

Proceedings and firms	Class or kind
INA Walzlager Schaeffler KG	All.
NTN Kugellagerfabrik (Deutschland) GmbH	All.
Rollix & Defontaine, S.A.	Ball.
SKF GmbH. (including all relevant affiliates)	All.
Torrington Nadellager (Torrington/Kuensebeck)	Ball & Cylindrical.
Italy A-475-801:	
FAG Italia S.p.A. (including all relevant affiliates)	Ball & Cylindrical.
SKF-Industrie S.p.A.	Ball.
Japan A-588-804:	
Asahi Seiko	Ball.
Izumoto Seiko Co., Ltd	All.
Jidosha Buhin Kogyo Co., Ltd	Ball.
Koyo Seiko Company, Ltd	All.
Naiico Spicer Co., Ltd	Ball.
Nippon Pillow Block Sales Company, Ltd	All.
Nippon Seiko K.K. (NSK)	All.
Nissan Trading Co., Ltd	Ball.
NTN Corp	All.
Romania A-485-801:	
Tehnimportexport, S.A.	Ball.
Singapore A-559-801:	
NMB Singapore/Pelmec Ind	Ball.
Thailand A-549-801:	
NMB Thai/Pelmec Thai Ltd	Ball.
United Kingdom A-412-801:	
Barden Corporation	Ball.
NSK Bearings Europe, Ltd./RHP Bearings Ltd	Ball & Cylindrical.
Normalair-Garrett Ltd	Ball & Cylindrical.
Hoffmann U.K.	Ball & Cylindrical.
Rose Bearing Co., Ltd	Ball & Cylindrical.
Timken Bearing Co	Ball & Cylindrical.

Interested parties must submit applications for administrative protective orders in accordance with section 353.34(b) of the Department's regulations.

However, due to the large number of parties to this proceeding, we strongly recommend that parties submit their APO applications as soon as possible, and we will process them on a first-come, first-served basis.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c).

Dated: June 12, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

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[A-357-809]

Notice of Final Determination of Sales at Less than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT:

Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-6320 or (202) 482-3853.

Final Determination

The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from Argentina is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (1994). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our preliminary determination on January 19, 1995 (60 FR 5348, January 27, 1994), the following events have occurred.

In response to a request from respondent Siderca S.A.I.C. (Siderca), we postponed the final determination until June 12, 1995, pursuant to section 735(a)(2)(A) of the Act (60 FR 9012, February 16, 1995).

In our notice of preliminary determination we stated that we would solicit further information on various scope-related issues, including class or kind of merchandise. On February 10, 1995, we issued a questionnaire to interested parties to request further information on whether the scope of the investigation constitutes more than one class or kind of merchandise. Responses to this questionnaire were submitted on March 27, 1995.

On April, 27, 1995, Koppel Steel Corporation, a U.S. producer of subject merchandise which appeared as an interested party from the outset of this investigation, requested co-petitioner status.

On May 5, 1995, respondent submitted its case brief. Petitioner¹ submitted its rebuttal brief on May 15, 1995. In its rebuttal brief, petitioner requested that the Department reject "substantial portions" of Siderca's case brief because it allegedly constituted a "new submission of factual information." Siderca objected to this request on May 19, 1995. Petitioner responded to this letter on May 26, 1995. However, we determined that Siderca's case brief did not contain new factual information. (See Comment 1 in the "Interested Party Comment" section

¹ All references to "petitioner" in this notice include Koppel Steel Corporation.

of this notice.) In addition, on June 1, 1995, the Department returned Siderca's May 19, 1995, letter, as well as petitioner's letter of May 26, 1995, because they constituted unsolicited submissions untimely filed after the briefing period.

Scope of Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the "Scope Issues" section below.

The scope of this investigation includes seamless pipes produced to the ASTM A-335, ASTM A-106, ASTM A-53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel

pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A-106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A-335 must be used if temperatures and stress levels exceed those allowed for A-106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A-106 specification necessarily meet the API 5L and ASTM A-53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A-53 specification. However, pipes meeting the A-53 or API 5L specifications do not necessarily meet the A-106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A-

106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A-335, A-106, A-53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A-106 applications. These specifications generally include A-162, A-192, A-210, A-333, and A-524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A-335, A-106, A-53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Interested parties in these investigations have raised several issues related to the scope. We considered these issues in our preliminary determination and invited additional comments from the parties. These issues, which are discussed below, are: (A) Whether to continue to include end use as a factor in defining the scope of these investigations; (B) whether the seamless pipe subject to these investigations constitutes more than one class or kind of merchandise; and (C) miscellaneous scope clarification issues and scope exclusion requests.

A. End Use

We stated in our preliminary determination that we agreed with petitioner that pipe products identified as potential substitutes used in the same applications as the four standard, line, and pressure pipe specifications listed in the scope would fall within the class or kind of subject merchandise and, therefore, within the scope of any orders issued in these investigations. However, we acknowledged the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties, and stated that we would strive to simplify any procedures in this regard.

For purposes of these final determinations, we have considered carefully additional comments submitted by the parties and have determined that it is appropriate to continue to employ end use to define the scope of these cases with respect to non-listed specifications. We find that the generally accepted definition of standard, line and pressure seamless pipes is based largely on end use, and that end use is implicit in the description of the subject merchandise. Thus, end use must be considered a significant defining characteristic of the subject merchandise. Given our past experience with substitution after the imposition of antidumping orders on steel pipe products,² we agree with petitioner that if products produced to a non-listed specification (e.g., seamless pipe produced to A-162, a non-listed specification in the scope) were actually used as standard, line, or pressure pipe, then such product would fall within the same class or kind of merchandise subject to these investigations.

Furthermore, we disagree with respondents' general contention that using end use for the scope of an antidumping case is beyond the purview of the U.S. antidumping law. The Department has interpreted scope language in other cases as including an end-use specification. See *Ipsco Inc. v. United States*, 715 F.Supp. 1104 (CIT 1989) (*Ipsco*). In *Ipsco*, the Department had clarified the scope of certain orders, in particular the phrase, "intended for use in drilling for oil and gas," as covering not only API specification OCTG pipe but, "all other pipe with [certain specified] characteristics used in OCTG applications * * *." *Ipsco* at 1105. In reaching this determination,

the Department also provided an additional description of the covered merchandise, and initiated an end-use certification procedure.

Regarding implementation of the end use provision of the scope of these investigations, and any orders which may be issued in these investigations, we are well aware of the difficulty and burden associated with such certifications. Therefore, in order to maintain the effectiveness of any order that may be issued in light of actual substitution in the future (which the end-use criterion is meant to achieve), yet administer certification procedures in the least problematic manner, we have developed an approach which simplifies these procedures to the greatest extent possible.

First, we will not require end-use certification until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring.³ Second, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that substitution is occurring. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to A-162 specification is being used as pressure pipe, we will require end-use certifications for imports of A-162 specification. Third, normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States. For a complete discussion of interested party comments and the Department's analysis on this topic, see June 12, 1995, *End Use Decision Memorandum* from Deputy Assistant Secretary Barbara Stafford (DAS) to Assistant Secretary Susan Esserman (AS).

B. Class or Kind

In the course of these investigations, certain respondents have argued that the scope of the investigations should be divided into two classes or kinds. Siderca S.A.I.C., the Argentine respondent, has argued that the scope should be divided according to size: seamless pipe with an outside diameter of 2 inches or less and pipe with an outside diameter of greater than 2 inches constitute two classes or kinds.

Mannesmann S.A., the Brazilian respondent, and Mannesmannrohr-Werke, A.G., the German respondent, argued that the scope should be divided based upon material composition: carbon and alloy steel seamless pipe constitute two classes or kinds.

In our preliminary determinations, we found insufficient evidence on the record that the merchandise subject to these investigations constitutes more than one class or kind. We also indicated that there were a number of areas where clarification and additional comment were needed. For purposes of the final determination, we considered a significant amount of additional information submitted by the parties on this issue, as well as information from other sources. This information strongly supports a finding of one class or kind of merchandise. As detailed in the June 12, 1995, *Class or Kind Decision Memorandum* from DAS to AS, we analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) The general physical characteristics of the merchandise; (2) expectations of the ultimate purchaser; (3) the ultimate use of the merchandise; (4) the channels of trade in which the merchandise moves; and (5) the cost of that merchandise.

In the past, the Department has divided a single class or kind in a petition into multiple classes or kinds where analysis of the *Diversified Products* criteria indicates that the subject merchandise constitutes more than one class or kind. See, for example, *Final Determination of Sales at Less than Fair Value; Anti-Friction Bearings (Apart from Tapered Roller Bearings) from Germany*, 54 FR 18992, 18998 (May 3, 1989) ("AFBs from Germany"); *Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition*, 57 FR 30939 (July 13, 1992).

