

***Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. v. United States,***  
***Court No. 14-00016; Slip Op. 15-21 (CIT 2015)***

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

**A. SUMMARY**

The Department of Commerce (the Department) prepared these final remand results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (CIT or the Court), issued on March 20, 2015, in *Kam Kiu*.<sup>1</sup> These final remand results concern the Department's corroboration of the adverse facts available (AFA) rate assigned to Tai Shan City Kam Kiu Aluminum Extrusion Co. Ltd. (Kam Kiu) in the *Final Results*.<sup>2</sup>

The Court instructed the Department to reconsider its corroboration methodology with regard to location-specific subsidy programs included in Kam Kiu's rate and the "Export Rebate for Mechanic, Electronic, and High-Tech Products" program also included in Kam Kiu's rate, as well as to explain how the final AFA rate relates to Kam Kiu.

In these final remand results, the Department demonstrates that the AFA rate applied to Kam Kiu in the *Final Results* was corroborated to the extent practicable and is relevant to Kam Kiu. However, to comply with the Court's remand order, under protest, we have adjusted Kam Kiu's AFA rate to remove all location-specific subsidy programs aside from programs that Kam Kiu could have used based on its mailing address. We also further explain below that we have corroborated Kam Kiu's ability to use the "Export Rebate for Mechanic, Electronic, and High-

---

<sup>1</sup> See *Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. v. United States*, Court No. 14-00016; Slip Op. 15-21 (CIT March 20, 2015) (*Kam Kiu*).

<sup>2</sup> See *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Final Results*), and accompanying Issues and Decision Memorandum (Final Results Decision Memorandum) at "Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies" and Comment 23.

Tech Products” program to the extent practicable, and demonstrate that Kam Kiu’s revised AFA rate of 79.80 percent is relevant to Kam Kiu.

## **B. BACKGROUND**

### **1. *The Final Results***

In the first administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People’s Republic of China (PRC), covering the period September 7, 2010, through December 31, 2011, the Department determined that Kam Kiu failed to respond to its request for information regarding the company’s quantity and value (Q&V) of imports of subject merchandise to the United States during the period of review (POR) and, therefore, found Kam Kiu to be uncooperative. Specifically, Kam Kiu submitted its Q&V response, which was due to the Department on October 18, 2012, on June 3, 2013, the signature date of the preliminary results.<sup>3</sup> As a result of Kam Kiu’s failure to submit a timely Q&V response, which prevented the Department from conducting respondent selection based on the company’s information, the Department determined that the application of facts available with an adverse inference was appropriate pursuant to sections 776(a)(2)(A) and (C) and section 776(b) of the Tariff Act of 1930, as amended (the Act).<sup>4</sup> In accordance with the statute and past practice, the Department assigned to Kam Kiu a rate based on total AFA of 121.22 percent, which the Department determined was corroborated to the extent practicable in accordance with section 776(c) of the Act.<sup>5</sup>

The Department explained that, in deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information

---

<sup>3</sup> See *Final Results*, 79 FR at 106.

<sup>4</sup> See *Final Results Decision Memorandum* at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies” and Comment 23.

<sup>5</sup> *Id.*

derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department also explained that its practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>6</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>7</sup>

Because Kam Kiu failed to cooperate, the Department had no usable record information concerning the company. To determine Kam Kiu’s subsidy rate, we relied on the Department’s AFA methodology as applied in the underlying aluminum extrusions investigation and other CVD investigations and administrative reviews.<sup>8</sup> Under this approach, the Department computes a total AFA rate for a non-cooperative company generally using program-specific rates calculated for the cooperating respondents in the instant review or in prior segments of the instant proceeding, or calculated in prior CVD cases involving the country under review (in this case, the PRC), unless it is clear that the industry in which the respondents operate cannot use the program for which the rates were calculated.<sup>9</sup>

---

<sup>6</sup> See Final Results Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies.” See also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>7</sup> See Final Results Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies;” and Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870.

<sup>8</sup> See Final Results Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies” and Comment 23.

<sup>9</sup> *Id.* Because the rates calculated in the underlying investigation were calculated for voluntary respondents, we did not use any of those rates in constructing Kam Kiu’s AFA rate. See Final Results Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies.”

As such, in the *Final Results*, for the income tax rate reduction or exemption programs, we applied an adverse inference that Kam Kiu paid no income taxes during the POR. The standard income tax rate for PRC corporations filing income tax returns during the POR was 25 percent. We determined that the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent).<sup>10</sup> Next, for all programs other than those involving income tax rate reduction or exemption programs, such as grant or loan programs, we first sought to apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of the proceeding. Absent such a rate, we applied, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of the proceeding.<sup>11</sup>

In the absence of an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, we applied the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. On that basis, we determined that the AFA rate for Kam Kiu, and the other non-cooperative companies, is 121.22 percent *ad valorem* for the POR.<sup>12</sup>

Further, the Department explained its analysis concerning corroborating, to the extent practicable, the secondary information relied upon in its AFA rate. Specifically, the Department explained that section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are

---

<sup>10</sup> The 25 percent AFA rate does not apply to the income tax credit and rebate, accelerated depreciation, or import tariff and value add tax exemption programs because such programs may not affect the tax rate. *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*



reasonably at its disposal. The Department considers information to be corroborated if it has probative value.<sup>13</sup> To corroborate secondary information, the Department, to the extent practicable, examined the reliability and relevance of the information to be used. The Department explained that the SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>14</sup>

With regard to the reliability aspect of corroboration, we noted that the rates on which we relied for Kam Kiu's AFA rate were subsidy rates calculated in the current review or other PRC CVD final determinations.<sup>15</sup> Further, the calculated rates were based on information about the same or similar programs. No information was presented on the record of the administrative review to call into question the reliability of the calculated rates that were applied as AFA.<sup>16</sup> Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department considered information reasonably at its disposal in determining the relevance of information used to calculate a countervailable subsidy benefit.

---

<sup>13</sup> *Id.*, and SAA at 870.

<sup>14</sup> *Id.*, and SAA at 869-870.

<sup>15</sup> See Final Results Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies."

<sup>16</sup> *Id.*

In the absence of record evidence concerning the programs under examination resulting from Kam Kiu's decision not to participate in the review, we reviewed the information concerning the PRC subsidy programs in this and other cases. For those programs for which the Department found a program-type match, we determined that, because these are the same or similar programs, they are relevant to the programs under review in this case.<sup>17</sup> The relevance of these rates is that they are actual calculated subsidy rates for a PRC program from which Kam Kiu could actually receive a benefit. Further, the Department explained that these rates were calculated for periods close to the POR and that, moreover, the failure of Kam Kiu to respond to the Department's request for information "resulted in an egregious lack of evidence on the record to suggest an alternative rate."<sup>18</sup> Due to the lack of participation by Kam Kiu and the lack of record information concerning the company's use of programs under review, the Department corroborated the rates it selected to the extent practicable.<sup>19</sup>

## **2. *The Court's Holding***

Before the CIT, Kam Kiu challenged the Department's determination to apply total AFA as well as its corroboration of the AFA rate with respect to Kam Kiu's use of location-specific subsidy programs and the "Export Rebate for Mechanic, Electronic, and High-Tech Products" program. In its decision, the Court affirmed the Department's determination to apply AFA to Kam Kiu where Kam Kiu failed to file a timely Q&V response, instead submitting it over seven months late and on the signature day of the preliminary results.<sup>20</sup> The Court stated that "requiring Commerce to consider the late-filed response without using facts available or adverse inferences would undermine the integrity of the procedures Commerce has put in place and the

---

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* See also *Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005).

<sup>19</sup> See Final Results Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies."

<sup>20</sup> See *Kam Kiu*, Slip Op. at 7-13.

system itself” and could incentivize non-cooperation.<sup>21</sup>

The Court also held that the Department must, to the extent practicable, corroborate an AFA rate and its failure to do so in this case renders its determination unsupported by substantial evidence.<sup>22</sup> The Court stated that evidence reasonably at the Department’s disposal, such as Kam Kiu’s Q&V response, which the Court stated is on the record and could be used for corroboration purposes, indicated that Kam Kiu did not benefit from all location-specific subsidy programs simultaneously.<sup>23</sup> The Court also stated that record evidence from the companion antidumping duty (AD) case in which Kam Kiu participated, and information from other respondents in the history of the proceeding, could be used to corroborate whether Kam Kiu would be the type of company to benefit from subsidies in locations throughout the PRC.<sup>24</sup> The Court held that the Department “can either attempt to corroborate Kam Kiu’s ability to benefit from these programs simultaneously in the first instance, or can adjust its methodology as applied to Kam Kiu and corroborate its findings under its new methodology.”<sup>25</sup>

The Court further held that the Department’s corroboration methodology, in which it identifies all potential subsidies and only eliminates programs that could not have been used, is not consistent with the Department’s obligation to corroborate the rate assigned to Kam Kiu.<sup>26</sup> The Court found that the Department did not explain how the final rate of 121.22 percent was related to Kam Kiu, and that such a rate appears punitive in light of the lower rates assigned to the mandatory respondents which were partially based on AFA.<sup>27</sup>

Lastly, the Court held that the Department failed to corroborate its finding that Kam Kiu

---

<sup>21</sup> *Id.*, at 8-9.

<sup>22</sup> *Id.*, at 18-23.

<sup>23</sup> *Id.*, at 18-19.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, at 20.

<sup>26</sup> *Id.*, at 20-21.

<sup>27</sup> *Id.*, at 22-23.

could have benefited from the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program, and evidence that the mandatory respondents in the review did not use the program detracted from the Department’s finding.<sup>28</sup>

### **3. *Draft Results of Redetermination Pursuant to Court Remand***

On June 23, 2015, the Department issued the *Draft Results of Redetermination Pursuant to Court Remand* (Draft Remand) and provided parties until July 6, 2015, to comment. On July 6, 2015, Kam Kiu filed comments.<sup>29</sup> Kam Kiu is the only interested party that submitted comments on the Draft Remand.

