

TESTIMONY OF RICHARD O. CUNNINGHAM
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Good afternoon, Members of the Commission. I am Dick Cunningham of Steptoe & Johnson, counsel to Tata Steel Netherlands and Tata Steel United Kingdom. Today I want to address two significant issues:

The first point I want to make is that the facts on this record do not at all support an affirmative determination on the rationale that the Commission has consistently used this year in all of its flat-rolled steel cases (cold-rolled, corrosion-resistant and cut-to-length plate). In each of those determinations, the Commission has found that

- By means of predominant underselling during the 2013-2015 period, subject imports achieved a significant increase in market share in 2014 and held all or most of that increased market share in 2015, and
- This loss of market share caused material injury to the domestic industry, whose operating results would have been materially better in both years had it retained that market share.

Neither element of that rationale is present in this hot-rolled steel investigation.

There is no predominance of underselling in this investigation. By the metric the Commission normally uses – number of quarterly comparisons – subject imports pervasively oversold U.S. firms' prices. Nor does it help petitioners to focus on a volume-based calculation, which shows mixed underselling (52%) and overselling (48%) – certainly nothing that could cause a substantial shift in market shares.

And the record is also clear that, in the huge market for hot-rolled steel, the market share gain of subject imports did not materially affect the operating results of the U.S. industry. This is

shown by the staff's variance analysis and by the income statement models attached as Exhibits 2 and 3 to the Tata Steel Netherlands Prehearing Brief.

Furthermore, whatever the industry's overall capacity may have been, the evidence does not support their claim that they could have supplied the entire volume of subject imports' increase. Both Steel Warehouse's testimony and the written testimony of Mr. Malashevich of ECS address that point. In sharply improving markets – such as occurred in both 2014 and 2016 – U.S. firms' practically available capacity is shown to have been to levels below what has been reported in domestic producers' questionnaires.

In short, the considerations that were found to support affirmative determinations in each of your previous flat-rolled cases here compel a negative determination.

For my second point, I want to address the petitioners' last-gasp effort to make lemonade out of lemons on the underselling issue. Since no analysis of underselling over the POI works for them, they urge you to look separately at 2014 and 2015 and find majority underselling in 2014. Sadly for them, that does not work either, for at least three reasons:

First, it is more than a bit strange that petitioners would argue that 2014 is the year as to which the Commission should focus on the issue of underselling. That year was the year in which the industry turned in very strong operating results, whether there was or was not predominant underselling.

Second, and for the same reason, the Commission's analysis in the prior cases focused on the fact that subject imports maintained their increased market share in 2015 and thus contributed to the decline in U.S. industry operating results. In that analysis, the Commission appropriately looked to underselling over the entire POI, because that encompassed both 2014 and 2015, and it should do the same here. If 2014 and 2015 underselling are examined separately, the undisputed

pervasive overselling in 2015 makes it clear that neither the maintenance of market share nor the decline in U.S. industry results are attributable to underselling.

Finally, it is important for the Commission to understand the nature of the so-called “underselling” in 2014. This was not a case of aggressive price reductions by subject imports. To the contrary, both AUVs and the pricing product numbers demonstrate that subject imports increased in price in 2014. The so-called “underselling” simply means that domestic producers increased their prices more than did the imports.

Please enter into the record both my written testimony and the written testimony and exhibits of Mr. Malashevich.