1991) (Canadian Replacement Parts) and *Krupp Stahl A.G.* v. *United States,* 822 F. Supp. 789 (CIT 1993) (Krupp Stahl) as precedent, the petitioners believe the Department must expand its choices and include the petition rates in its BIA pool.

The petitioners point out that in Certain Malleable Cast Iron Pipe Fittings From Brazil; Final Results of Antidumping Duty Administrative Review, 60 FR 41876 (August 14, 1995) (Brazil Cast Iron Pipe Fittings) the Department assigned as BIA the average of the petition rates, as adjusted by the Department, reasoning that

> [in] not responding to our requests for information, [the respondent] 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 [the respondent] 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, [the respondent] would no longer have an incentive to participate in an administrative review which would determine the extent to which [the respondent] is actually dumping subject merchandise in the United States.

The petitioners state that similarly in this review Silarsa's current BIA rate is the highest rate established for any respondent in this or any prior segment of the proceeding. Therefore, in the petitioners' opinion, the Department should assign to Silarsa, as BIA, the average of the petition rates, 81.31 percent, or, at a minimum, the lowest petition rate of 49.35 percent.

Silarsa counters that it generally supports the Department's preliminary results and urges the Department to assign to Silarsa in the final results a rate no greater than the highest rate ever established by the Department in Argentine Silicon Metal I, *i.e.,* 24.62 percent. Silarsa maintains that the Department's use of this rate as BIA is firmly rooted in established agency practice and is commonly referred to as the two-tiered BIA methodology. In this case the Department uses as BIA the highest previous margin ever established by the Department in Silicon Metal from Argentina. Silarsa cites *Allied Signal Co.* v. *U.S.* (996 F.2d 1185, 1192 (Fed. Cir. 1993), aff'd, 28 F.3d 1188, cert denied, 115 S. Ct. 722(1995)) as evidence that the Department's two-tiered BIA methodolgy and its application in administrative reviews have been upheld by the Court of Appeals for the Federal Circuit.

Silarsa dismisses the petitioners' claim that Silarsa's failure to cooperate in the second and third administrative reviews demonstrates that the current rate is not sufficiently adverse to induce Silarsa's cooperation, contending that this conclusion is clearly refuted by the record. In fact, Silarsa maintains that the 24.62 percent margin constitutes an insurmountable barrier, which precluded Silarsa from participating in the U.S. silicon metal market, and precipitated the company's decision to cease production of silicon metal effective January 1, 1994. According to Silarsa, economic constraints and the lack of a sufficient administrative structure have precluded Silarsa's participation in the administrative proceedings, not the petitioners' purported ineffectiveness of the margin. Silarsa characterizes the petitioners' claim that the use of the 24.62 percent margin as BIA would ''reward'' Silarsa for its inability to participate in the administrative proceedings as baseless, stating that this margin is not ''neutral or even favorable'' to Silarsa.

Silarsa contends that the Department has no basis to assign to Silarsa a rate greater than the 24.62 percent rate determined to constitute BIA in the first administrative review. Silarsa asserts that the petitioners' cite to Canadian Replacement Parts to support the application of a rate from the petition as the BIA rate for purposes of an administrative review is incorrect. In that case, the Department ''included the petition rate in the BIA pool,'' as petitioners contend, but ultimately rejected this rate and applied the BIA rate in effect for the respondent in a preceding review.

Silarsa states that the petitioners' cite to PRC Sodium Thiosulfates is ''equally inapt'' because, unlike that case where the petitioner placed on the record documentation indicating that costs and prices had changed substantially since the investigation, the petitioners in this case have not introduced evidence of increased costs or prices that might warrant the application of a higher dumping margin. Silarsa also rejects the petitioners' cite to Krupp Stahl, where the CIT upheld the Department's choice of the rate established in the preliminary phase of the LTFV investigation as BIA. Silarsa points out that the administrative review at issue in Krupp Stahl was the first review and the only BIA alternatives available to the Department were the petition-based preliminary LTFV rate for the respondent and the respondent's own final LTFV rate. The Court specified that ''under the circumstances of limited BIA data in [that] review,'' the Department's use of the only other information available, *i.e.,* the preliminary LTFV rate, was not arbitrary. Silarsa argues that this is the third administrative review of silicon metal from Argentina and the information available to the Department is not ''limited.'' In addition, Silarsa notes that the rate used by the Department as BIA in Krupp Stahl was a rate established in the preliminary LTFV investigation, not a petition rate as proposed by the petitioners in this case.

Silarsa also distinguishes the facts in Brazil Cast Iron Pipe Fittings from those in this review. In Brazil Cast Iron Pipe Fittings there was only one respondent, with a relatively low margin, who failed to respond to the Department's questionnaire subsequent to the initial LTFV investigation. The petitioner argued that so long as the company chose not to respond to the Department's questionnaire, the relative low margin for the respondent would not change under the Department's regular BIA practice. Silarsa points out that due to the ''unusual situation'' in that case the Department deviated from its ''normal BIA practice,'' the two-tiered methodology. Silarsa argues that this ''unusual situation'' is not applicable in this review, where there are two companies, there is more than one rate in the selection pool, and the rate currently in effect for Silarsa, *i.e.,* 24.62 percent, is a BIA rate itself and is more adverse and prejudicial than the calculated rate in Brazil Cast Iron Pipe Fittings.

Silarsa concludes that the petitioners have failed to establish a reasonable basis for the Department to deviate from its accepted, established methodology to determine a BIA rate for Silarsa. Silarsa, therefore, urges the Department to utilize as BIA for Silarsa in the final results of this administrative review a rate no greater than the BIA rate currently in effect for Silarsa, *i.e.,* 24.62 percent.

In rebuttal the petitioners argue that Silarsa's characterization of its current BIA rate as ''extremely adverse and prejudicial'' does not alter the fact that Silarsa failed to cooperate in this review; this noncooperation demonstrates that the current rate is not sufficiently adverse or prejudicial to achieve the central purpose of the BIA rule which is to provide a strong enough incentive to cooperate that the respondent will submit the information necessary to determine the actual margin of dumping on its U.S. sales. The petitioners urge the Department not to rely upon selected, unverified facts submitted by an uncooperative respondent as the basis for a decision benefiting that respondent. They maintain that the most important of the selective facts submitted by Silarsa in its