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Administrative Review
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March 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: Issues and Decision Memorandum for the Final Results of
Administrative Review of the Antidumping Duty Order on Carbon
and Alloy Steel Wire Rod from the Republic of Korea; 2017-2019

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty order on carbon and alloy steel wire rod (steel wire rod) from the Republic of Korea (Korea) covering the sole mandatory respondent, POSCO, for the period of review (POR), October 31, 2017, through April 30, 2019.

Based upon our analysis of the comments received regarding the following issues, we made two changes to the *Preliminary Results*.¹ We continue to find that POSCO made sales at prices below normal value (NV). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Apply Adverse Facts Available (AFA) to POSCO’s Reported Cost
- Comment 2: Whether the Beginning Dates in the Margin Program are Correct
- Comment 3: Whether U.S. Sales of Further-Manufactured Merchandise Should be Excluded
- Comment 4: Whether to Grant POSCO a Constructed Export Price (CEP) Offset

¹ See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2019*, 85 FR 44858 (July 24, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



II. BACKGROUND

On July 24, 2020, Commerce published the *Preliminary Results* of this administrative review. On July 28, 2020, we issued a supplemental questionnaire to POSCO,² who filed a timely response on August 26, 2020.³

On August 24, 2020, Charter Steel, Liberty Steel USA, Nucor Corporation, and Optimus Steel LLC (collectively, the petitioners) and POSCO filed hearing requests.⁴ On September 28 and October 9, 2020, the petitioners and POSCO filed case and rebuttal briefs.⁵ On January 14 and 21, 2021, we held video conferences with the counsel for POSCO and the petitioners, respectively.⁶

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁷ Subsequently, on July 21, 2020, Commerce tolled all preliminary and final results in administrative reviews by an additional 60 days.⁸ On December 1, 2020, Commerce extended the deadline for issuing these final results until March 17, 2021.⁹

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

² See Commerce's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Second Supplemental Questionnaire," dated July 28, 2020.

³ See POSCO's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - POSCO's Response to the Department's July 28 Supplemental Questionnaire," dated August 26, 2020 (SQR2nd); see also POSCO's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Request to Modify Question 6 of July 28th Supplemental Questionnaire," dated August 4, 2020; and Commerce's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Modifying Question Six of, and Extending the Deadline of, July 28, 2020 Supplemental Questionnaire," dated August 10, 2020.

⁴ See Petitioners' Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Petitioners' Request for Hearing," dated August 24, 2020; see also POSCO's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Request for Public Hearing," dated August 24, 2020.

⁵ See Petitioners' Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Petitioners' Case Brief," dated September 28, 2020 (Petitioners' Case Brief); see also POSCO's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - POSCO's Case Brief," dated September 28, 2020 (POSCO's Case Brief); Petitioners' Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Petitioners' Rebuttal Brief," dated October 9, 2020 (Petitioners' Rebuttal Brief); POSCO's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - POSCO's Rebuttal Brief," dated October 9, 2020 (POSCO's Rebuttal Brief).

⁶ See Memorandums, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - *Ex Parte* Meeting with POSCO's Counsel," dated January 15, 2021, and "Carbon and Alloy Steel Wire Rod from the Republic of Korea - *Ex Parte* Meeting with Petitioners' Counsel," dated January 21, 2021.

⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020 (the deadline for the final results was actually tolled by 57 days because the tolling started three day before the publication date of the *Preliminary Results*).

⁹ See Memorandum, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Extension of Deadline for Final Results," dated December 1, 2020.

III. SCOPE OF THE ORDER¹⁰

The scope includes certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.*, products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

Excluded from the scope are grade 1078 and higher tire cord quality wire rod to be used in the production of tire cord wire.¹¹ Grade 1078 and higher tire cord quality wire rod refers to wire rod with not less than 0.78 percent of carbon and includes but is not limited to other high carbon grades of wire rod such as Grade 1078, 1080, 1085, 1086, 1090, and 1092.

Grade 1078 and higher tire cord quality rod is defined as: (i) Grade 1078 and higher tire cord quality wire rod measuring not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no nondeformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.405 mm or less, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, (5) not more than 0.6 percent silicon; and (6) not more than 0.55 percent in the aggregate, of copper, nickel, and chromium. For purposes of the grade 1078 and higher tire cord quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling-of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod.

The designation of the products as “tire cord quality” indicates the acceptability of the product for use in the production of tire cord applications which require that the tire cord wire rod be drawn into wire with a diameter of 0.405 mm or less. These quality designations are presumed to indicate that these products are being used in tire cord applications, and such merchandise

¹⁰ See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417 (May 21, 2018) (*Order*).