1. Physical Characteristics

We find little meaningful difference in physical characteristics between seamless pipe above and below two inches. Both are covered by the same technical specifications, which contains detailed requirements.⁴ While we recognize that carbon and alloy pipe do have some important physical

² See *Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Welded Non-Alloy Steel Pipes from Brazil, the Republic of Korea, Mexico and Venezuela*, 59 FR 1929, January 13, 1994.

³ This approach is consistent with petitioner's request.

⁴ The relevant ASTM specifications, as well as product definitions from other independent sources (e.g., American Iron and Steel Institute (AISI)), describe the sizes for standard, line, and pressure pipe, as ranging from 1/2 inch to 60 inches (depending on application). None of these descriptions suggest a break point at two inches.

differences (primarily the enhanced heat and pressure tolerances associated with alloy grade steels), it is difficult to say where carbon steel ends and alloy steel begins. As we have discussed in our *Class or Kind Decision Memorandum* of June 12, 1995, carbon steel products themselves contain alloys, and there is a range of percentages of alloy content present in merchandise made of carbon steel. We find that alloy grade steels, and pipes made therefrom, represent the upper end of a single continuum of steel grades and associated attributes.⁵

In those prior determinations where the Department divided a single class or kind, the Department emphasized that differences in physical characteristics also affected the capabilities of the merchandise (either the mechanical capabilities, as in *AFBs from Germany*, 54 FR at 18999, 19002-03, or the chemical capabilities, as in *Pure and Alloy Magnesium from Canada*, 57 FR at 30939), which in turn established the boundaries of the ultimate use and customer expectations of the products involved.

As the Department said in *AFBs from Germany*,

[t]he real question is whether the physical differences are so material as to alter the essential nature of the product, and, therefore, rise to the level of class or kind distinctions. We believe that the physical differences between the five classes or kinds of the subject merchandise are fundamental and are more than simply minor variations on a theme.

54 FR at 19002. In the present cases, there is insufficient evidence to conclude that the differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, rise to the level of a class or kind distinction.

Furthermore, with regard to Siderca's allegation that a two-inch breakpoint is widely recognized in the U.S. market for seamless pipe, the Department has found only one technical source of U.S. market data for seamless pipe, the *Preston Pipe Report*. The *Preston Pipe Report*, which routinely collects and publishes U.S. market data for this merchandise, publishes shipment data for the size ranges 1/2 to 4 1/2 inches: it

does not recognize a break point at 2 inches. Accordingly, the Department does not agree with Siderca that "the U.S. market" recognizes 2 inches as a physical boundary line for the subject merchandise.

In these present cases, therefore, the Department finds that there is insufficient evidence that any physical differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, or between carbon and alloy steel, rise to the level of class or kind distinctions.

2. Ultimate Use and Purchaser Expectations

We find no evidence that pipe above and below two inches is used exclusively in any specific applications. Rather, the record indicates that there are overlapping applications. For example, pipe above and below two inches may both be used as line and pressure pipe. The technical definitions for line and pressure pipe provided by ASTM, AISI, and a variety of other sources do not recognize a distinction between pipe over and under two inches.

Likewise, despite the fact that alloy grade steels are associated with enhanced heat and pressure tolerances, there is no evidence that the carbon or alloy content of the subject merchandise can be differentiated in the ultimate use or expectations of the ultimate purchaser of seamless pipe.

3. Channels of Trade

Based on information supplied by the parties, we determine that the vast majority of the subject merchandise is sold through the same channel of distribution in the United States and is triple-stenciled in order to meet the greatest number of applications.

Accordingly, the channels of trade offer no basis for dividing the subject merchandise into multiple classes or kinds based on either the size of the outside diameter or on pipe having a carbon or alloy content.

4. Cost

Based on the evidence on the record, we find that cost differences between the various products do exist. However, the parties varied considerably in the factors which they characterized as most significant in terms of affecting cost. There is no evidence that the size ranges above and below two inches, and the difference between carbon and alloy grade steels, form a break point in cost which would support a finding of separate classes or kinds.

In conclusion, while we recognize that certain differences do exist between

the products in the proposed class or kind of merchandise, we find that the similarities significantly outweigh any differences. Therefore, for purposes of the final determination, we will continue to consider the scope as constituting one class or kind of merchandise.

C. Miscellaneous Scope Clarification Issues and Exclusion Requests

The miscellaneous scope issues include: (1) Whether OCTG and unfinished OCTG are excluded from the scope of these investigations; (2) whether pipes produced to non-standard wall thicknesses (commonly referred to as "tubes") are covered by the scope; (3) whether certain merchandise (e.g., boiler tubing, mechanical tubing) produced to a specification listed in the scope but used in an application excluded from the scope is covered by the scope; and (4) whether redraw hollows used for cold drawing are excluded from the scope. For a complete discussion of interested party comments and the Department's analysis on these topics, see June 12, 1995, *Additional Scope Clarifications Decision Memorandum* from DAS to AS.

Regarding OCTG, petitioner requested that OCTG and unfinished OCTG be included within the scope of these investigations if used in a standard, line or pressure pipe application. However, OCTG and unfinished OCTG, even when used in a standard, line or pressure pipe application, may come within the scope of certain separate, concurrent investigations. We intend that merchandise from a particular country not be classified simultaneously as subject to both an OCTG order and a seamless pipe order. Thus, to eliminate any confusion, we have revised the scope language above to exclude finished and unfinished OCTG, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in a standard, line or pressure pipe application, and, as with other non-listed specifications, may be subject to end-use certification if there is evidence of substitution.

Regarding pipe produced in non-standard wall thicknesses, we determine that these products are clearly within the parameters of the scope of these investigations. For clarification purposes, we note that the physical parameters of the scope include all seamless carbon and alloy steel pipes, of circular cross-section, not more than 4.5 inches in outside diameter, *regardless of*

⁵ The Department has had numerous cases where steel products including carbon and alloy grades were considered to be within the same class or kind. See, e.g., *Preliminary Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Austria, et al.*, 60 FR 6512 (February 2, 1995); *Final Determination of Sales at Less than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semi-Finished Products of Special Bar Quality Engineered Steel from Brazil*, 58 FR 31496 (June 3, 1993); *Final Determination of Sales at Less than Fair Value: Forged Steel Crankshafts from the United Kingdom*, 60 FR 22045 (May 9, 1995).

wall thickness. Therefore, the fact that such products may be referred to as tubes by some parties, and may be multiple-stenciled, does not render them outside the scope.

Regarding pipe produced to a covered specification but used in a non-covered application, we determine that these products are within the scope. We agree with the petitioner that the scope of this investigation includes all merchandise produced to the covered specifications and meeting the physical parameters of the scope, regardless of application. The end-use criteria included in the scope is only applicable to products which can be substituted in the applications to which the covered specifications are put *i.e.* standard, line, and pressure applications.

It is apparent that at least one party in this case interpreted the scope incorrectly. Therefore, we have clarified the scope to make it more explicit that all products made to ASTM A-335, ASTM A-106, ASTM A-53 and API 5L are covered, regardless of end use.

With respect to redraw hollows for cold drawing, the scope language excludes such products specifically when used in the production of cold-drawn pipe or tube. We understand that petitioner included this exclusion language expressly and intentionally to ensure that hollows imported into the United States are sold as intermediate products, not as merchandise to be used in a covered application.

Standing

The Argentine, Brazilian, and German respondents have challenged the standing of Gulf States Tube to file the petition with respect to pipe and tube between 2.0 and 4.5 inches in outside diameter, arguing that Gulf States Tube does not produce these products.

Pursuant to section 732(b)(1) of the Act, an interested party as defined in section 771(9)(C) of the Act has standing to file a petition. (See also 19 CFR 353.12(a).) Section 771(9)(C) of the Act defines "interested party," *inter alia*, as a producer of the like product. For the reasons outlined in the "Scope Issues" section above, we have determined that the subject merchandise constitutes a single class or kind of merchandise. The International Trade Commission (ITC) has also preliminarily determined that there is a single like product consisting of circular seamless carbon and alloy steel standard, line, and pressure pipe, and tubes not more than 4.5 inches in outside diameter, and including redraw hollows. (See USITC Publication 2734, August 1994 at 18). For purposes of determining standing, the Department has determined to accept the ITC's

definition of like product, for the reasons set forth in the ITC's preliminary determination. Because Gulf States is a producer of the like product, it has standing to file a petition with respect to the class or kind of merchandise under investigation. Further, as noted in the "Case History" section of this notice, on April 27, 1995, Koppel, a U.S. producer of the product size range at issue, filed a request for co-petitioner status, which the Department granted. As a producer of the like product, Koppel also has standing.

The Argentine respondent argues that Koppel's request was filed too late to confer legality on the initiation of these proceedings with regard to the products at issue. Gulf States Tube maintains that the Department has discretion to permit the amendment of a petition for purposes of adding co-petitioners who produce the domestic like product, at such time and upon such circumstances as deemed appropriate by the Department.

The Court of International Trade (CIT) has upheld in very broad terms the Department's ability to allow amendments to petitions. For example, in *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075 (Ct. Int'l Trade 1988), the Court sustained the Department's granting of requests for co-petitioner status filed by six domestic producers on five different dates during an investigation. The Court held that the addition of the co-petitioners cured any defect in the petition, and that allowing the petition to be amended was within Commerce's discretion:

[S]ince Commerce has statutory discretion to allow amendment of a dumping petition at any time, and since Commerce may self-initiate a dumping petition, any defect in a petition filed by [a domestic party is] cured when domestic producers of the like product [are] added as co-petitioners and Commerce [is] not required to start a new investigation.

Citrosuco, 704 F. Supp. at 1079 (emphasis added). The Court reasoned that if Commerce were to have dismissed the petition for lack of standing, and to have required the co-petitioners to refile at a later date, it "would have elevated form over substance and fruitlessly delayed the antidumping investigation * * * when Congress clearly intended these cases to proceed expeditiously." *Id.* at 1083-84.

Koppel has been an interested party and a participant in these investigations from the outset. The timing of Koppel's request for co-petitioner status and the fact that it made its request in response to Siderca's challenge to Gulf States's Tube's standing does not render its request invalid. See *Final Affirmative Countervailing Duty Determination; Live*

Swine and Fresh, Chilled, and Frozen Pork Products from Canada, 50 FR 25097 (June 17, 1985). The Department has rejected a request to add a co-petitioner based on the untimeliness of the request only where the Department determined that there was not adequate time for opposing parties to submit comments and for the Department to consider the relevant arguments. See *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden*, 52 FR 5794, 5795, 5803 (February 26, 1987). In this investigation, the respondents have had an opportunity to comment on Koppel's request for co-petitioner status, and the Argentine respondent has done so in its case brief. Therefore, we have determined that, because respondents would not be prejudiced or unduly burdened, amendment of the petition to add Koppel as co-petitioner is appropriate.

Period of Investigation

The period of investigation (POI) is January 1, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Siderca, the only named respondent in this investigation. As stated in our notice of preliminary determination, on September 12, 1994, Siderca notified the Department that it would not participate in this investigation. Because Siderca refused to answer the Department's questionnaire, we find that it has not cooperated in this investigation.

In determining what rate to use as BIA, the Department follows a two-tiered BIA methodology, whereby the Department may impose the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding, or assign a lower rate for those respondents who have cooperated in an investigation. The Department's BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. The Department's practice for applying BIA to cooperative respondents is to use the higher of the average of the margins alleged in the petition or the calculated

margin for another firm for the same class or kind of merchandise from the same country. See *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19033 (May 3, 1989). The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co. v. the United States*, 996 F2d 1185 (Fed Cir. 1993); see also *Krupp Stahl AG. et al v. the United States*, 822 F. Supp. 789 (CIT 1993).) Because there are no other respondents in this investigation we are assigning to Siderca, as BIA, the highest margin among the margins alleged in the petition.

Fair Value Comparisons

To determine whether sales of subject merchandise from Germany to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV) as reported in the petition. See *Initiation of Antidumping Duty Investigation of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy* (59 FR 37025, July 20, 1994).

Interested Party Comments

Comment 1

Petitioner contends that Siderca's submissions of factual information made after its September 12, 1994, letter indicating that it would not participate in the investigation, are untimely. As such, they must be stricken from the record and not considered by the Department in its final determination. In addition, petitioner states that none of the factual information upon which Siderca relies in its case brief has been verified by the Department, which is required under the antidumping statute if it is to be utilized by the Department in making a final determination. Also, petitioner states that some of Siderca's later submissions (e.g., submissions on October 12, 1994, and March 27, 1995) related to standing and class or kind issues did not contain certifications of factual information.

