



C-533-876

Administrative Review  
POR: 01/01/2019 – 12/31/2019

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September 1, 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:** Issues and Decision Memorandum for the Final Results of the  
2019 Administrative Review of the Countervailing Duty Order on  
Fine Denier Polyester Staple Fiber from India

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by an interested party in the administrative review of the countervailing duty (CVD) order on fine denier polyester staple fiber (fine denier PSF) from India<sup>1</sup> for the period of review (POR) January 1, 2019, through December 31, 2019. As a result of this analysis, we revised the prohibited subsidy rate calculation for Reliance Industries Limited (Reliance), the sole mandatory respondent in this administrative review. We recommend that you approve the position described in the “Discussion of the Issue” section of this memorandum. Below is the sole issue in this administrative review for which we received comments from an interested party.

Comment: Prohibited Subsidy Rate

## II. BACKGROUND

On May 18, 2021, Commerce published the *Preliminary Results* of this administrative review.<sup>2</sup> On June 17, 2021, we received a case brief from Auriga Polymers, Inc., DAK Americas LLC,

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<sup>1</sup> See *Fine Denier Polyester Staple Fiber from the People’s Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People’s Republic of China and Countervailing Duty Orders for the People’s Republic of China and India*, 83 FR 11681 (March 16, 2018) (*Order*).

<sup>2</sup> See *Fine Denier Polyester Staple Fiber from the Republic of India: Preliminary Results of Countervailing Duty Administrative Review; 2019*, 86 FR 26903 (May 18, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



and Nan Ya Plastics Corporation, America (collectively, the petitioners).<sup>3</sup> No other party submitted a case brief or rebuttal brief.

### **III. SCOPE OF THE *ORDER***

The merchandise 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.<sup>4</sup>

### **IV. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES**

#### **A. Legal Standard**

Sections 776(a) of the Tariff Act of 1930, as amended (the Act) provides that Commerce shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the agency will so inform the party submitting the response and will, to the extent practicable, provide that party with 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.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in

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<sup>3</sup> See Petitioners’ Letter, “Fine Denier Polyester Staple Fiber from India: Petitioners’ Case Brief,” dated June 17, 2021 (Petitioners’ Case Brief).

<sup>4</sup> See *Order*.

selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>5</sup> Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.<sup>6</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>7</sup> Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>8</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>9</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>10</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>11</sup> Further, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>12</sup>

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the agency considers reasonable to use, including the highest of such rates.<sup>13</sup> Additionally, when using an adverse inference in selecting among the facts otherwise available, Commerce is not required, for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality of the interested party.”<sup>14</sup>

## **B. Application of Adverse Facts Available (AFA)**

Commerce determined that an adverse inference is warranted in the selection of facts available, pursuant to section 776(b) of the Act, because the Government of India (GOI) failed to provide

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<sup>5</sup> See section 776(b)(1)(B) of the Act.

<sup>6</sup> See 19 CFR 351.308(c).

<sup>7</sup> See 19 CFR 351.308(d).

<sup>8</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103- 316, vol. 1 at 870 (1994).

<sup>9</sup> *Id.* at 870.

<sup>10</sup> *Id.* at 869.

<sup>11</sup> *Id.* at 869-870.

<sup>12</sup> See section 776(c)(2) of the Act.

<sup>13</sup> See sections 776(d)(1) and (2) of the Act.

<sup>14</sup> See section 776(d)(3) of the Act.

necessary information in response to questions pertaining to the following programs: Duty Drawback (DDB program), Export Promotion of Capital Goods Scheme (EPCGS), Advance Authorization Program (AAP), Merchandise Export from India Scheme (MEIS), Technology Upgradation Fund Scheme (TUFS), State Government of Gujarat (SGOG) Preferential Water Rates, SGOG Electricity Duty Exemption, SGOG Provision of Land for Less Than Adequate Remuneration (LTAR), Special Economic Zone (SEZ) Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts, and Packing Materials (SEZ Duty-Free Import program), and State Government of Maharashtra (SGOM) Electricity Concession for Textile Units.<sup>15</sup>

Commerce relied on Reliance's reported information for our benefit findings for these aforementioned programs.<sup>16</sup> For further descriptions of this decision, *see the Preliminary Results*.<sup>17</sup> Because no party commented on this issue, we continue to rely on the respondent's reported usage to calculate the benefit, within the meaning of section 771(5)(E) of the Act.<sup>18</sup>