¹¹ See *Carbon and Alloy Steel Wire Rod from the Republic of Korea and the United Kingdom: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 13888 (April 8, 2019).

intended for the tire cord applications is not included in the scope. Importers of tire cord quality wire rod are required to file with CBP, at the time of the Entry Summary filing with CBP, a certification of end use that certifies that the Grade 1078 and above tire cord quality wire rod will be used only in the production of tire cord wire. In instances where the importer of record is not the end-user, the importer must provide written notice of the end-use requirement and an official of the end user must also sign a copy of the certification filed with CBP at the time of Entry Summary. Importers of record of tire cord wire rod are required to maintain a copy of the end-use certifications that were filed with the entry summaries with the CBP and to provide them at the request of CBP or Commerce.

Also, excluded from the scope are valve spring quality (VSQ) steel products, which is defined as wire rod:¹²

- (i) Measuring no more than 14 mm in cross-sectional diameter;
- (ii) Containing by weight the following elements in the proportions shown:
 - (1) 0.51 percent to 0.68 percent, inclusive, of carbon;
 - (2) Not more than 0.020 percent of phosphorus;
 - (3) Not more than 0.020 percent of sulfur;
 - (4) Not more than 0.05 percent of copper;
 - (5) Not more than 70 ppm of nitrogen;
 - (6) 0.5 percent to 0.8 percent, inclusive, of manganese;
 - (7) Not more than 0.1 percent of nickel;
 - (8) 1.3 percent to 1.6 percent, inclusive, of silicon;
 - (9) Not more than 0.002 percent of titanium;
 - (10) Not more than 0.15 percent of vanadium; and
 - (11) Not more than 20ppm of oxygen of product;
- (iii) Having non-metallic inclusions not greater than 15 microns and meeting all of the following specific inclusions requirements using the Max-T method:
 - (1) No sulfide inclusions greater than 5 microns;
 - (2) No alumina inclusions greater than 10 microns;
 - (3) No silicate inclusions greater than 5 microns; and
 - (4) No oxide inclusions greater than 10 microns.

The products covered by the scope are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS may also be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

¹² See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review*; 84 FR 27582 (June 13, 2019).

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on our analysis of the comments received, we: (1) refined the conversion costs by diameters using ratios derived from the reported production-line-month specific cost, as discussed in Comment 1; and (2) corrected the first date of U.S. sales and beginning of the window period in the margin program, as discussed in Comment 3.

V. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Apply AFA to POSCO's Reported Cost

Petitioners' Case Brief

- Commerce should find that AFA is warranted because POSCO's reported costs are inaccurate and unreliable. POSCO was expected to develop a methodology that resulted in control number specific (CONNUM-specific) costs based on its cost accounting system but failed to do so. Instead, POSCO continued to embed intentionally non-CONNUM factors in the reported costs of manufacturing.
 - Although Commerce smoothed the cost of coal in the *Preliminary Results*, this did not remedy POSCO's inclusion of non-timing, non-CONNUM factors intentionally embedded in the total material costs. Therefore, Commerce cannot know the absolute value of each CONNUM's materials costs nor the difference in the material costs between CONNUMs.¹³
 - There are significant differences in the reported conversion costs that do not relate to the CONNUM's physical characteristics. For the CONNUMs that are identical for all characteristics except for diameter, the only characteristic that impacts conversion costs is, therefore, diameter range. Thus, the per-unit conversion costs should trend from the highest cost to the lowest cost when moving from the smallest diameter to the largest diameter product. However, the majority of CONNUMs show costs trending in the opposite direction, which demonstrates that POSCO shifted costs away from the CONNUMs that were sold in both the home market and the U.S. market.¹⁴
 - Smoothing is only useful in eliminating timing differences in reported costs. POSCO embedded other non-timing factors in their costs, such as differences in the raw materials or finished products, different production lines, *etc.* These distorted costs cannot be corrected for by the use of smoothing.¹⁵
 - POSCO was given three opportunities to demonstrate that its reported costs of manufacturing were CONNUM specific, and having failed to do so, Commerce should apply total AFA using the highest margin from the petition or the highest calculated rate for any transaction from a prior segment. At a minimum, Commerce should rely on partial AFA by using the single highest unit cost of direct material, direct labor, variable overhead costs, fixed overhead costs and associated variances to determine the total cost

¹³ See Petitioners' Case Brief at 3-4.

¹⁴ *Id.* at 5-10.

¹⁵ *Id.* at 11-19 (citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir. 1990); *Chia Far Indus. Factory Co. v. United States*, 343 F.Supp.2d 1344 (CIT 2004); and *Koyo Seiko Co. v. United States*, 746 F.Supp.1108 (CIT 1990)).

of manufacture, and recalculate the general and administrative expenses and net interest expense.¹⁶

- AFA is also warranted based solely on any of the following: (1) POSCO withheld requested data for affiliated purchases of major inputs;¹⁷ (2) POSCO failed to submit the requested data for its cost reconciliation;¹⁸ and (3) deficiencies and discrepancies related to sales and expenses.¹⁹ Regarding the deficiencies and discrepancies in POSCO's reporting, although Commerce made certain adjustments for the *Preliminary Results* to exclude overrun sales and a home market billing adjustment, the fact that Commerce needed to make such adjustments should give rise to a lack of confidence in the overall reliability of POSCO's responses.

