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Investigation  
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DATE: May 23, 2018

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

FROM: Scot Fullerton  
Director, Office VI  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Determination in the Less-  
Than-Fair Value Investigation of Fine Denier Polyester Staple  
Fiber from India

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## I. SUMMARY

The Department of Commerce (Commerce) finds that fine denier polyester staple fiber (fine denier PSF) from India is, or is likely to be, sold in the United States at less than fair value, as provided under section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

Commerce analyzed the comments submitted by the petitioners<sup>1</sup> and Reliance Industries Limited (RIL). Based on our analysis and findings at verification, we have applied a margin based on adverse facts available (AFA) to RIL, the mandatory respondent in this investigation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

## II. LIST OF ISSUES

- Comment 1: Whether Commerce Should Apply Total Adverse Facts Available
- Comment 2: Whether Commerce Should Apply Partial AFA to Certain Freight Expenses
- Comment 3: Whether Commerce Should Reduce RIL’s Billing Adjustments
- Comment 4: Whether Commerce Should Reject RIL’s Inland Freight to Warehouse
- Comment 5: Whether Commerce Should Reject RIL’s Reported Warranty Expenses

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<sup>1</sup> The petitioners are DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers Inc. (collectively, the petitioners).



- Comment 6: Whether Commerce Should Rely on RIL's Rebate and Commission Fields  
Comment 7: Whether Commerce Should Correct an Error in RIL's Margin Program  
Comment 8: Reliance Artificially Understated the Reported Costs by Reporting Chain Cost and Withholding the Cost Reconciliation in the Form and Manner Requested by Commerce  
Comment 9: Reliance understated the Reported General and Administrative (G&A) Expenses  
Comment 10: RIL Understated the Financial Expenses

### III. BACKGROUND

On January 5, 2018, Commerce published in the *Federal Register* the notice of its affirmative *Preliminary Determination* in this investigation.<sup>2</sup> We conducted the sales verification of RIL in January 2018,<sup>3</sup> and we conducted the cost verification of RIL from February into March 2018.<sup>4</sup>

On February 5, 2018, the petitioners requested a hearing with Commerce.<sup>5</sup> On March 22, 2018, we received case briefs from the petitioners related to sales issues<sup>6</sup> and on April 4, 2018, we received case briefs from the petitioners related to cost issues.<sup>7</sup> On March 27, 2018, we received rebuttal briefs from RIL related to sales issues, and on April 9, 2018,<sup>8</sup> we received rebuttal briefs from RIL related to cost issues.<sup>9</sup> On April 16, 2018, the petitioners withdrew their hearing request.<sup>10</sup>

Based on our analysis of the comments received and our verification findings, for this final determination we have revised the dumping margins for RIL and the all-others companies.

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<sup>2</sup> See *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 662 (January 5, 2018) (*Preliminary Determination*).

<sup>3</sup> See Memorandum: "Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from India: Verification of the Sales Questionnaire Responses of Reliance Industries Limited," dated March 13, 2018 (Sales Verification Report).

<sup>4</sup> See Memorandum: "Verification of the Cost Response of Reliance Industries Limited in the Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from India," dated March 27, 2018 (Cost Verification Report).

<sup>5</sup> See Letter from the petitioners, "Fine Denier Polyester Staple Fiber from India – Petitioners' Request for a Hearing," dated February 5, 2018.

<sup>6</sup> See Petitioners' Sales Case Brief, "Fine Denier Polyester Staple Fiber from India: Petitioners' Case Brief Re Non-Cost Issues," dated March 22, 2018 (Petitioners' Sales Brief).

<sup>7</sup> See Petitioners' Cost Case Brief, "Fine Denier Polyester Staple Fiber from India: Petitioners' Case Brief for Reliance Industries Limited," dated April 4, 2018 (Petitioners' Cost Brief).

<sup>8</sup> See RIL's Sales Rebuttal Brief, "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Rebuttal Brief," dated March 27, 2018 (RIL Sales Rebuttal Brief).

<sup>9</sup> See RIL's Cost Rebuttal Brief, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Rebuttal Brief Regarding Cost Issues," dated April 9, 2018 (RIL Cost Rebuttal Brief).

<sup>10</sup> See letter from the petitioners: "Fine Denier Polyester Staple from India – Petitioners' Withdrawal of Hearing Request," dated April 16, 2018.

#### IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### V. DISCUSSION OF THE ISSUES

##### **Comment 1: Whether Commerce Should Apply Total AFA to RIL**

###### *Petitioners' Comments*

Commerce should base RIL's dumping margin on total AFA, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act) because: 1) RIL failed to reconcile the total quantity and value (Q&V) of its sales to its financial statements; 2) RIL reported sales using the incorrect date of sale; and 3) Commerce discovered that RIL failed to report affiliates, including those involved with the merchandise under consideration. As a result, Commerce is missing a significant amount of information that is necessary to calculate an accurate dumping margin.

Each of the petitioners' alleged bases for applying AFA is discussed more fully below:

##### **A. Quantity and Value Reconciliation**

- Despite being given multiple opportunities to reconcile the Q&V of sales in its financial statements to its general ledger, sales journal, and U.S. and home market sales files, RIL never did so.
- Instead, RIL reconciled the Q&V of its sales to its March 2017 Media Release (its quarterly financial results which are posted to RIL's website and filed with the Security and Exchange Board of India), which contains inter-segment transfers (*i.e.*, transfers from one department to another department within the company). Despite RIL's claim that there were no inter-segment transfers of subject merchandise, record evidence shows that RIL internally transferred subject merchandise to its affiliates for the production of downstream products. RIL never subtracted the inter-segment sales from its sales reconciliation. Thus, its sales reconciliation is materially inadequate and, given its incorrect claim of no inter-segment transfers, Commerce should find

that RIL intentionally mislead Commerce which, on its own, is evidence of a failure to cooperate.

