



A-533-875
Administrative Review
POR: 01/05/2018 - 06/30/2019
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May 24, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

We analyzed comments submitted by interested parties in the above-referenced administrative review covering the sole mandatory respondent, Reliance Industries Limited (RIL), and recommend continuing to base RIL's dumping margin on total adverse facts available (AFA).¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments from interested parties:

Comment 1: Whether Commerce Should Continue to Apply Total AFA

- A. Reconciliations
- B. CONNUMs
- C. Affiliations

II. BACKGROUND

The Department of Commerce (Commerce) published the *Preliminary Results* on November 23, 2020, in accordance with section 751(a)(1)(B) of the Tariff Act of 1920, as amended (the Act).² The period of review (POR) is January 5, 2018, through June 30, 2019. In accordance with 19

¹ See *Fine Denier Polyester Staple Fiber from India: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 74688 (November 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Preliminary Results*.

CFR 351.309(c)(1)(ii), we invited interested parties to comment on the *Preliminary Results*.³ On December 30, 2020, RIL filed comments⁴ on the *Preliminary Results*, which the petitioners⁵ rebutted on January 6, 2021.⁶

On March 16, 2021, Commerce extended the deadline for issuing the final results of this review from March 23, 2021 to May 24, 2021.⁷

III. SCOPE OF THE ORDER

The product covered by the order 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 the order is dispositive.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Continue to Apply Total AFA

In the *Preliminary Results*, Commerce based RIL's dumping margin on total AFA due to missing information required to reconcile reported sales and cost information to the company's records, inaccurate reporting of control numbers (CONNUMs), and missing information regarding potential affiliates. We have addressed the parties' arguments regarding each of these bases for applying total AFA in separate sections below. First, however, we consider the statutory framework for applying AFA.

³ See *Preliminary Results* at 74689.

⁴ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Case Brief," dated December 30, 2020 (RIL's Case Brief).

⁵ Auriga Polymers Inc., DAK Americas LLC, and Nan Ya Plastics Corporation, America (collectively, the petitioners).

⁶ See Petitioners' Letter, "Fine Denier Polyester Staple Fiber from India: Petitioners' Rebuttal Brief," dated January 6, 2021 (Petitioners' Rebuttal Brief).

⁷ See Memorandum, "Fine Denier Polyester Staple Fiber from India: Extension of Deadline for Final Results of Antidumping Duty Administration Review," dated March 16, 2021.

Application of Total 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 if 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 in the form and manner requested upon a prompt notification by that party that it 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(d) of the Act states that if Commerce “determines that a response to a request for information ... does not comply with the request,” it “shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews ...”

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.

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 the facts otherwise available.⁸ In so doing, Commerce is not required to determine, or make any adjustments to, estimated dumping margins based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁹ 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

⁸ See 19 CFR 351.308(a); see also *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).

⁹ See Section 776(b)(1)(B) of the Act.

cooperate than if it had cooperated fully.”¹⁰ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹¹

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”¹² Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.

Hence, the best-of-its-ability standard requires a respondent to put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a proceeding.¹³ The Federal Circuit indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the “best of its ability standard” does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹⁴ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.¹⁵ In addition, a failure to act to the best of one’s ability can be due to “either a willful decision not to comply or behavior below the standard for a reasonable respondent.”¹⁶

A. Reconciliations

RIL’s Comments

- Commerce should not apply total AFA based on the alleged lack of information regarding the sales and cost reconciliations.¹⁷
- RIL’s sales databases reconcile to its 2018-2019 audited financial statements.¹⁸
- RIL’s sales reconciliation is sufficiently detailed and complete with various supporting financial records including the audited financial statements, quarterly final results, general ledger (GL) summaries, and sales register entries.¹⁹
- RIL’s cost reconciliation is also complete and accurate. RIL reconciled its cost database

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

¹¹ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

¹² *Id.*

¹³ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1359 (CIT 2003) (*China Steel*) (quoting *Steel Auth. Of India, Ltd. v. United States*, 149 F. Supp. 2d 921, 930 (CIT 2001)).

¹⁴ *Id.*; see also *Nippon Steel*, 337 F.3d at 1382.

¹⁵ *Id.*

¹⁶ See *China Steel* 264 F. Supp. 2d 1339, 1359 (CIT 2003) (quoting *Steel Auth. Of India, Ltd. v. United States*, 149 F. Supp. 2d 921, 930 (CIT 2001)).

