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July 16, 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 Preliminary Results in the
Antidumping Duty Administrative Review of Fine Denier
Polyester Staple Fiber from India; 2019-2020

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 July 1, 2019, to June 30, 2020. The administrative review covers one exporter of the subject merchandise, 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, 2020, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the orders, findings, or suspended investigations with anniversaries in July 2020, including the AD order on fine denier PSF.² On

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).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531 (July 1, 2020).

July 31, 2020, the petitioners³ and RIL requested that Commerce conduct an administrative review of RIL's entries/shipments during the POR.⁴ We received no other requests for administrative reviews. On September 3, 2020, Commerce initiated the requested review.⁵ On December 14, 2020, the petitioners requested a verification of the factual information submitted in this administrative review.⁶ Commerce determines that verification of factual information is not warranted.

Between September 2020 and April 2021, Commerce issued questionnaire and supplemental questionnaires to RIL.⁷ Between October 2020 and May 2021, RIL timely responded to those questionnaires, and the petitioners commented on few of those responses.⁸

On March 24, 2021, Commerce extended the deadline for issuing the preliminary results of this review from April 2, 2021 to July 30, 2021.⁹ On July 2, 2021, the petitioners submitted pre-preliminary comments.¹⁰

³ Auriga Polymers Inc., DAK America LLC, and Nan Ya Plastics Corporation, America (collectively, the petitioners).

⁴ See Petitioners' Letter, "Fine Denier Polyester Staple Fiber from India – Petitioners' Request for Administrative Review," dated July 31, 2020; *see also* RIL's Letter, "Fine Denier Polyester Staple Fiber from India – Reliance Industries Limited Request for Administrative Review," dated July 31, 2020.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020).

⁶ See Petitioners' Letter, "2nd Administrative Review of Antidumping Duty Order on Fiber Denier Polyester Staple Fiber from India – Petitioners' Request for Verification," dated December 14, 2020.

⁷ See Commerce's Letter, Initial AD Questionnaire, dated September 16, 2020; *see also* Commerce's Letters, "Fine Denier Polyester Staple Fiber from India: Supplemental Sections A Questionnaire," dated November 24, 2020; "Fine Denier Polyester Staple Fiber from India: Supplemental Section B, C and D Questionnaire," dated December 1, 2020 (Commerce's December 1, 2020 SB CDQ); "Fine Denier Polyester Staple Fiber from India: Second Supplemental Sections A Questionnaire," dated April 22, 2021; and "Fine Denier Polyester Staple Fiber from India: Second Supplemental Sections B, C and D Questionnaire," dated April 22, 2021 (Commerce's April 22, 2021 2nd SB CDQ).

⁸ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Section A Questionnaire Response," dated October 7, 2020 (RIL's October 7, 2020 AQR); *see also* RIL's Letters, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Section B-D Questionnaire Response," dated October 23, 2020 (RIL's October 23, 2020 BCDQR); "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Supplemental Section A Questionnaire Response," dated December 14, 2020 (RIL's December 14, 2020 SAQR); "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Supplemental Section B-D Questionnaire Response," dated December 24, 2020 (RIL's December 24, 2020 SB CDQR); "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Second Supplemental Section A Questionnaire Response," dated May 7, 2021; "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Second Supplemental Section A Questionnaire Questions 3d, 3e, 3g, 7 and 10," dated May 12, 2021; "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Sections BCD Second Supplemental Questionnaire Response," dated May 13, 2021; "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Sections BCD Second Supplemental Questionnaire Partial Response," dated May 20, 2021; Petitioners' Letters, "Fine Denier Polyester Staple Fiber from India – Petitioners' Comments on Reliance's Supplemental Section A Questionnaire Response," dated January 4, 2021; "Fine Denier Polyester Staple Fiber from India – Petitioners' Comments on Reliance's Response to the Department's Supplemental Sections B-D Questionnaire," dated January 11, 2021; and "Fine Denier Polyester Staple Fiber from India – Petitioners' Submission of Information to Rebut, Clarify or Correct Information Contained in Reliance's Response to the Department's Second Supplemental Section A Questionnaire," dated May 24, 2021.