- In *PET Resin from India*, in which RIL was also a mandatory respondent, RIL performed a top-down reconciliation beginning with aggregate sales in its annual report which it adjusted to determine its POI sales.<sup>11</sup> RIL has not explained why it was unable to provide a complete reconciliation in the instant investigation.
- In *Silica from China*, *Geogrid Products from China*, and *CORE from Italy*,<sup>12</sup> Commerce based respondents' dumping margins on AFA because they did not provide accurate, verifiable information concerning their U.S. and home market sales, rendering their responses unreliable.
- Ultimately, RIL's sales reconciliation is inaccurate, unreliable, and not in the form and manner requested. Without a valid and accurate sales reconciliation, Commerce has no basis for accepting RIL's home market and U.S. sales files. In light of the foregoing, Commerce should base RIL's dumping margin on total AFA.

#### B. Date of Sale

- Because RIL reported the wrong date of sale, Commerce does not have the complete universe of sales.
- Although RIL reported invoice date as the date of sale, the record indicates that the terms of RIL's home market and U.S. sales were established before the commercial invoice was issued.
- RIL should have reported the *pro forma* invoice date as the date of sale for its U.S. sales because RIL stated that during the POI, there were no instances of differences in the sales value or volume between the *pro forma* invoice and the commercial invoice.
- At verification, Commerce collected documentation for an export sale indicating that when sales terms change after a *pro forma* invoice is issued, RIL issues a *new pro forma* invoice which dictates the new terms of sale. Thus, for U.S. sales, the date of the *pro forma* invoice (or the revised *pro forma* invoice) is the correct date of sale.
- For home market sales, RIL's shipment documentation indicates that the correct date of sale is the final purchase order date.
- At verification, Commerce observed that when a customer changes the terms of the sale, RIL's SAP system notes the date that the order was changed. Thus, the order date (or changed order date) establishes the material terms of RIL's home market sales.
- Because the correct sale dates for the U.S. and home market sales files are the *pro forma* invoice dates and the order (or change order) date, respectively, Commerce

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<sup>11</sup> See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327, (March 14, 2016).

<sup>12</sup> See *Antidumping Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value, and Final Affirmative Determination of Critical Circumstances*, 82 FR 8399 (January 17, 2017) (*Silica from China*) and accompanying Issues and Decision Memorandum at Comment 1; see *Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 3284, (January 11, 2017) (*Geogrid Products from China*) and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) (*CORE from Italy*) and accompanying Issues and Decision Memorandum at Comment 1.

does not have the correct universe of sales with which to calculate a dumping margin for RIL.

C. Affiliated Parties

- As explained below, RIL significantly impeded this investigation by failing to disclose its affiliates.
  - On multiple occasions prior to verification, Commerce instructed RIL to provide information concerning its affiliates, as defined by the statute, but the company relied on Indian accounting standards and its own financial statements to report affiliated persons. RIL's financial statements do not identify affiliated parties consistent with Commerce's dumping statute.
  - RIL itself conceded that the Indian Accounting Standards do not identify affiliated parties relating to shared officers/directors, partners, employer/employee, two or more parties directly or indirectly controlling, controlled by, or under common control with, any person and any person who controls any other person and such other person.
  - Even though Commerce's statute defines familial relationships as a basis for affiliation, and despite Commerce requesting, in a supplemental questionnaire, that RIL submit information regarding affiliations through the Ambani family, it was only at verification that RIL acknowledged its history of being part of a group of companies (including the Reliance Anil Dhirubhai Ambani Group (RADAG) companies) split between brothers in the Ambani family. Section 773(A) of the Act, defines affiliated parties as 'members of a family.' Despite its claims otherwise, RIL failed to disclose companies in the RADAG group as affiliates.
  - RIL denied any affiliation with one of its freight providers, even though information was obtained at verification showing a member of the board of directors of the freight provider sat on the board of directors of certain RIL subsidiaries.<sup>13</sup> While RIL claimed it did not nominate this director to those boards, Commerce could not verify this claim. RIL had the burden to demonstrate it was not affiliated with the freight provider, especially when the evidence indicated otherwise.
  - RIL failed to cooperate by not acting to the best of its ability, because it simply repeated its claims that it had reported all of its affiliates consistent with Indian accounting standards rather than address Commerce's supplemental questions concerning this issue. RIL withheld information regarding its affiliates' involvement in the development, production, sales, or distribution of the merchandise under consideration.
  - RIL did not provide information that is critical to Commerce's dumping analysis. By failing to report all affiliated parties, RIL did not provide the data necessary for Commerce to conduct its statutorily mandated major inputs and transactions disregarded tests. Commerce does not know all of RIL's affiliated parties, their involvement with the merchandise under consideration, or whether affiliate-provided transactions reflect arm's-length prices. Therefore, Commerce should reject RIL's

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<sup>13</sup> See Memorandum: "Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from India: Proprietary Information Relating to Issues in the Issues and Decision Memorandum," dated concurrently with this notice (BPI Memorandum) at Note 1.

responses in their entirety and rely on total AFA in calculating the dumping margin for RIL in the final determination.

