ensures that the antidumping duties assessed are not less than the actual amounts might have been, had the Department received full and accurate information. The Committee concludes that a respondent should not find itself in a better position as a result of its noncompliance than it would have had it provided the Department with complete, accurate and timely data. The Committee argues that respondents are likely to not submit any information to the Department after considering the low dumping margin established in Steel Wire Rope from Korea: Final Determination of Sales at Less Than Fair Value, 58 FR 11029, 11032 (February 23, 1993) (LTFV Final Determination), and the possibility that the margins calculated in the review will also be low. It states that the Court of International Trade has affirmed the appropriateness of the Department's use of information from other sources. The Committee quotes the Court as saying that BIA "is not necessarily accurate information, it is information which becomes usable because the respondent has failed to provide accurate information," citing Asociacion Colombiana de Exportadores de Flores v. United States, 13 CIT 13, 28, 704 F. Supp. 1114, 1126.

Boo-Kook responds by arguing that the purpose of BIA is to set an accurate assessment of current dumping margins. Since there are eight respondents in this review and three companies in the *LTFV Final Determination* for which the Department calculated individual dumping margins, Boo-Kook asserts that the verified data of the companies for which the Department calculated dumping margins should be the most accurate assessment of current dumping margins.

Department's Position: We disagree with the Committee and find that reliance on petitioner-supplied data as a basis for BIA would be inappropriate in the context of this review. The Department has broad discretion in determining what constitutes BIA in a given situation. Krupp Stahl at 792; see also Allied Signal at 1191: "[b]ecause Congress has 'explicitly left a gap for the agency to fill' in determining what constitutes the best information available, the ITA's construction of the statute must be accorded considerable deference," citing Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 833-44 (1984). The Department's two-tiered BIA methodology has been upheld as "a reasonable and permissible exercise of the ITA's statutory authority to use the best information available when a respondent refuses or is unable to

provide requested information." *Allied Signal* at 1192.

The Department has used the twotiered methodology in the vast majority of cases involving the application of BIA to non-responsive companies since the adoption of this approach in the first administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany, et al.: Final Results of Antidumping Duty Administrative Reviews (56 FR 31692, 31705 (July 11, 1991)). In such cases we have been satisfied that the two-tiered methodology effectuates the purpose of the BIA provision of the Act, which is to encourage compliance in our reviews.

In any given review, a respondent will have knowledge of the antidumping rates from the investigation and past reviews but not of the rates that will be established in the ongoing review. Because the two-tiered approach incorporates the highest rate from the current review as one source of BIA, potentially uncooperative respondents will generally be less able to predict their BIA rate as the number of participants in the ongoing review increases. Thus the two-tiered methodology induces respondents to participate and receive their own known rates as opposed to a potentially much higher unknown rate. Therefore in most cases the BIA selection pursuant to the two-tiered methodology satisfies the cooperation-inducing function of the BIA provision. However, the Department recognizes that there are instances in which the BIA resulting from the two-tiered methodology may not induce respondents to cooperate. The rare cases in which we have not relied on this approach have involved an extremely limited number of participants, and a consequent small number of rates available for use as BIA. For instance, in Sodium Thiosulfate, we used information supplied by the petitioner to establish the BIA rate for the one respondent that had shipments of subject merchandise during the POR. Similarly, in Silicon Metal, we resorted to petitioner-supplied data where we had a calculated rate for only one firm: '[i]n this instance, we have only Andina's rate from the LTFV investigation * * *. Because Andina's rate is also the 'all other' rate, Silarsa would be assured a rate no higher than Andina's, the only respondent who cooperated fully with the Department in this administrative review. The use of the two-tier methodology, in this *instance*, restricts the field of potential BIA rates to the rate established for one firm." Silicon Metal, 58 FR 65336, at 65337 (December 14, 1993) (emphasis

added). The concern in such cases with respect to the two-tiered methodology is that the lack of past rates, as well as the small number of participants in the current review, could allow a respondent in such a review to manipulate the proceeding by choosing not to comply with our requests for information. In such cases the cooperation-inducing function of the BIA provision of the Act may not be achieved by use of the two-tiered BIA methodology, in which case the Department will resort to alternatives sources in determining the BIA rate for uncooperative respondents.

The cases cited by the Committee thus establish only that we will consider, on a case-by-case basis as appropriate, petitioner-supplied data in situations involving a number of calculated rates insufficient to provide an adequate indication of the best information available and to induce cooperation by respondents in the proceeding. In those cases, we did not have rates for more than one company and therefore determined that use of a BIA rate outside our two-tiered methodology was appropriate to encourage future cooperation.

Our recent determination in Certain Malleable Cast Iron Pipe Fittings from Brazil; Final Results of Antidumping Duty Administrative Review is a further example of a situation in which the circumstances of the case clearly demonstrated that the two-tiered BIA selection was not sufficient to induce the respondent to cooperate. In Pipe *Fittings*, we applied a petition-based BIA rate to a non-responsive company that was the only company to have ever been investigated or reviewed: "[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 * * *. 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." Pipe Fittings, 60 FR 41876, 41877-78 (August 14, 1995).

Given the number of rates and respondents involved in both the LTFV investigation and in this review, the concern over potential manipulation of antidumping rates cited in *Sodium Thiosulfate, Silicon Metal,* and *Pipe Fittings* does not exist in the present case, wherein we have calculated rates from three companies in the LTFV final determination and eight companies in this review. We are satisfied that selection of the highest of these rates is appropriate for BIA for this review, is consistent with our practice, and