DOC Position

We disagree with petitioner. Despite the fact that Siderca chose not to respond to the Department's questionnaire, and thus not to participate in this investigation, the Department cannot preclude it from

commenting as an interested party in this investigation. Furthermore, all of the information contained in Siderca's brief was submitted previously on the record, so that its case brief contained no new factual information. In addition, the omission of certification from earlier submissions was a clerical oversight which was cured without prejudicing petitioner.

Comment 2

Siderca maintains that Gulf States is not a producer of standard, line and pressure pipe between 2.0 and 4.5 inches in outer diameter (OD) and, therefore, lacks standing as an "interested party" under section 771(9)(C) of the Act to petition on behalf the U.S. industry which produces this merchandise. Siderca also asserts that the request of Koppel Steel Corporation for co-petitioner status does not remedy Gulf States' lack of standing or cure the petitioner's defects. Consequently, Siderca urges the Department to rescind the initiation of the investigation with respect to seamless pipe in the OD size range between 2.0 and 4.5.

Specifically, respondent states that Gulf States openly admits in the petition that it neither manufactures or sells seamless pipe greater than or equal to 2 $\frac{3}{8}$ inches in OD, and that publicly available evidence shows that Gulf States neither manufactures or sells seamless pipe between 1.9 and 2 $\frac{3}{8}$ inches in OD. Respondent also maintains that Gulf States fails to meet the statutory test for interested party status to file a petition under Section 771(9)(C) of the Act, and has no legally-recognizable stake in the market for pipe greater than 2.0 inches in OD, as provided for in the legislative history of the standing requirement.

Furthermore, Siderca asserts that the ITC's one like product preliminary determination does not change this analysis because the like product determination made by the ITC when it considers the issue of material injury is different from the like product determination made by the Commerce Department when it considers the issue of standing. The Commerce Department is not required to adopt the ITC's like product definition for purposes of determining petitioner's standing. Siderca adds that seamless carbon and alloy pipe is produced in a continuum of sizes at least up to 36 inches in OD; there is no "bright line" at any point on that continuum above 2.0 inches, other than a line that may be drawn where the facilities of producers impose physical limitations. Thus, if the Department concludes that a producer of seamless pipe up to 2.0 inches is an interested

party with regard to seamless pipe of greater OD, then there is no more of a justification for a producer such as Gulf States to petition on pipe up to 4.5 inches than there is for it to petition up to 36 inches. Once the Department determines that a petitioner is an interested party for sizes beyond its production capability, there is no reason for drawing the line at 4.5 inches or any other point along the continuum.

With respect to Koppel's request for co-petitioner status, respondent states that this request was filed too late (almost 10 months after the June 23, 1994, filing of the petition) to confer legality on the initiation of this proceeding with regard to seamless pipe between 2.0 and 4.5 inches in OD. According to Siderca, this action is unprecedented, and was precipitated by Gulf States' and Koppel's realization that the petition and Department's subsequent initiation are legally deficient with respect to seamless pipe over 2.0 inches. Siderca also points out that all of the information on which the Department relied in making its initiation determination came from Gulf States, not Koppel. If Koppel is not accepted as co-petitioner, the initiation of these investigations with regard to pipe between 2.0 and 4.5 inches in OD must be rescinded because Gulf States is not an interested party with respect to merchandise of this size range.

Siderca also asserts that if the Department does not reject the petition or rescind the initiation with respect to seamless pipe of this size range, it should determine that there are two classes or kinds of merchandise, i.e., 2.0 inches and below; and between 2.0 and 4.5 inches, because these pipe size ranges differ in terms of physical characteristics, purchaser expectations, end use and cost.

Gulf States contends that Siderca's objection to its standing is without merit because: (1) There is no basis in law or in fact for treating pipe larger than 2.0 inches in OD as a separate class or kind of merchandise; and (2) in any event, Gulf States produces pipe in the categories of merchandise proposed by Siderca. Contrary to respondent's claim, petitioner points out that in its March 27, 1995, submission, it provided extensive factual information concerning the stencilling, sale, distribution, and cost of production for all sizes of subject merchandise produced by Gulf States, including seamless pipe larger than 2.0 inches in OD. Therefore, petitioner asserts that even if pipe over 2.0 inches in OD were to constitute a separate class or kind of merchandise, Gulf States would nonetheless have standing as a

petitioner. Additionally, Gulf States maintains that Siderca's claim that Koppel cannot be added as a co-petitioner at the time it made its request on April 27, 1995, is legally incorrect. Citing *Citrosuco Paulista, S.A. v. United States* (704 F. Supp. 1075 (CIT 1988)), petitioner asserts that the Department has discretion to permit the amendment of a petition for the purposes of adding co-petitioners who produce the like product, at such time and upon such circumstances as deemed appropriate by the Department.

DOC Position

We agree with petitioner for reasons explained in our section on "Standing" in this notice.

Comment 3

Siderca argues that the Department should reject petitioner's end use language in the scope of this investigation which includes products not subject to this investigation if they are used in standard line pipe applications.

Respondent maintains that such an end use requirement would result in a disparate treatment between imported goods that have crossed the border and domestic goods once they are competing in the U.S. marketplace, which is contrary to Article III of the General Agreement on Tariffs and Trade (GATT).

Respondent also argues that if an end use certification program were implemented, it would be virtually unadministerable because importers and producers normally do not know the end use of their product. Moreover, respondent cites the *Oil Country Tubular Goods from Canada* investigation, in which the Department abandoned its end use program after two years, because the program was cumbersome and difficult to administer.

Petitioner states that end use is an appropriate element of the scope and that the Department has included end use has included end use as an element of scope in other investigations. Furthermore, petitioner maintains that because of overlapping properties, it is possible that pipe made to other specifications than A-53, A-106, A-335, and API-5L may be applied to uses for which those specifications are normally used, creating the likelihood of substitution. Petitioner recognizes that defining scope by end use presents more complications for the enforcement of an order, but, for simplification, has suggested that the Department employ a rebuttable presumption that specification is an indication of use for pipe in non-listed specifications.

Finally, petitioner counters Siderca's assertion that an end use element in the scope is contrary to GATT by stating that the GATT is not violated unless the country imposing the duties has disregarded its obligations under Article VI of the Antidumping Code; and that Siderca does not allege that any provisions of relevant GATT antidumping law would be violated if the Department, following established U.S. practice continues to consider end use as a scope criterion.

DOC Position

We agree with petitioner for the reasons outlined in the "Scope Issues" section of this notice.

Comment 4

Siderca argues that there are two classes or kinds of merchandise: standard line pipe 2.0 inches in outside diameter and below; and between 2.0 and 4.5 inches in outside diameter. Respondent maintains that the criteria articulated in *Diversified Products* support its assertion of two classes of kinds. Specifically, respondent argues that the distinct size differences between steel pipe below 2.0 inches in outside diameter and steel pipe between 2.0 and 4.5 inches are recognized in the industry as differentiating physical characteristics. Respondent maintains that line capacity, operating pressure, temperature, stress level, and structural integrity will determine the size of the pipe, and in turn, will determine the particular application.

With respect to customer expectations, Siderca argues that customers purchase pipe in specific sizes knowing that different sizes have different applications. Respondent states that pipe under 2.0 inches is used almost exclusively as pressure pipe because of the unique characteristics of pipe that size. Moreover, respondent claims that a purchaser will expect pipe above 2.0 inches to be suitable for line pipe applications.

Regarding channels of trade, respondent argues that although pipe below 2.0 inches and pipe between 2.0 and 4.5 inches are sold through distributors, this fact does not make these two groups a single class or kind.

Siderca argues that the ultimate use of the product depends on the size. Respondent states that pipe under 2.0 inches is used almost exclusively as pressure pipe and most pipes between 2.0 and 4.5 inches are sold as line pipe. Furthermore, respondent claims that seamless pipe is almost never used in standard pipe applications.

Respondent contends that the cost of seamless pipe differs significantly

depending on size. Respondent states that smaller pipe also costs more to manufacture because it requires more manufacturing time, on a kilogram basis, than larger pipe. Furthermore, respondent maintains that pipe in sizes under 2.0 inches is usually cold-drawn, a more costly process than hot-finishing, which is the most common production process for pipe above 2.0 inches.

Petitioner argues that an analysis of the five factors used in the diversified products analysis supports a single class or kind of merchandise. Regarding the physical characteristics, petitioner argues that seamless standard, line, and pressure pipe each meet the same physical characteristics described in the petition. Petitioner argues that the use of different production facilities to make physically identical merchandise does not constitute a difference in physical characteristics. Petitioner also states the respondent's argument that cold-drawn merchandise (pipe below 2.0 inches) and hot-finished merchandise (pipe above 2.0 inches) indicated two classes or kinds is contrary to the Department's decision not to create separate classes of kinds based on cold-drawn and hot-rolled products in *Stainless Steel Bar from Italy*. Petitioner asserts that respondent's suggestions that end users have different expectations for pipe below 2.0 inches is unfounded. Petitioner contends that the physical characteristics of pipe are set forth in the ASTM and API specifications, which apply to all subject pipe regardless of size. Petitioners contend that the sales subject seamless pipes are made through the same channels of trade. Petitioner maintains that the ultimate end use of the product is largely dictated by the specification to which the pipe is produced. Petitioner argues that since the majority of imported subject pipe is triple certified, the pipe may be put to use in any of the uses that either A-106, A-53, or API 5L may be applied.

Petitioner argues that all subject seamless pipe has sufficiently similar costs to be considered a single class or kind of merchandise. Petitioner contends that since the majority of the subject pipe is triple certified, it has basically identical costs regardless of the customer to whom it is sold and that there are only minimal differences in production costs between pipe over 2.0 inches and pipe under 2.0 inches.

DOC Position

We agree with petitioner for the reasons outlined in the "Scope Issues" section of this notice.

Comment 5

In order to eliminate confusion and uncertainty of the scope, respondent argues that the Department should clarify the language of the scope and explicitly exclude products that are not intended to be part of the investigation. Specifically, respondent argues that the Department exclude unfinished oil country tubular goods and tubing products made in non-pipe sizes. Furthermore, respondent contends that language in the scope concerning "redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube," is confusing. Respondent suggests the Department revise this language to simply state that the scope excludes hollows for cold-drawing. This would eliminate confusion, while not changing the intended scope of the exclusion.

Petitioner asserts that a modification of the scope to Siderca's requests would be unsupported by substantial evidence on the record. With respect to OCTG, petitioner notes that the scope explicitly excludes OCTG when it is not used or intended for use in one of the listed applications and that no further clarification is necessary. Petitioner states that tubing in "non-pipe" sizes is expressly covered by the scope of the investigation when produced to one of the listed specifications or when used in a listed application. Petitioner maintains that the language in the scope with respect to redraw hollows was included expressly to ensure that hollows are actually cold-drawn and not sold directly as A-106 pipe.

DOC Position

We agree with petitioner for the reasons outlined in the "Scope Issues" section of this notice.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of seamless pipe from Argentina, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 27, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of seamless pipe from Argentina that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal**

Register. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
Siderca S.A.I.C.	108.13
All Others	108.13

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 12, 1995.

Susan G. Esserman,
Assistant Secretary for Import Administration.

[FR Doc. 95-14936 Filed 6-16-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-351-826]

Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230;

telephone (202) 482-6320 or 482-3853, respectively.

Final Determination

The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Brazil (seamless pipe) is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act") (1994). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of preliminary determination on January 27, 1995 (60 FR 5351, January 27, 1995), the following events have occurred.

On February 10, 1995, we issued a supplemental questionnaire to respondent Mannesmann S.A. (MSA) and its affiliated Brazilian and U.S. sales organizations, Mannesmann Comercial S.A. (MCSA) and Mannesmann Pipe & Steel Corporation (MPS), respectively (collectively "Mannesmann"), concerning certain items in its December 9, 1994, response, which we deemed required further clarification and/or information prior to verification. On February 28, and March 9, 1995, Mannesmann submitted its responses to this questionnaire, including revised home market and U.S. sales listings.

In response to respondent's request, we postponed the final determination until June 12, 1995, pursuant to section 735(a)(2)(A) of the Act (60 FR 9012, February 16, 1995).

In our notice of preliminary determination we stated that we would solicit further information on various scope-related issues, including class or kind of merchandise. On February 10, 1995, we issued a questionnaire to interested parties to request further information on whether the scope of the investigation constitutes more than one class or kind of merchandise. Responses to this questionnaire were submitted on March 27, 1995.

In March and April, 1995, we conducted verification of Mannesmann's questionnaire responses. Our verification reports were issued in May, 1995.

On April 27, 1995, Koppel Steel Corporation, a U.S. producer of subject merchandise which appeared as an interested party from the outset of this investigation, requested co-petitioner status, which the Department granted.

Case and rebuttal briefs were submitted on May 19, 1995, and May 25, 1995, respectively. In its rebuttal