### **C. Application of Facts Available**

Commerce relied on facts available for information relating to Reliance's SEZ Duty-Free Import program benefits received during the earliest year of the average useful life (AUL) period.<sup>19</sup> For further descriptions of this decision, *see the Preliminary Results*.<sup>20</sup> Because no party commented on this issue, we continue to rely on facts available for these final results for information relating to the benefit for this program.<sup>21</sup>

## **V. SUBSIDIES VALUATION INFORMATION**

### **A. Allocation Period**

We made no changes to the allocation methodology used in the *Preliminary Results*. For a description of the allocation period and the methodology used for the final results, *see the Preliminary Results*.<sup>22</sup>

### **B. Attribution of Subsidies**

We made no changes to the methodology underlying our attribution of subsidies in the *Preliminary Results*. For a description of the methodology used for the final results, *see the Preliminary Results*.<sup>23</sup>

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<sup>15</sup> *See Preliminary Results* PDM at 5-10.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 5-10.

<sup>18</sup> *See* Memorandum, "Final Results Calculations for Reliance Industries Limited," dated concurrently with this memorandum (Final Calculation Memorandum) at Attachment II.

<sup>19</sup> *See Preliminary Results* PDM at 10-11.

<sup>20</sup> *Id.*

<sup>21</sup> *See* Final Calculation Memorandum at Attachment II.

<sup>22</sup> *See Preliminary Results* PDM at 11.

<sup>23</sup> *Id.* at 11-12.

### **C. Denominators**

We made no adjustments to the denominators relied on for the calculation of Reliance's subsidy rate. For a description of the denominators used for the final results, *see the Preliminary Results*.<sup>24</sup>

### **D. Benchmarks and Interest Rates**

We made no adjustments to the benchmarks and interest rates relied on for the calculation of Reliance's program benefits. For a description of the benchmarks and interest rates used for the final results, *see the Preliminary Results*.<sup>25</sup>

## **VI. ANALYSIS OF PROGRAMS**

We have made changes to our *Preliminary Results* with respect to the prohibited subsidy rate calculation for Reliance. For further details, *see the specific program section below and the Final Calculation Memorandum*. For the descriptions, analyses, and calculation methodologies of the below programs, *see the Preliminary Results*. Except where noted, no issues were raised by interested parties in the case brief regarding these programs. The final program rates for Reliance are identified below.

### **A. Programs Determined to Be Countervailable**

#### **1. DDB Program**

We made no changes to the *Preliminary Results* regarding this program. Reliance's final subsidy rate continues to be 1.86 percent *ad valorem*.<sup>26</sup>

#### **2. EPCGS**

We made no changes to the *Preliminary Results* regarding this program. Reliance's final subsidy rate continues to be 0.07 percent *ad valorem*.<sup>27</sup>

#### **3. MEIS**

We made no changes to the *Preliminary Results* regarding this program. Reliance's final subsidy rate continues to be 0.17 percent *ad valorem*.<sup>28</sup>

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<sup>24</sup> *Id.* at 12-13.

<sup>25</sup> *Id.* at 13-15.

<sup>26</sup> *Id.* at 16; *see also* Final Calculation Memorandum at Attachment I.

<sup>27</sup> *See Preliminary Results* PDM at 17-19; *see also* Final Calculation Memorandum at Attachment I.

<sup>28</sup> *See Preliminary Results* PDM at 19-20; *see also* Final Calculation Memorandum at Attachment I.

#### 4. SEZ Duty-Free Import Program

We made no changes to the *Preliminary Results* with regard to the countervailability or subsidy rate calculated for this program. As discussed in the “Discussion of the Issue” section, we revised the prohibited subsidy rate calculated for Reliance to exclude this program from the total prohibited subsidy rate. Reliance’s final subsidy rate under this program continues to be 2.18 percent *ad valorem*.<sup>29</sup>

#### 5. SGOG Subsidy Programs

- a. SGOG Preferential Water Rates
- b. SGOG Electricity Duty Exemption
- c. SGOG Provision of Land for LTAR

