Customs Service (Customs Service) purposes. Our written description of the scope of the order remains dispositive.

This review covers one Japanese manufacturer and exporter of industrial belts to the United States, Mitsuboshi Belting Limited (MBL), and the period June 1, 1993 through May 31, 1994.

Analysis of the Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results of this administrative review. We received a case brief from MBL, and case and rebuttal briefs from the petitioner, Gates Rubber Company (Gates). We did not receive a request for a hearing.

Comment: MBL acknowledges that the Department's resort to best information available (BIA) is authorized under section 776(c) of the Tariff act, since MBL did not respond to the Department's questionnaire. MBL argues, however, that the Department should use information obtained in the first administrative review (1989–90) as BIA instead of the rate from the original less-than-fair-value (LTFV) investigation. MBL contends that the Department is required to consider the most recent information available in deciding upon a BIA rate. According to MBL, the information provided by the respondent in the first administrative review is the most probative evidence of the current margin because the LTFV margin was based solely on information provided by the petitioner for the period October 1986 through March 1988 while the first review margin is based on information provided by MBL for the period of February 1, 1989 through May 31, 1990.

Furthermore, MBL points out that in two separate actions before the United States Court of International Trade (CIT), it is challenging the Department's choice of BIA in the second administrative review and in the third and fourth administrative reviews. MBL urges the Department to withhold making a final determination as to the applicable BIA in this fifth administrative review until the ongoing litigation is resolved.

Gates argues that based on MBL's refusal to cooperate in this review, the Department should apply the highest margin determined for any period to MBL's entries. According to Gates, the Department has previously rejected MBL's argument that information obtained in the first administrative review (1989–90) should be used as BIA and has consistently applied the highest margin determined for any period to MBL's entries. Gates states that the basis for this determination is the fact that MBL refused to respond to the questionnaire. As such, Gates contends, it is well-established under Department practice that the highest prior rate should apply.

Department's Position: Section 776(c) of the Tariff Act requires us to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation.'' In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide information requested (19 CFR 353.37(b)). MBL's contention that the Department should use the information obtained in the 1989–90 administrative review is contrary to Department policy. When a respondent refuses to cooperate with the Department, it is our policy to assign a dumping margin to that respondent, as BIA, based on the higher of: (1) The highest rate found for any firm in the original LTFV investigation or previous administrative review, or (2) the highest rate found for any firm in the current review (*Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France et al., Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28379 (June 24, 1992)). The Department's methodology for assigning BIA has been upheld by the Court of Appeals for the Federal Circuit (CAFC) (see *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993), *Krupp Stahl AG et al.* v. *United States,* 822 F. Supp. 789 (CIT 1993)). Because MBL refused to respond to the Department's questionnaire, it was reasonable for the Department to assign to MBL, as BIA, a rate of 93.16 percent, the highest rate found for any firm in the original LTFV investigation. Further, because the law does not provide for extensions of deadlines pending the outcome of court decisions in other proceedings, we have not delayed our final results. In addition, the CIT has held that the Department may base BIA on a rate established in a prior review that is subject to challenge (see *D & L Supply Co.* v. *United States,* Slip Op. 95–92 at 13 (CIT May 15, 1995), citing *D & L Supply Co.,* 841 F. Supp. 1312, 1314 (CIT 1993)). Furthermore, the CIT has recognized the need for the Department to be able to issue final determinations in a timely fashion based upon the rates available at the time the final determination is due (see *D & L Supply Co., et al.* v. *United States,* Slip Op. 95–92 at 15 (CIT May 15, 1995)).

Final Results of the Review

As a result of this administrative review, the Department determines that a dumping margin of 93.16 percent exists for MBL for the period June 1, 1993 though May 31, 1994.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff act: (1) For subject merchandise exported by MBL, a cash deposit of 93.16 percent; (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate of 93.16 percent established in the LTFV investigation.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section