POSCO's Rebuttal Brief

- Commerce should find that AFA is not warranted.
 - POSCO has fully cooperated with Commerce throughout this review by providing all requested information, including complete and accurate cost data which are both reliable and usable to calculate POSCO's margin. There is no legitimate question of error, inattentiveness, or inadequate record keeping, and certainly no "pervasive" or "persistent" deficiencies or "missing information."²⁰
 - POSCO used the same methodology verified in the original investigation, and consistent with U.S. law and Commerce's instructions to report CONNUM-specific costs based on its normal books and records maintained in accordance with Korean GAAP.²¹ Further, POSCO used the same methodology in other cases which Commerce has reviewed, verified, and accepted.²²
 - POSCO disagrees that smoothing the costs of coal is necessary. Cost differences can exist between similar CONNUMs because of factors that the CONNUMs do not reflect (e.g., timing of production), and should be expected between CONNUMs that are identical for all characteristics except for diameter, because POSCO's manufacturing

¹⁶ *Id.* at 19-32.

¹⁷ *Id.* at 32-36.

¹⁸ *Id.* at 36-40.

¹⁹ *Id.* at 40-41.

²⁰ See POSCO's Rebuttal Brief at 4-7 (citing *Mukand, Ltd. v. United States*, 767 F.3d 1300, 1305 (Fed. Cir. 2014), *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003), and *NSK Ltd. v. United States*, 481 F.3d 1355, 1361 (Fed. Cir. 2007)).

²¹ *Id.* at 7-15 (citing *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances*, 82 FR 50386 (October 31, 2017), and accompanying PDM at 19, unchanged in *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13228 (March 28, 2018), and accompanying Issues and Decision Memorandum (IDM) at Comment 1 (*Wire Rod Korea Inv.*)).

²² *Id.* at 15-18 (citing *Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results and Final Determination of No Shipments of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 70951 (December 26, 2019), and accompanying IDM at Comment 9; *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 82 FR 16369 (April 4, 2017), and accompanying IDM at Comment 2; *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24083 (May 24, 2019), and accompanying IDM at Comment 1).

costs can and do vary based on diameter and other non-CONNUM factors.²³ The post-preliminary supplemental response further supports the use of POSCO's reported cost data.²⁴

- Commerce's decision to "smooth" the reported costs is not indicative of non-cooperation or a failure to report cost data. Smoothing costs is a longstanding practice and routinely employed in steel cases.²⁵ Although POSCO disagrees that any smoothing is necessary, POSCO also notes that Commerce has not explained or supported what threshold justifies a divergence from the reported costs and an adjustment to the smoothing methodology.²⁶
- No factual or legal justification exists to apply partial AFA. That proposal is divorced from any sense of accuracy and would result in significant distortions, if applied.²⁷
- The petitioners misconstrued Commerce's reporting requirements on affiliated purchases of major inputs, and failed to comprehend the complexities of POSCO's cost reconciliation, which is the same methodology accepted by Commerce in the original investigation.²⁸
- POSCO reasonably interpreted Commerce's instruction as requiring POSCO to "smooth" the conversion costs in the same manner that Commerce performed in the original investigation. Based on this methodology, any CONNUMs that have the same diameter will have the same conversion costs regardless of the other characteristics.²⁹

Commerce's Position

We disagree that we should apply either AFA or facts available to POSCO, as POSCO has fully cooperated and acted to the best of its ability in providing complete and accurate information in response to Commerce's requests in this administrative review.

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested by Commerce; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Further, section 776(b) of the Act provides that Commerce may use an adverse inference in 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 addition, the U.S. Court of Appeals for the

²³ *Id.*

²⁴ See POSCO's Rebuttal Brief at 18-19.

²⁵ *Id.* at 20-21 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2015-2016, 82 FR 42075 (September 6, 2017), and accompanying IDM at Comment 3; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016), and accompanying IDM at Comment 8; *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010), and accompanying IDM at Comment 4; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 39908 (June 20, 2016), and accompanying IDM at Comments 9-11).

²⁶ *Id.*

²⁷ *Id.* at 22.

²⁸ *Id.* at 24.

²⁹ *Id.* at 12.

Federal Circuit, in *Nippon Steel*, explained that when Commerce’s considers making an adverse inference the “best of its ability” standard does not require perfection.³⁰

The issues raised by the petitioners concerning POSCO’s reported costs do not meet these criteria for facts available as defined in section 776(a) of the Act, much less demonstrate that POSCO failed to comply to the best of its ability as defined by 776(b) of the Act. On the record of this review, POSCO fully responded to the initial questionnaire and all supplemental questionnaires.³¹

In determining the appropriate costs, section 773(f)(1)(A) of the Act directs Commerce to look first to the company’s books and records:

“Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.”