- If Commerce does not assign RIL an antidumping margin based on total AFA, it should increase the material costs to account for the difference between the market price and affiliated-price for crude oil, increase the material and fixed overhead expenses to adjust for affiliated transactions considered business proprietary (BPI), and assign the single highest adjusted cost of manufacturing to all control numbers (CONNUMs) to account for RIL's failure to demonstrate the arm's-length nature of the affiliated-provided power, utilities, purchases of tangible and intangible assets, net loans and advances, revenue from operations other income, purchases/material consumed, electric power, fuel and water, hire charges, employee benefit expense, payment to key managerial personnel/relative, sales and distribution expenses, rent, professional fees, general expenses, donations, *etc.*

#### *RIL's Comments*

- Pursuant to section 776(a) of the Act, application of AFA is warranted only when a party "fails to cooperate" by not acting "to the best of its ability" to comply with a request for information.<sup>14</sup> Commerce has declined to apply AFA in previous cases where, as here, the respondent "timely responded to Commerce's questionnaires and participated in the verification of the submitted information," and where the impact of any missing information was deemed "inconsequential."<sup>15</sup>
- RIL's actions in this investigation do not meet the statutory requirements for the imposition of AFA. RIL has fully cooperated with Commerce's request for information to the best of its ability and its responses have been exhaustively verified by Commerce.

Each of RIL's rebuttal comments, with respect to not applying AFA, is discussed more fully below:

#### A. Quantity and Value Reconciliation

- RIL's Q&V reconciliation is accurate, reliable, in the form and manner requested by Commerce, and has been thoroughly verified by Commerce.
- Due to the complex nature of RIL's operations and small relative size of its petrochemical segment (which produces subject merchandise), RIL based its reconciliation on the audited March 2017 Media Release, which reflects the total 2016 revenue in RIL's audited financial statements, but contains more detailed segment revenue.
- RIL provided a complete reconciliation demonstrating how the audited sales revenue ties to sales of subject merchandise based on segment-specific revenue.
- Commerce fully reconciled RIL's reported sales to its fiscal year 2016-17 financial statements and the March 2017 Media Release, with the exception of revenue of the refining segment, which differed by a small percentage due to rounding.

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<sup>14</sup> Section 776(b)(1) of the Act, as amended by the Trade Preferences Extension Act of 2015 (TPEA), Pub. L. No. 114-27, Title V, § 502(1)(B), 129 Stat. 3839, 2015.

<sup>15</sup> See, e.g., *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea*, 82 FR 16369 (April 4, 2017), and accompanying Issues and Decision Memorandum at Comment 2.

B. Date of Sale

- The commercial invoice date is when all the material terms of sales, which were initially agreed upon in the U.S. *pro forma* invoice (or amended *pro forma* invoice) or home market sales order (or change order) are executed.
- In *Thai Pineapple*, the U.S. Court of International Trade (CIT) noted that “the question is could the {sales} terms be changed, or were they fixed at the time of the initial order.” RIL provided several examples where the terms of sale were altered prior to the issuance of the commercial invoice.
- At verification, Commerce examined revisions to RIL’s sales quantities after preparation of a *pro forma* invoice for a U.S. customer and after issuance of sales orders for two home market sales. These changes to quantity were reflected in the commercial invoice, not the initial sales documents.
- Because the material terms of RIL’s U.S. and home market sales can change up until the commercial invoice date, Commerce should continue to rely on RIL’s reported date of sale for the final determination.

C. Affiliated Parties

- RIL correctly reported all relevant, affiliated companies. RIL reported over 200 different affiliated parties, consistent with Commerce’s definition of affiliation.
- There is no evidence that any RADAG company was relevant to this investigation and there is no substantive issue with respect to other companies owned by the Ambani family. The fact that RIL and RADAG have a non-compete clause is sufficient for RIL to not report the RADAG companies as affiliated.
- The petitioners are aware that RIL is one of the largest companies in India, and they would have known that Mukesh Ambani’s brother, Anil Ambani, owns many companies in the RADAG group when they filed the AD petition for this proceeding.
- RIL addressed affiliation with the RADAG group in its September 29 letter stating that it would only report any companies theoretically affiliated through family relationships, including Mukesh Ambani’s wife, sons, that had anything to do with the sale, production or distribution of subject merchandise. RIL was transparent about its relationships with the Ambani family and Commerce had no follow up questions to this matter.
- The petitioners make unsupported allegations regarding the freight provider in question. Even if one of RIL’s freight providers shares a board member with some of RIL’s subsidiaries (which are not involved in the production of subject merchandise), this does not rise to the level of affiliation, let alone demonstrate control.
- The board member of the freight provider in question is not an employee, officer (e.g., company Secretary), or director of RIL, there is no evidence that this person was placed on the board of RIL’s affiliates by RIL, and RIL was never in any position to exercise restraint over the freight provider or its director. Thus, RIL correctly reported that it is not affiliated with the freight provider.
- The petitioners provided a quotation related to the contract of affreightment (without a citation) and then provided a monograph on the meaning of “contract of affreightment” which is nowhere on the record. There are multiple instances where the petitioners’ citations to the record are simply wrong and their allegations are

nowhere supported by the record. In short, it was on the record that RIL has many transactions with its affiliate companies, as disclosed in its Annual Report. However, such affiliate transactions do not mean that all such transactions were directly related to PSF.

### **Commerce's Position:**

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

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

We have determined that RIL withheld requested information regarding affiliations, failed to provide complete information regarding affiliations within the deadlines established, and provided information regarding affiliations that could not be verified. By not providing Commerce with the necessary information, RIL significantly impeded this proceeding. In section A of the antidumping duty questionnaire, Commerce requested that RIL:

{s}tate whether your company is under “common control” with another person by a third person (*e.g.*, a family group or investor group) and/or whether your company and another person commonly control a third person (*e.g.*, a joint venture). ... If there is such a relationship, describe the nature of the relationship (*e.g.*, ownership percentage, common officers/directors), your business relationship with such company or person and the effect such relationship may have on the development, product, sale and/or distribution of the merchandise under investigation.<sup>16</sup>

In response to this request, RIL reported that “it is not under common control with another person.”<sup>17</sup>

In a subsequent supplemental questionnaire, Commerce request that RIL:

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<sup>16</sup> See Commerce letter, “Antidumping Duty Questionnaire,” dated July 26, 2017, (Antidumping Duty Questionnaire) at A-5.

