encourages an optimization of the industrial layout in order to "transform and improve the consumer goods industry, and promoting the enlargement and enhancement of manufacturing industries," including the creation of "advanced manufacturing bases with international competitiveness" and the development of "a number of modern industry clusters with distinctive characteristics, a prominent brand image and a sound service platform."[144] It also indicates the maintenance of "the current advantage in export markets" and indicates that the GOC "will also speed up the nurturing of new advantages," including encouraging "enterprises to build up international sales channels to increase their ability to expand international market shares" and "actively develop{ing} emerging markets and promote the diversification of the export market."[145] The current "*National 13th Five-Year Plans of Economic and Social Development* (2016-2020)" continues these objectives, calling for "{c}arrying out deep structural adjustment and revitalizing the real economy, we will move ahead with supply-side structural reforms, foster new industries while upgrading traditional ones, and move faster to put in place a new modern industrial system that has strong innovative capabilities, provides quality services, is based on close collaboration, and is environmentally friendly."[146]

Further, the GOC's *Iron and Steel Plan* seeks to promote the development of "the whole technical level of the iron and steel industry, promote the structural adjustment, improve the industrial layout, develop a recycling economy, lower the consumption of materials and energy, pay attention to the environmental protection, raise the comprehensive competitive capacity of enterprises, realize the industrial upgrading, and develop the iron and steel industry into an industry with international competitive capacity that may basically satisfy the demand of the national economy and social development in terms of quantity, quality and varieties. . ."[147] and so that "{t}he comprehensive competitive capacity of iron and steel industry may reach to the international advanced level so that China may become a large country in iron and steel production and a great power country in world-wide competitive."[148] Further, large scale enterprises were to consolidate and expand production according to the GOC's directives.[149] In particular, the *Iron and Steel Plan* emphasizes the importance of "strengthen{ing} the connection of fiscal, financial, trade, land, energy saving, environmental protection, safety and other policies with the steel industrial policy."[150] These polices indicate that the GOC has placed great emphasis on targeting the iron and steel industry, which includes the soil pipe industry, for development throughout recent years.[151]

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[143] *Id.*
[144] *See* GOC IQR at Exhibit Loan – 6, Chapter 9.
[145] *Id.* at Exhibit Loan – 6, Chapter 51.
[146] *See* GOC IQR at Loan – 6, Part V.
[147] *See* the Petition at Exhibit III-14.
[148] *Id.*
[149] *Id.*
[150] *See* European Commission Implementing Regulation (EU) 2017/969 (June 8, 2017), contained in the Petition at Exhibit III-2.
[151] *See* PDM at 27-29.

Moreover, in the GOC's *Iron and Steel Plan*, the GOC has stated a policy of encouraging compliance with the development policies for the iron and steel industry, which includes the soil pipe industry. For example, the policy states that, "the financial institution shall not provide any loan or give credit support in any other form," unless projects in industries, such as the soil pipe industry, comply with the development policies for the iron and steel industry.[152] Furthermore, Article 25 of the policy states:

> To grant mid- and long-term loans for the fixed-asset investment to the projects of iron smelting, steel smelting and steel rolling, a financial institution shall comply with the development policies for the iron and steel industry, and strengthen their risk management. For any fix-asset investment loan granted to any project of iron smelting, steel smelting and steel rolling with newly increased production capacity, the relevant reply, verification or archival documents as issued by the NDRC shall be required to be provided.[153]

As noted above, the GOC policies are a clear indication that the SOCBs are an important means to accomplish GOC objectives. Thus, the *Iron and Steel Plan*, which is specific to the development of the iron and steel industry (which includes the soil pipe industry), makes clear the GOC's policy to encourage the industry's development *via* finance policy and banks, and it directs authorities to implement its iron and steel industry policy.

The GOC argues that there is no evidence on the record supporting a finding that loans issued by SOCBs to the soil pipe industry are *de jure* specific.[154] As we stated in the *Preliminary Determination*, when examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals.[155] Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act.[156] The evidence cited above demonstrates that the GOC encourages compliance with the development policies for the iron and steel industry, which includes the soil pipe industry, and that it encourages these development policies *via* finance policy and banks. Although the GOC argued at page 33 of the GOC Case Brief that the only reference to policy lending in the *Preliminary Determination* is to "mid- and long-term loans," this language was not the sole basis for our determination. Rather, we considered all of the evidence from the *Iron and Steel Plan* and five-year plans discussed above in making our determination. Thus, we have no basis to exclude short-term loans from our determination.

Accordingly, we continue to find that there is a program of preferential policy lending specific to the iron and steel industry, including soil pipe producers, within the meaning of section

[152] *See* Petition at Volume III, Exhibit III-14.
[153] *Id*.
[154] *See* GOC Case Brief at 31-34.
[155] *See* PDM at 27.
[156] *Id*.