Accordingly, we are instructed by the Act to rely on the company’s normal books and records if two conditions are met: (1) the books are kept in accordance with the home country’s generally accepted accounting principles; and (2) the books reasonably reflect the cost to produce and sell the merchandise. Commerce uses such costs for purposes of the sales below cost test on home market sales and for constructed value (CV) when NV prices are not available. Additionally, Commerce relies on the reported CONNUM costs to calculate the difference-in-merchandise adjustment (DIFMER) when comparing prices of similar merchandise.

POSCO’s cost build-up worksheets and cost reconciliation demonstrate that the unadjusted per-unit costs are derived from POSCO’s normal books and records, which are kept in accordance with K-IFRS.³² For the CONNUMs that are identical for all characteristics except for diameter, POSCO demonstrated that their conversion costs by diameters have the trend that the petitioners expected when the cost data is specific to the production line and the month (production-line-month). POSCO explained that: “the comparison of costs based on the same production line in the same month confirms that thinner CONNUMs have higher processing costs. The reported costs for each CONNUM reflect a weighted-average of actual production costs for all production

³⁰ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

³¹ See POSCO’s Letter, “Carbon and Alloy Steel Wire Rod from the Republic of Korea - POSCO’s Section A Questionnaire Response,” dated September 10, 2019 (AQR); see also POSCO’s Letter, “Carbon and Alloy Steel Wire Rod from the Republic of Korea - POSCO’s Sections B, C, and D Questionnaire Responses,” dated October 4, 2019 (BQR, CQR, DQR); POSCO’s Letter, “Carbon and Alloy Steel Wire Rod from the Republic of Korea - POSCO’s Section E Questionnaire Response and Section C Addendum,” dated October 21, 2019 (EQR), POSCO’s Letter, “Carbon and Alloy Steel Wire Rod from the Republic of Korea - Response of POSCO to the Department’s February 24, 2020 Supplemental Section D Questionnaire,” dated March 23, 2020 (DSQR), POSCO’s Letter, “Carbon and Alloy Steel Wire Rod from the Republic of Korea - Response of POSCO to the Department’s February 24, 2020 Supplemental Section B and C Questionnaire,” dated April 6, 2020 (BCSQR); POSCO’s Letter, “Carbon and Alloy Steel Wire Rod from the Republic of Korea - Response of POSCO to the Department’s February 24, 2020 Supplemental Section A Questionnaire,” dated April 13, 2020 (ASQR); and SQR2nd.

³² See DQR at D-12, D-39, and Exhibit D-16. K-IFRS refers to Korean International Financial Reporting Standards.

lines during all months of the POR.”³³ Thus, while POSCO provided a factual basis to explain the cause of the “opposite direction” in trending of conversion costs by diameters, the petitioners provided no factual basis to demonstrate that POSCO intentionally embedded non-CONNUM factors in the reported costs, or that POSCO shifted costs away from the CONNUMs that were sold in both the home and U.S. markets.

The petitioners are incorrect in their assertion that section D of Commerce’s questionnaire directs the respondents to report per-unit CONNUM costs that reflect **solely** the physical characteristics identified for the case. Consistent with section 773(f) of the Act, the questionnaire directs the respondent to report weighted-average costs for each CONNUM relying on the per-unit costs from their normal books and records, assigned to CONNUMs based upon the physical characteristics identified by Commerce.³⁴ While either the respondent or Commerce may later assert that such costs do not reasonably reflect the cost of production, the starting point to adjust from is the per-unit figure from the normal books and records.³⁵ Further, if the respondent’s costs do not normally account for certain costs differences, Commerce may direct the respondent to further refine the costs from their system using available records.³⁶ However, Commerce does not direct the respondent to completely recalculate per-unit costs to **solely** reflect differences related to the physical characteristics. If Commerce instructed respondents to calculate costs as suggested by the petitioners, the per-unit costs would not reflect the actual costs of producing the products, as they would ignore other physical characteristics distorting their use in the sales below cost test and CV. Additionally, such costs would not be “calculated based on the records of the exporter or producer of the merchandise,” in accordance with section 773(f)(1)(A) of the Act, and would be difficult to verify in that they no longer represent the costs in the producer’s books and records.