<sup>17</sup> See letter from RIL, “Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.’s Response to Section A of the Department’s Questionnaire,” dated August 23, 2017 (RIL Section A Response) at 14.



Please provide a chart that lists all of Reliance's affiliated companies under section 771(33) of the Act, including but not limited to ... {t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person ... In addition, please indicate whether the affiliated parties provided any input, services, loans or had any other transaction that directly relates to the development, production, sale or distribution of fine denier PSF (including the exploration and refining of petroleum products up to the production of fine denier PSF).<sup>18</sup>

In response to this request, RIL identified companies that are considered subsidiaries, associates or joint ventures of RIL under Indian accounting standards.<sup>19</sup>

Even though the question regarding affiliates in section A of the questionnaire specifically notes that control could be exercised through a family group, and includes a request for information regarding whether RIL was under common control with other persons, RIL never disclosed the existence of a family group of companies involving RIL. The related follow-up question in the supplemental questionnaire specifically requests that RIL identify all affiliates, as defined in section 771(33) of the Act, including two or more persons (*e.g.*, companies) controlled by any person. It is Commerce's long-standing interpretation of the Act that a family grouping is a "person" under this provision.<sup>20</sup>

The question in Commerce's supplemental section A referenced above makes it clear that the request was not limited to only companies involved with subject merchandise, given that the second part of the request directed RIL to indicate whether any of the parties identified provided "any input, services, loans, or had any other transaction that directly relates to the development, product, sale or distribution of fine denier PSF ...".<sup>21</sup> Thus, Commerce was seeking information regarding any companies that *could* be considered an affiliate, including companies under the common control of a family. Again, RIL did not disclose the existence of a family group of companies involving RIL in response to this supplemental question, thereby preventing Commerce from conducting an analysis on the record with respect to RIL's affiliations.

At verification, while explaining RIL's history, company officials explained that:

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<sup>18</sup> See Commerce letter, "Fine Denier Polyester Staple Fiber from India: Supplemental Section A Questionnaire," dated September 19, 2017 (Supplemental A Questionnaire) at 4.

<sup>19</sup> See letter from RIL, "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Supplemental Section A Questionnaire Response," dated October 10, 2017, (RIL Supplemental A Response) at 9-10.

<sup>20</sup> See, *e.g.*, *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014), and accompanying Issues and Decision Memorandum at Comment 4 ("the Department considers the Kwong family to be 'a person' for purposes of section 771(33)(F) of the Act"); *Structural Steel Beams from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 68 FR 2499 (January 17, 2003), and accompanying Issues and Decision Memorandum at Comment 1 ("the Department considers the Jung Brothers as affiliated persons through their familial relationship").

<sup>21</sup> See Supplemental A Questionnaire at 4.

... RIL had been founded by Dhirubhai Ambani. In 2002, the assets of RIL were given to his two sons, Mukesh Ambani and Anil Ambani. In 2005, the two brothers split the assets of RIL, and Anil Ambani formed a separate company, RADAG, while Mukesh Ambani maintained control of RIL.<sup>22</sup>

This is the first instance in which RIL acknowledged the history of RIL's split or indicated that other Ambani family members controlled companies outside of RIL.

As noted above, section 771(33)(F) of the Act defines affiliated persons as "two or more persons directly, or indirectly controlling, controlled by, or under common control with, any person." Section 771(33) of the Act goes on to explain that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." Section 351.102(a)(3) of Commerce's regulations explains that:

In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; ... The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

Not only do the statute and regulations support Commerce's long-standing practice to consider family groupings to determine whether or not companies are affiliated, but the CIT has affirmed Commerce's interpretation of the law in this regard.<sup>23</sup>

Although RIL claimed, prior to verification, that it was "not under common control with another person,"<sup>24</sup> it never disclosed the splitting of RIL's assets between Anil Ambani and Mukesh Ambani in 2005 or RIL's connection with the RADAG group. Mukesh Ambani is the Chairman and Managing Director of RIL. While details regarding Anil Ambani's position with the RADAG companies are not on the record because RIL did not disclose this group of companies until verification, and Commerce does not collect such new information at verification,<sup>25</sup> RIL claimed at verification that Anil Ambani formed a separate company, RADAG. This suggests that Anil Ambani is also in a position to exercise restraint or direction over the RADAG

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<sup>22</sup> See Sales Verification Report at 4-5.

<sup>23</sup> See, e.g., *Jinko Solar Co. v. United States*, 229 F. Supp. 3d 1333, 1344-45 (CIT 2017) ("nothing precludes Commerce from considering that members of a family unit sit on the boards of two sets of entities as reflecting a potential for manipulation"); *Zhaoqing New Zhongya Aluminum Co. v. United States*, 70 F. Supp. 3d 1298, 1303 (CIT 2015) (finding that, "{i}n cases where affiliation is found on the basis of ownership by a single family, Commerce makes the legitimate choice to treat the family grouping as a 'person' under subsection (F)" and "since the Kwong family grouping controls the companies . . . Commerce's affiliation finding is supported by substantial evidence").

<sup>24</sup> See RIL Section A Response at 14 and RIL Supplemental A Response at 9-10.

<sup>25</sup> See *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 353 F.Supp.2d 1294, 1304 (CIT 2004) ("Verification is intended to test the accuracy of data already submitted, rather than to provide a respondent with an opportunity to submit a new response.") (*Tianjin v. United States*), aff'd, 146 F. App'x 493 (Fed. Cir. 2005); Commerce Verification Outline at 2.

companies. Thus, RIL should have disclosed the RADAG companies in response to Commerce's questionnaire and supplemental questionnaire.