¹⁷ See RIL’s Case Brief. at 6.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 3-5.

to its 2018-2019 audited financial statements. The cost reconciliation is entirely verifiable.²⁰

Petitioners' Comments

- Commerce should apply total AFA because RIL impeded the proceeding and withheld its trial balances on three different occasions.²¹
- Trial balances are a key element of Commerce's determination as to the completeness and accuracy of U.S. sales, home market (HM) sales, and cost databases. RIL had to tie its audited financial statements to its trial balances and then to subsequent accounting ledgers and journals to be able to verify the databases.²²
- RIL failed to provide its fiscal year trial balances in response to three requests from Commerce and misled Commerce regarding the availability of its trial balances.²³
- RIL's claim that its 2018-2019 trial balance was not available cannot be accurate, since trial balances must be completed before the final set of financial statements can be finalized and the audit report signed. RIL's 2018-2019 annual report includes audited financial statements; therefore, the trial balances should have been available and should have been submitted.²⁴
- Despite RIL's claim that it provided a detailed description of how it reconciled sales revenue from its audited 2018-2019 financial statements to its sales database, it did not provide the fiscal year trial balances.²⁵
- RIL cannot substitute the cost of goods sold (COGS) report for the fiscal year trial balance. The COGS report does offer sufficient information to be tied to the Profit and Loss Statements and, therefore, RIL's databases cannot be accepted.²⁶
- Without the fiscal year trial balance, 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, HM sales, and cost databases, respectively.²⁷

Commerce's Position:

We disagree with RIL. Despite multiple requests, RIL did not provide its fiscal year trial balances to support the reconciliations.²⁸ It is important for the sales and costs reconciliations to

²⁰ *Id.* at 5-6.

²¹ *See* Petitioner's Rebuttal Brief at 5.

²² *Id.* at 4, 5.

²³ *Id.* at 5.

²⁴ *Id.* at 6-8.

²⁵ *Id.* at 7.

²⁶ *Id.*

²⁷ *Id.* at 8-9.

²⁸ *See* Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Questionnaire Sections A, B, C and D," dated September 16, 2019 (Commerce's September 16, 2019 AD Questionnaire) at D-12; *see also* Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Supplemental Section D Questionnaire," dated February 20, 2020 (Commerce's February 20, 2020 SDQ) at 3; Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Second Supplemental Section A-D Questionnaire," dated June 9, 2020 (Commerce's June 9, 2020 2nd SABCDQ) at 8; RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Sections B-D Response," dated November 8, 2019 (RIL's November 8, 2019 BCDQR) at 130; RIL's Letter, "Fine

be properly supported with accounting records because Commerce uses those reconciliations to determine the reliability of the reported sales and costs data. According to RIL, its fiscal trial balances were not available; 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.²⁹ 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.³⁰ While RIL provided a cost of goods sold (COGS) report instead of the requested trial balances, the COGS report does not have enough information to tie it to RIL's Profit and Loss Statement.³¹

The trial balances are not the only information that RIL failed to provide to support its reconciliations. There are deficiencies in the record with respect to both the sales and cost reconciliations, as discussed below.

In order to reconcile sales figures from the POR financial statements to the sales databases, in the AD questionnaire Commerce requested that RIL provide worksheets, supporting documents (such as excerpts from the general ledger), computer programs used to identify the reported sales, and a detailed narrative explanation of how the worksheets and documentation tie together.³² In response to this request, RIL simply provided worksheets without any supporting accounting records, other than certain screenshots from its system, or any narrative explanation. Without the requested narrative explanation and support accounting records, Commerce is unable to make sense of the provided worksheets and screenshots. Moreover, the worksheets and screenshots that RIL provided did not demonstrate how its financial statements reconciled to the databases. Specifically, RIL did not provide a narrative explanation of how the figures in the worksheets and the screenshots tie together and how they reconcile to the financial statements and the sales databases. Furthermore, RIL did not provide an explanation of, or source documentation showing, how it separately identified sales of subject merchandise from sales of non-subject merchandise. Thus, RIL's reconciliations for its home market and U.S. sales were deficient.

Given the deficiencies and unclear information in the reconciliations in RIL's original questionnaire response, Commerce provided RIL another opportunity to submit the requested information. In the first supplemental questionnaire, Commerce requested the following:

RIL's home market (HM) and U.S. sales reconciliations do not reconcile company records with the home market sales database (HM Sales) and U.S. sale database (U.S.

Denier Polyester Staple Fiber from India: Reliance Industries Limited's Supplemental Section D Questionnaire Response," dated March 9, 2020 (RIL's March 9, 2020 SDQR) at 2; RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Second Supplemental Section A-D Questionnaire Response," dated June 29, 2020 (RIL's June 29, 2020 2nd SABCDQR I) at 13; and *Preliminary Results* PDM at 4.

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

³⁰ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Section A Questionnaire Response," dated October 18, 2019 (RIL's October 18, 2019 AQR) at Exhibit A-14.

³¹ See RIL's October 18, 2019 AQR at Exhibit A-14; see also RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Supplemental Section ABC Questionnaire Response," dated February 26, 2020 (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 November 17, 2020 (Preliminary BPI Memorandum) at Note 1.

³² See Commerce's September 16, 2019 AD questionnaire at A-3.

