why real exchange rates should be used instead of nominal exchange rates.

Respondent also states that, in the precedent cited by petitioner, the Department assumed that prices in the United States and the foreign market remained constant. Respondent alleges that prices have not been constant in the United States, and, therefore, such an assumption cannot be made in this case.

Department's Position: We agree with petitioner. Tupy was the only company investigated in the antidumping duty LTFV investigation on malleable cast iron pipe fittings from Brazil. Because this is the first administrative review of this order, Tupy's final LTFV rate of 5.64 percent is the only rate for any company from any segment of the proceeding. If we were to follow our regular practice for assigning uncooperative BIA rates, Tupy would benefit by receiving its own LTFV rate in this and any subsequent review in which it chooses not to respond to our requests for information. This is contrary to the Department's aim in using BIA. As the Court of Appeals for the Federal Circuit has affirmed, "the ITA may use BIA as an investigative tool, which [ITA] may wield as an informal club over recalcitrant parties or persons" to induce cooperation with our requests for information. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185 at 1191 (1990) (Rhone Poulenc II). Therefore, we find that there is justification in this case to depart from past Department practice in determining uncooperative BIA.

By refusing to provide a questionnaire response, as indicated in its letter to the Department dated October 31, 1994, Tupy leaves unanswered a legitimate question as to whether the firm dumped subject merchandise during the period of review to a greater or lesser extent than in the past. In not responding to our requests for information, Tupy could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate. Such a capped BIA rate would allow Tupy to practice injurious price discrimination to a greater degree than at the time of the LTFV investigation without fear of adverse consequences. With such a capped rate, Tupy would no longer have an incentive to participate in an administrative review which would determine the extent to which Tupy is actually dumping subject merchandise in the United States.

In Rhone Poulenc, Inc. v. United States, 710 F. Supp. 341 (Rhone Poulenc I) at 347, the Court of International Trade (CIT) ruled that a respondent should not be allowed to control the results of the review by providing

partial information (or, as in this case, no information) or otherwise hindering the review. Citing *Rhone Poulenc I*, the CIT has also determined that "to use the rate demanded by [the respondent] might have the effect of 'plac[ing] control of the investigation in the hands of uncooperative respondents who could force Commerce to use possibly unrepresentative information most beneficial for them.''' *See Krupp Stahl,* 822 F. Supp. at 793. Contrary to Tupy's claim that the function of BIA is solely to find the most accurate rate possible, in Krupp Stahl, the CIT characterizes one of the functions of BIA as 'cooperation-inducing.'' <u>Id</u>.

We also find incorrect Tupy's assertion that the Krupp Stahl decision upholds only the authority to use a preliminary margin based on petition rates as BIA, and not the authority to use the petition rates themselves. Respondent correctly states that, in Krupp Stahl, the petition-based information used as BIA was derived from the LTFV preliminary investigation. See 822 F. Supp. at 796. Resort to the preliminary determination for evidence of petition-based BIA was necessary in that case because the petition was not on the administrative record of the review under consideration in Krupp Stahl, and each administrative determination must be supported by sufficient evidence on the record. See 822 F. Supp. at 795. Contrary to Tupy's assertion, the CIT's decision in Krupp Stahl did not limit the use of petition-based information in administrative reviews to cases where margins in the preliminary determinations were petition-based. Rather, in Krupp Staĥl, the CIT upheld our interpretation that the use of petition-based information as BIA in an administrative review was not contrary to the statute, and that it did not 'contravene any clearly discernable legislative intent." See Krupp Stahl, 822 F. Supp. at 794. Because Tupy has failed to cooperate in this administrative review, and a BIA rate capped at Tupy's LTFV rate would not induce Tupy's cooperation in this or any future review, we have determined that it is appropriate to use petition-based information as BIA in this administrative review.

We have also determined that the use of petition-based information as BIA is more appropriate than adjusting the LTFV rate for currency appreciation. Though the latter methodology may be appropriate in other circumstances, in this case we have rates from the petition, which, after correction, were found to be acceptable by the Department as a basis for initiating the

LTFV investigation. Further, there is limited record evidence available for determining an adjustment to the LTFV margin for currency fluctuations, including whether we should use real or nominal exchange rates for such a calculation. Thus, we conclude that the use of petition-based rates for BIA is a better approach in this administrative review.

In order to use petition-based information as BIA for Tupy in this administrative review, the Department must include the petition in the administrative record of this review. Therefore, with the permission of petitioner, and pursuant to our regulations at 19 CFR 353.3, we have obtained a copy of the petition from the administrative record of the LTFV investigation, and included it in the record of this administrative review.

We have determined that the simple average of the rates from the petition is a more appropriate standard for BIA in this case. The petition rates, as adjusted by the Department for the LTFV initiation notice, are 8.8, 14.46, 53.6, and 61.7 percent. See Malleable Cast Iron Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation, 50 FR 34730. The simple average of these rates is 34.64 percent.

## **Final Results of Review**

We determine the margin for this administrative review to be:

Producer/exporter	Margin
Industria de Fundicao Tupy S.A	34.64

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse for consumption, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-thanfair-value 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 (3) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 5.64 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the