Commerce relies on the reported per-unit costs as an option that can be used rather than a DIFMER adjustment and does not assume that the cost based DIFMER precisely captures the price difference between two products as the perceived value by a customer will not correlate directly to the marginal costs expended to achieve specific physical differences. Moreover, Commerce has recognized that modern computer-based accounting systems that track costs over short periods will on occasion capture differences that do not reflect any physical difference, for example timing differences related to assigned costs or natural production variances that average out differently because of small or large production quantities.³⁷ In such cases Commerce has resorted to averaging across CONNUMs to eliminate such distortions, but does so only when such differences can be shown to be significant.³⁸

³³ See SQR2nd at SD2-4 and Exhibit SD2-4, Exhibit SD2-5, and Exhibit SD2-6.

³⁴ See Commerce’s Letter, “Initial Questionnaire,” dated August 7, 2019 (Initial Questionnaire), at Section D “General Explanation and Response Methodology”.

³⁵ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014) (CWP Korea AR 11-12), and accompanying IDM at Comment 1; see also *Wire Rod Korea Inv.* and accompanying IDM at Comment 1; and *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019) (CORE Korea AR 16-17), and accompanying IDM at Comment 9.

³⁶ See CWP Korea AR 11-12; Wire Rod Korea Inv.; and CORE Korea AR 16-17.

³⁷ *Id.*

³⁸ *Id.*

For CONNUMs that are identical for all characteristics except for diameter, Commerce found that: (1) significantly different material costs between them was the effect of significantly fluctuated costs of coal and different timing of production;³⁹ and (2) “opposite direction” trend of conversion costs by diameters between them was the effect of varied efficiencies of production lines and different timing of production.⁴⁰ Because coal, production line and timing are unrelated to the physical characteristics of the steel wire rod, Commerce revised the reported coal costs by using a POR weighted-average coal cost in the *Preliminary Results*; further, Commerce revised the reported conversion costs by using a POR weighted-average conversion cost and applying ratios derived from the production-line-month specific costs in the final results, to correct the “opposite direction” trend.

We disagree that smoothing costs is unnecessary. POSCO provided no explanation that coal, production line, and timing are related to the physical characteristics of the steel wire rod; nor did it explain that the “opposite direction” trend of conversion costs by diameters reasonably reflect the costs associated with production and sale of the merchandise.

We disagree that POSCO withheld requested data for its major inputs.⁴¹ Commerce’s section D questionnaire requests a respondent to “provide the product specific per-unit cost of production incurred by each affiliated supplier **producing** the major input.”⁴² POSCO’s affiliated suppliers did not produce the inputs because they are trading companies according to POSCO’s financial statements and KSEC reports.⁴³ In accordance with section 773(f)(2) of the Act, we compared the affiliated prices to unaffiliated prices (*i.e.*, market value) and increased the cost as noted for the *Preliminary Results*.⁴⁴

We disagree that POSCO failed to submit the requested data and documentation for its cost reconciliation. POSCO reconciled the reported cost (*i.e.*, standard cost plus cost variances minus packing expense) to the actual costs reported in its financial statement.⁴⁵ Further, Commerce’s section D questionnaire requests a respondent to **identify** the source documents for all major items shown on the reconciliation worksheets;⁴⁶ POSCO identified the source documents as requested.⁴⁷

We also disagree with the petitioners that there are alleged deficiencies and discrepancies related to POSCO’s reported sales and expenses. We excluded overrun sales and denied a billing

³⁹ See *Preliminary Results* PDM at 14.

⁴⁰ See SQR2nd at SD2-4.

⁴¹ *Id.* at 32-36.

⁴² See Initial Questionnaire at D-4 Question 7f.

⁴³ See, *e.g.*, AQR at Appendix, POSCO’s 2017/2018 Consolidated Financial Statements, 11(b). Investments in Subsidiaries, Associates and Joint ventures; and SQR2nd at Exhibit SD2-14, 2018 KSEC Business Report, Main Business Details, Business Overview, Trading segment (18 companies). KSEC refers to Korea Securities and Exchange Commission.

⁴⁴ See Memorandum, “Calculation Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Carbon and Alloy Steel Wire Rod from the Republic of Korea; 2017-2019,” dated July 17, 2020 (Preliminary Calculation Memorandum), at Affiliated-Party Inputs.

⁴⁵ See SQR2nd at SD2-7 and Exhibit SD2-12.

⁴⁶ See Initial Questionnaire at D-11: “{o}n the worksheets, identify the source documents for all major items shown and cross-reference the worksheets where appropriate.”

⁴⁷ See SQR2nd at SD2-7 and Exhibit SD2-12.

adjustment after our analysis found they were made outside the ordinary course of trade. Rather, there would have potentially been deficiencies and discrepancies related to its reported sales and expenses if POSCO did not report its overrun sales and billing adjustments. If we did not exclude them from the home market analysis, then the dumping margins would be based on sales which are not representative, in violation of the ordinary-course-of-trade provision.⁴⁸

As discussed above, POSCO did not withhold information, provide untimely information, significantly impede the proceeding, or provide information that could not be verified; nor is necessary information missing from the record. Consequently, we find no basis to apply total AFA or facts available.