Sales), respectively . . . Please prepare and provide one sales reconciliation worksheet for HM Sales and a separate worksheet for U.S. Sales that each reconcile RIL's total POR sales quantities and values from the audited annual financial statements to the general ledger to the sales ledger to subject and non-subject merchandise, to the appropriate market and then to the respective sales databases. In the worksheet, identify each adjustment and support all quantities and values with copies of the lowest level ledger or journal form RIL's normal books and records, or other source documents.³³

In response to this request, RIL provided an Exhibit which is a compilation of much of the same worksheets already provided and a few additional worksheets with no narrative explanations and no supporting source documents.³⁴ Once again, RIL's response did not tie the figures shown in its exhibit to the financial statement and to the sales databases. Hence, its responses with respect to the sales reconciliation continued to be deficient.

With respect to the cost reconciliation, in the AD questionnaire, Commerce requested that RIL provide summary trial balances for the POR and fiscal year, along with a series of worksheets reconciling the following items: (1) all items on the fiscal year audited income statement (*e.g.*, revenues, cost of sales, selling and administrative expenses, and non-operating expenses) to total costs in the financial accounting system (*i.e.*, the summary trial balance); (2) financial accounting system fiscal year costs to POR cost of sales; (3) POR costs of sales to total POR costs in the cost accounting system; (4) total POR costs in the cost accounting system to total POR cost of manufacturing (COM); and (5) total POR COM to the total costs reported to Commerce.³⁵ In response to this request, RIL provided its COGS report and an Exhibit called "COP DATA" in which it provided worksheets.³⁶ RIL's COGS report is an Excel spreadsheet with various accounting codes and balances. RIL did not provide a narrative description of a step-by-step reconciliation, nor did it explain how the figures in the worksheets tie together and how they tie to the financial statements and the cost database. RIL never explained how it generated the COGS report or whether this was a document used in its cost accounting system in the normal course of business. Thus, RIL's cost reconciliation was deficient.

Given the deficiencies in the cost reconciliation that RIL provided in response to the AD questionnaire, in a supplemental questionnaire Commerce requested that RIL submit a cost reconciliation that contained all of the elements requested in the AD questionnaire.³⁷ In response to this request, RIL submitted exhibits that contained various worksheets with no narrative explanation and no supporting documentation; thus, Commerce was unable to understand RIL's cost reconciliation.³⁸

Given the deficiencies in the cost reconciliation that RIL provided in response to the first supplemental questionnaire, in a second supplemental questionnaire, Commerce requested that

³³ See Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Supplemental Sections A, B, and C Questionnaire," dated February 12, 2020 (Commerce's February 12, 2020 SABCQ) at 11.

³⁴ See RIL's February 26, 2020 SABCQR at 21-22 and Exhibits 40-41.

³⁵ See Commerce's September 16, 2019 AD questionnaire at D-12.

³⁶ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Sections B-D Response," dated November 8, 2020, (RIL's November 8, 2020 BCDQR) at 130, Exhibits D-C-3, and COP DATA.

³⁷ See Commerce's February 20, 2020 SDQ at 3.

³⁸ See RIL's March 9, 2020 SDQR at 2-4.

RIL: (1) provide its 2018-2019 fiscal year trial balances; (2) provide a reconciliation of all items on its fiscal year audited income statement to its financial accounting system, and (3) describe and quantify each reconciling item.³⁹ RIL responded that it had already provided its cost reconciliation and that its trial balances were not yet available.⁴⁰ Commerce was unable to follow RIL's cost reconciliation as it was not clear how the figures in the worksheets tie together and how they reconcile to the financial statement. Hence, RIL's cost reconciliation continued to be deficient.

RIL's only narrative explanation of its sales and cost reconciliations is in its case brief.⁴¹ Providing an explanation at such a late stage in the proceeding deprived Commerce of an opportunity to supplement any deficiencies in the explanation in order to fully understand the reconciliations. For example, RIL explained that the value of sales from its Profit and Loss Statement reconciles with page 1 of Exhibit B-IV, which appears to be a worksheet.⁴² RIL did not explain how the information in Exhibit B-IV was obtained, how it ties the financial statements to the financial accounting system, and how the financial accounting systems ties to the sales database. RIL points to Exhibit B-IV to claim that its "sales reconciliation is extremely detailed and complete with various financial records including the audited financial statements, quarterly financial results, GL summaries, and sales register entries."⁴³ Exhibit B-IV, however, simply contains a worksheet. Contrary to RIL's claim, we do not find its reconciliation to be detailed and complete without identification of the specific normal books and records from which it obtained specific figures in the worksheets, a clear explanation of what the figures and adjustments represent, sufficient support documentation, and a detailed step-by-step explanation of how the worksheets demonstrate that it reconciled its financial statements to its financial accounting system and to its sales databases. Also, RIL never explained how it separately identified subject from non-subject merchandise sales, or which items were excluded from the sales revenue on the Profit and Loss statement to reconcile to the sales revenue reported in the sales databases.