RIL also maintained at verification that none of the companies within the RADAG group were "involved in any business sector pertaining to the production, sale or transportation of PSF."<sup>26</sup> However, RIL's relationship with the RADAG companies needed to be disclosed prior to verification to afford interested parties an opportunity to comment on this matter and to allow Commerce sufficient time to thoroughly investigate any claims that none of the companies in the RADAG group were involved with subject merchandise. At verification, company officials identified eight companies of the RADAG group and provided their areas of operations: Reliance Communications (telecommunications service provider), Reliance Infrastructure (infrastructure company developing projects in high growth structures such as power grids, rail, airport, and defense), Reliance Capital (financial services, asset management and mutual funds), Reliance Power (private sector power generation – develop construct, and operate power projects), Mumbai Metro (commuter transportation services for the Mumbai metropolitan area), Reliance Roads (roads and infrastructure development), Reliance Defense Engineering (defense infrastructure and shipbuilding), and Reliance Big Entertainment, (entertainment and motion picture group).<sup>27</sup>

During verification, we examined the financial statements of two of the eight companies within the RADAG group looking for any indication of involvement with fine denier PSF and found that each of these companies had numerous subsidiaries.<sup>28</sup> Therefore, we could not limit our examination to merely considering whether the operations described above indicated any possible involvement with subject merchandise, but we also needed to consider the operations of any subsidiaries of these companies.<sup>29</sup> Information about Anil Ambani and the RADAG companies was presented for the first time at verification and at that point there was not enough time to fully examine the operations of all of the companies within the RADAG group. Our examination of the subsidiaries was limited to a review of their names in an attempt to determine whether their names provided any indication of possible involvement (including providing movement services) with subject merchandise.<sup>30</sup> Although we did not find such indications based on the company names of the subsidiaries, due to time constraints we were only able to conduct a cursory review of the subsidiaries' names, which was insufficient to support RIL's claims that none of the companies within the RADAG group were involved with subject merchandise, particularly given that the names of companies do not necessarily convey the nature of a company's operations.

Based on the foregoing, we have concluded that RIL's failure to disclose the existence of the RADAG companies and their relationship with RIL demonstrates that RIL withheld necessary requested information regarding affiliations; failed to provide complete information regarding affiliations within the deadlines established; significantly impeded this proceeding; and provided information regarding affiliations that could not be verified. Specifically, RIL's disclosure of the

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<sup>26</sup> See Sales Verification Report at 5

<sup>27</sup> *Id.* at 4-5.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

RADAG companies for the first time at verification precluded Commerce from fully confirming their relationship with RIL and satisfactorily verifying RIL's claims that these companies were not involved in the production, sale, or transportation of fine denier PSF.

Moreover, RIL also withheld requested information regarding possible affiliation with a freight provider; failed to provide complete information regarding its relationship with this freight provider within the deadlines established; provided information regarding its relationship with the freight provider that could not be verified, and thus further significantly impeded this proceeding. The petitioners placed information on the record indicating that a member of the board of directors of one of RIL's freight providers was also on the board of directors of four RIL subsidiaries.<sup>31</sup> In light of this information, we sought information regarding RIL's relationship with the freight provider in question through multiple questions over a number of supplemental questionnaires. In a supplemental questionnaire dated October 20, 2017, we asked “{d}id RIL have any affiliated companies that provided it with freight services during the POI?”<sup>32</sup> RIL responded by reporting that it “has not received freight services from any affiliated entity with respect to the merchandise under investigation during the POI.”<sup>33</sup> In its November 20, 2017, response to the petitioners' pre-preliminary determination comments, RIL stated that the director in question, “is not an employee of Reliance.”<sup>34</sup> RIL continued to argue in this response that even if one of the directors of the freight provider “also has some connection with Reliance,” it “is not proof of affiliation between the two companies.”<sup>35</sup>

Although RIL had documentation demonstrating the precise connection between RIL's subsidiaries and the director in question, RIL did not disclose this detailed information in its response.<sup>36</sup> On December 14, 2017, four days before the preliminary determination was issued, RIL again responded to the petitioners' comments regarding its potential affiliation with the freight provider. In its response, RIL maintained that the “{p}etitioners have made several allegation{sic} which are misleading. They have relied in part in unauthenticated sources (quoting social media and personal publication platforms like LinkedIn).”<sup>37</sup> In that response,

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<sup>31</sup> See letter from the petitioners, “Fine Denier Polyester Staple Fiber from India – Petitioners' Comments on the Supplemental Section A Questionnaire Response of Reliance Industries,” dated October 25, 2017 at Attachment 1; see also letter from the petitioners, “Fine Denier Polyester Staple Fiber from India – Petitioners' Comments Concerning Reliance's Second Supplemental Sections B and C Response,” dated December 8, 2017, at Attachment 1.

<sup>32</sup> See Commerce letter, “Fine Denier Polyester Staple Fiber from India: Supplemental Sections B and C Questionnaire,” dated October 20, 2017, (RIL Supplemental B and C Questionnaire) at 7.

<sup>33</sup> See letter from RIL, “Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Supplemental Sections B&C Questionnaire Response,” dated November 7, 2017 (RIL First Supplemental B and C Response) at 24.

<sup>34</sup> See letter from RIL, “Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Response to Petitioners' Letter of November 14, 2017,” dated November 20, 2017, (RIL Comments on Preliminary Determination) at 3.

<sup>35</sup> *Id.*

<sup>36</sup> See Verification Exhibit 25.

<sup>37</sup> See letter from RIL, “Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Rebuttal Comments on Petitioners' Letter Dated December 8, 2017,” dated December 14, 2017 (RIL's Preliminary Determination Rebuttal Comments) at 2.