In response to POSCO's arguments, we found that the petitioners' analysis demonstrated that the costs from the books do not reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with section 773(f)(1)(A) of the Act, for the final results we continue to smooth the coal costs as was done in the *Preliminary Results*.

In addition, we are now refining conversion costs by diameters using the POR weighted-average conversion cost and the ratios derived from the reported production-line-month specific data. The revised conversion costs by diameters show the correct direction trend, *i.e.*, from the high to low when moving from smaller diameter to larger diameter product, which reasonably reflects the costs associated with production.

Comment 2: Whether the Beginning Dates in the Margin Program Are Correct

POSCO's Case Brief

- Commerce incorrectly set the first day of the first month of U.S. sales (BEGINDAY) and the first day of the first month of the window period (BEGINWINDOW) in the margin program to "01APR2018" and "01JAN2018", respectively. Instead, they should be "01FEB2018" and "01NOV2017" because the date of the first U.S. sale was in February 2018.⁴⁹

Petitioners' Rebuttal Brief

- Both dates should be set to 01JAN2018 because the date of the first U.S. sale was in April 2018. Section 351.414(f)(2) of Commerce's regulations states that the window period should begin with "the most recent of the three months prior to the month of the U.S. sales in which there was a sale of the foreign like product." Further, the SAS program notes the necessary correlation of these two dates: "in a review the Margin Calculation macro variable BEGINWINDOW needs to have the same value as the home market macro variable BEGINDAY so that model matching will work properly."⁵⁰

⁴⁸ See *Preliminary Results* PDM at 12; see also section 771(15) of the Act; section 773(a)(1)(B)(i) of the Act; Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 vol. I at 834 (1994), reprinted in 1994 U.S.C.C.A.N. 3773, 4163 (SAA); and *Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988) (The purpose of the ordinary-course-of-trade provision "is to prevent dumping margins from being based on sales which are not representative" of the home market.).

⁴⁹ See POSCO's Case Brief at 3-4.

⁵⁰ See Petitioners' Rebuttal Brief at 28-29.

Commerce's Position

We revised BEGINDAY and BEGINWINDOW in the final margin program. While the *Preliminary Results* stated that the date of sale for U.S. sales is the shipment date from the Pohang mill,⁵¹ the preliminary margin program inadvertently used the invoice date for the beginning dates of U.S. sales and window period.

Comment 3: Whether U.S. Sales of Further Manufactured Merchandise Should be Excluded

POSCO's Case Brief

- POSCO America Alabama Processing Center Co., Ltd. (AAPC)'s U.S. sales of further manufactured merchandise should be excluded from the margin calculation, because the value added after importation by POSCO America Corp. (POSAM) exceeded substantially the value at the time of importation. The entered value should be used for estimation of value added defined in 19 CFR 351.402(c)(2). Additionally, these sales only account for a small percentage of the overall U.S. sales quantity. Given these facts, according to 19 CFR 351.402(c)(2) and section 772(e) of the Act (the "special rule"), Commerce is afforded the discretion to use alternative calculations or thresholds in appropriate circumstances and these sales should be excluded.⁵²

Petitioners' Rebuttal Brief

- POSCO is seeking an alternative calculation methodology that should be rejected. The data demonstrate that the value added after importation by POSCO's affiliates is not "likely to exceed substantially the value of the subject merchandise."⁵³
- Under 19 CFR 251.402(c)(2), Commerce will find the "value added is likely to exceed substantially the value of the subject merchandise if Commerce estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise sold in the U.S." Using this approach, POSCO admits that the value added is below the threshold of 65 percent.⁵⁴
- Commerce has not used an alternative calculation method whereby the transfer price of the imported merchandise serves as the benchmark to measure whether the value of the further manufacturing exceeded the 65 percent threshold, citing *CORE Korea Inv. Final*.⁵⁵
- POSCO has missed the fundamental purpose of the "special rule," which is intended to alleviate the burden on Commerce and not the respondent. It would be patently absurd to

⁵¹ See *Preliminary Results* PDM at 8.

⁵² See POSCO's Case Brief at 5-7.

⁵³ See Petitioners' Rebuttal Brief at 25-26.

⁵⁴ *Id.* at 25.

⁵⁵ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016), and accompanying IDM at Comment 2.

argue that one should ignore the data that respondent was in fact able to compile and present.⁵⁶

Commerce's Position

We continue to include the sales of further-manufactured merchandise in the margin calculation because the value added in the United States fails the 65 percent threshold defined by 19 CFR 351.402(c), and thus those sales do not qualify for exclusion under the "special rule" defined by section 772(e) of the Act. Further, neither the Act nor Commerce's regulations contemplate an exemption based on the quantity of such sales.

