brief was its contention that it had made only one exportation to the United States during the POR and, therefore, its current rate should not be increased. The petitioners claim that the only reason Silarsa provided any information in this review regarding its shipments to the United States is the petitioners' challenge to Silarsa's erroneous claim that it had made only one shipment of silicon metal to the United States during the POR. According to the petitioners, the fact that Silarsa is willing to accept the 24.62 percent rate rather than provide the requested information demonstrates that the rate is neither adverse not prejudicial.

The petitioners argue that since Silarsa is the only company being reviewed in this administrative review, under the Department's normal methodology Silarsa's current rate is the highest possible BIA rate. The petitioners maintain that it is the Department's practice to go beyond the rates specified by its normal methodology when the highest of those rates is not ''sufficiently adverse to induce respondents to submit timely, accurate, and complete responses'' (PRC Sodium Thiosulface, 57 FR at 58792). Since the current rate has proven to be too low to induce Silarsa's cooperation, the petitioners conclude that, in accordance with Krupp Stahl, the Department must assign a higher BIA rate, the petition rate, as BIA for Silarsa. The petitioners cite Brazil Cast Iron Pipe Fittings, 60 FR at 41878, wherein the Department reasoned that ''such a capped BIA rate would allow (the respondent) to practice injurious price discrimination of a greater degree than at the time of the LTFV investigation without fear of adverse consequences'' (*id.*, 41878), as precedent for the Department's use of petition-based rates when the only available rate under the Department's standard practice is the respondent's own LTFV margin. Since Silarsa's current BIA rate is the highest rate established for any respondent in this or any prior segment of the proceeding, the petitioners contend that Silarsa's rate will be capped at the current rate. Therefore, the petitioners reiterate their contention that the Department should assign to Silarsa, as BIA, the average of the petition rates (81.31%) or, at a minimum, the lowest petition rate (49.35%).

Hunter Douglas agrees with Silarsa that there is no reason for the Department to deviate from its two-tiered BIA methodology in this review, stating that the petitioners cannot realistically claim that the 24.62 percent rate is not sufficiently adverse when it has prevented Silarsa from exporting to the Untied States and also has induced Silarsa to discontinue production of silicon metal altogether.

Hunter Douglas argue that the sole impact of an increase in the BIA rate would be to punish unrelated U.S. importers who must actually pay the antidumping duties even though they have no control over foreign exporters or their decisions about whether to cooperate in the Department's antidumping administrative reviews. Therefore, Hunter Douglas urges the Department to apply a BIA rate no higher than 24.62 percent to Silarsa's merchandise in this review.

Department's Position: We agree with Silarsa. In the preliminary results of this administrative review we followed our established two-tiered methodology, as set out above, and assigned to Silarsa, a noncomplying respondent, the highest rate found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review. As the petitioners explain in their brief, in the final results of Argentina Silicon Metal I we assigned to Silarsa, as BIA), a rate of 54.67 percent, computed using constructed value information submitted by petitioners and based on Silarsa's financial statements and its reported U.S. sales data. On remand, the Department recalculated this margin, taking into account ministerial error allegations filed by Silarsa, and derived a BIA rate of 24.62 percent which was subsequently affirmed by the CIT on March 24, 1994.

We disagree with the petitioners that the 24.62 percent BIA rate assigned to Silarsa in the first administrative review was not sufficiently adverse to induce Silarsa's cooperation in the second and third administrative reviews and, therefore, a more adverse rate should be assigned in this review to induce the desired cooperation. The BIA rate from the first administrative review appears to have precluded Silarsa's participation in the U.S. silicon metal market (see Letter from Silarsa). Accordingly, there is no need to resort to any higher BIA rate, as the petitioners suggest.

The petitioners are correct in their assertion that the Department tries to select an appropriate BIA rate to encourage future compliance with the Department's requests for information. However, in the present case, Silarsa maintains that it has ceased producing and exporting the subject merchandise. As such, in this instance, Silarsa is in no way advantaged by the present rate, and use of an even higher BIA rate would not induce Silarsa to respond to the Department's questionnaire.

The petitioners' reliance on Canadian replacement Parts and Krupp Stahl to support the use of the petition rates for BIA is misleading. In Canadian Replacement Parts we considered the petition rate in the pool of possible BIA rates, but ultimately rejected the rate alleged in the petition as a BIA rate because the respondent did make ''several attempts to respond to our request for data'' and ''the selection of the most adverse BIA rate {was} not warranted under {those} circumstances'' (see Canadian Replacement Parts, 56 FR 47454), In Krupp Stahl the CIT concluded that the Department's choice of BIA (*i.e.*, the preliminary LTFV margin) was ''within its discretion'' and ''in accordance with law'' given the ''special circumstance of {that} case, that is, Krupp's destruction of the records during the process of litigation and the limited BIA data available for use'' (*Id.*, 822 F. Supp., at 796). There are no parallel ''special circumstances'' in this review. There were special circumstances in the first administrative review which persuaded the Department to go beyond the two-tiered BIA methodology and use the rate the petitioners derived from Silarsa's own financial statements and submitted sales information. That rate is currently the highest rate for any respondent during the investigation and in subsequent administrative reviews. There are no special circumstances in this third administrative review that warrant rejecting that rate and going beyond the standard two-tiered BIA methodology.

The petitioners' fear that the Department's use of the traditional two-tiered methodology in this instance would result in a ''capped BIA rate'' which ''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'' (Brazil Cast Iron Pipe Fittings, 60 FR at 41876) is unwarranted. While the Department did find it appropriate to use a higher petition-based rate as BIA in the Brazil Cast Iron Pipe Fittings review, there is no need to do so here. Unlike Brazil Cast Iron Pipe Fittings, there are other exporters of the subject merchandise which may receive a higher rate in subsequent proceedings. Moreover, as discussed above, Silarsa attests that it is no longer producing or exporting the subject merchandise. There is no evidence to indicate that,if Silarsa resumes production, the current rate is insufficient to ensure Silarsa's cooperation in a subsequent review. Therefore, we believe that Silarsa's BIA