that it is incapable of manufacturing seamless pipe and tube in dimensions above two inches in outside diameter. Therefore, respondent maintains that petitioner is not an ''interested party'' with respect to this merchandise. Accordingly, the Department should amend the scope of the investigation to limit it only to those dimensions and pipe types that petitioner has a proven ability to manufacture.

Gulf States Tube contends that the antidumping statute neither requires nor permits the Department to limit the scope of the investigation to products that the petitioner itself produces. Gulf States Tube also maintains that respondent's standing claim is untimely and may not be considered by the Department at this stage of the proceeding. Nevertheless, Gulf States Tube asserts that the issue is rendered moot by the request of Koppel Steel Corporation, a domestic producer of subject merchandise in sizes larger than two inches in outside diameter, for co-petitioner status.

DOC Position

We disagree with respondent for the reasons outlined in the ''Standing'' section of this notice.

Comment 2

Mannesmann contends that including an end-use certification requirement in the scope would be both illegal and unworkable. Respondent maintains that petitioner is effectively seeking to circumvent the established legal procedure by arguing for an open-ended scope definition that encompasses products that it does not manufacture and that petitioner has conceded are not causing present injury. In addition, respondent states that it is clear that any end-use certification procedure designed to implement such a scope definition is wholly unworkable because of the manner in which the subject products are sold. That is, in almost all cases the importer of record does not know the ultimate use of the pipe products it sells, and in many instances, neither do its customers. According to respondent, as a practical matter, the effect of an end-use certification requirement would be to ask the impossible of importers. Furthermore, respondent states that the anticircumvention procedures of the antidumping law provide ample remedy to petitioner in cases of order circumvention via product substitution. Respondent emphasizes that absent the detailed inquiry required by anti-circumvention legal provisions, the Department cannot include within the scope of this investigation other merchandise simply because such other products might in theory be utilized for the same purposes as pipe meeting the listed specifications. According to respondent, to do otherwise is contrary to the antidumping law and deprives respondents of their right to a full and fair hearing on any circumvention allegations that might be advanced by petitioner at some later date.

Petitioner argues that there is no factual or legal basis for eliminating end use as a defining element of the scope of the investigation. Furthermore, not only is the feasibility of specific enforcement mechanisms irrelevant to the scope determination, but it is also untrue that any end use certification procedure would be unworkable. According to petitioner, there is no evidence on the record of this investigation that an end-use certification program must require the submission of an end-use certificate by the importer at the time of importation. Rather, petitioner proposes a program whereby the end-use certificate travels with the pipe to the ultimate end-user, who may then send it back up the line of distribution. When final duties are assessed, the Department may assume that any pipe for which no certificates can be produced was used in subject applications. Contrary to Mannesmann's arguments, petitioner maintains that the Department and the U.S. Customs Service are perfectly capable of administering an order that includes end use in its scope definition. In the event that products meeting the physical description of subject merchandise, but which are not certified to one or more of the covered specifications, are being substituted into one of the listed applications, the burden would be on the petitioner, other domestic producers or interested parties to notify Customs and the Department with some objective evidence supporting a reasonable belief that substitution is occurring. Accordingly, it is both unnecessary and inappropriate at this point to engage in debate about the feasibility and desirability of specific end-use certification procedures. According to petitioner, the facts and policy considerations relevant to such a debate are not available on this record, and the selection of a specific enforcement mechanism is beyond the Department's responsibilities in this proceeding.

DOC Position

We disagree with respondent's assertion that including end-use in the scope of the investigation would be unlawful. 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). *See* ''Scope Issues'' section of this notice for further discussion on end-use.

Comment 3

Mannesmann contends that the carbon and alloy pipe products subject to investigation are distinct classes or kinds of merchandise. Mannesmann asserts that the criteria set out in *Diversified Products* support a division between carbon and alloy products. Specifically, Mannesmann argues that carbon and alloy pipes differ in terms of physical characteristics, uses, customer expectations and cost. With respect to physical characteristics, alloy seamless pipes contain higher grade steel than carbon seamless pipe, and because of their different chemistries, these products have different performance characteristics. With respect to end use which, according to respondent, is inherently tied to physical characteristics, carbon pipe is not as versatile as alloy steel pipe and is not suited for the more sophisticated applications, such as operations in high temperature environments. Respondent asserts that the Department has consistently emphasized the relationship between physical characteristics and end use in past cases (*e.g., Torrington Co.* v. *United States*, 745 F.Supp. 718, 726 (CIT 1990) (*Torrington*)). In addition, respondent states that customer expectations vary depending upon the ability of specific merchandise to perform a given task. With regard to alloy and carbon steel pipe, the ultimate purchaser does not expect these two types of pipe to be interchangeable, and is willing to pay more for alloy steel pipe because it must perform under more adverse conditions than the conditions for which carbon pipe is suited. With respect to cost, respondent states that the cost of alloy pipe is higher than that of carbon pipe because of the more expensive raw materials and production costs incurred in producing alloy pipe. Finally, with respect to channels of trade, respondent states that carbon and alloy pipe move in similar channels, but that this factor is not determinative as to class or kind of merchandise.

Petitioner maintains that the subject merchandise constitutes a single class or kind. With respect to Mannesmann's proposal for a split in class or kind on the basis of material composition, petitioner asserts that the factual evidence does not support such a division. Petitioner states that the application of the criteria employed by the Department in *Diversified Products*