Additionally, RIL claimed in its brief that it provided a detailed cost reconciliation in Exhibit SUP-D-1-4.3, and general ledger excerpts and screenshots in Exhibit SUP-D-1-4.2 which show how every cost element reconciles to the cost database. However, neither in its questionnaire response, supplemental questionnaire responses, nor in its brief, did RIL explain how the figures in Exhibit SUP-D-1-4.2 tie to the cost reconciliation, or explain how the figures in the cost reconciliation tie to the cost database. Prior to the case brief, RIL's discussion of its U.S. and HM sales and cost reconciliations was limited. The extent of the discussion was mainly to point to the respective Exhibits, B-IV, C-4, D-C-3 and Exhibit SUP-D-1-4.3.⁴⁴ It is not clear how the worksheets in these Exhibits were generated and RIL failed to provide appropriate explanations and supporting source documentation.

³⁹ See Commerce's June 9, 2020 2nd SABCDQ at 8.

⁴⁰ See RIL's June 29, 2020 2nd SABCDQR I at 13.

⁴¹ See RIL's Case Brief at 3-6.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See RIL's November 8, 2020 BCDQR at 6, 49, and 130; *see also* RIL's March 9, 2020 SDQR at 25.

Without support documentation and complete explanations of the reconciliations, 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, HM sales, and cost databases, respectively. Therefore, RIL's sales and cost databases cannot be accepted and a dumping margin cannot be calculated.

Hence, pursuant to section 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, the use of facts available is warranted. Necessary information is missing from the record because it was withheld by RIL and thus not provided in a timely manner which significantly impeded the proceeding. Specifically, RIL withheld the narrative explanations and supporting documentation requested and required for its reconciliations.

Pursuant to section 782(d) of the Act, Commerce notified RIL of the missing information and provided it with opportunities to provide the information which it failed to do. Accordingly, we have not considered what was provided pursuant to section 782(e) of the Act, because without the missing information, the reconciliations are incomplete and cannot be fully verified through record evidence.

Lastly, because RIL failed to respond to multiple requests to provide necessary information to support, and fully explain, its sales and cost reconciliations, and there is no credible information on the record indicating that the appropriate support documentation was not available, pursuant to section 776(b) of the Act, we find that RIL failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information. Therefore, the application of total AFA is appropriate. As total AFA, we have continued to assign RIL a dumping margin of 21.43%, which is the total AFA rate that we assigned to RIL in the *Preliminary Results*.

B. CONNUMs

RIL's Comments

- RIL reported CONNUMs pursuant to Commerce's instructions.⁴⁵
- RIL did not redefine "virgin inputs" when developing its CONNUMs but considered virgin inputs to include RIL's plant's intermediates/by-products/production waste from virgin materials,⁴⁶ and not from recycled or regenerated materials (such as consumer products).⁴⁷ This interpretation of "virgin inputs" is reasonable, is not a redefinition,⁴⁸ and is consistent with Commerce's definition of "virgin inputs" in its questionnaire.
- In the investigation of *Certain Polyester Staple Fiber from Taiwan*, Commerce accepted the respondent's interpretation of "virgin inputs" as including small amounts of waste that are generated at different production stages.⁴⁹

⁴⁵ See RIL's Case Brief at 7.

⁴⁶ *Id.* at 8.

⁴⁷ *Id.* at 8-9.

⁴⁸ *Id.* at 7.

⁴⁹ *Id.* at 9-10 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan*, 65 FR 16877 (March 30, 2000) (*Certain Polyester Staple Fiber from Taiwan*), and accompanying Issues and Decision Memorandum at Comment 4).

- In *Certain Polyester Staple Fiber from Taiwan*, Commerce did not apply AFA because it determined that the reporting methodology used would not prevent reasonable model matches or the implementation of the sales below-cost test.⁵⁰
- RIL applied its interpretation of virgin inputs uniformly to create CONNUMs consistently for all of its PSF production and sales. Therefore, there is no CONNUM matching issue preventing Commerce from comparing like products and calculating a dumping margin.⁵¹
- Commerce must be consistent with *Certain Polyester Staple Fiber from Taiwan* and not apply AFA based on RIL's CONNUM construction.⁵²
- Moreover, there is no gap in the record. RIL's cost data includes detailed information about the type and value of every raw material input used and can be easily verified.
- RIL acted to the best of its ability to provide complete and accurate information regarding its CONNUM construction; hence, Commerce did not meet the statutory requirements for applying AFA to RIL.⁵³

Petitioners' Comments

- Commerce correctly applied total AFA to RIL because it reported inconsistent CONNUMs, withheld requested information, failed to provide such information by the deadlines for submission of the information, and significantly impeded the proceeding.⁵⁴
- Regardless of RIL's interpretation of "virgin inputs," Commerce notified RIL that its interpretation was wrong, and it identified several other issues with the fiber type codes, not all of which stem from RIL's interpretation of "virgin inputs. Therefore, RIL's failure to accurately report its CONNUMs cannot be explained by its interpretation of the term "virgin inputs."⁵⁵
- RIL's failure to revise its CONNUM reporting after being notified by Commerce to do so, demonstrates that RIL withheld information and failed to cooperate.⁵⁶
- In *Prosperity Tieh Enter. Co.*, the Federal Circuit rejected the respondents' methodology for reporting product characteristics which deviated from Commerce's instructions. Similarly, Commerce should reject RIL's methodology for reporting fiber type which deviates from Commerce's instructions.⁵⁷
- While RIL repeated the questions to which it was responding in its questionnaire response, it conspicuously omitted Commerce's instructions regarding fiber type in its section B and C questionnaire responses. By doing so, if it was not willfully impeding Commerce's review of the questionnaire responses, it negligently impeded such a review.⁵⁸

⁵⁰ *Id.* at 10.