⁹ See Memorandum, "Fine Denier Polyester Staple Fiber from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 24, 2021.

¹⁰ See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India: Petitioners' Pre-Preliminary Comments," dated July 2, 2021.

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:

(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 INFERENCES

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 complete sales and cost reconciliations that tie the sales and cost databases to the financial statements covering the POR, withheld information requested by Commerce to determine whether it properly reported all of its affiliated parties, failed to report control numbers (CONNUMs) as requested by Commerce, and failed to submit accurate and reliable U.S. and home market (HM) sales and cost databases.

First, Commerce requested RIL to provide HM and U.S. sales reconciliation that tie the financial statements covering the POR to the sales database multiple times.¹¹ Commerce requested RIL to provide worksheets demonstrating how the POR financial statements' total sales tie to the general ledger sales revenue accounts and how the general ledgers' sales tie to the sales reported in the HM and U.S. sales databases.¹² Additionally, Commerce requested a detailed narrative explanation about how all worksheets and supporting documentation tie together.¹³ However, RIL did not provide a narrative explanation for any of the items requested for the HM and US sales reconciliations; instead, RIL only referred to its Exhibit B-IV and Exhibit B-3.¹⁴ Exhibits B-IV and B-3 were not responsive to our requests, as the exhibits did not tie the HM and US sales databases to the financial statements. In Commerce's December 1, 2020 SBCDQ, Commerce requested RIL to submit a sales reconciliation that tied the total POR sales 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 to the respective sales databases.¹⁵ RIL responded to Commerce's request by providing an exhibit that contains the same worksheets it previously provided in Exhibit B-IV, thus the exhibit is not responsive to Commerce's request.¹⁶ In Commerce's second supplemental sections B, C and D questionnaire, Commerce again requested RIL to demonstrate how the POR financial statements' total sales revenue tie to the HM and US sales databases.¹⁷ In response, RIL provided Exhibit BCD-SQR-3.a "Reco-RIL Revenue Exhibit" and "Reco-RIL SAP Screenshot" which still do not tie the value of sales in the Statement of Profit and Loss provided in Exhibit A-17 to the sales reported in the HM and US sales databases.¹⁸ Additionally, in items 3.d-g of Commerce's second supplemental section B-D

¹¹ See Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Questionnaire Sections A, B, C and D," dated September 16, 2020 at B-6 and C-4; *see also* Commerce's April 22, 2021 2nd SBCDQ at 3, 4, 10 and 11.

¹² See Commerce's September 16, 2020 AD Questionnaire at B-6 and C-4.

¹³ *Id.*

¹⁴ See RIL's October 23, 2020 BCDQR at B-5, B-6, C-4, and C-5

¹⁵ See Commerce's December 1, 2020 SBCDQ at 3.

¹⁶ See RIL's December 24, 2020 SBCDQR at 1 and Exhibit BCD2-1-Sales Reconciliation.

¹⁷ See Commerce's April 22, 2021 2nd SBCDQ at 3, 4, 10 and 11.

¹⁸ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Section BCD

questionnaire, Commerce requested RIL to explain how it identified the non-subject merchandise it excluded from the sales database, to provide product codes and descriptions of the excluded sales, and to clarify figures it subtracted in its sales reconciliation reported in Exhibit 1 “BCD2-1-Sales Reconciliation”.¹⁹ However, RIL did not provide responses to items 3.d-g, and omitted adding Commerce’s request for those items in its response.²⁰ After three requests, RIL did not provide a complete sales reconciliation that ties its Statement of Profit and Loss to the HM and U.S. sales databases.²¹ Without a complete sales reconciliation, Commerce cannot confirm that the sales reported in the financial statement have been fully and accurately accounted for in RIL’s HM and U.S. sales databases.

