

FR 23051) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. On May 4, 1994, we received from the petitioners in this case, Grinnell Corporation, Ward Manufacturing Inc., and Stockham Valves and Fittings Co., a request to initiate an administrative review of Tupy, a manufacturer and exporter of this merchandise to the United States. On July 15, 1994, in accordance with 19 CFR 353.22(c), we initiated an administrative review of this order for Tupy covering the period May 1, 1993 through April 30, 1994 (see 59 FR 36160). On February 22, 1995, we published the preliminary results of this administrative review (see 60 FR 9821).

The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original order, these products were classifiable in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have determined that the use of BIA is appropriate for Tupy. Our regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)) in selecting BIA. Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, as Tupy did here, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate

(including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in the review for any firm for the same class or kind of merchandise from the same country. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 57 FR 28360, 28379 (June 24, 1992); see also *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993). In our preliminary results of review, we preliminarily applied to Tupy, as first-tier BIA, a rate of 5.64 percent, which was the rate we determined in the LTFV investigation.

Upon review of the comments our choice of a rate to use as first-tier BIA has changed. In this case, Tupy is the only company to have ever been reviewed or investigated, and we have only calculated one margin, which was in the less-than-fair-value (LTFV) investigation. Due to the unusual situation, we have determined to use as BIA the simple average of the rates from the petition. See our response to Comment, below. The rate we have calculated for Tupy is 34.64 percent.

General Issues Raised By the Petitioner

Comment: Petitioner contends that the Department's use of its standard BIA practice for the preliminary results of this review is inappropriate. Petitioner points out that this resulted in no change in the margin applicable to respondent. Petitioner argues that this rewards respondent for being uncooperative with the Department's information requests.

Petitioner also argues that, since Tupy is the sole respondent in this case, under the Department's regular practice, Tupy's margin would never change in an administrative review so long as it does not respond to the Department's requests for information. Thus, Tupy would be able to dump at will without fear of repercussion unless the Department alters its choice of BIA for this case. Petitioner argues that the Department is not limited to the standards enunciated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991). Rather, petitioner states, the Department has the authority to choose other BIA when the circumstances warrant it, citing *Krupp*

Stahl, A.G. v. United States, 822 F. Supp. 789 (CIT 1993) (*Krupp Stahl*) in support of its arguments.

Petitioner suggests that the Department use as BIA the simple average of the margins alleged in the petition. Petitioner also suggests, as an alternative methodology, that the Department should adjust the original margin for appreciation of Brazil's currency against the dollar since the period of the original LTFV investigation. Citing reports from the International Trade Commission (ITC) submitted as an attachment to its case brief, petitioner argues that the Brazilian cruzeiro has appreciated against the dollar between the period of investigation and the current period of review by 33.2 percent, and that the Department should assume that Brazilian foreign market values have increased similarly. Petitioner states that there is precedent for this approach in *Malleable Iron Pipe Fittings, Other than Grooved, from Korea; Preliminary Results of Administrative Review*, 54 FR 7577 (Feb. 22, 1989), in *Malleable Iron Pipe Fittings, Other than Grooved, from Korea; Final Results of Administrative Review*, 54 FR 13090 (Mar. 30, 1989), and in *Malleable Iron Pipe Fittings, Other than Grooved, from Taiwan; Preliminary Results of Administrative Review*, 54 FR 38713 (Sept. 20, 1989).

Respondent argues that the Department applied BIA correctly in the preliminary results, and that petitioner misrepresents the decision in *Krupp Stahl*. Respondent contends that, while *Krupp Stahl* allowed the Department to use a preliminary margin from the LTFV investigation, which adopted the petition rates, the court did not hold that a margin alleged in a petition can be used over a published margin for a particular company.

Respondent also argues that the courts have held, in *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (1990), that the purpose of BIA is "to determine current margins as accurately as possible", and that the Department may not use BIA in a punitive manner. Respondent claims that using rates from the petition would be less accurate than using the rates calculated by the Department in the LTFV investigation.

Respondent argues that the methodology suggested by petitioner for adjusting the margin for changes in currency values would result in an inaccurate margin because the rates used in the ITC report cited in petitioner's case brief use real exchange rates instead of nominal exchange rates. Respondent argues that petitioner has not provided any compelling argument