⁵¹ *Id.* at 11.

⁵² *Id.* at 9-10.

⁵³ *Id.* at 11-13.

⁵⁴ See Petitioner's Rebuttal Brief at 9, 10.

⁵⁵ *Id.* at 10.

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* at 11-12.

⁵⁸ *Id.* (citing *Prosperity Tieh Enter. Co. v. United States*, 865 F.3d 1320 (Fed. Cir. 2020) (*Prosperity Tieh Enter. Co.*))

- *Certain Polyester Staple Fiber from Taiwan* is a twenty-year-old case that involves a different product and a different country from those here. As the Federal Circuit explained, each investigation is *sui generis*. Therefore, this case does not establish a practice that Commerce must follow.⁵⁹ Moreover, unlike RIL, in *Certain Polyester Staple Fiber from Taiwan*, the respondent corrected its reporting after being notified of its error.⁶⁰
- RIL's claim that Commerce should not rely on AFA because its reporting was consistently erroneous throughout its response, and that it acted to the best of its ability is wrong. It is inappropriate for Commerce to use partial AFA when RIL failed to report consistent, accurate and verifiable CONNUMs which means that Commerce cannot rely on RIL's sales or cost databases.⁶¹

Commerce's Position:

We disagree with RIL. There are several deficiencies in RIL's CONNUM reporting. Thus, consistent with the *Preliminary Determination*, we find that RIL failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information.⁶²

Despite Commerce's repeated requests, RIL did not follow Commerce's definition of virgin inputs when coding fiber type. In the instructions for reporting fiber type codes in the AD questionnaire, Commerce explained that virgin materials do not include recycled materials, such as polyethylene terephthalate flakes from recycled plastic bottles, or regenerated material inputs, such as fiber and filament waste and scrap polyester material.⁶³ RIL claimed that it reported fiber type as instructed by Commerce.⁶⁴ However, by including recycled materials in its classification of virgin materials it did not follow Commerce's instructions.⁶⁵

In its June 9, 2020, Supplemental Section A-D Questionnaire, Commerce explained that RIL used an incorrect definition of virgin inputs and gave it an opportunity to correct its fiber type codes and CONNUM reporting.⁶⁶ In response, RIL acknowledged that it misreported the fiber type when pet flakes were consumed, but RIL only corrected a few CONNUMs that were impacted by its misreporting.⁶⁷ RIL failed to fully follow Commerce's instructions and continued to use its own definition of virgin inputs which includes, among other things, "waste of virgin PSF of production."⁶⁸ RIL failed to address all of the other CONNUMs that were misreported.

⁵⁹ *Id.* at 13, 14.

⁶⁰ *Id.*

⁶¹ *Id.* at 14-16.

⁶² See *Preliminary Results PDM* at 4; see also *Preliminary BPI Memorandum* at Note 2.

⁶³ See Commerce's September 16, 2019 AD Questionnaire at B-9 and C-8.

⁶⁴ See RIL's November 8, 2019 BCDQR at 10, 54.

⁶⁵ *Id.* at Exhibit COP DATA – CONNUM wise summary cost.

⁶⁶ See Commerce's June 9, 2020 Second SABCDQ at 10-11.

⁶⁷ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Response to Second Supplemental Sections A-D Questionnaire Response (Questions 36, 37 and 39)," dated July 2, 2020 (RIL's July 2, 2020 2nd SABCDQR II) at 1-3.

⁶⁸ *Id.*

Commerce uses CONNUMs to match U.S. sales with HM 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.

RIL contends that it applied its interpretation of virgin inputs uniformly; thus, there is no CONNUM matching issue.⁶⁹ We disagree with this assessment of the facts. There are instances where inputs consist of chips (master batch for coloring), popcorn and waste, which, according to RIL's definition, are all virgin inputs, but RIL did not report the fiber type as being 100% virgin inputs.⁷⁰ Due to the proprietary nature of CONNUM reporting, *see* Final BPI Memorandum for details regarding such instances.⁷¹ Therefore, we determine that the record demonstrates that RIL did not apply its interpretation of virgin inputs consistently.⁷² This means that Commerce cannot accurately match sales and calculate an accurate dumping margin on the basis of the reported information.