Second, Commerce requested RIL to provide a cost reconciliation, that ties the costs reported on the financial statements to the general ledger, to the cost accounting system and to the reported costs, multiple times.²² In response to Commerce’s first request, RIL provided Exhibit 56 “D-23 Cost Reconciliation,” which did not tie the costs reported in the cost database to the financial statement.²³ In the first supplemental sections B, C, and D questionnaire, Commerce requested RIL to demonstrate how the cost of goods sold (COGS) reconciles to the cost of manufacturing kept in the normal course of business and to explain and demonstrate how the differences between its COGS worksheet and the COGS in its financial statements were reported in the cost database.²⁴ In response to Commerce’s request, RIL provided Exhibit 38 “BCD2-161-D-23 Cost Reco” and stated that it reconciles the total cost submitted for the POR with the costs in the POR’s financial statements.²⁵ However, the contents in Exhibit 38 are the same as the ones provided in Exhibit D-23, which is still not responsive to our request. In the second supplemental sections B, C and D questionnaire, Commerce again requested RIL to reconcile the cost of manufacturing that it reported in the cost database to its Statement of Profit and Loss reported in Exhibit A-17 of the AQR.²⁶ In response to Commerce’s request, RIL stated that it only publishes total costs of material consumed at the company level in its annual report, and that it was not possible to break costs of manufacturing at the company level towards subject merchandise level.²⁷ However, in response to item 51.e of Commerce’s second supplemental sections B, C, and D questionnaire, RIL provided Exhibit BCD2-SQR-51-e “Cost reconciliation updated with GL breakup” and stated that the exhibit reconciled cost items from accounting records for the fiscal years covering the POR, to the COGS in RIL’s Statement of Profit and Loss.²⁸ Yet, Exhibit BCD2-SQR-51-e “Cost reconciliation updated with GL breakup” contains the same worksheets previously provided in Exhibit 38 and Exhibit D-23, and a new worksheet

Second Supplemental Questionnaire Partial Response,” dated May 20, 2021 (RIL’s May 20, 2021 2nd SB CDQR Part II) at 1, 2, Exhibit BCD2-SQR-3a “Reco-RIL Revenue Exhibit” and “Reco-RIL SAP Screenshot”; *see also* RIL’s October 7, 2020 AQR at Exhibit A-17 “2019-2020 Annual Report.”

¹⁹ *See* Commerce’s April 22, 2021 2nd SB CDQ at 4.

²⁰ *See* RIL’s May 20, 2021 2nd SB CDQR Part II at 1.

²¹ Commerce’s September 16, 2020 AD Questionnaire at B-6 and C-4; *see also* Commerce’s December 1, 2020 SB CDQ at 3; and Commerce’s April 22, 2021 2nd SB CDQ at 3, 4, 10 and 11.

²² *See* Commerce’s September 16, 2020 AD Questionnaire at D-12; *see also* Commerce’s December 1, 2020 SB CDQ at 38; and Commerce’s April 22, 2021 2nd SB CDQ at 14, 15.

²³ *See* RIL’s October 23, 2020 BCDQR at D-30 – D-33, and Exhibit 56 “D-23 Cost Reconciliation.”

²⁴ *See* Commerce’s December 1, 2020 SB CDQ at 38.

²⁵ *See* RIL’s December 24, 2020 SB CDQR at 58 and Exhibit 38 “BCD2-161-D-23 Cost Reco.”

²⁶ *See* Commerce’s April 22, 2021 2nd SB CDQ.

²⁷ *See* RIL’s May 20, 2021 2nd SB CDQR Part II at 3-5.

²⁸ *Id.* at 4, 5.

that includes general ledger accounts breakup.²⁹ Despite three requests for a complete cost reconciliation, none of the exhibits provided by RIL tie the costs reported in the cost reconciliation to the cost file or to the Statement of Profit and Loss.³⁰ Without a complete cost reconciliation, Commerce cannot confirm that the costs reported in the financial statements have been fully and accurately accounted for in RIL's cost database.

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,³¹ it failed to provide a list of the names of family members that own five percent or more of a company or business operation, the names of such companies, ownership percentage held, relationship between RIL and the companies and transactions with RIL during the POR despite repeated requests.³² In response to Commerce's second supplemental section A questionnaire, RIL provided an exhibit that contained the same information it provided in Exhibit 2 of the AQR and that Commerce deemed not responsive to our request.³³ Additionally, RIL provided Exhibit 7.b "additional family member list" where it reported a few other family members and companies they currently hold.³⁴ However, Exhibit 7.b. does not include a list of all Ambani family members, the companies they own five percent or more, the exact shareholding percentage, the relationship between RIL and the companies and the POR transactions between the companies.