RIL repeated its prior claims regarding any potential relationship with the freight provider in question and contended that:

“the information supplied by Petitioners merely suggest {sic} that there may be some overlap of directors in certain Reliance companies – some of which are not even related to the {sic} Reliance Industries Limited – the actual respondent in this investigation.”<sup>38</sup>

Once again, although RIL had documentation demonstrating the precise connection between RIL’s subsidiaries and the director in question,<sup>39</sup> RIL did not disclose this detailed information. Rather, RIL questioned the relevance and veracity of the petitioners’ information by characterizing the information as merely suggesting that there *may* be overlap of directors and even then, RIL claimed that any overlap relates to some companies not related to RIL.<sup>40</sup>

In a supplemental questionnaire dated November 21, 2017, Commerce asked whether RIL is affiliated with the freight provider under section 771(33) of the Act.<sup>41</sup> In response, RIL reported the reasons why it claimed it is not affiliated with the freight provider under any of the definitions of affiliated persons in section 771(33) of the Act.<sup>42</sup> To address the petitioners’ claim that a board member of one of RIL’s freight providers was also on the board of directors of four RIL subsidiaries, we specifically asked RIL in the November 20, 2017, supplemental questionnaire, “{d}o RIL, or any of the companies wholly or partially owned by RIL, have shareholders, directors, or officers who are also either shareholders, directors, or officers of {the freight provider}?”<sup>43</sup> RIL responded “No.”<sup>44</sup> As we discovered for the first time at verification, that response is incorrect.

At verification, Commerce officials specifically requested that RIL provide a list of board members for the four RIL subsidiaries that the petitioners alleged shared a board member with the freight provider.<sup>45</sup> RIL provided documentation that confirmed that the individual named as a board member of the freight provider was on the board of directors of those subsidiaries.<sup>46</sup> Given the record evidence regarding the freight provider, the information collected at verification directly contradicts RIL’s statement that its subsidiaries did not share directors with the freight provider. RIL claims that it did not nominate this individual to the board of directors of its subsidiaries and that the individual served as a director for those companies solely in a professional capacity, but RIL did not produce any evidence to substantiate these claims.

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<sup>38</sup> *Id.* at 4.

<sup>39</sup> See Verification Exhibit 25.

<sup>40</sup> RIL’s Preliminary Determination Rebuttal Comments at 3-4.

<sup>41</sup> See Commerce letter, “Fine Denier Polyester Staple Fiber from India: Supplemental Sections B and C Questionnaire,” dated November 21, 2017, (Second Supplemental B and C Questionnaire) at 5.

<sup>42</sup> See letter from RIL, “Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.’s Second Supplemental Sections B&C Questionnaire Response,” dated November 30, 2017 (RIL Second Supplemental B and C Response) at 11.

<sup>43</sup> See Second Supplemental B and C Questionnaire at 5-6.

<sup>44</sup> See RIL Second Supplemental B and C Response at 11.

<sup>45</sup> See Sales Verification Report at 6; see also Verification Exhibit 25.

<sup>46</sup> See Verification Exhibit 25.

Moreover, whether or not RIL nominated this individual to the board of directors of its subsidiaries or whether this individual served on the boards of those companies in a professional capacity is not germane to the fact that RIL stated that none of its subsidiaries shared a director with the freight provider, which was proven to be incorrect.

While RIL asserts that the existence of a shared director between the freight provider and RIL's subsidiaries does not indicate it is affiliated with the freight provider, it was not until verification that Commerce found that RIL did not accurately disclose the facts regarding this relationship and at that point it was too late for Commerce to collect new factual information and thoroughly examine the nature of the relationship. Verification affords Commerce the opportunity to assess the validity of the facts that are already on the record, not to collect new information.<sup>47</sup> While Commerce preliminarily did not find RIL affiliated with the freight provider in question solely based on the petitioners' claims regarding shared directors, given the absence of any further information regarding this relationship at the time of the *Preliminary Determination*, Commerce's preliminary position was taken after RIL denied the existence of any shared directors in response to a direct supplemental question on this point. The existence of a shared director needed to be disclosed prior to verification to afford interested parties an opportunity to comment on this matter and to allow Commerce sufficient time to thoroughly investigate this relationship involving RIL owned companies and the freight provider and completely understand the facts surrounding the relationship to evaluate RIL's reasons why it claims it is not affiliated with the freight provider. However, as demonstrated above, RIL withheld requested information regarding possible affiliation with a freight provider in its questionnaire responses, failed to provide complete information regarding its relationship with this freight provider within the deadlines established, and provided information regarding its relationship with the freight provider that could not be verified.

However, we disagree with the petitioners' position regarding RIL's Q&V reconciliation and the correct date of sale. The petitioners contend that RIL's Q&V reconciliation is inaccurate and unreliable because RIL reconciled the reported sales to sales revenue which reflects inter-segment sales (*i.e.*, transfers of goods from one RIL business segment to another) without demonstrating that the reported sales do not include inter-segment sales. However, record evidence, which is proprietary, demonstrates that is not the case.<sup>48</sup> Additionally, record evidence, which was supported at verification, demonstrates that the material terms of sale can, and do change, after the *pro forma* invoice and purchase order dates. Thus, there was an expectation that sales terms remain negotiable and are subject to change after the *pro forma* invoice was issued and a purchase order was entered into RIL's system; therefore, RIL properly reported its sales using the earlier of invoice date or shipment date, consistent with Commerce's practice.<sup>49</sup>

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<sup>47</sup> See *Tianjin v. United States* at 1304.

<sup>48</sup> See BPI Memorandum at Note 2.