Furthermore, there are other deficiencies with RIL's CONNUM reporting unrelated to its interpretation of virgin inputs. Although in a supplemental questionnaire we requested that RIL correct these other deficiencies, including its reporting of fiber type for mixed materials,⁷³ for CONNUMs where inputs consisted of a mixture of virgin, recycled, and regenerated materials, RIL did not report the fiber type as a combination of virgin and recycled/regenerated materials. Due to the proprietary nature of CONNUM reporting, *see* Final BPI Memorandum for details.⁷⁴ As noted above, inaccurate CONNUM reporting means that Commerce cannot accurately match sales and calculate an accurate dumping margin.

RIL's reliance on *Certain Polyester Staple Fiber from Taiwan* to argue that Commerce should not apply AFA for its failure to properly report CONNUMs is unavailing.⁷⁵ Commerce notified both RIL and Far Eastern Textiles, Ltd. (FETL), the respondent in *Certain Polyester Staple Fiber from Taiwan*, that their CONNUMs needed to be revised by following Commerce's instructions. FETL made the corrections pursuant to Commerce's instructions, and it also provided Commerce supporting documentation and explanation to justify its original CONNUM reporting.⁷⁶ RIL, however, did not make all the corrections requested by Commerce. Instead, RIL repeated its interpretation of virgin inputs without providing support documentation to explain its interpretation of virgin inputs. This proceeding is also different from *Certain Polyester Staple Fiber from Taiwan*, where Commerce had enough information to accept FETL's interpretation of virgin inputs, and therefore, accepted FETL's CONNUM reporting.

⁶⁹ See RIL's Case Brief at 11.

⁷⁰ See RIL's November 8, 2019 BCDQR at Exhibit COP DATA – Connum wise summary cost.

⁷¹ See Memorandum, "Proprietary Information for the Final Results of the Administrative Review of the Antidumping Order on Fine Denier Polyester Staple Fiber from India; 2018-2019," dated concurrently with this memorandum (Final BPI Memorandum) at Note 1.

⁷² See RIL's July 2, 2020 2nd SABCDQR II at 1-3.

⁷³ See Commerce's June 9, 2020 2nd SABCDQ at 10-11; *see also* RIL's July 2, 2020 2nd SABCDQR II at 1-3.

⁷⁴ See Preliminary BPI Memorandum at Note 2; *see also* Final BPI Memorandum Note 2.

⁷⁵ See RIL's Case Brief at 9, 10.

⁷⁶ See *Certain Polyester Staple Fiber from Taiwan* IDM at Comment 4.

Here, Commerce does not have any information to accept RIL's virgin interpretation and, thus, cannot use its CONNUMs since RIL did not make all of the changes requested by Commerce.

Furthermore, in *Prosperity Tieh Enter. Co.*, the CAFC found that the respondent, Prosperity Tieh Enterprise Co., Ltd. (Prosperity) misreported its product characteristic (yield strength) because it did not comply with Commerce's reporting instructions but instead relied on its internal method of reporting.⁷⁷ Similar to Prosperity, RIL followed its internal method of reporting fiber type codes in its CONNUMs, and while it made a few corrections, other deficiencies remain with respect to RIL's CONNUM reporting such that we cannot accurately calculate a dumping margin. Therefore, RIL did not fully comply with Commerce's request to correct its reporting by following Commerce's initial instructions.⁷⁸

RIL's incorrect and inconsistent CONNUM reporting render its cost and sales databases unreliable. CONNUMs are a key component of reporting that are required to properly match sales in different markets and to match costs with sales. 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. Therefore, just as we found with respect to RIL's reconciliations (*see* Comment 1 above), we find here that RIL's sales and cost databases cannot be accepted and an accurate dumping margin cannot be calculated.

Hence, pursuant to section 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, the use of facts available is warranted. Necessary information is missing from the record because RIL did not correct its CONNUM reporting. Corrected CONNUMs were withheld by RIL and thus not provided in a timely manner which significantly impeded the proceeding. Commerce does not have the information to correct these CONNUM errors. Also, as noted above, CONNUMs are necessary to Commerce's analysis and accurately calculating a dumping margin. For these reasons, use of partial facts available is not appropriate. As the CAFC explained, use of partial AFA is inappropriate "when the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty."⁷⁹

Pursuant to section 782(d) of the Act, Commerce determined that RIL's response did not comply with Commerce's instructions for reporting fiber type codes in CONNUMs and thus Commerce informed RIL of the nature of the deficiency and provided it with an opportunity to remedy or explain the deficiency. RIL did not make all of the necessary corrections. In accordance with section 782(e) of the Act, we have not considered the submitted information because it is inaccurate and incomplete with respect to a core element of our calculations, CONNUMs, such that it cannot serve as a reliable basis for reaching the applicable determination.

Lastly, because RIL failed to fully respond to our requests to revise and correct its CONNUM reporting and provided no valid explanation for its failure to do so, pursuant to section 776(b) of the Act, we find that RIL failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information. Therefore, the application of total AFA is appropriate.

⁷⁷ *See Prosperity Tieh Enter. Co.*

⁷⁸ *See Preliminary Results PDM* at 4.