## **C. ANALYSIS**

In a CVD proceeding, when a respondent fails to provide information as requested and fails to cooperate by not acting to the best of its ability to comply with the Department’s request for information, the statute allows the Department to draw a reasonable, adverse inference that the respondent used the program or programs at issue and that a benefit was provided that resulted in a subsidy rate.<sup>30</sup> To conclude otherwise would allow parties to benefit from their own lack of cooperation.<sup>31</sup>

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to

---

<sup>28</sup> *Id.*, at 23.

<sup>29</sup> See Letter from Kam Kiu regarding “Comments on Draft Remand Results” (July 2, 2015) (Kam Kiu Comments).

<sup>30</sup> See section 776(b) of the Act.

<sup>31</sup> See SAA at 870.



induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>32</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>33</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The Department considers information to be corroborated if it has probative value.<sup>34</sup> To corroborate secondary information, the Department, to the extent practicable, examines the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>35</sup>

As explained above, in the *Final Results*, the Department assigned Kam Kiu a rate based on AFA because of Kam Kiu’s failure to cooperate to the best of its ability in providing a timely Q&V response. To determine Kam Kiu’s subsidy rate, we relied on the Department’s AFA methodology as applied in the underlying aluminum extrusions investigation and other CVD investigations and administrative reviews.<sup>36</sup> Under this approach, we first identified all programs from which Kam Kiu could have benefited, including all programs identified in the instant administrative review and the investigation. Next, we computed a total AFA rate for Kam Kiu using program-specific rates calculated for the cooperating respondents in the instant review or

---

<sup>32</sup> See Final Results Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies.” See also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>33</sup> See Final Results Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies,” and SAA at 870.

<sup>34</sup> *Id.*, and SAA at 870.

<sup>35</sup> *Id.*, and SAA at 869-870.

<sup>36</sup> See Final Results Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies” and Comment 23.

in prior segments of the instant proceeding, or calculated in prior CVD cases involving the PRC. Finally, the Department did not include certain programs if it is clear that the industry in which Kam Kiu operates cannot use the program for which the rates were calculated.<sup>37</sup>

We address each aspect of the Court's findings with respect to the *Final Results* below, and reach new determinations on remand as necessary.<sup>38</sup>

### 1. *Application of AFA to All Location-Specific Programs*

In its decision, the Court found that the Department's determination that Kam Kiu could have used all location-specific subsidy programs was not corroborated to the extent practicable, given that "evidence reasonably at {the Department's} disposal suggests that Kam Kiu could not have benefited from all of these programs at the same time."<sup>39</sup> We respectfully disagree with the Court, and demonstrate below that the "evidence" identified by the Court does not offer corroborative value with respect to limiting Kam Kiu's ability to use location-specific subsidy programs.

First, in its decision, the Court refers to Kam Kiu's Q&V response and also states that "Commerce may wish to consider the Q&V response, in relation to other Q&V data, to

---

<sup>37</sup> *Id.* Because the rates calculated in the underlying investigation were calculated for voluntary respondents, we did not use any of those rates in constructing Kam Kiu's AFA rate. See Final Results Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA to Non-Cooperative Companies."

<sup>38</sup> On June 29, 2015, President Obama signed into law the Trade Preferences Extension Act of 2015, which provides a number of amendments to, *inter alia*, section 776 of the Tariff Act of 1930 concerning determinations made on the basis of facts available. The Trade Preferences Extension Act of 2015 did not specify dates of application for these amendments. On August 6, 2015, the Department published *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794 (August 6, 2015) (*Application Dates Announcement*), which announced that the Department would apply the amendments to section 776 of the Act to determinations made on or after August 6, 2015. Because of the timing and the procedural posture of this remand (*i.e.*, we issued our draft remand on June 23, 2015, before the August 6, 2015 publication of *Application Dates Announcement*, 80 FR 46793, and our remand is due one week after such publication, on August 13, 2015), we did not apply the new law in this remand redetermination. Therefore, all references to section 776 of the Act in this remand are to the law as it existed prior to the Trade Preferences Extension Act of 2015.

<sup>39</sup> See *Kam Kiu*, Slip Op. at 18.

corroborate.”<sup>40</sup> We do not believe that Kam Kiu’s mailing address, as provided for in its untimely Q&V response, is corroborative of whether Kam Kiu could or could not have benefitted from the location-specific programs. Although this provides us with a mailing address for the company, as demonstrated below, this evidence does not provide any information with respect to the facility location or locations of Kam Kiu and/or the identity and locations of any potential cross-owned affiliates, and therefore does not aid in corroborating the extent of the location-specific subsidy programs from which Kam Kiu could have benefitted. Nor, for reasons explained below, do we believe that the information contained in Kam Kiu’s untimely Q&V response, such as its reported data, can aid in corroborating the extent of the location-specific subsidy programs from which Kam Kiu, or any potential cross-owned affiliates, could have benefitted.

The purpose of a Q&V response is to aid in respondent selection and not to serve as a tool for the identification of the location of facilities and crossed-owned affiliates. The Q&V questionnaire issued in this administrative review sought information only with respect to Kam Kiu’s quantity and U.S. dollar sales value of exports to the United States during the period September 7, 2010, through December 31, 2011, of merchandise covered by the scope of the order. The Q&V questionnaire did not solicit information concerning the location of Kam Kiu’s facilities or the identification or location of Kam Kiu’s cross-owned affiliates. Nor did it solicit information on the quantity and value of subject merchandise exported by cross-owned affiliates. In fact, the Q&V questionnaire specifically directed companies to “include only information for

---

<sup>40</sup> *Id.*, at 18-19.

subject merchandise exported by *your company* directly to the United States” and to not report information for any cross-owned companies.<sup>41</sup>

As provided under 19 CFR 351.526(b)(6)(ii)-(v), cross-ownership with certain firms, (*e.g.*, parent/holding companies, producers of subject merchandise, producers that supply an input primarily dedicated to the production of subject merchandise, or the transfer of a subsidy between cross-owned affiliates), can play a critical role in the manner in which the Department establishes the parameters of its CVD proceedings and, ultimately, how it attributes subsidies to respondent firms. This analysis is performed after a company has been selected for individual examination. In order to determine the extent to which a respondent is cross-owned with another firm in a manner that would be germane to the Department’s subsidy attribution analysis, the Department requires the respondent to identify and describe the operations of each of its cross-owned affiliates. In addition, the Department also requires the respondent to report the quantity and value of exports of subject merchandise to the United States for its cross-owned affiliates. Given that the initial Q&V response, which is received before any respondent is selected for individual examination, does not contain such information concerning the identification, facility locations, or quantity and value of exports of subject merchandise to the United States of any of Kam Kiu’s potential cross-owned affiliates, it does not aid in the corroboration of whether Kam Kiu and/or its cross-owned affiliates could have benefitted from location-specific subsidy programs.

---

<sup>41</sup> See Department Letter to Kam Kiu regarding “Issuance of Quantity and Value Questionnaire” (October 1, 2012) at Attachment I (emphasis added). Moreover, the Q&V questionnaire states: “{A} company responding to this Q&V Questionnaire which the Department has not determined to be cross-owned with other companies, or not treated as cross-owned with other companies, in the most recently completed segment of the proceeding should only report Q&V data for itself. Such a company should not include data for any other party, even if the company believes it should be treated as a single entity with other parties.” *Id.* With regard to Kam Kiu, the Department did not examine the company in the underlying investigation and, therefore, did not consider whether it is cross-owned with other companies in the prior segment of this proceeding. Accordingly, the Q&V questionnaire would have instructed Kam Kiu report Q&V data only for itself.



In light of the Court's suggestion that Kam Kiu's untimely Q&V response could be used to corroborate whether the company could have benefitted from location-specific subsidy programs, we reiterate that there is no information on the record regarding the location of Kam Kiu's facilities or the identity/location or quantity and value of subject merchandise exports of any potential cross-owned affiliates. Specifically, the only information the Department has on the record of the administrative review concerning Kam Kiu is its untimely filed Q&V response. The Q&V response merely indicates a mailing address for Kam Kiu. It does not, however, definitively establish the extent of the location of Kam Kiu's facilities, and the Q&V response does not provide the identity and location of any other firms with which Kam Kiu may be cross-owned. In addition, although the Q&V response contains reported data from Kam Kiu regarding the quantity and value of its exports of subject merchandise to the United States, we do not have this same information for any of Kam Kiu's potential cross-owned affiliates. Thus, the Q&V response is not a reliable indicator of whether any cross-owned affiliates of Kam Kiu could have benefitted from location-specific subsidy programs because the reported data is exclusive of any such cross-owned affiliates.

Absent information concerning the definitive location of Kam Kiu's facilities, the existence of and quantity and value information for those entities that are potentially cross-owned with Kam Kiu, information that, as noted above, is critical to the manner in which the Department attributes subsidies in a CVD proceeding, the Department is unable to definitively determine the location-specific subsidy programs that could not have been used by Kam Kiu.