We made no changes to the *Preliminary Results* regarding each of these programs. Reliance’s final subsidy rates for the SGOG Preferential Water Rates, SGOG Electricity Duty Exemption, and SGOG Provision of Land for LTAR programs continue to be 0.01 percent *ad valorem*, 0.06 percent *ad valorem*, and 0.54 percent *ad valorem*, respectively.<sup>30</sup>

### **B. Programs Determined to Not Confer a Measurable Benefit During the POR**

We made no changes to the *Preliminary Results* with respect to the non-countervailability or measurability of the following programs. For the description and analysis of the programs, see the *Preliminary Results*.<sup>31</sup>

1. AAP
2. TUFS
3. Status Holder Incentive Scheme (SHIS)
4. SGOM Electricity Concession for Textile Units

### **C. Programs Determined to Not Be Used During the POR**

We made no changes to the *Preliminary Results* with regard to programs determined not to be used.

1. Income Tax Programs
  - a. Income Tax Exemption Scheme (80-IA)
  - b. Sections 35(1)(i), 35(1)(ii), 35(1)(iv) of the Income Tax Act of 1961
  - c. Section 35(2AB) of the Income Tax Act of 1961 conferring Income Tax Reductions for R&D Expenses
2. Market-Linked Focus Product Scheme (MLFPS)
3. SEZ Programs

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<sup>29</sup> See *Preliminary Results* PDM at 20-21; see also Final Calculation Memorandum at Attachment I.

<sup>30</sup> See *Preliminary Results* PDM at 21-23; see also Final Calculation Memorandum at Attachment I.

<sup>31</sup> See *Preliminary Results* PDM at 23-26.

- a. Exemption from Payment of Central Sales Tax on Purchases of Capital Goods and Raw Materials, Components, Consumables, intermediates, Spare Parts, and Packing Materials
  - b. Exemption of Stamp Duty of All Transactions and Transfers of Immovable Property within the SEZ
  - c. Exemption from Electricity Duty and Cess on the Sale or Supply of Electricity to the SEZ Unit
  - d. Discounted Land Fees in an SEZ
  - e. SEZ Income Tax Exemption (10A)
  - f. SEZ Income Tax Exemption for Companies Located in an SEZ
- 4. Renewable Energy Certificates
- 5. Duty Free Import Authorization Scheme (DFIA)
- 6. Focus Product Scheme (FPS)
- 7. Incremental Exports Incentive Scheme (IEIS)
- 8. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India and Procured through a Domestic Tariff Area
- 9. Duty Drawback on Furnace Oil Procured from Domestic Companies
- 10. Market Access Initiative
- 11. Market Development Program
- 12. GOI Loan Guarantees
- 13. State and Union Territory Sales Tax Incentive
- 14. Interest Subsidy
- 15. Incentives to Strengthening Micro-, Small-, and Medium-Sized & Large Scale Industries
- 16. SGOM Subsidy Programs
  - a. SGOM Investment Promotion Scheme (IPS)
  - b. SGOM Stamp Duty Exemption
  - c. SGOM Electricity Duty Exemption
- 17. SGOG Subsidy Programs
  - a. SGOG Plastics Industry Scheme: Interest Subsidy
  - b. SGOG Plastics Industry Scheme: VAT Incentive
  - c. SGOG Industry Policy 2009: Financial Benefits for Mega Projects
  - d. SGOG Industry Policy 2009: Promotion for Textiles and Apparel
  - e. SGOG Industry Policy 2009: Promotion of Non-Conventional Energy
  - f. SGOG Industry Policy 2009: Reimbursement of Stamp Duty
- 18. State Government of Uttar Pradesh (SGUP) Subsidy Programs
  - a. SGUP Stamp Duty Exemption
  - b. SGUP VAT Exemption
  - c. SGUP Electricity Duty Exemption
  - d. SGUP IPS
  - e. SGUP Special Assistance for Mega Projects

## VII. DISCUSSION OF THE ISSUE

### Comment: Prohibited Subsidy Rate

#### *Petitioners' Comments:*

- Commerce improperly included the subsidy rate calculated for the SEZ Duty-Free Import program, which it identified as export-contingent, in the prohibited subsidy rate<sup>32</sup> calculated for the *Preliminary Results*. Additionally, Commerce provided no explanation for this methodological change from the prior segments of this proceeding.<sup>33</sup>
- Commerce properly did not include the subsidy rates calculated for the SEZ Duty-Free Import program in the investigation and first administrative review in the respective prohibited subsidy rates for those segments. This decision was reasonable and consistent with Commerce's treatment of similar programs for which AFA was warranted in those segments.<sup>34</sup>
- In the first administrative review as well as the instant review, Commerce identified the SEZ Duty-Free Import program as specific pursuant to section 771(5A)(D) of the Act as a domestic subsidy, and did not identify the program as specific as an export subsidy. Further, at no point in any segment of this proceeding has Commerce determined that the program is export-contingent, because the GOI failed to provide complete information to evaluate specificity. Accordingly, Commerce should exclude the subsidy rate calculated for Reliance's use of the SEZ Duty-Free Import program from the prohibited subsidy rate, resulting in a revised prohibited subsidy rate of 2.10 percent.<sup>35</sup>

No other party commented on this issue.

**Commerce's Position:** We agree with the petitioners and have revised the prohibited subsidy rate calculated for Reliance to exclude the subsidy rate calculated for the SEZ Duty-Free Import program.<sup>36</sup> Specifically, we find that this program is specific pursuant to section 771(5A) of the Act.<sup>37</sup> We made this finding on the basis of AFA, because the GOI withheld requested information and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and 776(a)(2)(C) of the Act.<sup>38</sup> As stated above, we continue to rely on AFA for these final results.

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<sup>32</sup> The prohibited subsidy rate is the sum of the subsidy rates calculated for the export-contingent programs. This rate is used to offset the cash deposit rate in the companion antidumping duty proceeding.

<sup>33</sup> See Petitioners' Case Brief at 1-3.

<sup>34</sup> *Id.* at 2-5.

<sup>35</sup> *Id.* at 1 and 3-7.

<sup>36</sup> See Final Calculation Memorandum at Attachment I.

<sup>37</sup> We note that that the PDM states that we preliminarily determined the SEZ Duty-Free Import program is specific pursuant to section 771(5A)(D) of the Act, as there are no changes to the program from the prior review. See *Preliminary Results* PDM at 9 and 20. However, because we determine that the application of facts otherwise available is warranted with respect to the GOI for the finding of specificity for this program, we clarify our finding that the program is specific within the meaning section 771(5A) of the Act.

<sup>38</sup> See *Preliminary Results* PDM at 10; see also *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51387 (November 6, 2017), and accompanying PDM at 10-11, unchanged in *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018); see also *Fine Denier Polyester Staple Fiber from the*



In each of the prior segments, we did not provide Reliance an offset to the antidumping duty cash deposit rate based on the subsidy rate calculated for the SEZ Duty-Free Import program, because we did not make an export-contingency finding with respect to this program.<sup>39</sup> Thus, because Commerce has not made an explicit export-contingency finding in this instant review, but has rather only found the SEZ Duty-Free Import program to be specific under section 771(5A) of the Act, consistent with prior segments, we have omitted the subsidy rate calculated for this program from Reliance's prohibited subsidy rate for the final results.<sup>40</sup> Our approach here is also consistent with our practice.<sup>41</sup>

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*Republic of India: Preliminary Results of Countervailing Duty Administrative Review*, 85 FR 18916 (April 3, 2020), and accompanying PDM at 15, unchanged in *Fine Denier Polyester Staple Fiber from India: Final Results of Countervailing Duty Administrative Review; 2017–2018*, 85 FR 86537 (December 30, 2020).

<sup>39</sup> *Id.*

<sup>40</sup> See Final Calculation Memorandum at Attachment I.

<sup>41</sup> See, e.g., *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 81 FR 20619 (April 8, 2016), and accompanying PDM at 12, unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Countervailing Duty Determination*, 81 FR 75045 (October 28, 2016), and accompanying Issues and Decision Memorandum (IDM) at 6; *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016), and accompanying PDM at 13 (“While we recognize that certain programs in the companion CVD investigation were alleged to be export subsidies, the Government of Pakistan and IIL, the sole mandatory company respondent in the CVD investigation, did not cooperate to the best of their ability, and so {Commerce’s} preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences. In relying on facts available with adverse inferences, {Commerce} did not preliminarily determine that the subsidies in question were export subsidies ...”), unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016), and accompanying IDM at 13.

## VIII. RECOMMENDATION

Based on the analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.

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Agree

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Disagree

9/1/2021

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Signed by: CHRISTIAN MARSH

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Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance