

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. However, 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 the "Scope Issues" section of this notice for further discussion on end-use.

Comment 3. MRW contends that the carbon and alloy pipe products subject to investigation are distinct classes or kinds of merchandise. MRW asserts that the criteria set out in *Diversified Products* support a division between carbon and alloy products. Specifically, MRW 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. at 726 (CIT 1990)). 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 those 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; however, 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 MRW'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's state that the application of the criteria employed by the Department in *Diversified Products* compels the conclusion that there is a single class or kind of merchandise. According to petitioner, the physical characteristics of carbon and alloy pipe represent a single continuum of product produced with varying chemical compositions to meet a range of heat, pressure and tensile requirements. According to petitioner, there is simply no bright dividing line between the physical characteristics of the products. Petitioner states that the customer's expectations and use of the product are dictated by the engineering specification required by the intended application. Because the majority of all subject seamless pipe is triple-certified, the pipe may be put to any of the uses that apply to each of the individual specifications to which it is certified. Petitioner points out that the vast majority of seamless pipe is sold through the same channel of trade—distributors. Finally, petitioner adds that because the majority of seamless pipe is triple-certified, it has identical costs regardless of the customer to whom it is sold.

DOC Position. We agree with petitioner that the subject merchandise constitutes a single class or kind for the reasons outlined in the "Scope Issues" section of this notice.

Company-Specific Issues

For a number of reasons articulated in its briefs, with which we concur, petitioner argues that the final determination should be based on BIA, and that MRW should be found to be uncooperative.

MRW disagrees and argues that the Department's verification report does not offer a balanced assessment of the verification. MRW states that the

Department verified the accuracy of its reported sales information and that the discrepancies found at verification were minor. Furthermore, respondent argues that the minor discrepancies detailed in the verification report should be evaluated in the context of the vast majority of data that tied exactly to source documentation. Respondent states that the minor discrepancies found at verification do not affect the Department's ability to perform its antidumping analysis.

Respondent states that the delays in providing information requested by the Department at verification were a result of the manner in which its records are kept in the ordinary course of business. MRW cites to *Nippon Pillow Block Sales Co. v. United States*, 820 F. Supp. 1444, 1449 (CIT 1993), and *Fresh Cut Roses from Colombia (Final)* 60 FR 6980, 7009 (February 6, 1995) as examples of Department policy that respondents cannot be penalized because of the way their records are kept.

Regarding its failure to include the costs of one of its plants in its reported difmer costs, MRW states the manner in which it reported difmer costs is reasonable given that this plant is a newly acquired facility located in the former German Democratic Republic, which was a non-market economy until recently. Furthermore, MRW states that it is extraordinarily difficult to calculate actual, verifiable costs for a plant that has operated under a planned economy and that it is appropriate to use the surrogate costs of a plant in the Federal Republic of Germany to perform antidumping calculations.

DOC Position. We agree with petitioner that the magnitude and nature of the problems found at verification require that we base MRW's margin on BIA. (See *Best Information Available (BIA)* section of this notice).

We disagree with respondent's assertion that it is being penalized for the way its records are kept. We must hold all respondents to a basic standard of accuracy and completeness at verification while taking into account the limitations existing with respect to the respondent's sales and cost accounting systems. We require all respondents, regardless of record keeping systems, to prepare for verification in such a manner that the Department's questions can be answered within a specified period of time. To this end, we supply all respondents with an outline which specifies the type of documentation that needs to be available at verification. MRW did not have the necessary documentation readily available, which prevented us from verifying its response. Most