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. Further, 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.[157] Additionally, as noted in the *Preliminary Determination*, Commerce has recently conducted a re-assessment of the lending system in China, concluding that, despite reforms to date, the GOC's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes.[158]

We also continue to find 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, because SOCBs are "authorities." We disagree with the GOC that Commerce disregarded information concerning regulatory reforms that contradict our policy lending finding.[159] The significance of the GOC's reference to "*Capital Rules for Commercial Banks*" at page 33 of the GOC Case Brief is unclear because of the high and increasing level of debt relative to GDP, indicating that credit is being put to increasingly unproductive use; the rising number of troubled and non-performing loans; and large-scale systemic credit misallocation, including overallocation of credit to SOEs and an increasing share of loans going to firms with low debt-service capacity. These factual findings are detailed in the Financial System Memorandum, as is the fundamentally unchanged institutional relationship between the government (Party-state) and the financial sector (including SOCBs and trust companies) that underlies these chronic and systemic debt and non-performing loans (NPL) problems that China struggles to resolve today.[160] Because there has been no fundamental change in the state's pervasive role in the financial system and the institutional relationships that bind the government and the principal actors in that system, Commerce properly determined, as detailed in the Financial System Memorandum, that the Chinese financial system is distorted.[161]

Comment 4: The Application of AFA to the Provision of Electricity for LTAR

The GOC's Case Brief:

- The GOC acted to the best of its ability with respect to providing information on is provision of electricity to HengTong. The GOC stated that electricity prices are determined by the

[157] *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.
[158] *See* PDM at 19; *see also* Memorandum to The File from Annathea Cook, International Trade Compliance Analyst, Enforcement and Compliance, "Countervailing Duty Investigation of Cast Iron Soil Pipe from the People's Republic of China: Review of China's Financial System Memorandum," (Financial System Memorandum).
[159] *See* GOC Case Brief at 31-34.
[160] *See* Financial System Memorandum.
[161] *Id.*

provincial governments within their jurisdictions and that the role of the NDRC is to review the pricing schedule provided by the provincial governments.[162]

- The GOC applied its best efforts to answer Commerce's questionnaire and supplemental questionnaire, providing verifiable information sufficient for Commerce to analyze the GOC provision of electricity and to determine that it is not a countervailable subsidy.[163]
- Commerce's determination regarding electricity for LTAR is contradicted by evidence on the record.[164] Commerce ignored record evidence where the GOC explained that electricity prices are based on market principles and that electricity prices are determined by provincial governments within their jurisdictions and not the NDRC.[165]
- As explained in its supplemental response, the GOC explained that provincial authorities submit pricing to the NDRC merely to ensure that certain pricing standards are followed.[166]
- There are no "facts otherwise available" on the record that Commerce can rely on that suggest that the GOC's provision of electricity is specific. The record is clear that retail prices for electricity are set according to purchase cost, transmission prices, transmission losses, and government surcharges, regardless of a participation in a specific industry or location in a particular region.[167]

Commerce's Position:

We disagree with the GOC that it acted to the best of its ability. As discussed above, consistent with our practice and in accordance with the law, Commerce is continuing to apply AFA with respect to the provision of electricity for this final determination. As noted in the Post-Preliminary Memorandum, none of the government notices submitted by the GOC explicitly eliminated Provincial Pricing Proposals, nor fully defined the NDRC's and the provinces' roles in setting electricity prices.[168] As we further explained in the Post-Preliminary Memorandum, GOC notices on the record do not support the GOC's claim that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions; instead, the notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices.[169]

Further, in the Post-Preliminary Memorandum, we determined that the GOC withheld information that was requested of it for our analyses of financial contribution and specificity and, thus, we relied on "facts available."[170] As detailed in the Post-Preliminary Memorandum, the GOC did not provide the following: Provincial Price Proposals; an explanation of the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; an explanation of how the NDRC determines that the provincial-level price bureaus have accurately reported all relevant cost elements in their price proposals; how increases in cost

[162] *See* GOC Case Brief at 36.
[163] *Id*. at 36.
[164] *Id*. at 37.
[165] *Id*. at 37-38.
[166] *Id*. at 38.
[167] *Id*. at 38-39.
[168] *See* Post-Preliminary Memorandum at 4-5.
[169] *Id.*
[170] *Id.* at 6.

elements led to retail price increases, the derivations of those cost increases were calculated, and how cost increases impacted final prices; an explanation, with supporting documents, how pricing values in the Appendix to Notice 748 were derived; and, for each province in which a respondent was located, how cost element increases and final price increases were allocated across the province and across tariff end-user categories.[171] Because the GOC failed to provide necessary information, Commerce found it necessary to apply facts otherwise available. Moreover, we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we drew an adverse inference in the application of facts available.[172]

In drawing an adverse inference, we found that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we also drew an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[173] For the final determination, we continue to find that the GOC withheld information that was requested of it. Therefore, we continue to apply facts available, with an adverse inference, for this program.

Comment 5: Ocean Freight Cost Calculation

HengTong's Comments:

- Commerce added an average U.S. dollar per-container cost for both 20-foot and 40-foot containers for each month of the POI in its pig iron, ferrous scrap, and metallurgical coke calculations. Commerce however, understated the conversion factor for the 40-foot container and, therefore, overstated the calculated per kilogram cost of the 40-foot container.[174]

Commerce's Position:

We disagree with HengTong that we erred in our per-container cost calculation and overstated the calculated per kilogram cost of the 40-foot container. As an initial matter, HengTong, like all interested parties, was given the opportunity to provide benchmark ocean freight information on the record for Commerce to evaluate and use in our benchmark calculations.[175] However, no party provided any ocean freight benchmark information on the record of this investigation. As a result, for the *Preliminary Determination,* Commerce placed on the recor, container weight information that we used to calculate ocean freight averages for the pig iron, ferrous scrap, and metallurgical coke benchmarks. [176] Thus, the information Commerce used in the *Preliminary*

[171] *Id.* at 3-6.
[172] *See* section 776(b) of the Act
[173] *See* section 776(b)(4) of the Act.
[174] *See* HengTong Case Brief at 3.
[175] 19 C.F.R. § 351.301(c)(3) and (c)(5).
[176] *See Preliminary Analysis Memo* Attachment 3.

Determination was the only information available on the record of this investigation which could be used for our benchmark calculations.

Additionally, according to 19 CFR 351.511 (a)(2)(ii), where there is more than one commercially available world price, Commerce will average such prices to the extent practicable, making due for factors affecting comparability. Here, the information placed on the record by Commerce has shipping costs for two container types, a 20-foot container and a 40-foot container. As a result, Commerce, in accordance with 19 CFR 351.511 (a)(2)(ii), averaged the shipping cost of the 20-foot and 40-foot containers and applied the average of the two containers' prices to the benchmark calculation. HengTong did not place on the record any information on the ocean freight benchmark and did not cite any other record information to demonstrate that its proposed methodology is more accurate than what we used in the *Preliminary Determination*. Therefore, Commerce correctly applied the only ocean freight information placed on the record in the benchmark calculations for pig iron, ferrous scrap, and metallurgical coke.

VIII. 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

2/22/2019

X 

Signed by: GARY TAVERMAN

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

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source	Citation
1.	Policy Loans to the Soil Pipe Industry	0.49%	Calculated - HengTong	
2.	Treasury Bond Loans	5.03%	Highest Rate for Same Program Based on Benefit Type	*Cast Iron Pipe Fittings from China Investigation Final Determination*
3.	Preferential Loans for State-Owned Enterprises			
4.	Preferential Lending to Soil Pipe Producers and Exporters Classified as "Honorable Enterprises"			
5.	Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program			
6.	Debt-to-Equity Swaps	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) *(Chlorinated Isocyanurates China Final).*
7.	Exemptions for SOEs from Distributing Dividends	0.58%	Highest Rate for Same Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
8.	Loan and/or Interest Forgiveness for SOEs	2.32%	Highest Rate for Similar Program Based on Benefit Type	*Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323* (October 2, 2008).
9.	Preferential Income Tax Reductions for High and New Technology Enterprises	25%	Income Tax Rate	*Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 43331 (September 15, 2017) (*Tool Chests*).
10.	Preferential Deduction of R&D Expenses for HNTEs		Income Tax Rate	
11.	Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment		Income Tax Rate	*Tool Chests*
12.	Preferential Income Tax Policy for Enterprises in the Northeast Region		Income Tax Rate	*Tool Chests*

13.	Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax			
14.	Income Tax Benefits for Domestically Owned Enterprises Engaging in Research and Development			
15.	VAT and Tariff Exemptions for Purchasers of Fixed Assets Under the Foreign Trade Development Fund	9.71%	Highest Rate for Similar Program Based on Benefit Type	*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) (*Off-the-Road Tires China), unchanged in New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty*
16.	Import Tariff and VAT Exemptions for Foreign Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	9.71%	Highest Rate for Same Program Based on Benefit Type	*Off-the-Road Tires China*
17.	Deed Tax Exemptions for SOEs Undergoing Mergers or Restructuring	9.71%	Highest Rate for Similar Program Based on Benefit Type	*Off-the-Road Tires China*
18.	Provision of Land to SOEs for LTAR	13.36%	Highest Rate for Similar Program Based on Benefit Type	*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)
19.	Provision of Pig Iron for LTAR	4.87%	Calculated - HengTong	
20.	Provision of Ferrous Scrap for LTAR	2.48%	Calculated - HengTong	
21.	Provision of Electricity for LTAR	1.58%	Calculated - HengTong	
22.	Provision of Iron Ore for LTAR	8.66%	Highest Rate for Similar Program Based on Benefit Type Calculated for HengTong	
23.	Provision of Metallurgical Coke for LTAR through SOEs	1.89%	Calculated - HengTong	

24.	Provision of Coking Coal for LTAR	8.66%	Highest Rate for Similar Program Based on Benefit Type Calculated for HengTong	
25.	State Key Technology Project Fund	0.58%	Highest Rate for Same or Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
26.	Foreign Trade Development Fund Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
27.	Export Assistance Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
28.	Grants to Loss-Making SOEs	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
29.	Export Interest Subsidies	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
30.	Grants for Energy Conservation and Emission Reduction	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
31.	Grants for the Retirement of Capacity	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*
32.	Grants for Relocating Production Facilities	0.58%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates China Final*

Total AFA Rate: **109.27%**