Second, in its decision, the Court states that information from other administrative proceedings in which Kam Kiu has participated, such as the AD investigation, can be used to corroborate whether Kam Kiu could have benefitted from the location-specific subsidy

programs. In particular, Kam Kiu argued that because the Department “linked exporter and producer margins in the initial {AD} investigation,” if Kam Kiu “had multiple affiliated producers in different locations in China, it would have had to report those producers in its Separate Rates application to get a valid separate antidumping rate and the other producers would have been reflected in the antidumping order itself.”<sup>42</sup> The Court states that the Department “can use information from those proceedings to corroborate, just as it uses information from other respondents in other proceedings in its adverse inference methodology.”<sup>43</sup>

We disagree that the AD order itself, or Kam Kiu’s separate rate application filed in the context of the AD investigation, can assist with the corroboration issue at hand. As an initial matter, we note that Kam Kiu’s separate rate application, a business proprietary document, is not on the record of this proceeding. While the Department may examine information contained in a public preliminary or final results or preliminary or final determination (as it did here in examining information regarding subsidy programs from the underlying investigation), it is not the Department’s practice to examine a company’s business proprietary information (BPI) from a separate and distinct proceeding, unless that information is placed on the record of the instant proceeding by the company whose business proprietary information is contained in the document.<sup>44</sup>

---

<sup>42</sup> See *Kam Kiu*, Slip Op. at 19 fn. 5.

<sup>43</sup> *Id.*, at 19.

<sup>44</sup> We also note that it is not the Department’s practice to transfer a company’s BPI from one proceeding to another (for example, from an antidumping duty proceeding to a countervailing duty proceeding). While a party may transfer its own BPI from one proceeding to another, there are concerns with the Department taking such action. See section 777(c)(1)(A) of the Act (providing that the Department “shall make all business proprietary information presented to, or obtained by it, during a proceeding...available to interested parties who are parties to the proceeding under an {administrative protective order}.”). Thus, the Department’s transfer of a party’s BPI from one proceeding to another creates the risk of disclosure of such information to parties that were not a party to the proceeding in which the BPI was submitted.

In any event, contrary to Kam Kiu's argument, even if Kam Kiu's separate rate application submitted on the record of the AD proceeding was on the record of this CVD proceeding, the application would not provide sufficient information that would be pertinent to the Department's corroboration analysis in this instance. For instance, the separate rate application does not seek affiliation information which is necessary for the Department to determine cross-ownership in a CVD proceeding and the locations of all potential cross-owned affiliates. Although the Department's standard AD separate rate application requests information on affiliates involved in the sale or production of subject merchandise, it does not solicit information concerning cross-owned producers that supply an input primarily dedicated to the production of subject merchandise, pursuant to 19 CFR 351.525(b)(6)(iv).<sup>45</sup> Additionally, the separate rate application does not seek information specific to any in-country unaffiliated trading companies through which the producer sells subject merchandise, which could be relevant in a countervailing duty proceeding pursuant to 19 CFR 351.525(c). Thus, the resulting assignment of a separate rate to Kam Kiu in the AD order which identifies a producer/exporter rate for Kam Kiu which was based on the separate rate application would not be probative of all of Kam Kiu's cross-owned affiliates, or relevant trading companies, and their locations.

Such information is necessary for the Department's attribution subsidy analysis under 19 CFR 351.525(b) and (c) in a CVD proceeding. Without this information (the identity and locations of such cross-owned affiliates and relevant trading companies), there is insufficient information to corroborate whether any of Kam Kiu's cross-owned affiliates could have availed themselves of the location-specific subsidy programs at issue.

---

<sup>45</sup> The Department's standard AD separate rate application is available at: <http://enforcement.trade.gov/download/nme-sep-rates/vietnam-pcrb/vietnam-pcrb-sra-042709.pdf>.

Moreover, any information contained in the company's separate rate application was for the July 1, 2009, through December 31, 2009, period of the AD investigation<sup>46</sup> and, thus, does not overlap, at all, with the September 7, 2010, through December 31, 2011, period of the CVD review. Thus, the separate rate application, and the resulting assignment of a separate rate for Kam Kiu in the AD order which identifies a producer/exporter rate for Kam Kiu, is not dispositive of the extent of Kam Kiu's facility locations and the identification and location of any potential cross-owned affiliates *for this period of review*.

Third, the Court states that the Department may wish to examine the ability of other respondents in the history of the proceeding "to use various types of subsidies from various locations in its corroboration analysis even if it declines to use their rates in its adverse inference methodology."<sup>47</sup> We recognize that in the aluminum extrusions investigation and the instant review no cooperating respondent benefitted simultaneously from all location-specific subsidy programs across the PRC. Nonetheless, because Kam Kiu failed to cooperate, we cannot assume that the company's cross-ownership structure and facility locations mirror that of cooperative respondents.

As such, because the Department had no knowledge as to the extent of Kam Kiu's locations and any cross-owned affiliates in the CVD first administrative review period, the Department considers it to have been appropriate for the Department to include the location-specific subsidy programs within Kam Kiu's AFA rate. Further, as explained above, there is no information on the record that would otherwise inform the Department as to the limits of Kam Kiu's locations and those of any crossed-owned affiliates. Because of the limitations imposed by Kam Kiu's lack of cooperation, the Department made a reasonable inference that Kam Kiu could

---

<sup>46</sup> See *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011).

<sup>47</sup> See *Kam Kiu*, Slip Op. at 19.



have benefitted from the location-specific subsidy programs, even those that were available to companies outside of Kam Kiu's mailing address location. Moreover, the Department used a reasonable estimate of the subsidy rates that were calculated for other producers/exporters of aluminum extrusions that cooperated with the Department in the current segment of the proceeding and PRC producers/exporters in other CVD PRC proceedings. As such, the Department did not fail to consider whether Kam Kiu could have benefitted from all location-specific programs simultaneously, but lacked information specific to Kam Kiu on the record for such consideration due to Kam Kiu's failure to cooperate.

Section 776(c) of the Act requires that the Department "shall, to the extent practicable, corroborate that information from independent sources that are reasonably at {its} disposal." Because the record lacked complete information with regard to Kam Kiu (*i.e.*, its locations, corporate structure/affiliations, and subsidy usage), the Department was limited in its ability to corroborate the information used to calculate the AFA rate. Nonetheless, in light of the failure of Kam Kiu to cooperate and the reasonableness of the secondary information that the Department used under section 776(c) of the Act (*i.e.*, based on actual subsidy data provided by other PRC producers/exporters for identical or similar subsidy programs), the Department considered that it satisfied the requirement of corroborating the 121.22 percent AFA rate to the extent practicable.

We note that the Court in a recent opinion upheld the Department's method for corroboration of rates used in the application of AFA under section 776(c) of the Act.<sup>48</sup> In *Fengchi*, neither Fengchi nor the Government of the People's Republic of China (GOC) provided information during the administrative review regarding use of countervailable subsidies; thus the Department's ability to corroborate its secondary information was limited by Fengchi's lack of

---

<sup>48</sup> See *Fengchi Imp. & Exp. Co. v. United States*, Court No. 13-00166, Slip Op. 15-32 at 24-25 (CIT 2015) (*Fengchi*).

cooperation. The Court found that the rates used to corroborate Fengchi's AFA rate were reliable because they were calculated in recent CVD final investigations or final results of review, were relevant because they were based upon information about the same or similar programs, and were calculated for periods close in time to the period of review. Specifically, the Court found that

{d}ue to Fengchi's lack of cooperation during the review, there is no company-specific data on the record regarding Fengchi's participation in countervailable programs. Because there were no other independent sources of data on company-specific benefits, Commerce was limited in its ability to corroborate the information used to calculate the AFA rate. Thus, Plaintiffs' arguments do not undermine the reasonableness of Commerce's corroboration given the limited information available to Commerce.<sup>49</sup>

The Court further concluded “. . . in light of the failure of Fengchi to cooperate and the reasonably accurate nature of the secondary information that Commerce used under § 1677e(b), Commerce satisfied the requirement of corroborating the 262.80 percent AFA rate ‘to the extent practicable.’”<sup>50</sup>

The Department, faced with uncooperativeness from Kam Kiu, and lacking independent sources of data on company-specific benefits, was similarly limited in its ability to corroborate the information used to calculate the AFA rate and, thus, corroborated Kam Kiu's AFA rate to the extent practicable under section 776(c) of the Act.

For all the reasons discussed above, we respectfully disagree with the Court's holding that the Department failed to corroborate to the extent practicable Kam Kiu's ability to benefit from the location-specific subsidy programs. Nonetheless, we understand the Court's holding to have given the Department the choice to “either attempt to corroborate Kam Kiu's ability to benefit from these programs simultaneously in the first instance, or { } adjust its methodology as

---

<sup>49</sup> *Id.*, at 24.

<sup>50</sup> *Id.*, at 25.

applied to Kam Kiu and corroborate its findings under its new methodology.”<sup>51</sup> When faced with the Court’s options of either using affirmative evidence to corroborate Kam Kiu’s ability to benefit from these programs, or changing our methodology, and given our findings above that no Kam Kiu-specific evidence exists flowing from Kam Kiu’s lack of cooperation, we find, under protest<sup>52</sup> and for purposes of this remand only, that there is no alternative but to alter our *Final Results* and adjust Kam Kiu’s rate to remove all location-specific subsidy programs aside from programs Kam Kiu could have used based on the mailing address on the record. As a result, to determine Kam Kiu’s AFA rate, we considered only subsidy programs administered at the national/central-government level and provincial-government level of Guangdong Province, the province in which Kam Kiu’s mailing address is located. Additionally, based on the Court’s reasoning, we did not include in the AFA rate any subsidy programs administered by Guangdong Province that were limited to a geographic area that was outside of the area encompassed by Kam Kiu’s mailing address. On this basis, we calculated a revised total AFA rate of 79.80 percent for Kam Kiu.<sup>53</sup>

Nevertheless, we find that respondents could be incentivized to withhold their cooperation under a standard in which a company’s mailing address information (from, for example, a petition, review request, or Q&V response) constitutes sufficient evidence to preclude the Department from determining pursuant to section 776(b) of the Act that a non-cooperative firm could not have benefited from all location-specific subsidy programs at issue in a given CVD proceeding. For example, under such approach, potential respondents would have little incentive to cooperate in a CVD proceeding in which provincial or municipal authorities

---

<sup>51</sup> See *Kam Kiu*, Slip Op. at 20.

<sup>52</sup> See *Viraj Group v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

<sup>53</sup> See Attachment (identifying the remaining programs that constitute Kam Kiu’s AFA rate and the sources of the rates assigned to these programs).

administered all or a substantial portion of the alleged subsidy programs at issue and whose jurisdictions did not encompass the mailing addresses of the potential respondents. Under such a scenario, a non-cooperative respondent could end up with a result that is more favorable than what it would have received had the company cooperated fully. Additionally, such an approach, where a company selectively provides information to the Department (*e.g.*, just a mailing address) raises the potential for evasion and fraud and could result in ineffective enforcement of the trade laws.

## **2. *Export Rebate for Mechanic, Electronic, and High-Tech Products***

The Court also held that the Department failed to corroborate the finding that Kam Kiu could have benefited from the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program, and evidence that the mandatory respondents in the administrative review did not use the program detracted from the Department’s finding.<sup>54</sup> The Court stated that “in order for Commerce to apply this subsidy to Kam Kiu, doing so must be based upon a reasonable reading of the record.”<sup>55</sup>

In the underlying investigation, the Department found that a PRC producer of subject merchandise received a grant under the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program from the Bureau of Finance of Guangdong Province.<sup>56</sup> Here, as discussed above, the record does not contain information concerning Kam Kiu’s use of this program because of Kam Kiu’s failure to cooperate in providing requested information to the Department. Thus, in evaluating which programs may be included in Kam Kiu’s AFA rate, the Department reasonably considered that producers of subject aluminum extrusions are eligible for grants

---

<sup>54</sup> See *Kam Kiu*, Slip Op. at 23.

<sup>55</sup> *Id.*

<sup>56</sup> See *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Investigation*), and accompanying Issues and Decision Memorandum (Investigation Decision Memorandum) at “Export Rebate for Mechanic, Electronic, and High-Tech Products.”



under the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program, as evidenced by the Department’s finding in the investigation. This, coupled with Kam Kiu’s lack of cooperation, leads the Department to find that it is reasonable to conclude that Kam Kiu, a producer of aluminum extrusions, could also have received benefits under the program. In addition, we note that the program was available to those producers of aluminum extrusions located in Guangdong Province, like Kam Kiu (which we established above based on Kam Kiu’s mailing address).<sup>57</sup> Based on this evidence, the Department corroborated Kam Kiu’s ability to use of this program to the extent practicable.

We respectfully disagree with the Court that the non-use of the program by two (partially) cooperative mandatory respondents in this administrative review detracts from the Department’s determination that a non-cooperative company could have used the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program. First, non-use of the program by the two mandatory respondents in this review merely demonstrates that not all subject merchandise producers use the program at issue. However, non-use of the program by the two mandatory respondents does not detract from a finding that a non-cooperative producer of subject merchandise was able to use the program, particularly in light of evidence that another respondent in the underlying investigation (also located in Kam Kiu’s province) used the program.<sup>58</sup>

---

<sup>57</sup> *Id.* at “Summary” and “Export Rebate for Mechanic, Electronic, and High-Tech Products.”

<sup>58</sup> As additional evidence that one or more respondent’s non-use of a particular program in a given period is not indicative – for corroboration purposes--of a separate respondent’s non-use of that same program, the Department found in this review that Changzheng Evaporator did not use the “State Key Technology Renovation Project Fund,” and that the Alnan Companies did use the program. *See* Final Results Decision Memorandum at “State Key Technology Renovation Project Fund.” *See also*, *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012) and accompanying Issues and Decision Memorandum at 6, where only one of the two mandatory respondents used the Pre-Export Credits loan program. Thus, the fact that a respondent did not use a program provides little insight into whether another respondent may have used the program.

Given these competing pieces of evidence, use of this program in the investigation and non-use of this program in this review, it is appropriate to make the adverse inference that Kam Kiu could have used this program, so that Kam Kiu does not benefit from its lack of cooperation. As noted above, the Department found, and verified, that a producer of subject aluminum extrusions used, and in fact, benefitted from the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program from the Bureau of Finance of Guangdong Province in the investigation, which immediately preceded the instant review period.<sup>59</sup> As such, it is reasonable to determine, as AFA, that Kam Kiu could use this program because a respondent in the investigation, also located in Guangdong Province like Kam Kiu, received a grant under this program. Thus, the record of the investigation demonstrates that the industry in which Kam Kiu operates is eligible for a grant under the program.

Furthermore, we note that a standard for corroborating an AFA rate based on “use of a program by a cooperative respondent” in the immediate review would incentivize non-cooperation. For instance, a company would have little incentive to cooperate, because it would know that the highest AFA rate it would receive would likely be dependent on the use or non-use of subsidy programs by the cooperative company(ies) in the instant review. In addition, such a practice would require the Department to disregard relevant information, such as the use of the program by another respondent in a prior segment of the proceeding, which the Department may reasonably rely upon for purposes of its AFA methodology. Such a situation could lead to an uncooperative party receiving a more favorable result by failing to cooperate than if it had fully cooperated.

Lastly, Kam Kiu argues that it is a small producer of basic aluminum extrusion inputs and, therefore, would not avail itself of the “Export Rebate for Mechanic, Electronic, and High-

---

<sup>59</sup> See Investigation Decision Memorandum at “Export Rebate for Mechanic, Electronic, and High-Tech Products.”

Tech Products” program. The only evidence the Department has concerning the size of Kam Kiu’s operations is its Q&V response. We note that Kam Kiu’s Q&V response says nothing regarding the type of products produced by Kam Kiu, nor does it provide any information concerning the operations of Kam Kiu’s potential cross-owned affiliates. Thus, the Department has no evidence that Kam Kiu is a small producer of basic aluminum extrusions, and no evidence that small producers of basic aluminum extrusions would not/could not use the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program. Therefore, the Department finds that Kam Kiu’s arguments are unsubstantiated. In sum, we continue to find that evidence in the history of the proceeding, *i.e.*, from the investigation, corroborates that Kam Kiu could have used this program, and therefore we continue to include the program in Kam Kiu’s AFA rate.<sup>60</sup>

### **3. *Aggregate AFA Rate***

Lastly, the Court held that “Commerce’s finding that the rate applied is a reasonably accurate estimate of Kam Kiu’s actual countervailing duty rate albeit with some built-in increase to deter non-compliance,” was not supported by the record, and that the Department failed to explain how the final aggregate AFA rate relates to Kam Kiu.<sup>61</sup> We address the Court’s findings below.

Section 776(c) of the Act provides that when the Department relies upon secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. “The statute does not prescribe any methodology for corroborating secondary information . . . .”<sup>62</sup> The SAA defines secondary information as “information derived from the petition that gave rise to the investigation or review, the final determination concerning

---

<sup>60</sup> See Attachment.

<sup>61</sup> See *Kam Kiu*, Slip Op. at 22-23.

<sup>62</sup> See *Mittal Steel Galati S.A. v. United States*, 491 F. Supp. 2d 1273, 1278 (CIT 2007) (*Mittal Steel Galati*).

the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>63</sup> The Department considers information to be corroborated if it has probative value,<sup>64</sup> and assesses the probative value of secondary information by examining the reliability and relevance of the information to be used.<sup>65</sup>

In the *Final Results*, as discussed above, the Department applied a hierarchy in calculating the AFA subsidy rate for Kam Kiu. The Department’s reliance on previously calculated subsidy rates for similar programs is a methodology which the Department has employed in numerous CVD proceedings, and which the Court upheld in *Essar Steel III*<sup>66</sup> and other cases, because the subsidy rates used to determine the AFA rate are on par with similar subsidy programs and, therefore not punitive.

As discussed above, the AFA rate applied to Kam Kiu was established using the Department’s standard CVD AFA methodology. The methodology was designed to enable the Department to generate, in a consistent manner across cases, an AFA rate that estimates the benefits an uncooperative company received with respect to the programs that were under examination in a given administrative review or investigation. The AFA methodology the Department employs in CVD proceedings relies on the premise that the behavior of the government (in this case the GOC) with regard to companies investigated in another segment of a same proceeding, or alternatively with regard to companies in another CVD proceeding involving the same country, provides a reasonable estimate of the level of subsidization provided by the government for each program in the case at issue. Moreover, by basing the principle of the CVD AFA methodology on the type of benefit provided under the subsidy programs at issue,

---

<sup>63</sup> See SAA at 870.

<sup>64</sup> *Id.*

<sup>65</sup> See *Mittal Steel Galati*, 491 F. Supp. 2d at 1278.

<sup>66</sup> See *Essar Steel Ltd. v. United States*, 908 F. Supp. 2d 1306, 1312-13 (CIT 2013) (*Essar Steel III*), affirmed by *Essar Steel Ltd. v. United States*, 753 F.3d 1368 (Fed. Cir. 2014) (*Essar Steel IV*).



the Department endeavors to apply only the most relevant information with regard to each particular program. In this case, following the Department's hierarchy, the Department identified subsidy rates for use as AFA rates from the current administrative review as well as other PRC CVD proceedings.