<sup>49</sup> See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comment 7 ("The mere presence or likelihood of changes to quantity and unit price after the internal purchase order and the fact that new internal purchase orders are sometimes issued as a consequence of such changes indicates that internal purchase order date (or revised internal purchase order date) does not reflect the date upon which the material terms of sale are "finally" and "firmly" established.");

Nevertheless, as noted above, RIL's failure to timely disclose complete information regarding potential affiliations calls into question the accuracy and completeness of all of its reporting. The fact that after petitioners raised concerns with respect to one party, a freight provider, and Commerce discovered after issuing questions and analyzing the relationship of that freight provider with RIL that RIL had not accurately report its relationship with that single known party suggests that RIL's claims with respect to other affiliations may also not be accurate. RIL claimed at verification that none of the numerous companies in the RADAG group are involved with (including the shipping of) subject merchandise, but how is Commerce expected to believe such an unsubstantiated claim when the issue was never discussed or provided to Commerce in response to its relevant questionnaires?

As we have explained, due to time constraints at verification resulting from RIL's reporting failures, we were unable to analyze and consider the nature and activities of the numerous RADAG subsidiaries. We certainly cannot conclude based on RIL's verified facts that those subsidiaries in the family grouping were or were not involved with subject merchandise. If, in fact, just some of those subsidiaries were involved in the production of inputs of subject merchandise, the sale of subject merchandise, or the export of subject merchandise, not having those companies' data on the record would undermine our analysis and prevent us from calculating an accurate antidumping margin.

It was vital to the conduct of this investigation that RIL thoroughly and accurately provide information regarding potential affiliates in order to ensure that all sales, selling and distribution expenses, and costs were accurately and completely reported. Therefore, for the foregoing reasons, we have determined to base RIL's dumping margin on the facts otherwise available. RIL's failure to provide this amount of information to Commerce is significant and could impact all of our calculations if any of the numerous RADAG subsidiaries were shown to be involved in the production of subject merchandise inputs, or the sale or export of subject merchandise. Accordingly, we do not believe the use of facts available to only part of RIL's calculations is

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*Certain Cold-Rolled Steel Flat Products from India: Final Determination of Sales at Less Than Fair Value*, 81 FR 49938 (July 29, 2016) and accompanying Issues and Decision Memorandum at Comment 2 ("The fact that the sales terms did change after the initial contract date, and at times there were multiple revisions to the terms of the contracts, indicates that even after the last revision to the contract there was an expectation that the terms of sale could change. Hence, the record shows that the sales terms remained negotiable, even after the date of the last contract revision, and were not finally established until the sale was invoiced."); *Thai Pineapple Canning Industry Corp., Ltd., and Mitsubishi International Corp. v. United States*, Slip Op. 00-17 (CIT February 10, 2000) (*TPC v. United States*) at 6 "the question is could the terms be changed, or were they fixed at the time of the initial order," where there is evidence "that the terms could be changed and were changed in some instances," there is "no reason for Commerce to abandon its presumption" of the use of invoice date as the appropriate date of sale; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Malaysia*, 65 FR 81825 (December 27, 2000) and accompanying Issues and Decision Memorandum at Comment 2 ("Although {the respondent} emphasizes that order confirmation/contract date is the date on which the material terms of sale are established, the Department ascertained at verification that changes and adjustments were made to a significant portion of U.K. sales after the order confirmation/contract date, including changes in price and terms... Such changes and adjustments suggest that the material terms of sale for sales to the U.K. market are not necessarily established at confirmation/contract date, but rather remain alterable by the parties.").

logical or appropriate. Instead, the application of “total” facts available is warranted under sections 776(a)(1) and (2)(A), (C) and (D) of the Act.

Next, we turn to the question of whether it is appropriate to use an adverse inference when selecting from among the facts otherwise available, pursuant to section 776(b) of the Act.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>50</sup>

The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the failure to act to “the best of its ability” provision, stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”<sup>51</sup> Further, the “best of its ability” standard requires the respondent to do the maximum that it is able to do.<sup>52</sup> The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.<sup>53</sup> Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.<sup>54</sup> The CAFC further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>55</sup>

Section 776(b)(2) of the Act states that use of an adverse inference when selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.<sup>56</sup> Section 776(d) of the Act states that Commerce may apply any dumping margins from these sources, including the highest of such dumping margins, based on its evaluation of the situation that resulted in using an adverse inference in selecting from among the facts otherwise available.<sup>57</sup>

The SAA explains that Commerce may use an adverse inference when selecting from the facts otherwise available “to ensure that the party does not obtain a more favorable result by failing to

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<sup>50</sup> See section 776(b)(1)(B) of the Act.

<sup>51</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* (citing *Nippon Steel* at 1380).

<sup>54</sup> *Id.* (citing *Nippon Steel* at 1382).

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

<sup>56</sup> See also 19 CFR 351.308(c).

<sup>57</sup> See sections 776(d)(1)(B) and 776(d)(2) of the Act.



cooperate than if it had cooperated fully.”<sup>58</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may use an adverse inference when selecting from the facts available.<sup>59</sup>

Commerce provided RIL with multiple opportunities to identify any potential affiliates, including the existence of a family group of companies involving RIL, and to explain the nature of its relationship with one of its freight providers. Despite this, RIL stated that it had reported its affiliates based on Indian accounting standards, did not disclose the RADAG family group of companies involving RIL, and denied any overlap of directors with the freight provider in question, which was shown to be false based on the record evidence. RIL claims that it was transparent about its relationships with the family group (Ambani family) because it specifically informed Commerce it would only report any companies theoretically affiliated through family relationships that had anything to do with the sale, production or distribution of subject merchandise. However, this claim relates to only one specific supplemental question regarding any members of the Ambani family who may have held management or director positions at RIL. While RIL argued that it should be able to restrict its response to this question to only companies that are involved with subject merchandise and it requested that Commerce modify the question by limiting it to such companies, Commerce never modified the question. It is Commerce, and not RIL, which determines the information necessary to conduct the proceeding before the agency.<sup>60</sup>

Moreover, as noted above, in another supplemental question, Commerce specifically asked RIL to identify all of its affiliates, as defined in section 771(33) of the Act, including two or more persons (*e.g.*, companies) controlled by any person. In this question, Commerce clearly indicated that the request was not limited to only companies involved with subject merchandise, given that the second part of the request directed RIL to indicate whether any of the parties identified provided “any input, services, loans, or had any other transaction that directly relates to the development, product, sale or distribution of fine denier PSF ....” Yet, RIL never disclosed the existence of the RADAG companies prior to verification and directly indicated that none of RIL’s subsidiaries shared a director with the freight provider, a claim which was directly refuted by the record evidence.