⁷⁹ *See Mukand, Ltd. v. United States*, 767 F.3d 1300 (Fed Cir. 2014).

As total AFA, we have continued to assign RIL a dumping margin of 21.43%, which is the total AFA rate that we assigned to RIL in the *Preliminary Results*.

C. Affiliations

RIL's Comments

- Commerce should not apply AFA based on RIL's responses regarding the Ambani family grouping.⁸⁰
- RIL acted to the best of its ability to comply with Commerce's requests for information regarding the family by providing a list of, and certain information regarding, all companies in which any member of RIL's owner's family (the Ambani family) served as a director or held a key management position.⁸¹
- RIL's extensive and detailed responses meet the statutory threshold under 19 U.S.C. 1677(e)(b) for acting to the best of its ability.
- Additionally, RIL kept the types of records which one would expect a reasonable respondent to maintain with respect to the requested information.⁸² RIL did not expect that in the normal course of its operations it would need to maintain, or provide, records associated with extended family members with significant and complex business interests outside of, and unrelated to, RIL's corporate structure.⁸³
- Commerce did not meet the statutory requirements to assume, as an adverse inference, that there are other unreported affiliated parties. Adverse inferences are not warranted merely from a failure to respond, but rather in instances when Commerce reasonably expected that "more forthcoming responses should have been made."⁸⁴

Petitioners' Comments

- RIL withheld information regarding its affiliates, significantly impeded the proceeding, and failed to cooperate by not acting to the best of its ability to report its affiliations.⁸⁵
- Despite the fact that the petitioners placed substantial information on the record concerning RIL's ownership and control by a family group and identified additional companies owned or controlled by RIL and the family group,⁸⁶ RIL failed to report whether or not it was part of a group. Also, RIL failed to provide substantial information regarding each company associated with the family group.
- RIL twice failed to respond to Commerce's requests to identify each company or business in which each person in the Ambani family and certain related families, holds a five percent or greater ownership interest, the nature of such companies' operations, and the family relationship of each family member.⁸⁷

⁸⁰ See RIL's Case Brief at 17.

⁸¹ *Id.* at 14.

⁸² *Id.* at 16-17.

⁸³ *Id.* at 16.

⁸⁴ *Id.* at 15-16.

⁸⁵ See *Petitioner's Rebuttal Brief* at 16-17.

⁸⁶ *Id.* at 18-19.

⁸⁷ *Id.* at 17-18.

- RIL’s argument that it provided sufficient information regarding its affiliates because it reported “extensive information” is unpersuasive because the “extensive information” provided was not all of the information requested by Commerce. Commerce, not RIL, determines what information is necessary.⁸⁸ RIL withheld information concerning its affiliates that is necessary for Commerce to accurately calculate dumping margins.⁸⁹ Thus, the “extensive information” does not demonstrate that RIL cooperated to the best of its ability.⁹⁰
- RIL was on notice that it would be required to submit complete and accurate information in this review regarding its affiliates. This is the case because in the investigation in this proceeding Commerce based RIL’s dumping margin on total AFA, in part, because it failed to provide information concerning its affiliates.⁹¹

Commerce’s Position:

We continue to find that by withholding requested information regarding potential affiliates, RIL significantly impeded the proceeding and failed to cooperate by not acting to the best of its ability. 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 review.⁹²

In response to this request, RIL reported that “none of RIL’s affiliated entities in India manufacture or have the potential to manufacture the merchandise under consideration”, which is not responsive to our request.⁹³ However, record evidence indicates that the Ambani family may be in a position to control RIL. 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” (person can refer to companies as well).⁹⁴ 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:

⁸⁸ *Id.* at 20.

⁸⁹ *Id.* at 4.

⁹⁰ *Id.* at 17-18

⁹¹ *Id.* at 20-21.

⁹² See Commerce’s September 16, 2019 AD Questionnaire at A-5.

⁹³ See RIL’s October 18, 2019 AQR at 11.

⁹⁴ See *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”).

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.

Therefore, it was important to determine whether the Ambani family controlled other companies which could be considered affiliated with RIL by virtue of family control.

Consequently, in our first supplemental questionnaire, we requested that RIL provide the names of its chairman and managing director's family members that own five percent or more of a company or business operation and that it provide certain information regarding these companies, including information regarding the nature of each businesses' operations, and whether the business engaged in any transactions with RIL involving the merchandise under consideration.⁹⁵ RIL did not provide the requested information. Instead RIL provided a list of companies in which the Ambani family members are directors.⁹⁶

Hence, in our second supplemental questionnaire, we again requested that RIL provide 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 that it provide certain information regarding these companies, including information regarding the nature of each businesses' operations, and whether the business engaged in any transactions with RIL involving the merchandise under consideration.⁹⁷ In response to this second request, RIL stated that none of the family members own five percent or more of RIL's shares.⁹⁸ We did not request that RIL identify family members that own five percent or more of RIL's shares. We requested that RIL provide the names of RIL's chairman and managing director's family members that own five percent or more of a company or business operation (meaning any company or business, not just RIL) and that it provide certain information regarding these companies. RIL did not provide this information.