Regarding the explanation required by the Court,<sup>67</sup> we respectfully submit that the AFA rate applied to Kam Kiu meets the standard articulated by the Court with regard to whether Kam Kiu's AFA rate is corroborated. In *Essar Steel II*,<sup>68</sup> the Court ruled that the corroboration standard is set forth in *De Cecco*,<sup>69</sup> stating:

For over a decade the court has applied the *De Cecco* standard to review the reasonableness of Commerce's AFA rate choices in antidumping proceedings. Under that standard the court reviews whether Commerce chose a reasonably accurate estimate of the respondent's actual dumping rate with some built-in increase to deter non-compliance. The *DeCecco* standard would seem to apply in the CVD context as well.<sup>70</sup>

The Department has met this standard because it has explained why the AFA rate assigned to Kam Kiu is a reliable and relevant indicator of a reasonably accurate estimate of Kam Kiu's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance. In particular, the rate is reliable because it was derived from actual subsidy rates calculated for cooperative PRC respondents, and it is relevant because it uses other subsidy rates calculated for the same or similar type of program in the instant or prior segments of the proceeding or other proceedings involving China.

Lastly, after finding that the individual programs and their subsidy rates are corroborated to the extent practicable, it is not the Department's practice to corroborate the final overall aggregate AFA subsidy rate assigned to a non-cooperative respondent, for instance, by

---

<sup>67</sup> See *Kam Kiu*, Slip Op. at 22-23.

<sup>68</sup> See *Essar Steel Ltd v. United States*, 880 F. Supp. 2d 1327, 1331 (CIT 2012) (*Essar Steel II*).

<sup>69</sup> See *F.lli De Cecco Di Filippo Fara S. Martino S.p.A v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*).

<sup>70</sup> See *Essar Steel II*, 880 F. Supp. 2d at 1331 (citing *DeCecco*, 216 F.3d at 1032) (internal citations omitted).

comparing the resulting rate to the rates assigned to the (mostly) cooperative mandatory respondents in this proceeding.<sup>71</sup> We note that the Court in *Essar Steel III* rejected the argument that corroboration must extend beyond the Department's existing practice to account for the aggregate rate:

Therefore, the rates selected are reliable (derived from calculated rates) and relevant (derived from the same type of programs). The aggregated rate (*i.e.*, the sum of the highest above *de minimis* rates for similar programs) is a reasonable approximation of Essar's actual benefit (albeit with some built-in increase to deter non-compliance) given the limited choices available to Commerce in this review.<sup>72</sup>

Although it did not directly address the argument regarding corroboration of the aggregated rate specifically, the Federal Circuit in *Essar Steel IV* agreed that

{b}ecause there were no other independent sources of data on company-specific benefits, Commerce was limited in its ability to corroborate the information used to calculate the AFA rate. Nonetheless, in light of the failure of Essar to cooperate and the reasonably accurate nature of the secondary information that Commerce used under § 1677e(b), Commerce satisfied the requirement of corroborating the 54.68% AFA rate "to the extent practicable."<sup>73</sup>

Although the *Essar Steel* cases contained somewhat different facts (*i.e.*, no cooperative mandatory respondent rate with which to compare the aggregate AFA rate), we find these cases instructive because they recognize that the Department's corroboration analysis in those cases, like its CVD AFA methodology, satisfied the statutory requirement to corroborate to the extent practicable.

Furthermore, we reiterate that the Department's CVD AFA methodology is based on the aggregation of certain programs and corresponding rates in a CVD proceeding. Unlike an AD proceeding where a single rate is calculated for each respondent based on its business practices, a

---

<sup>71</sup> See *Kam Kiu*, Slip Op. at 22 (comparing Kam Kiu's AFA rate to the rates assigned to the mandatory respondents, which were based in part on AFA).

<sup>72</sup> See *Essar Steel III*, 908 F. Supp. 2d at 1311-13 (responding to the argument that "the *Remand Results* explain Commerce's AFA subsidy rate methodology but fail to corroborate the actual rate assigned to Essar.")

<sup>73</sup> See *Essar Steel IV*, 753 F.3d at 1374.

CVD proceeding is based on the analysis of the government's practices with regard to one or more subsidy programs under investigation. Consistent with its methodology for arriving at the overall AFA subsidy rate, the Department conducts its corroboration analysis by appropriately examining each individual CVD program and corresponding rate.

An alternative, or additional corroboration based on the calculated, aggregate subsidy rate would be inapposite to the manner in which the Department arrived at the rate to begin with, and could lead to inaccurate and arbitrary results. For instance, the 79.80 percent AFA rate assigned to Kam Kiu is higher than the rates assigned to the mandatory respondents. However, those lower aggregated program rates for the mandatory respondents reflect a record-based determination that the particular mandatory respondents did not use a number of the programs at issue. Were the Department to find this rate not corroborated by comparison to these lower rates, the Department would be left with no other rate on the record to assign to Kam Kiu than the rate assigned to the (mostly) cooperative mandatory respondents. Thus, the results of such an aggregate rate corroboration practice could lead to an uncooperative party receiving a more favorable result by failing to cooperate than if it had fully cooperated, as it would implicitly include an unsupported determination that the non-cooperative company did not use a number of programs under investigation. Such a scenario would incentivize non-cooperation of companies.

We also note the Court's discussion regarding the differences between CVD cases and AD cases.<sup>74</sup> The Department wishes to clarify a few points in this respect. The Court is correct that in the context of an AD nonmarket economy (NME) case, the Department assigns a single rate to the single NME-government entity and does not distinguish between companies within

---

<sup>74</sup> *Id.*, at 20, fn. 6 (noting that “{i}n the NME AD context, Commerce presumes that all commercial entities are controlled by the state unless they can show lack of control{,}” and that “{e}ntities that do not rebut the presumption of state control receive the dumping rate assigned to the country-wide entity, often based on 19 U.S.C. § 1677e(b).”); *id.* (“Thus, Commerce is required to corroborate the rate with respect to the country-wide entity rather than an individual company. However, in countervailing duty cases Commerce does not make the same presumption of state control and thus must corroborate the rate applied to an individual respondent.”)

the single entity for purposes of corroboration. The Court is also correct that in CVD cases “Commerce calculates net countervailable subsidy rates based in part on the benefit conferred to individual exporters and producers.”<sup>75</sup> However, as discussed above, the AFA methodology the Department employs in CVD proceedings relies on the premise that the observed behavior of the government<sup>76</sup> (in this case the GOC) provides a reasonable estimate of the level of subsidization provided by the government for each program in the case at issue. Thus, in a CVD proceeding, the AFA rate is determined based on the programs being examined during the segment rather than the degree to which mandatory respondents may have participated in one or more of those programs during the period of review. In this respect, a CVD proceeding is different than an AD proceeding, where the Department is examining the pricing behavior of respondents and may, when applying AFA, corroborate the total AFA dumping margin by examining the margins of the cooperative mandatory respondents to determine whether the AFA margin is, in fact, within the range of margins from the cooperative mandatory respondents.<sup>77</sup> There is no equivalent in a CVD proceeding, as there is in an AD proceeding, to compare company transaction rates.

In any event, notwithstanding the above discussion, in light of the Court’s finding that the Department failed to explain why the final AFA rate was related to Kam Kiu, we note that although Kam Kiu’s revised total AFA rate of 79.80 percent is higher than the rates calculated for the cooperative mandatory respondents in the review,<sup>78</sup> the rate is significantly lower than the all others rate of 137.65 percent for this CVD order.<sup>79</sup> Thus, available information supports a

---

<sup>75</sup> *Id.*, at 20.

<sup>76</sup> That is, behavior observed with regard to companies examined in the instant and prior segments of the same proceeding, or alternatively with regard to companies in another proceeding involving the same country.

<sup>77</sup> See *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), and accompanying Issues and Decision Memorandum at Comment 11.

<sup>78</sup> The final rates for the mandatory companies were 1.02 percent and 15.97 percent for 2010, and 1.51 percent and 15.66 percent for 2011. See *Final Results*, 79 FR at 107-8.

<sup>79</sup> See *Aluminum Extrusions from the People’s Republic of China: Notice of Court Decision Not in Harmony With*



conclusion that aluminum extrusion producers can experience levels of subsidization higher than the AFA rate calculated for Kam Kiu in this final remand.

**D. SUMMARY AND ANALYSIS OF KAM KIU'S COMMENTS ON THE DRAFT RESULTS**

**1. *Application of AFA to All Location-Specific Programs***

Kam Kiu states that the Department's redetermination on the location-specific subsidies is consistent with the Court's order and consistent with the agency's statutory duty to corroborate an AFA rate as applied here.<sup>80</sup>

Kam Kiu, however, also argues that the Department's explanation to disregard certain evidence identified by the Court for the purpose of corroboration remains unsupported. In particular, Kam Kiu disagrees with the Department's claims that the company's Q&V response or the separate rate application filed in the AD investigation cannot be used to corroborate Kam Kiu's use of all the location specific subsidies.<sup>81</sup> Kam Kiu also argues that the Department did not explain why the linked exporter/producer rate published in the AD order would not corroborate the fact that the Kam Kiu could not have availed itself of all the location-specific subsidy programs.<sup>82</sup>

Kam Kiu disagrees with the Department's objection to the above-described "evidence" identified by the Court which was based on the premise that the record information would not otherwise inform the Department as to the limits of Kam Kiu's locations and those of any cross-owned affiliates, and that the record was otherwise limited because of Kam Kiu's failure to cooperate. According to Kam Kiu, this conclusion does not support the assumption that Kam

---

*Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination*, 77 FR 74466 (December 14, 2012) (*Timken Notice*).

<sup>80</sup> See Kam Kiu Comments, at 9-10.

<sup>81</sup> *Id.*, at 11-13.

<sup>82</sup> *Id.*, at 13-15.