Section 772(e) of the Act define the special rule as:

(e) SPECIAL RULE FOR MERCHANDISE WITH VALUE ADDED AFTER IMPORTATION. - Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

19 CFR 351.402(c) defines the calculations:

(c) Special rule for merchandise with value added after importation - (1) Merchandise imported by affiliated persons. In applying section 772(e) of the Act, merchandise imported by and value added by a person affiliated with the exporter or producer includes merchandise imported and value added for the account of such an affiliated person.

(2) Estimation of value added. The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 65 percent of **the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States**. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and **the price paid for the**

⁵⁶ See Petitioners' Rebuttal Brief at 27.

subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.

POSCO sold the subject merchandise to its U.S. subsidiary, POSAM, who resold the subject merchandise to its subsidiary, AAPC, who further processed the subject merchandise and sold the further manufactured merchandise to unaffiliated U.S. customers.

POSCO misinterpreted the value added as the difference between the selling price of AAPC and entered value of the subject merchandise, and further misinterpreted the threshold as a percentage of the entered value.⁵⁷ The entered value of the merchandise at importation is not part of Commerce's calculations, in this regard. In accordance with 19 CFR 351.402(c), we instead calculated the value added based on the difference between the selling price of AAPC and the price paid for the subject merchandise by POSAM, then divided the value-added by the selling price of AAPC, and found the value-added in the United States was less than 65 percent of the AAPC's selling price.

POSCO provided no explanation as to why those sales represents an appropriate circumstance in which an alternative calculation or threshold should be used. Even though 19 CFR 351.402(c)(2) states Commerce will "normally determine that the value added...." there is nothing in POSCO's arguments to warrant Commerce to change from its current practice.

Comment 4: Whether to Grant POSCO a CEP offset

POSCO's Case Brief

- Commerce frequently relies principally on the selling functions chart, and the narrative discussions related to it, as the basis for determining whether a company qualifies for a CEP offset.⁵⁸ Commerce disregarded the clearly identifiable differences between the home market level of trade (LOT) and the CEP LOT shown in the selling functions chart. The record is replete with evidence of all nine selling activities reported in the selling functions chart.⁵⁹
- The nature of U.S. sales process caused the CEP LOT to be at a less advanced stage, and thus supports a CEP offset.⁶⁰ Prior cases, including *CTL Steel Korea AR 17-18*,⁶¹ *Cold-Rolled*

⁵⁷ See POSCO's Letter, "Carbon and Alloy Steel Wire Rod from the Republic of Korea - Response to the Department's September 19th Supplemental Request," dated September 24, 2019, at Attachment A.

⁵⁸ See *Certain Corrosion - Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008) (*CORE Carbon Steel Korea AR 05-06*), and accompanying IDM at Comment 3.

⁵⁹ See POSCO's Case Brief at 9.

⁶⁰ *Id.* at 15.

⁶¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 83 FR 65348 (December 20, 2018), and accompanying PDM at 8-9, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 25751 (June 4, 2019) (*CTL Steel Korea AR 17-18*).

Carbon Steel Korea Inv.,⁶² *CORE Carbon Steel Korea AR 02-03*,⁶³ *Stainless Pipe Taiwan AR 00-01*,⁶⁴ *Bricks Mexico Inv.*,⁶⁵ *Stainless Coils Germany AR 04-05*,⁶⁶ which all had similar factual circumstances to the instant proceeding, support the granting of a CEP offset for POSCO.

Petitioners' Rebuttal Brief

- POSCO erroneously claims that it has demonstrated a greater magnitude and intensity of selling activities at the home-market LOT than that of the CEP LOT.⁶⁷ POSCO also claimed that it provided the required quantitative analysis. These claims are false.⁶⁸ Furthermore, some of the supporting documentation that POSCO did provide contradicts its claim for the offset.⁶⁹
- A CEP offset is not automatically granted based solely on the nature of U.S. sales process.⁷⁰ The case precedents cited by POSCO, when taken in their full context, show that they differ from the facts of the record here. In all those cases all the necessary documentation and analysis was provided.

Commerce's Position

We continue to find that a CEP offset is not warranted, finding that POSCO: (1) disregards the selling functions chart and documentation on the record; (2) mistakes the reported level of intensity as a quantitative analysis to support the claimed level of intensity; (3) overlooks an affiliated reseller of home market sales; and (4) ignores the fact that the granting of a CEP offset is a the fact-intensive and case-specific inquiry.

Section 773(a)(7)(B) of the Act states:

When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine

⁶² See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002) (*Cold-Rolled Carbon Steel Korea Inv.*), and accompanying IDM at Comment 10.

⁶³ See *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) (*CORE Carbon Steel Korea AR 02-03*), and accompanying IDM at Comment 4.

⁶⁴ See *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 78417 (December 24, 2002) (*Stainless Pipe Taiwan AR 00-01*), and accompanying IDM at Comment 6.

