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\% inches in OD, and that publicly available evidence shows that Gulf States neither manufactures or sells seamless pipe between 1.9 and 23/8 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 legallyrecognizable 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