Kiu availed itself of all subsidies simultaneously. Kam Kiu asserts that, contrary to the Department's arguments, it must corroborate any assumptions and not merely presume, as AFA, that Kam Kiu availed itself of all subsidies provided by the GOC, spanning multiple regions, provinces, and cities in the PRC.<sup>83</sup> Kam Kiu also disagrees with the Department's reliance on *Fengchi* to support the original AFA calculation as corroborated, arguing that the Department did not rely on mere assumptions in that case, like the present case.<sup>84</sup>

Kam Kiu further argues that it is the Department's duty to corroborate secondary information used in the AFA rate and this obligation is not limited to the record compiled by the interested parties. Thus in the present proceeding, the Department's conclusion that the evidence identified by the Court as a means to corroborate the AFA rate applied to Kam Kiu does not provide "corroborate value" does not satisfy the Department's obligation to corroborate.<sup>85</sup>

Lastly, Kam Kiu notes that Department objects to the adjusted AFA rate as "not serving as a deterrent for noncompliance." However, Kam Kiu argues that, contrary to the Department's claim, the revised AFA subsidy rate for Kam Kiu (*i.e.*, 79.80 percent) is higher than the rates calculated for the mandatory respondents and non-individually reviewed companies. Kam Kiu asserts that the Department's adjusted rate, which removes all location-specific subsidy programs that would not be applicable given Kam Kiu's location, is consistent with the Department's requirement to "provide respondents with an incentive to cooperate, while at the same time not to impose punitive, aberrational, or uncorroborated margins."<sup>86</sup>

**Department's Position:** As noted above, Kam Kiu agrees with the Department's adjusted methodology to exclude all location-specific subsidy programs, which, per the Court's

---

<sup>83</sup> *Id.*, at 15-16.

<sup>84</sup> *Id.*, at 16-17.

<sup>85</sup> *Id.*, at 17-18.

<sup>86</sup> *Id.*, at 18-20 (citing *De Cecco*, 216 F.3d at 1032).

reasoning, Kam Kiu could not have benefited from given the company's location based on its mailing address. Kam Kiu states that the Department's redetermination on the location-specific subsidy program is consistent with the Court's order and consistent with the agency's statutory duty to corroborate an AFA rate.

For these final results of redetermination, as explained above, when faced with the Court's options of either using affirmative evidence to corroborate Kam Kiu's ability to benefit from these programs, or changing our methodology, we continue to, under protest and for purposes of this remand only, adjust Kam Kiu's rate to remove all location-specific subsidy programs aside from the programs that Kam Kiu could have used based on the mailing address on the record. As discussed in detail above, to determine Kam Kiu's AFA rate, we considered only subsidy programs administered at the national/central-government level and provincial-government level of Guangdong Province, the province in which Kam Kiu's mailing address is located. Additionally, based on the Court's reasoning, we did not include in the AFA rate any subsidy programs administered by Guangdong Province that were limited to a geographic area that was outside of the area encompassed by Kam Kiu's mailing address. On this basis, we calculated a final revised total AFA rate of 79.80 percent for Kam Kiu.<sup>87</sup>

Lastly, because Kam Kiu agrees with the Department's redetermination on the location-specific subsidies and states that the Department's action is consistent with the Court's order and the statute, we determine that we need not address Kam Kiu's comments on certain evidence, which it claims is reasonably available to the Department, for the purpose of corroboration.<sup>88</sup>

## **2. *Export Rebate for Mechanic, Electronic, and High-Tech Products***

---

<sup>87</sup> See Attachment (identifying the remaining programs that constitute Kam Kiu's AFA rate and the sources of the rates assigned to these programs).

<sup>88</sup> See the discussion of the information at issue on pages 10-16 of this Final Remand.

Kam Kiu argues that that Department makes no attempt to answer the Court's question as to how Kam Kiu could have availed itself of the benefits of this program, which – according to Kam Kiu – on its face, does not apply to Kam Kiu. Rather, the Department simply states that the fact that the mandatory respondents did not use the program in the review was not evidence that Kam Kiu could not have used the program in light of evidence “that another respondent in the underlying investigation used the program.”<sup>89</sup>

Kam Kiu notes that in the underlying investigation, the Department calculated 0.02 percent, a *de minimis* rate, for the respondent that used the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program, based on partial facts available because the GOC had no meaningful information on the program. Kam Kiu argues that, in the final remand results, the Department should no longer attribute 5.5 percent<sup>90</sup> to Kam Kiu for this program.<sup>91</sup>

**Department's Position:** Contrary to Kam Kiu's arguments, for these final results of redetermination, the Department has answered the Court's question on how Kam Kiu could have received benefits from this program. Namely, in the underlying investigation, a respondent reported using this program. Further, as discussed above, the record does not contain information concerning Kam Kiu's use of this program because of Kam Kiu's failure to cooperate in providing requested information to the Department. Thus, in evaluating which programs may be included in Kam Kiu's AFA rate, Commerce reasonably considered that producers of subject aluminum extrusions are eligible for grants under the “Export Rebate for Mechanic, Electronic, and High-Tech Products” program, as evidenced by the Department's finding in the investigation. This, coupled with Kam Kiu's lack of cooperation, leads the

---

<sup>89</sup> See Kam Kiu Comments, at 20-21 (citing Draft Remand, at 18).

<sup>90</sup> For this program, the Department applied an AFA rate of 0.55 percent and not 5.5 percent, as argued in Kam Kiu's comments. See Draft Remand, at Attachment.

<sup>91</sup> See Kam Kiu Comments, at 21-22.



Department to find that it is reasonable to conclude that Kam Kiu, also a producer of aluminum extrusions, could have received benefits under the program. Additionally, we noted that the program is available to those producers of aluminum extrusions located in Guangdong Province, where Kam Kiu is located based on its mailing address.

Further, we addressed the Court's conclusions, and explained that the non-use of the program by two (partially) cooperative mandatory respondents in this administrative review does not detract from a determination that a non-cooperative company could have used the "Export Rebate for Mechanic, Electronic, and High-Tech Products" program. Specifically, we noted that non-use of the program by the two mandatory respondents in this review merely demonstrates that not all subject merchandise producers use the program at issue. However, non-use of the program by the two mandatory respondents does not detract from a finding that a non-cooperative producer of subject merchandise was able to use the program, particularly in light of evidence that another respondent in the underlying investigation used the program. We thus concluded, after considering the evidence for this program, that it is appropriate to make the adverse inference that Kam Kiu could have used this program because the evidence demonstrates that the industry in which Kam Kiu operates is eligible for a grant under the program.

Lastly, because Kam Kiu was non-cooperative in the administrative review, for this program, the Department assigns an AFA rate for this program, which is above *de minimis*, so that the company does not benefit from its lack of cooperation. Contrary to Kam Kiu's statement, in the Draft Remand, the Department did not apply an AFA rate of 5.5 percent for this program, but rather an AFA rate of 0.55 percent, which is the highest calculated rate, in any PRC CVD proceeding, for a grant program.<sup>92</sup>

---

<sup>92</sup> See Draft Remand, at Attachment.

### 3. *Aggregate AFA Rate*

Kam Kiu argues that the Department's position regarding the aggregate AFA rate is unsupported by law and does not comply with the Court's instructions on remand to explain how the final aggregate rate relates to Kam Kiu.<sup>93</sup> Kam Kiu notes that, on this issue, the Department simply states that "it is not the Department's practice to corroborate the final overall AFA subsidy rate assigned to a non-cooperative respondent, for instance, by comparing the resulting rate to the rates assigned to the (mostly) cooperative mandatory respondents in this proceeding."<sup>94</sup> Kam Kiu argues that the Department must corroborate its information to ensure that the aggregate rate—and not just the individual rate for each program—is relevant and reliable. Kam Kiu asserts that the Department can do so by comparing the aggregate rate to the rates calculated for the mandatory respondents. Kam Kiu argues that this approach is reasonable, appropriate, and required by law and by the Court.

Additionally, Kam Kiu argues that the Department cannot rely on the *Essar Steel* cases to support its argument that the aggregate AFA rate as applied to Kam Kiu meets the standard articulated by the Court with regard to corroboration.<sup>95</sup> Kam Kiu states that the Court did not rule on the corroboration of the aggregate AFA rate in those cases, because the respondent failed to exhaust its administrative remedies on the issue.<sup>96</sup>

***Department's Position:*** We disagree with Kam Kiu's arguments. In these final results of redetermination, as discussed above, we explained the Department's finding that the rate applied is a reliable and relevant indicator of a reasonably accurate estimate of Kam Kiu's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance, and therefore

---

<sup>93</sup> See Kam Kiu Comments, at 22-23 (citing *Kam Kiu*, Slip Op. at 22-23).

<sup>94</sup> *Id.* at 22 (citing Draft Remand, at 22).

<sup>95</sup> *Id.*, at 23.

<sup>96</sup> *Id.* (citing *Essar Steel III*, 908 F. Supp. 2d at 1306, 1309, 1311).

meets the standard articulated by the CIT with regard to whether Kam Kiu's AFA rate is corroborated.<sup>97</sup> In particular, the rate is reliable because it was derived from actual subsidy rates calculated for cooperative PRC respondents, and it is relevant because it uses other subsidy rates calculated for the same or similar type of program in the instant or prior segments of the proceeding or other proceedings involving China.

Moreover, we explained that after finding that the individual programs and their subsidy rates are corroborated to the extent practicable, it is not the Department's practice to further corroborate the resulting rate through a comparison to the rates assigned to the (mostly) cooperative mandatory respondents in this proceeding.<sup>98</sup> Contrary to Kam Kiu's assertions,<sup>99</sup> the Court in *Essar Steel III* explicitly addressed and rejected the argument that corroboration must extend beyond the Department's existing practice to account for the aggregate rate:

Therefore, the rates selected are reliable (derived from calculated rates) and relevant (derived from the same type of programs). The aggregated rate (*i.e.*, the sum of the highest above *de minimis* rates for similar programs) is a reasonable approximation of Essar's actual benefit (albeit with some built-in increase to deter non-compliance) given the limited choices available to Commerce in this review.<sup>100</sup>

Although it did not directly address the argument regarding corroboration of the aggregated rate specifically, the Federal Circuit in *Essar Steel IV* agreed that

{b}ecause there were no other independent sources of data on company-specific benefits, Commerce was limited in its ability to corroborate the information used to calculate the AFA rate. Nonetheless, in light of the failure of Essar to cooperate and the reasonably accurate nature of the secondary information that Commerce used under § 1677e(b), Commerce satisfied the requirement of corroborating the 54.68% AFA rate "to the extent practicable."<sup>101</sup>

<sup>97</sup> See *Essar Steel II*, 880 F. Supp. 2d at 1331 (citing *DeCecco*, 216 F.3d at 1032) (internal citations omitted).

<sup>98</sup> See *Kam Kiu*, Slip Op. at 22 (comparing Kam Kiu's AFA rate to the rates assigned to the mandatory respondents, which were based in part on AFA).

<sup>99</sup> See *Kam Kiu* Comments at 23.

<sup>100</sup> See *Essar Steel III*, 908 F. Supp. 2d at 1311-13 (responding to the argument that "the *Remand Results* explain Commerce's AFA subsidy rate methodology but fail to corroborate the actual rate assigned to Essar.")

<sup>101</sup> See *Essar Steel IV*, 753 F.3d at 1374.

We note that although certain arguments were deemed waived and therefore not addressed by the *Essar Steel III* court due to Essar's failure to exhaust its administrative remedies, which was affirmed in *Essar Steel IV*, those findings pertained to different arguments not at issue here.<sup>102</sup>

Furthermore, although the *Essar Steel* cases contained somewhat different facts (*i.e.*, no cooperative mandatory respondent rate with which to compare the aggregate AFA rate), we find these cases instructive because they recognize that the Department's corroboration analysis in those cases, like its CVD AFA methodology, satisfied the statutory requirement to corroborate to the extent practicable.

As discussed above, we reiterate that the Department's CVD AFA methodology is based on the aggregation of certain programs and corresponding rates in a CVD proceeding. An alternative, or additional corroboration based on the calculated, aggregate subsidy rate would be inapposite to the manner in which the Department arrived at the rate to begin with, and could lead to inaccurate and arbitrary results. For instance, the 79.80 percent AFA rate assigned to Kam Kiu is higher than the rates assigned to the mandatory respondents. However, those lower aggregated program rates for the mandatory respondents reflect a record-based determination that the particular mandatory respondents did not use a number of the programs at issue. Were the Department to find this rate not corroborated by comparison to these lower rates, the Department would be left with no other rate on the record to assign to Kam Kiu than the rate

---

<sup>102</sup> See *Essar Steel III*, 908 F. Supp. 2d at 1311 (waiving arguments that "Commerce (1) improperly applied the subsidy rate to the entire value of the finished merchandise; (2) failed to consider whether Essar could simultaneously have benefitted from all the programs at issue; (3) failed to consider that Essar was found to benefit from two programs that purportedly have mutually exclusive eligibility criteria; and (4) failed to consider the purported maximum benefits for certain subsidy programs."); *Essar Steel IV*, 753 F.3d at 1374-75 (affirming that Essar waived its arguments that "Commerce (1) failed to consider whether Essar could have simultaneously benefitted from all nine CIP programs to achieve the aggregate AFA rate; (2) improperly applied the CIP subsidy rate to the finished goods when the subsidy would have benefitted only an upstream component; and (3) failed to consider that certain CIP programs had maximum benefits.").



assigned to the (mostly) cooperative mandatory respondents. Thus, the results of such an aggregate rate corroboration practice could lead to an uncooperative party receiving a more favorable result by failing to cooperate than if it had fully cooperated, as it would implicitly include an unsupported determination that the non-cooperative company did not use a number of programs under investigation. Such a scenario would incentivize non-cooperation of companies. Because of the corroboration approach employed for CVD proceedings, contrary to Kam Kiu's arguments, it would be inappropriate, and make little sense, to corroborate the relevancy and reliability of the aggregate rate by simply comparing it to the rates calculated for the mandatory respondents. As we discussed above, in a CVD proceeding, the AFA rate is based on the programs being examined during the segment rather than the degree to which mandatory respondents may have participated in one or more of those programs during the period of review.

We note that, although Kam Kiu's revised total AFA rate of 79.80 percent is higher than the rates calculated for the cooperative mandatory respondents in the review,<sup>103</sup> the rate is significantly lower than the all others rate of 137.65 percent for this CVD order, indicating that aluminum extrusion producers can experience high levels of subsidization in the PRC.<sup>104</sup>

## **E. CONCLUSION**

Though we respectfully disagree with the Court that the AFA rate applied to Kam Kiu in the *Final Results* was not corroborated to the extent practicable, in light of the Court's ruling,<sup>105</sup> under protest and for purposes of this remand only, we altered the *Final Results* and adjusted Kam Kiu's rate to remove all location-specific subsidy programs aside from programs Kam Kiu could have used based on its mailing address. This action results in a revision of the AFA rate

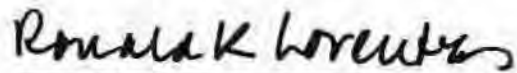
---

<sup>103</sup> The final rates for the mandatory companies were 1.02 percent and 15.97 percent for 2010, and 1.51 percent and 15.66 percent for 2011. See *Final Results*, 79 FR at 107-8.

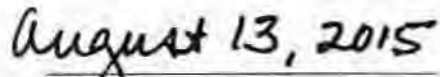
<sup>104</sup> See *Timken Notice*, 77 FR at 74467.

<sup>105</sup> See *Kam Kiu*, Slip Op. at 20.

from 121.22 percent to 79.80 percent. Additionally, we provided further explanations with respect to the "Export Rebate for Mechanic, Electronic, and High-Tech Products" program and the aggregate AFA rate applied to Kam Kiu. We made no other changes to the *Final Results*.



Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

  
Date

## Attachment: Final Remand Calculation of AFA Rate for Kam Kiu

	Subsidy Programs Included in First Administrative Review	Original Subsidy Program Rates Used in the Final Results	Subsidy Program Rates Excluded in Final Remand	Subsidy Program Rates Used in the Final Remand	Subsidy Program Location/Administration Level	Source of AFA Subsidy Program Rate
I	Loan Programs					
1	Policy Loans for Aluminum Extrusion Producers	2.05%		2.05%	National Program	AE Review: Alnan's policy loan rate
2	Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	2.05%	2.05%		Dalian City and 3 Northeastern provinces - Liaoning, Jilin, and Heilongjiang	AE Review: Alnan's policy loan rate
3	Export Seller's Credit	2.05%		2.05%	National Program	AE Review: Alnan's policy loan rate
4	Export Buyer's Credit	2.05%		2.05%	National Program	AE Review: Alnan's policy loan rate
II	Provision of Goods and Services for LTAR					
1	Land-Use Rights in the Liaoyang High-Tech Industry Development Zone	2.55%	2.55%		Liaoyang	OCTG: Provision of Land for LTAR
2	Allocated Land-Use Rights for SOEs	2.55%		2.55%	National Program	OCTG: Provision of Land for LTAR
3	Provision of Primary Aluminum for LTAR	12.19%		12.19%	National Program	AE Review: Alnan's primary aluminum for LTAR rate
4	Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ) for LTAR	2.55%	2.55%		ZHTDZ is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	OCTG: Provision of Land for LTAR
5	Provision of Land-Use Rights to Enterprises Located in the South Sanshui Science & Technology Industrial Park for LTAR	2.55%	2.55%		South Sanshui Science & Technology Industrial Park is located in Foshan City, which is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	OCTG: Provision of Land for LTAR
6	Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City	2.64%	2.64%		Nanhai District is located in Foshan City, which is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Steel Wire: Provision of Electricity
7	Government Provision of Land-Use Rights for LTAR for Enterprises Located in the Yongji Circular Economic Park	2.55%	2.55%		Yongji Circular Economic Park is located in Shanxi Province	OCTG: Provision of Land for LTAR
III	Provisions of Goods and Services for MTAR					
1	Government Purchase of Aluminum Extrusions for MTAR	12.19%		12.19%	National Program	AE Review: Alnan's primary aluminum for LTAR rate
IV	Income Tax Programs				National Program	
1	Two Free, Three Half Tax Exemptions for FIEs	25.00%		25.00%		Corporate Tax Rate
2	Preferential Tax Program for FIEs Recognized as HNTES					Corporate Tax Rate
3	PGOG Tax Offset for Research & Development					Corporate Tax Rate
4	Provincial Tax Exemptions and Reductions for "Productive" FIEs					Corporate Tax Rate
5	Tax Reductions for FIEs Purchasing Chinese-Made Equipment					Corporate Tax Rate
6	Tax Reductions for FIEs in Designated Geographic Locations					Corporate Tax Rate
7	Tax Reductions for Technology- or Knowledge-Intensive FIEs					Corporate Tax Rate
8	Tax Reduction for Export-Oriented FIEs					Corporate Tax Rate
9	Exemption from City Construction Tax and Education Tax For FIEs					Corporate Tax Rate
	Kramet Tax Programs:					
10	Preferential Tax Policies for the Opening and Development of Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region (Local Income Tax Exemption)					Corporate Tax Rate
11	Preferential Tax Program for High or New Technology Enterprises					Corporate Tax Rate
12	Preferential Tax Policies for the Development of Western Regions of China (aka, GoWest Campaign)					Corporate Tax Rate
V	Tax Credit and Tax Rebate Programs					
1	Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment	1.38%		1.38%	National Program	Litric Acid: Income Tax Credits on Purchases of Domestically Produced Equipment
2	Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises	1.51%		1.51%	National Program	CFS Paper: VAT and Tariff Exemptions on Imported Equipment
3	Accelerated Depreciation for Enterprises Located in the Northeast Region	1.51%	1.51%		Northeast Region is Liaoning, Jilin, and Heilongjiang Provinces	CFS Paper: VAT and Tariff Exemptions on Imported Equipment
4	Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China	1.51%	1.51%		Northeast China is Liaoning, Jilin, and Heilongjiang Provinces	CFS Paper: VAT and Tariff Exemptions on Imported Equipment

5	Tax Refunds for Enterprises Located in the ZHTDZ	1.51%	1.51%	ZHTDZ is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	CES Paper: VAT and Tariff Exemptions on Imported Equipment
VI	Other Tax Programs				
1	Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries	1.51%	1.51%	National Program	CES Paper: VAT and Tariff Exemptions on Imported Equipment
2	VAT Rebates on FIE Purchases of Chinese-Made Equipment	1.51%	1.51%	National Program	CES Paper: VAT and Tariff Exemptions on Imported Equipment
3	Refund of Value Added Tax on Products Made through Comprehensive Utilization of Resources	1.51%	1.51%	National Program	CES Paper: VAT and Tariff Exemptions on Imported Equipment
VII	Grant Programs				
1	GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands	0.55%	0.55%	National Program	Wind Towers: Support Funds for Construction of Project Infrastructure (Support Funds)
2	International Market Exploration Fund (SME Fund)	0.55%	0.55%	National Program	Wind Towers: Support Funds
3	Fund for SME Bank-Enterprise Cooperation Projects	0.55%	0.55%	Guangdong Province	Wind Towers: Support Funds
4	Special Fund for Significant Science and Technology in Guangdong Province	0.55%	0.55%	Guangdong Province	Wind Towers: Support Funds
5	Fund for Economic, Scientific, and Technology Development	0.55%	0.55%	Govt of Foshan City program; Foshan City is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
6	Provincial Fund for Fiscal and Technological Innovation	0.55%	0.55%	Guangdong Province	Wind Towers: Support Funds
7	Provincial Loan Discount Special Fund for SMEs	0.55%	0.55%	Guangdong Province	Wind Towers: Support Funds
8	Export Rebate for Mechanic, Electronic, and High-Tech Products	0.55%	0.55%	Guangdong Province or National Export Subsidy Program	Wind Towers: Support Funds
9	PGOG Special Fund for Energy Saving Technology Reform	0.55%	0.55%	Guangdong Province	Wind Towers: Support Funds
10	PGOG Science and Technology Bureau Project Fund (aka, Guangdong Industry, Research, University Cooperating Fund)	0.55%	0.55%	Guangdong Province	Wind Towers: Support Funds
11	Refund of Land-Use Tax for Firms Located in the ZHTDZ	0.55%	0.55%	ZHTDZ is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
12	Labor and Social Security Allowance Grants in Sanshui District of Guangdong Province	0.55%	0.55%	Located in Foshan City, which is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
13	"Large and Excellent" Enterprises Grant	0.55%	0.55%		Wind Towers: Support Funds
14	Advanced Science/Technology Enterprise Grant	0.55%	0.55%		Wind Towers: Support Funds
15	Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing	0.55%	0.55%		Wind Towers: Support Funds
16	Tiaofeng Electric Power Subscription Subsidy Funds	0.55%	0.55%		Wind Towers: Support Funds
17	Award for Excellent Enterprise	0.55%	0.55%		Wind Towers: Support Funds
18	Export Incentive Payments Characterized as VAT Rebates	0.55%	0.55%		Wind Towers: Support Funds
19	PGOG & Foshan City Government Patent and Honor Award Grants	0.55%	0.55%	Foshan City, Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
20	Foshan City Government Technology Renovation & Technology Innovation Special Fund Grants	0.55%	0.55%	Foshan City, Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
21	Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology Research and Development Centers	0.55%	0.55%	Nanhai District is located in Foshan City, in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
22	Exemptions from Administrative Charges for Companies in the ZHTDZ	0.55%	0.55%	ZHTDZ is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
23	State Key Technology Renovation Project Fund	0.55%	0.55%	National Program	Wind Towers: Support Funds
24	Grants to Cover Legal Fees in Trade Remedy Cases in Shenzhen	0.55%	0.55%	Shenzhen is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
25	Clean Production Technology Fund	0.55%	0.55%	NDRC program	Wind Towers: Support Funds
26	Grants for Listing Shares: Liangyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)	0.55%	0.55%	Guangzhou Province, Zhejiang Province, and Fujian Province	Wind Towers: Support Funds
27	Northeast Region Foreign Trade Development Fund	0.55%	0.55%	Northeast provinces program	Wind Towers: Support Funds



28	Nanhai District Grants to High and New Technology Enterprises	0.55%	0.55%		Nanhai District is located in Foshan City, in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park in Taishan, Dajiang	Wind Towers: Support Funds
29	Development Assistance Grants from the ZHTDZ Local Authority <i>Kromet Grant Programs:</i>	0.55%	0.55%		ZHTDZ is located in Guangdong Province; however Kam Kiu is located in the Shiqian Industrial Park	Wind Towers: Support Funds
30	Guangxi Technology R&D Funds	0.55%	0.55%		Guangxi Province	Wind Towers: Support Funds
31	Guangxi Awards for Private Enterprises designated as Pilot Innovation-oriented Enterprises	0.55%	0.55%		Guangxi Province	Wind Towers: Support Funds
32	Special Funds of Guangxi Autonomous Region for Small Highland of Talents	0.55%	0.55%		Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
33	Special Funds of Nanning Municipality for Small Highland of Talents	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
34	Assistances for Science Research and Technology Development Planning Projects of Nanning Municipality	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
35	Supporting Funds of Nanning Municipality for "Informatization-Industrialization Integration" and Development of Information Industry	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
36	Funds for Projects of Science and Technology Professionals serving the Enterprises	0.55%		0.55%		Wind Towers: Support Funds
37	Special Funds of Nanning Municipality for Academic and Technical Leaders of the New Century	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
38	Funds of Nanning Municipality for Technology Innovation	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
39	Funds of Guangxi Autonomous Region for Enterprises' Technology Renovation	0.55%	0.55%		Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
40	Financial Assistance (Interest subsidy) of Nanning Municipality for Key Technology Renovation	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
41	Awards of Nanning Municipality for Advancement of Science and Technology	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
42	Awards of Nanning Municipality for Industrial Enterprises Completing Energy Saving Tasks	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
43	Financial Supporting Funds of Nanning Municipality for Technology Renovation for Production Safety	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
44	Membership Fee Refunds for Members of Mine Rescue Sub-team of Guangxi Emergency and Rescue Association for Production Safety	0.55%	0.55%		Guangxi Province	Wind Towers: Support Funds
45	Assistance for R&D projects under Funds of Nanning Municipality for Foreign Trade Development	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
46	Funds of Nanning Municipality for Sustainable Development of Foreign Trade	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
47	Awards of Guangxi Autonomous Region for Emission Reduction of Main Pollutants	0.55%	0.55%		Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
48	National Funds for the Industry Revitalization and Technology Renovation of the Key Fields	0.55%		0.55%		Wind Towers: Support Funds
49	Funds for Demonstration Bases of Introducing Foreign Intellectual Property	0.55%		0.55%		Wind Towers: Support Funds
50	Special Funds of Guangxi Autonomous Region for Production Safety (Supporting Fund for Eliminating Potential and Seriously Dangerous Projects)	0.55%	0.55%		Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
51	Funds of Nanning Municipality for Project Preliminary Works	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
52	National Funds for Construction of Ten "Key Energy Saving Projects", "Key Demonstration Bases for Recycling Economy and Resource Saving" and "Key Industrial Pollution Control Projects"	0.55%		0.55%	National Program	Wind Towers: Support Funds
53	Funds of Guangxi Autonomous Region for Promotion of Foreign Trade Development of the West Region	0.55%	0.55%		Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
54	Awards of Nanning Municipality for Excellent Foreign Trade Enterprises	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
55	Special Funds of Nanning Municipality for Key Planning Project of Professionals Cultivation	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
56	Special Funds for Projects of National Science and Technology Supporting Plan	0.55%		0.55%		Wind Towers: Support Funds
57	Funds of Guangxi Autonomous Region for Energy Saving and Emission Reduction	0.55%	0.55%		Guangxi Province	Wind Towers: Support Funds
58	Special Funds of Guangxi Beibu Gulf Economic Zone for the Development of Key Industries	0.55%	0.55%		Guangxi Province	Wind Towers: Support Funds
59	Awards of Nanning High-tech Zone for Annual Top Tax Payers of Industrial Enterprises	0.55%	0.55%		Nanning is located in Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
60	Awarding Funds of Guangxi Autonomous Region for Renovation of Energy-Saving Technologies	0.55%	0.55%		Guangxi Zhuang Autonomous Region (in southern China)	Wind Towers: Support Funds
60	National Special Funds for Emission Reduction of Main Pollutants (Assistance for Construction of Automatic Surveillance of Key Pollutant Sources)	0.55%		0.55%	National Program	Wind Towers: Support Funds
	<i>Changzhou Evaporator Grant Programs:</i>					
61	Expanding Production and Stabilizing Jobs Fund of Jiangsu Province	0.55%	0.55%		Jiangsu Province	Wind Towers: Support Funds
62	Technical Standards Awards	0.55%	0.55%		Program of Changzhou Municipality and Xinbei District, Changzhou Municipality of Jiangsu Province	Wind Towers: Support Funds
63	Intellectual Property Reward	0.55%		0.55%		Wind Towers: Support Funds

64	Support for Disabled Persons		0.55%		0.55%	Wind Towers: Support Funds
65	Support for the Tax Refund Difference Program		0.55%		0.55%	Wind Towers: Support Funds
		TOTAL AFA RATE:	121.22%		79.80%	