⁶⁵ See *Certain Magnesia Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010) (*Bricks Mexico Inv.*), and accompanying IDM at Comment 2.

⁶⁶ See *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024 (August 8, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006) (*Stainless Coils Germany AR 04-05*).

⁶⁷ See *Petitioners' Rebuttal Brief* at 9.

⁶⁸ *Id.* at 17.

⁶⁹ *Id.* at 18.

⁷⁰ *Id.* at 22 (citing *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1316 (Fed. Cir. 2001)).

under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).

19 CFR 351.412(c)(2) states:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.

We explained in the *Preliminary Results* the reasons for not granting the offset: (1) the selling functions chart shows that nine activities performed for home market sales are also performed for CEP sales at the same or similar level of intensity; (2) the response to question 3a(ii) of the initial questionnaire contains supporting documentation for only three of the nine claimed activities; and (3) the response to 3a(vi) of the initial questionnaire provided no quantitative analysis to support the claimed level of intensities.⁷¹

POSCO disregards the selling functions chart and documentation on the record. POSCO claimed that it provided more provisions of sales support and training services to the home market;⁷² however, the chart shows that three activities were performed at the same level of intensity in the two markets and the remaining two activities were performed in the home market at one level higher than for CEP sales.⁷³ Furthermore, the supporting documentation and KSEC report indicate that all five activities were performed indistinguishably for both markets.⁷⁴ POSCO reported that it did not provide technical support to either market.⁷⁵ POSCO did not claim that it provided logistical services at different levels in each market;⁷⁶ however, the chart shows that one of the two activities under the provision of logistical services was performed in the home market at one level lower than for CEP sales. POSCO claimed that it provided more sales related administrative activities in the home market; however, the chart shows that one activity was performed at the same level for both markets, and another activity was performed in the home market by an affiliated reseller.⁷⁷ Consequently, we continue to find no substantial differences in the selling activities performed in the two markets and that a CEP offset is unwarranted.

POSCO argued that, besides the three documents provided in response to question 3a(ii), documents provided in responses to other questions (*e.g.*, sample sales) in its sections A-C questionnaire responses, demonstrate that it performed all nine claimed activities.⁷⁸ Even if

⁷¹ See *Preliminary Results* PDM at 12.

⁷² See POSCO's Case Brief at 12.

⁷³ See ASQR at Exhibit SA-7.

⁷⁴ See AQR at Exhibit A-10; see also Petitioners' Rebuttal Brief at 18-21.

⁷⁵ See POSCO's Case Brief at 12.

⁷⁶ *Id.* at 13.

⁷⁷ *Id.* at 13.

⁷⁸ *Id.* at 14.

those documents support the claim that it performed each reported activity, POSCO provided no discussion on how those documents support the claim that it performed substantially greater selling activities for its home market sales.

In its Section A response,⁷⁹ POSCO responded “not applicable” to question 3a(iv): “provide a quantitative analysis showing how the expenses assigned to POI/POR sales made at different claimed levels of trade impact price comparability,” and to question 3a(v): “demonstrate how indirect selling expenses vary by the different levels of trade claimed.” POSCO did not provide the requested quantitative analysis, to be substantiated with source documents to answer either question. Then, in response to question 3a(vi), POSCO mistook its reported level of intensities as a substitute for the necessary quantitative analysis required by Commerce.

Regarding the nature of the CEP sales process, POSCO overlooks the involvement of its affiliated reseller for its home market sales,⁸⁰ and suggests that a CEP offset should be automatically granted based solely on the nature of CEP sales. This is contrary to both the Act and Commerce’s regulations. According to 19 CFR 351.412(c)(2), the respondent must first demonstrate that substantial differences exist between the LOTS of sales in each market.

POSCO’s reliance on the cited case precedents ignores that the granting of a CEP offset is a fact-intensive and case-specific inquiry, and that the distribution process question of the initial questionnaire has been revised since cited the determinations.⁸¹ Thus, the facts in this proceeding are different. Because POSCO did not provide the requested quantitative analysis, we find that the record lacks the quantitative information required to determine the relationship of the U.S. LOT with the information submitted regarding the home market LOT.

Accordingly, as explained above, the record evidence provides no support for POSCO’s claim that substantially greater selling activities were performed for home market sales than for CEP sales. Thus, as the two LOTs are at a same or similar stage of distribution, we find that a CEP offset is not warranted.

⁷⁹ See AQR at A-19 to A-20.

⁸⁰ *Id.* at A-15.

⁸¹ See, e.g., the initial questionnaire (barcode: 3696223-01) on the record of *CTL Steel Korea AR 17-18*, for which the final results were published on June 4, 2019.

VI. RECOMMENDATION

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

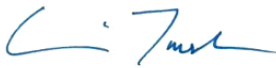
☒

Agree

☐

Disagree

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance