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November 17, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results in the
Antidumping Duty Administrative Review of Fine Denier
Polyester Staple Fiber from India; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting this administrative review of the antidumping duty (AD) order on fine denier polyester staple fiber (fine denier PSF) from India, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is January 5, 2018 to June 30, 2019. The administrative review covers one exporter of the subject merchandise, *i.e.*, Reliance Industries Limited (RIL). Commerce has preliminarily assigned a dumping margin to RIL, based upon the application of adverse facts available (AFA).

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results of review. Unless the deadline is extended pursuant to section 751(a)(3)(A) the Act, we will issue the final results of review no later than 120 days after the publication of these preliminary results of review.

II. BACKGROUND

On July 20, 2018, Commerce published in the *Federal Register* an AD order on fine denier PSF from India.¹ On July 1, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the orders, findings, or suspended

¹ See *Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan: Antidumping Duty Orders*, 83 FR 34545 (July 20, 2018) (*Order*).



investigations with anniversaries in July 2019, including the AD order on fine denier PSF.² On July 17, 2019, Reliance Industries Limited (RIL) requested that Commerce conduct an administrative review of its entries/shipments during the POR.³ We received no other requests for administrative reviews. On September 9, 2019, Commerce initiated the requested review.⁴

Between September 2019 and June 2019, Commerce issued questionnaire and supplemental questionnaires to RIL.⁵ Between October 2019 and July 2019, RIL timely responded to those questionnaires, and DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers Inc. (the petitioners) commented on those responses.⁶

On March 18, 2020, Commerce extended the deadline for issuing the preliminary results of this review from April 1, 2020 to July 30, 2020.⁷ On April 24, 2020, and July 21, 2020, Commerce tolled all deadlines in administrative reviews by 50 days and 60 days respectively, thereby extending the deadline for these preliminary results of review until November 17, 2020.⁸

III. SCOPE OF THE *ORDER*

The product covered by the *Order* is fine denier polyester staple fiber (fine denier PSF), not carded, 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:

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 31295 (July 1, 2019).

³ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India – Reliance Industries Limited Request for Administrative Review", dated July 17, 2019.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019).

⁵ See Commerce's Letter RIL dated September 16, 2019 (Commerce's September 16, 2019 AD Questionnaire); see also Commerce's Letters RIL "Fine Denier Polyester Staple Fiber from India: Supplemental Sections A, B, and C Questionnaire", dated February 12, 2020 (Commerce's February 12, 2020 SABCQ); "Fine Denier Polyester Staple Fiber from India: Supplemental Section D Questionnaire," dated February 20, 2020 (Commerce's February 20, 2020 SDQ); and "Fine Denier Polyester Staple Fiber from India: Second Supplemental Sections A, B, C and D Questionnaire," dated June 9, 2020 (Commerce's June 9, 2020 2nd SABCDQ).

⁶ See RIL's October 18, 2019 Section A Questionnaire Response (RIL's October 18, 2019 AQR); November 8, 2019 Sections B-D Response (RIL's November 8, 2019 BCDQR); February 26, 2020 Supplemental Section ABC Questionnaire Response (RIL's February 26, 2020 SABCQR); March 9, 2020 Supplemental Section D Questionnaire Response (RIL's March 9, 2020 SDQR); June 29, 2020 Second Supplemental Section A-D Questionnaire Response (RIL's June 29, 2020 2nd SABCDQR I); and July 2, 2020 Second Supplemental Section A-D Questionnaire Response (Questions 36, 37, and 39) (RIL's July 2, 2020 2nd SABCQR II); see also Petitioners' November 4, 2019, Section A Questionnaire Response Comments; December 4, 2019, Section B-C Questionnaire Response Comments; December 18, 2019, Section D Questionnaire Response Comments; March 16, 2020, Supplemental Section A-C Questionnaire Response Comments; April 21, 2020 Supplemental Section D Questionnaire Response Comments; and July 16, 2020 Second Supplemental Section A-D Questionnaire Response Comments.

⁷ See Memorandum, "Antidumping Duty Administrative Review of Fine Denier Polyester Staple Fiber from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 18, 2020.

⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020; see also Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

(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 *Order* is dispositive.

IV. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding, or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

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

We preliminarily determine that necessary information is not available on the record because RIL withheld information requested by Commerce and failed to provide such information by the deadlines for submission of the information. Thus, RIL significantly impeded the proceeding.

Specifically, despite repeated requests, RIL withheld documentation required for its sales reconciliation, did not report control numbers (CONNUMs) as requested by Commerce, and withheld information requested by Commerce to determine whether it properly reported all of its affiliated parties.

First, Commerce requested RIL to provide its fiscal year trial balances multiple times.⁹ RIL withheld fiscal year trial balances which are required for the first step in the sales and cost reconciliations. According to RIL, its fiscal year trial balances were not available and instead it provided a cost of goods sold (COGS) report that included its general ledger; however, a trial balance is a listing of accounts and their closing balances as of a certain date which must be completed before a company prepares its financial statements.¹⁰ The record demonstrates that RIL already prepared 2017-2018 and 2018-2019 financial statements; thus, it should have had trial balances for these fiscal years.¹¹ Because RIL did not provide these fiscal year trial balances, and the COGS report that was provided does not tie to the Profit and Loss Statements, Commerce is missing the necessary information to tie the sales revenue from RIL's Profit and Loss Statement to RIL's reconciliation worksheet.¹² Without a complete reconciliation, Commerce cannot confirm that the sales and costs reported in the financial statements have been fully and accurately accounted for in RIL's U.S. sales, home market (HM) sales and cost databases, respectively.

Second, RIL reported CONNUMs that are inconsistent with Commerce's instructions. Specifically, despite repeated requests, RIL reported CONNUM codes for Fiber Type that do not conform to Commerce instructions.¹³ Commerce utilizes CONNUMs to match U.S. sales with home market sales for determining dumping margins and for accumulating the appropriate costs for specific products. Without accurate CONNUMs, Commerce cannot accurately match sales and calculate an accurate dumping margin. Commerce has no means of determining the correct Fiber Type codes for U.S. sales and HM sales and for purposes of identifying CONNUMs for cost reporting.

Third, RIL withheld information regarding companies in a family grouping. Although RIL provided a list of companies in which certain family members were directors or held key management positions,¹⁴ it failed to provide a list of the names of family members that own five percent or more of a company or business operation and the names of such companies despite repeated requests.¹⁵ RIL's statement in response to Commerce's requests that such individuals

⁹ See Commerce's September 16, 2019 AD Questionnaire at D-12; *see also* Commerce's February 20, 2020 SDQ at 3; *see also* Commerce's June 9, 2020 2nd SABCDQ at 8.

¹⁰ See RIL's June 29, 2020 2nd SABCDQR I at 13.

¹¹ See RIL's October 18, 2019 AQR at Exhibit A-14.

¹² See RIL's October 18, 2019 AQR at Exhibit A-14; *see also* RIL's February 26, 2020 SABCDQR at Exhibit 40; *see also* Memorandum, "Proprietary Information for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fine Denier Polyester Staple Fiber from India; 2018-2019," dated concurrently with this memorandum (BPI Memorandum) at Note 1.

¹³ See RIL's November 8, 2019 BCDQR at Exhibit COP DATA – Connum wise summary cost; *see also* RIL's July 2, 2020 2nd SABCDQR II at 1-4; *see also* BPI Memorandum at Note 2.

¹⁴ See RIL's February 26, 2020 SABCDQR at Exhibit SUP1-4.4 and Exhibit SUP1-4.5.

¹⁵ See RIL's February 26, 2020 SABCDQR at 3; *see also* RIL's June 29, 2020 2nd SABCDQR I at 1.

do not own five percent or more of RIL was not responsive to the question asked by Commerce.¹⁶ Therefore, RIL withheld requested information.

Consistent with section 782(d) of the Act for each of the above deficiencies where Commerce determined that the response to its request for information did not comply with the request, it informed RIL of the nature of the deficiency and provided RIL with an opportunity to remedy or explain the deficiency. Commerce requested that RIL report certain trial balances multiple times.¹⁷ In its initial AD questionnaire, Commerce instructed RIL how to report CONNUMs and the product characteristic Fiber Type.¹⁸ After RIL incorrectly reported its CONNUMs, specifically Fiber Type, Commerce notified RIL of this and gave it an opportunity to correct its CONNUMs by following Commerce's initial instructions.¹⁹ RIL did not fully correct its CONNUMs in response to Commerce's request. Commerce asked RIL twice to provide a list of the names of RIL's chairman and managing director's family members that own five percent or more of a company or business operation and the names of such companies.²⁰

In accordance with section 782(e) of the Act, we have not considered the submitted information because it either cannot be verified and is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Without the trial balance, the reconciliations are incomplete and cannot be fully verified through record evidence. Without accurate CONNUMs, we do not have a reliable basis for matching U.S. sales with home market sales and properly accumulating costs in order to reach the applicable determination. Without the information requested regarding companies owned by family members, the record regarding potential affiliated parties is incomplete. Commerce must identify all affiliates of RIL to determine whether there are affiliated party sales, and to determine whether the appropriate sales expenses and production costs have been reported. This information is important for Commerce's analysis. Without an accurate determination of the entire universe of affiliated parties, or complete information supporting a respondent's claims that it has reported all of its affiliated parties, the record does not provide a reliable basis for reaching the applicable determination.

Hence, we preliminarily find that necessary information is not available on the record because RIL withheld information requested by Commerce, despite repeated requests, and failed to provide such information by the deadlines for submission of the information. Thus, RIL significantly impeded the proceeding. Therefore, we preliminarily find, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act, that the use of facts available is warranted.

Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from the facts

¹⁶ See RIL's June 29, 2020 2nd SABCDQR I at 1.

¹⁷ See RIL's November 8, 2019 BCDQR at 130; *see also* RIL's March 9, 2020 SDQR at 2; and RIL's June 29, 2020 2nd SABCDQR I at 13.

¹⁸ See Commerce's September 16, 2019 AD Questionnaire at B-9 and C-8.

¹⁹ See Commerce's June 9, 2020 SABCQ at 10-11.

²⁰ See RIL's February 26, 2020 SABCQR at 3; *see also* RIL's June 29, 2020 2nd SABCDQR I at 1.

otherwise available.²¹ In doing so, Commerce is not required to determine, or make any adjustments to, estimated dumping margins based on any assumptions about information an interested party had complied with the request for information.²² In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.²⁴ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.²⁵

The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the meaning of failure to act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”²⁶ Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.²⁷ 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.²⁸ Hence, 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 a segment of a proceeding.²⁹

We preliminarily find that RIL has not acted to the best of its ability to comply with Commerce’s requests for information pursuant to section 776(b) of the Act because it withheld its fiscal year trial balances which were requested multiple times, did not follow Commerce’s instructions in reporting CONNUMs, and withheld information regarding family companies despite multiple requests from Commerce for such information. As noted above, we believe that trial balances for a number of fiscal years overlapping the POR should have been available to RIL. In addition, Commerce provided RIL with specific instructions regarding how to report CONNUMs and specifically requested corrections to certain CONNUMs; nevertheless, RIL failed to fully comply

²¹ See also 19 CFR 351.308(a); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²² See section 776(b)(1)(B) of the Act.

²³ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

²⁴ See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); *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); and *Preamble*, 62 FR at 27340.

²⁵ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum (IDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

²⁶ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

²⁷ *Id.*

²⁸ *Id.* at 1380.

²⁹ *Id.* at 1382.

with these requests. Furthermore, RIL did not provide the information requested by Commerce regarding companies owned by family members. Therefore, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), we preliminarily determine to use an adverse inference when selecting from among the facts otherwise available.

Preliminary Estimated Weighted-Average Dumping Margin Based on AFA

Pursuant to section 776(b)(2) of the Act, when employing an adverse inference Commerce may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.³⁰ In selecting a rate based on AFA, Commerce 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.³¹ Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated rate of any respondent in the proceeding.³² Thus, consistent, with Commerce's practice, we have selected the dumping margin of 21.43 percent from the final determination from the LTFV investigation as the AFA rate for RIL.³³

Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."³⁴ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information used has probative value.³⁵ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an "alleged commercial reality" of the party.³⁶ Finally, under section 776(d) of the Act, Commerce may use

³⁰ See 19 CFR 351.308(c).

³¹ See SAA at 870.

³² See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

³³ See *Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24737 (May 30, 2018).

³⁴ See SAA at 870; see also 19 CFR 351.308(c)(1).

³⁵ *Id.*; see also 19 CFR 351.308(d).

³⁶ See section 776(d)(3) of the Act; see also, 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*

any dumping margin from any segment of an antidumping proceeding when applying an adverse inference, including the highest of such margins.³⁷

However, pursuant to section 776(c)(2), Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. Because the 21.43 percent rate was applied in a separate segment of this proceeding (it was applied as AFA to RIL in the investigation in this proceeding) Commerce need not corroborate that rate in this review.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results of review.

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Agree

Disagree

11/17/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

³⁷ See section 776(d)(1)-(2) of the Act.