Fourth, RIL reported CONNUMs that are inconsistent with Commerce's instructions. Commerce indicated in its initial questionnaire how to report the CONNUM codes for Fiber Type.³⁵ After RIL reported CONNUMs that do not conform to Commerce's instructions, Commerce issued a first supplemental questionnaire instructing RIL to follow the initial instructions.³⁶ In response to Commerce's request, RIL made corrections to its CONNUM reporting.³⁷ However, the sales and cost databases that RIL provided in response to Commerce's second supplemental sections B, C, and D questionnaire, did not include the CONNUM corrections that RIL previously provided.³⁸ In the first administrative review of this proceeding, Commerce made multiple requests to RIL to correct its CONNUM codes for Fiber Type that do

²⁹ *Id.* at Exhibit BCD2-SQR-51-e "Cost reconciliation updated with GL breakup."

³⁰ See Commerce's September 16, 2020 AD Questionnaire at D-12; *see also* Commerce's December 1, 2020 SB CDQ at 38; and Commerce's April 22, 2021 2nd SB CDQ at 14, 15.

³¹ See RIL's December 14, 2020 SAQR at Exhibit 2 "AR2-2-Affiliate".

³² See Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Supplemental Section A Questionnaire," dated November 24, 2020 (Commerce's November 4, 2020 SAQ) at 3, 4; *see also* Commerce's Letter, "Fine Denier Polyester Staple Fiber from India: Second Supplemental Section A Questionnaire," dated April 22, 2021 (Commerce's April 22, 2021 2nd SAQ) at 5, 6.

³³ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Second Supplemental Section A Questionnaire Questions 3d, 3e, 3g, 7 and 10 Response," dated May 12, 2021 at 2.

³⁴ *Id.* at Exhibit 7.b "Additional Family Member List."

³⁵ See Commerce's September 16, 2020 AD Questionnaire at B-9 and C-8.

³⁶ See Commerce's December 1, 2020 SB CDQ at 39.

³⁷ See RIL's December 24, 2020 SB CDQR at 59-62.

³⁸ See RIL's Letter, "Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited's Sections BCD Second Supplemental Questionnaire Response," dated May 13, 2021 (RIL's May 13, 2021 2nd SB CDQR Part I) at Exhibits "BCD-SQR-4-Domestic sales – per unit," "BCD-SQR-34-US Sales," and "BCD-SQR-53-Revised format cost sheet."

not conform to Commerce instructions.³⁹ Therefore, RIL was previously aware of the instructions it had to follow when reporting its CONNUMs. Additionally, in its supplemental questionnaire responses, RIL also reported conflicting and incorrect CONNUM data regarding Specialty Fiber, Color, Shape, Luster, Denier Range and Finish Type.⁴⁰ Even though, Commerce provided three opportunities to RIL to report accurate CONNUMs, RIL continue to withhold its data.⁴¹ Without accurate CONNUMs, Commerce cannot accurately match sales and calculate an accurate dumping margin. Commerce has no means of determining the correct Fiber Type, Specialty Fiber, Color, Shape, Luster, Denier Range and Finish Type codes for U.S. sales and HM sales and for purposes of identifying CONNUMs for cost reporting.

