use BIA as the basis for its determination. Consequently, we have based this determination on BIA. (See decision memorandum from The Team to Barbara R. Stafford dated June 12, 1995, for a detailed discussion of our verification findings and BIA recommendation.)

In determining what rate to use as BIA, the Department follows a twotiered 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. When a company is deemed uncooperative, it has been the Department's practice to apply as BIA the higher of the highest margin alleged in the petition or the highest rate calculated for any 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 highest 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

We have determined that MRW was uncooperative during this proceeding and have assigned a margin based on uncooperative BIA. Because there are no other respondents in this investigation we are assigning, as BIA, the highest margin among the margins alleged in the petition. MRW significantly impeded our administration of the case by misrepresenting the methodology it used in the response regarding the costs of the unreported plant.

MRW did not alert the Department at any time to any difficulties in providing the information requested in the questionnaire concerning the unreported manufacturing facility, and had indicated that the plant's costs had been included in a weighted-average calculation. In addition, much of the documentation we requested at verification was received late in the verification process, was incomplete, or, in some cases, not received at all. MRW

was unable to demonstrate: (1) How many of the figures reported on the sales listing were calculated; (2) how they tied to source documentation; and (3) a tie to financial statements. Therefore, we are assigning MRW the highest margin alleged in the petition as uncooperative BIA.

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

General Issues

Comment 1. MRW argues that petitioner lacks standing to seek the imposition of antidumping duties on products that it does not produce. According to MRW, petitioner has admitted 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 two inches in outside diameter, for copetitioner status.

DOC Position. We agree with petitioner for the reasons outlined in the "Standing" section of this notice.

Comment 2. MRW 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 never knows the ultimate use of the pipe products it sells, and in many instances, neither do its customers. According to MRW, 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 circumvention via product substitution. MRW 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 envisions 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 MRW'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