While RIL argued that it provided extensive information regarding affiliations, it did not provide the specific information requested by Commerce. RIL identified companies in which certain family members were directors or key management personnel. However, family members could be involved with companies other than those identified by RIL by virtue of their ownership of five percent or more of a company's shares. Thus, Commerce required that RIL identify such companies, and their transactions with RIL, to ensure that there were no unidentified companies potentially affiliated with RIL that engaged in transactions with RIL involving the merchandise under consideration. As noted above, RIL twice failed to respond to this specific request.

Commerce's inability to ensure that all affiliated parties were reported by RIL because of RIL's failure to respond to Commerce's requests, means that the reported sales values, sales expenses, and production costs may be unreliable. Commerce will only rely on home market sales to affiliated parties under certain circumstances. Also, Commerce typically relies on selling

⁹⁵ See Commerce's February 12, 2020 SABCQ at 3-4.

⁹⁶ See RIL's February 26, 2020 SABCQR at 3.

⁹⁷ See Commerce's June 9, 2020 2nd SABCDQ at 3.

⁹⁸ See RIL's June 29, 2020 2nd SABCDQR I at 1.

expenses with unaffiliated, rather than affiliated, parties to ensure that the expenses reflect market prices. Moreover, section 773(f)(2) of the Act provides that transactions between affiliated persons may be disregarded if they do not fairly reflect usual values. Section 773(f)(3) of the Act contains special rules for reporting costs of major inputs involving transactions between affiliated parties. Thus, full and accurate reporting regarding affiliations is important. RIL failed to provide the requested information that would substantiate that it fully and accurately reported all of its affiliates.

Without complete information regarding potential affiliations, including the requested information regarding companies owned by family members, the record regarding potential affiliated parties is incomplete. Because of the incomplete record, Commerce cannot determine whether there were affiliated party sales, or whether the appropriate sales expenses and production costs have been reported.⁹⁹ Therefore, RIL's sales and cost databases cannot be accepted and a dumping margin cannot be calculated.

Hence, pursuant to section 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, the use of facts available is warranted. Necessary information is missing from the record because it was withheld by RIL and thus not provided in a timely manner which significantly impeded the proceeding. Specifically, RIL withheld the information requested regarding family members' ownership of companies and businesses.

Pursuant to section 782(d) of the Act, Commerce twice requested the information at issue from RIL and provided it with opportunities to provide the information which it failed to do. Accordingly, we have not considered what was provided pursuant to section 782(e) of the Act, because without the missing information, we could not fully conduct our analysis regarding affiliations in order to verify that the sales values, sales expenses, and costs were correctly reported. Thus, the information that was provided cannot serve as a reliable basis for reaching the applicable determination.

Lastly, we find that RIL did not act 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 information regarding family ownership of companies despite multiple requests from Commerce for such information.

RIL argued that it provided extensive information regarding affiliations and that its detailed responses meet the statutory threshold for acting to the best of its ability. In addition, RIL claims that it was not aware of the need for, and that it did not expect that in the normal course of business it would need to maintain or provide, information associated with extended family members with significant and complex business interests outside of, and unrelated to, RIL's corporate structure.

However, regarding RIL's claims, it is important to first note that although RIL provided certain information regarding affiliations, it did not provide the ownership information for family members that we requested, despite being provided with two opportunities to do so. In response to our requests, RIL never explained that it was not able to provide a list of the companies owned by family members. Rather, it provided other information that we did not specifically request. A

⁹⁹ See *Preliminary Results* PDM at 5.

respondent cannot dictate which information it will provide to Commerce. Rather, Commerce is charged with administering the dumping statute, and thus Commerce must decide which information it requires to do so.

While RIL claims it was not aware of the need for such information, since the investigation in this proceeding, RIL has been aware that Commerce will consider, among other things, family groups in its affiliation analysis. Moreover, in the investigation in this proceeding, Commerce based RIL's dumping margin on total AFA because of its failure to provide complete information regarding affiliations.¹⁰⁰ Consequently, RIL should have been aware of the need to obtain detailed information regarding affiliations and companies owned by the relevant families involved with RIL.

Accordingly, we do not find that the information that was provided regarding affiliation or RIL's claim regarding its awareness of the details that it would need to provide, support its claim that it cooperated to the best of its ability. Therefore, the application of total AFA is appropriate. As total AFA, we have continued to assign RIL a dumping margin of 21.43 percent, which is the total AFA rate that we assigned to RIL in the *Preliminary Results*.

V. RECOMMENDATION

We recommend basing RIL's dumping margin on total AFA in these final results of review.

☒ ☐

Agree

Disagree

5/24/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

¹⁰⁰ See *Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24737 (May 30, 2018), and accompanying Issues and Decision Memorandum at Comment 1.