Fifth, RIL failed to submit accurate and reliable HM sales, U.S. sales and cost databases. In the initial AD questionnaire, Commerce instructed RIL how to report each of the fields in the databases.⁴² In response, RIL provided sales and cost databases that contained various deficiencies and did not conform to Commerce's instructions. Commerce issued two supplemental questionnaires in which it identified the deficiencies in RIL's sales and cost databases.⁴³ Despite the three opportunities given to RIL to submit accurate, reliable, and usable sales and cost databases, RIL's databases are still unreliable and unusable. In response to the first supplemental questionnaire, RIL made corrections to its databases, however, in response to the second supplemental questionnaire, RIL's databases contained deficiencies that it had already previously corrected. For example, in relation to the HM sales database, Commerce instructed RIL to add the name abbreviations to all fields, to report the missing CONNUMs for certain sales, to report the right CONNUMs for sales that had the same reported characteristics, to report all product characteristics for certain sales, and to report product characteristics following the defined codes in the initial AD questionnaire.⁴⁴ However, RIL's HM sales database submitted in response to the second supplemental questionnaire, still has all the deficiencies identified by Commerce.⁴⁵ Furthermore, in response to Commerce's second supplemental questionnaire, RIL submitted a U.S. sales database that does not include the fields that report the product characteristics that make up the CONNUMs, and the non-CONNUM product characteristics for each of the sales, does not contain the field names that Commerce instructed to include, does not include field name abbreviations for some fields and does not report sales to the U.S. for part of the POR.⁴⁶ Lastly, RIL's third version of the cost database reports different set of costs for the same unique CONNUM, does not report net interest expense (INTEX) for any of the unique

³⁹ See *Fine Denier Polyester Staple Fiber from India: Final Results of Antidumping Duty Administrative Review: 2018-2019*, 86 FR 29249 (June 1, 2021), and accompanying Issues and Decision Memorandum (IDM); see also *See Fine Denier Polyester Staple Fiber from India: Final Results of Antidumping Duty Administrative Review: 2018-2019*, 85 FR 74688 (November 23, 2020), and accompanying Preliminary Decision Memorandum.

⁴⁰ See Commerce's September 16, 2020 AD Questionnaire at B-8 – B-10, C-7 – C-9; see also Commerce's December 1, 2020 SBCDQ at 5 and 6; see also Commerce's April 22, 2021 2nd SBCDQ at 5 and 6; RIL's October 23, 2020 BCDQR at B-8 – B-12; RIL's December 24, 2020 SBCDQR at 5-7; and RIL's May 13, 2021 2nd SBCDQR Part I at 5-6.

⁴¹ See Commerce's September 16, 2020 AD Questionnaire at B-8 – B-10, C-7 – C-9; see also Commerce's December 1, 2020 SBCDQ at 5, 6 and 39; and Commerce's April 22, 2021 2nd SBCDQ at 5 and 6.

⁴² See Commerce's September 16, 2020 AD Questionnaire at B-3 – C-35, D-15 – D-19 and Appendix II.

⁴³ See Commerce's December 1, 2020 SBCDQ at 4 – 7, 11, 17 – 21, 24, 25, 29 – 31, 38 and 39; see also Commerce's April 22, 2021 2nd SBCDQ at 5, 9 – 11, 15 and 16.

⁴⁴ See Commerce's December 1, 2020 SBCDQ at 4-6.

⁴⁵ See RIL's May 13, 2021 2nd SBCDQR Part I at Exhibit "BCD-SQR-4-Domestic sales – per unit."

⁴⁶ *Id.* at Exhibit "BCD-SQR-34-US Sales".

CONNUMs and does not include name abbreviations for the fields.⁴⁷ Without accurate and usable sales and cost databases, Commerce cannot calculate an accurate dumping margin.

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 sales and cost reconciliations that tie the sales and cost databases to RIL's financial statements multiple times.⁴⁸ 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.⁴⁹ In its initial AD questionnaire, Commerce instructed RIL how to report CONNUMs and its product characteristics, such as Fiber Type, Specialty Fiber, Color, Shape, Luster, Denier Range and Finish Type.⁵⁰ After RIL incorrectly reported its CONNUMs, Commerce notified RIL of this and gave it an opportunity to correct its CONNUMs by following Commerce's initial instructions.⁵¹ While RIL corrected its CONNUMs, specifically its reporting of Fiber Type, after the second request, in response to the second supplemental sections B, C, and D, RIL reverted to reporting CONNUMs that do not conform to Commerce's instructions.⁵² Lastly, Commerce provided RIL three opportunities to submit accurate, reliable and usable sales and cost databases.⁵³

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 complete sales and cost reconciliations, we cannot verify that the sales and costs reported in the financial statements are fully accounted for in the sales and costs reported in the databases. 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 critical 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. Without accurate CONNUMs, we do not have a reliable basis for matching U.S. sales with HM sales and properly accumulating costs in order to reach the applicable determination. Without accurate, reliable, and usable sales and cost databases we cannot calculate an accurate dumping margin.