We conclude that complete and correct information relevant to Commerce’s inquiries was available to RIL as evidenced by the information finally provided at verification. This indicates that RIL did not provide the maximum efforts that it could have done to provide Commerce with full, complete, and accurate answers to its inquiries regarding affiliation. Therefore, we have concluded that RIL failed to cooperate by not acting to the best of its ability to comply with Commerce’s requests for information. This is consistent with the CAFC’s conclusion that

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<sup>58</sup> See Statement of Administrative Action (SAA), H.R. Doc. 103-316, 103d Cong., 2d Session, vol 1 (1994) (SAA) at 870.

<sup>59</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>60</sup> See *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1361 (Fed. Cir. 2017).

inadequate inquiries to respond to agency questions may be sufficient to find that a respondent did not act to the best of its ability.<sup>61</sup>

In selecting a rate based on the facts otherwise available with adverse inferences, Commerce typically selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>62</sup> In less-than-fair-value investigations, Commerce's general practice with respect to the assignment of a rate as AFA is to assign the higher of either the highest dumping margin alleged in the petition or the highest calculated dumping margin of any respondent in the investigation.<sup>63</sup> In this investigation, we have selected the petition dumping margin of 21.43 percent as the AFA rate applicable to RIL.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>64</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>65</sup> The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>66</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>67</sup> Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.<sup>68</sup>

The selected AFA rate is derived from the Petition<sup>69</sup> and, consequently, is based upon secondary information. Hence, we must corroborate the rate to the extent practicable. During our pre-initiation analysis, we determined that the dumping margin in the Petition was reliable where, to

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<sup>61</sup> See *Nippon Steel* at 1380.

<sup>62</sup> See SAA at 870.

<sup>63</sup> See *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 20.

<sup>64</sup> See also 19 CFR 351.308(d).

<sup>65</sup> See SAA at 870.

<sup>66</sup> *Id.*; see also 19 CFR 351.308(d).

<sup>67</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>68</sup> See section 776(d)(1) - (2) of the Act.

<sup>69</sup> See *Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam – Petition for the Imposition of Antidumping and Countervailing Duties*, dated May 31, 2017 (Petition).

the extent appropriate information was available, we reviewed the adequacy and accuracy of that information.<sup>70</sup>

Specifically, we examined evidence supporting the calculations in the petition and consider that analysis to establish the probative value of the dumping margin alleged in the Petition for use as AFA for this determination. During our pre-initiation analysis, we examined the key elements of the alleged dumping margin calculation (*i.e.*, export price (EP) and normal value (NV)).<sup>71</sup> Our analysis included examining information from various independent sources provided either in the Petition or, upon our request, in supplements to the Petition that supports key elements of the EP and NV calculation used to derive the dumping margin alleged in the Petition.<sup>72</sup>

Based on our examination of the information, as discussed in detail in the India AD Initiation Checklist, we consider the petitioners' EP and NV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the U.S. price and NV calculations provided in the Petition, based upon our examination of the aforementioned information, we consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin alleged in the Petition by examining source documents and publicly available information, we determine that the dumping margin alleged in the Petition is reliable for the purposes of this investigation.

In making a determination as to the relevancy aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a dumping margin not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA dumping margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party. Because there are no other participating cooperative respondents in this investigation, we relied upon the dumping margin alleged in the Petition, which is the only information regarding the PSF industry reasonably at our disposal. Furthermore, we determine the Petition rate to be relevant because it is derived from information about prices and accounting methodologies used in the PSF industry.

Accordingly, we determine that the dumping margin alleged in the Petition has probative value, and we have corroborated the AFA rate of 21.43 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant.<sup>73</sup>

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<sup>70</sup> See AD Investigation Initiation Checklist regarding, "Fine Denier Polyester Staple Fiber from India," dated June 20, 2017 (Initiation Checklist).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> See section 776(c) of the Act and 19 CFR 351.308(c) and (d); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

## Other Comments:

The petitioners and RIL raised a number of other issues listed below. However, because we have applied total AFA with respect to RIL, these issues are moot:

- Comment 2: Whether Commerce Should Apply Partial AFA to Certain Freight Expenses
- Comment 3: Whether Commerce Should Reduce RIL's Billing Adjustments
- Comment 4: Whether Commerce Should Reject RIL's Inland Freight to Warehouse
- Comment 5: Whether Commerce Should Reject RIL's Reported Warranty Expenses
- Comment 6: Whether Commerce Should Rely on RIL's Rebate and Commission Fields
- Comment 7: Whether Commerce Should Correct an Error in RIL's Margin Program
- Comment 8: Reliance Artificially Understated the Reported Costs by Reporting Chain Cost and Withholding the Cost Reconciliation in the Form and Manner Requested by Commerce
- Comment 9: Reliance understated the Reported General and Administrative (G&A) Expenses
- Comment 10: RIL Understated the Financial Expenses

## VI. RECOMMENDATION

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



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

5/23/2018

X



Signed by: GARY TAVERMAN

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