

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,<sup>1</sup> 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.<sup>2</sup> 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 AG, 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 Fed. Reg. 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 Fed. Reg. 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

<sup>1</sup> 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.

<sup>2</sup> This approach is consistent with petitioner's request.