⁴⁷ *Id.* at Exhibit "BCD-SQR-53 Revised format cost sheet."

⁴⁸ See Commerce's September 16, 2020 AD Questionnaire at B-6, C-4, and D-12; Commerce's December 1, 2020 SB CDQ at 3 and 38; Commerce's April 22, 2021 2nd SB CDQ at 3, 4, 10, 11, 14, and 15.

⁴⁹ See Commerce's November 4, 2020 SAQ at 3, 4; *see also* Commerce's April 22, 2021 2nd SAQ at 5-6.

⁵⁰ See Commerce's September 16, 2019 AD Questionnaire at B-9 and C-8.

⁵¹ See Commerce's December 1, 2020 SB CDQ at 39.

⁵² See RIL's May 13, 2021 2nd SB CDQR Part I at Exhibits "BCD-SQR-4-Domestic sales – per unit," "BCD-SQR-34-US Sales," and "BCD-SQR-53-Revised format cost sheet."

⁵³ See Commerce's September 16, 2020 AD Questionnaire at B-3 – C-35, D-15 – D-19 and Appendix II; *see also* Commerce's December 1, 2020 SB CDQ at 4 – 7, 11, 17 – 21, 24, 25, 29 – 31, 38 and 39; and Commerce's April 22, 2021 2nd SB CDQ at 5, 9 – 11, 15, and 16.

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 otherwise available.⁵⁴ 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.⁵⁵ 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.”⁵⁶ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁵⁷ 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.⁵⁸

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.”⁵⁹ 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.⁶⁰ 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.⁶¹ Hence, compliance with the “best of its ability” standard is determined by assessing

⁵⁴ 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).

⁵⁵ See section 776(b)(1)(B) of the Act.

⁵⁶ 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).

⁵⁷ 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.

⁵⁸ 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 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).

⁵⁹ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁶⁰ *Id.*

⁶¹ *Id.* at 1380.

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.⁶²

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 complete sales and cost reconciliations that tie its sales and cost databases to the financial statements covering the POR after repeated requests, withheld information regarding family companies despite multiple requests from Commerce for such information, and did not provide correctly reported its CONNUMs. As noted above, we requested RIL to submit sales and cost reconciliations that tie the sales and cost databases to RIL's financial statements multiple times. In addition, RIL did not provide the information requested by Commerce regarding companies owned by family members. Furthermore, Commerce provided RIL with specific instructions regarding how to report CONNUMs and specifically requested corrections to certain CONNUMs; while RIL submitted versions of the databases with corrected CONNUMs, in response to the second supplemental sections B, C, and D questionnaires, RIL submitted databases with the incorrect CONNUMs. Lastly, Commerce provided RIL three opportunities to submit accurate, reliable, and usable sales and cost databases. However, RIL continued to provide sales and cost databases that cannot be used to calculate an accurate dumping margin. 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 less-than-fair-value investigation, a previous administrative review, or any other information placed on the record.⁶³ 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.⁶⁴ 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.⁶⁵ Thus, consistent, with Commerce's practice, we have selected the dumping margin of 21.43 percent from the final determination from the first administrative review as the AFA rate for RIL.⁶⁶

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

⁶² *Id.* at 1382.

⁶³ See 19 CFR 351.308(c).

⁶⁴ See SAA at 870.

⁶⁵ 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.

⁶⁶ See *Fine Denier Polyester Staple Fiber from India: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 29249 (June 1, 2021).

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.”⁶⁷ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value.⁶⁸ 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.⁶⁹ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of an antidumping proceeding when applying an adverse inference, including the highest of such margins.⁷⁰

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 first administrative review in this proceeding) Commerce need not corroborate that rate in this review.

⁶⁷ See SAA at 870; see also 19 CFR 351.308(c)(1).

⁶⁸ *Id.*; see also 19 CFR 351.308(d).

⁶⁹ 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 Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁷⁰ See section 776(d)(1)-(2) of the Act.

V. RECOMMENDATION

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

☒ ☐

Agree	Disagree
	7/16/2021
	
X	

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance