

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
TIN- AND CHROMIUM-COATED) 731-TA-860 (Review)
STEEL SHEET FROM JAPAN)

REVISED AND CORRECTED VERSION

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
 TIN- AND CHROMIUM-COATED) 731-TA-860 (Review)
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Thursday,
 April 27, 2006

Room No. 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

The hearing commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

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On behalf of the International Trade Commission:

Commissioners:

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 VICE CHAIRMAN DEANNA TANNER OKUN
 COMMISSIONER JENNIFER A. HILLMAN
 COMMISSIONER CHARLOTTE R. LANE
 COMMISSIONER DANIEL R. PEARSON
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THE HONORABLE ALAN B. MOLLOHAN, U.S. Congressman,
U.S. House of Representatives, 1st District,
West Virginia
THE HONORABLE PETER J. VISCLOSKEY, U.S.
Congressman, U.S. House of Representatives, 1st
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I N D E X

	PAGE
TESTIMONY OF THE HONORABLE GEORGE MILLER U.S. CONGRESSMAN, U.S. HOUSE OF REPRESENTATIVES, 7TH DISTRICT, CALIFORNIA	9
TESTIMONY OF THE HONORABLE ALAN B. MOLLOHAN, U.S. CONGRESSMAN, U.S. HOUSE OF REPRESENTATIVES, 1ST DISTRICT, WEST VIRGINIA	12
TESTIMONY OF THE HONORABLE PETER J. VISCLOSKY, U.S. CONGRESSMAN, U.S. HOUSE OF REPRESENTATIVES, 1ST DISTRICT, INDIANA	18
TESTIMONY OF THE HONORABLE SHELLEY MOORE CAPITO, U.S. CONGRESSWOMAN, U.S. HOUSE OF REPRESENTATIVES, 2ND DISTRICT, WEST VIRGINIA	20
TESTIMONY OF ZACKARY MAZEY, DEPUTY GENERAL COUNSEL TO THE GOVERNOR OF WEST VIRGINIA, ON BEHALF OF THE HONORABLE JOE MANCHIN III, GOVERNOR OF WEST VIRGINIA	26
TESTIMONY OF THE HONORABLE EDWIN J. BOWMAN, STATE SENATOR, 1ST DISTRICT, WEST VIRGINIA	31
OPENING STATEMENT OF JAMES C. HECHT, ESQUIRE, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP	36
OPENING STATEMENT OF WILLIAM BARRINGER, ESQUIRE, WILLKIE FARR & GALLAGHER, LLP	40
TESTIMONY OF JOSEPH R. SCHERRBAUM, VICE PRESIDENT, SALES, U.S. STEEL	51
TESTIMONY OF GERALD W. GAGLIANO, MANAGER, SALES AND SERVICE FOR TIN AND CONTAINER PRODUCTS, U.S. STEEL	57
TESTIMONY OF CRAIG PETERSON, VICE PRESIDENT, COMMERCIAL, USS-POSCO INDUSTRIES	62
TESTIMONY OF M. THOMAS GOEDEKE III, DIRECTOR, TIN MILL PRODUCTS, SALES AND MARKETING, MITTAL USA	67
TESTIMONY OF WILLIAM STEPHANS, DIVISION MANAGER, TIN MILL PRODUCTS, MITTAL-WEIRTON, MITTAL USA	73

I N D E X

	PAGE
TESTIMONY OF WILLIAM J. KLINEFELTER, LEGISLATIVE AND POLITICAL DIRECTOR, USW	77
TESTIMONY OF MARK GLYPTIS, PRESIDENT, ISU	80
TESTIMONY OF SETH T. KAPLAN, VICE PRESIDENT, CHARLES RIVER ASSOCIATES	85
TESTIMONY OF JAMES C. HECHT, ESQUIRE, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP	88
TESTIMONY OF JOHN M. RYAN, ESQUIRE, WEIL, GOTSHAL & MANGES, LLP	93
TESTIMONY OF ERIC P. SALONEN, ESQUIRE, STEWART AND STEWART	96
TESTIMONY OF STEPHEN J. NARKIN, ESQUIRE, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP	101
TESTIMONY OF STEPHEN P. VAUGHN, ESQUIRE, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP	105
CLOSING STATEMENT OF ERIC P. SALONEN, ESQUIRE, STEWART AND STEWART	201
TESTIMONY OF DANIEL L. PORTER, ESQUIRE, WILLKIE FARR & GALLAGHER, LLP	202
TESTIMONY OF ROBERT OWEN, DIRECTOR, PROCUREMENT, SILGAN CONTAINERS CORPORATION	204
TESTIMONY OF MARK SPRINGFIELD, DIRECTOR, STEEL PURCHASING, BALL CORPORATION	214
TESTIMONY OF DAVID GILL, VICE PRESIDENT AND GENERAL MANAGER, NIPPON STEEL TRADING	222
TESTIMONY OF THOMAS PRUSA, PROFESSOR, RUTGERS UNIVERSITY	230
TESTIMONY OF JOHN MOORES, VICE PRESIDENT, STRATEGIC SOURCING, SILGAN CONTAINERS CORPORATION	251

I N D E X

	PAGE
TESTIMONY OF DANIEL CARSON, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, SILGAN CONTAINERS CORPORATION	270
TESTIMONY OF WILLIAM H. BARRINGER, ESQUIRE, WILLKIE FARR & GALLAGHER, LLP	289
CLOSING STATEMENT OF JOHN M. RYAN, ESQUIRE, WEIL, GOTSHAL & MANGES, LLP	370
CLOSING STATEMENT OF DANIEL L. PORTER, ESQUIRE, WILLKIE FARR & GALLAGHER	370

P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-860 (Review) involving Tin- and Chromium-Coated Steel Sheet From Japan.

The purpose of this five-year review investigation is to determine whether the revocation of the antidumping duty order covering tin and chromium steel sheet from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Notice of investigation for this hearing, list of witnesses and transcript order forms are available at the Secretary's desk. I understand the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

As all written material will be entered in full into the record it need not be read to us at this time. Parties are reminded to give any prepared non-confidential testimony and exhibits to the Secretary. Do not place any non-confidential testimony or

1 exhibits directly on the public distribution table.

2 All witnesses must be sworn in by the
3 Secretary before presenting testimony. Finally, if
4 you will be submitting documents that contain
5 information you wish classified as business
6 confidential your requests should comply with
7 Commission Rule 201.6.

8 Madam Secretary, are there any preliminary
9 matters?

10 MS. ABBOTT: Yes, Mr. Chairman. With your
11 permission we will add Philip A. Butler of Stewart and
12 Stewart to page 2 of the hearing calendar.

13 CHAIRMAN KOPLAN: Without objection.

14 Will you please call the first congressional
15 witness?

16 MS. ABBOTT: Our first speaker is the
17 Honorable George Miller, United States Congressman,
18 U.S. House of Representatives, 7th District,
19 California.

20 CHAIRMAN KOPLAN: Welcome.

21 MR. MILLER: Thank you. Thank you, Mr.
22 Chairman and Commissioners. Thank you very much for
23 the opportunity to testify before you today, and thank
24 you for making arrangements so that we can meet our
25 voting schedule on the Floor of the House this

1 morning.

2 The case that you are reviewing today is of
3 great importance to the American economic
4 competitiveness and in particular to a company and its
5 workers in my congressional district who have really
6 worked hard over the past 20 years to build a great
7 business and put out first class steel products.

8 The domestic tin mill industry provides
9 highly skilled, high paying manufacturing jobs for
10 hard working Americans, including at the USS-POSCO
11 Industries in Pittsburg, California, in my
12 congressional district.

13 UPI is one of the largest employers in my
14 district, but, more importantly, when things weren't
15 looking so good UPI took an outdated, non-competitive
16 steel mill and completed a \$450 million modernization
17 program in 1989 when \$450 million was a lot of money.

18 UPI now ranks among the most efficient steel
19 finishing facilities in the world and provides first
20 rate quality tin mill products to the food canners of
21 California. It is critical that the U.S. Government
22 aggressively enforce trade laws in order to prevent
23 dumping imports from harming such a critical industry.

24 When the ITC first investigated this issue
25 it was determined after an exhaustive analysis that

1 the skyrocketing Japanese tin mill imports led to a
2 \$132 million hit on the domestic industry.
3 Appropriately, the Commission determined that the
4 Japanese dumping caused material injury to the
5 domestic tin mill industry.

6 The antidumping orders have been extremely
7 helpful to the domestic industry, which has been able
8 to strengthen somewhat over the last five years. As
9 half of the Japanese imports are targeted to
10 California tin mill products, the antidumping order
11 has been particularly important to UPI in northern
12 California.

13 However, especially in the context of the
14 largest fuel crises and an extremely competitive
15 market, the domestic industry continues to confront
16 major challenges. The domestic tin mill products
17 industry actually lost money the last year.

18 UPI, like other U.S. producers, is not in a
19 financial condition to withstand another surge of
20 dumped imports from Japan. As a result, it's critical
21 that the Commission prevent another flood of dumped
22 imports from Japan which would cripple the struggling
23 domestic industry and cause material injury.

24 I believe that the U.S. producers are
25 capable of competing with imports from any source as

1 long as the trade laws preventing unfair dumping are
2 appropriately enforced, and I urge the Commission to
3 continue its support of the U.S. tin mill products
4 industry and not to revoke the antidumping order at
5 this time.

6 I appreciate again very much your
7 consideration for fitting me in here at the beginning
8 of what's going to be I think a long day of testimony
9 and ask for your full consideration of this matter as
10 you're starting to do today.

11 CHAIRMAN KOPLAN: It will be, and we very
12 much appreciate your appearance this morning.

13 If there are no questions from the dais?
14 (No response.)

15 CHAIRMAN KOPLAN: I see there are none.
16 You're excused.

17 MR. MILLER: Thank you.

18 CHAIRMAN KOPLAN: Thank you very much.
19 Madam Secretary?

20 MS. ABBOTT: Our next witness is the
21 Honorable Alan D. Mollohan, United States Congressman,
22 U.S. House of Representatives, 1st District, West
23 Virginia.

24 CHAIRMAN KOPLAN: Welcome back.

25 MR. MOLLOHAN: Thank you, Mr. Chairman and

1 members of the Commission.

2 I'm grateful for this opportunity to testify
3 before the Commission at this five-year sunset review.
4 Ms. Lane, I particularly appreciate your service. To
5 testify before the Commission at this five-year sunset
6 review of an important dumping order on tin mill steel
7 from Japan.

8 I represent the 1st Congressional District
9 of West Virginia, and, as Commissioner Charlotte Lane
10 knows, the people of my district appreciate the work
11 of the ITC. When the ITC stops egregious dumping by
12 foreign producers or ends massive subsidies by foreign
13 governments, it helps to preserve communities, our
14 industrial base and jobs in communities like Weirton
15 in my congressional district.

16 The steel produced in Weirton is vital to
17 the U.S. industrial base and our global
18 competitiveness. We are one of the few remaining tin
19 mill producers in the United States. The people
20 employed in the steel industry at Weirton receive good
21 wages and good benefits in these high skills jobs.

22 Since 1909, the health of the Weirton plant
23 has been critical to the overall economic strength of
24 the northern panhandle of West Virginia. The company
25 is one of the largest private employers in my

1 district, and beyond the actual employment of 1,300
2 people there's a multiplier effect. Many more
3 indirect jobs depend on the plant.

4 These jobs are provided by suppliers,
5 transportation companies, local retailers and
6 government. When one job is eliminated at the plant,
7 a family suffers a loss that also reverberates
8 throughout our community. All of this is devastating
9 to the local economy. Unfortunately, this generation
10 at Weirton has faced this severe stress and
11 dislocation numerous times.

12 While the plant, its workers and the Weirton
13 community are facing significant economic challenges
14 at the moment, the productivity, work ethic and strong
15 spirit of that community will enable it to prevail and
16 rebound strongly.

17 I believe that the independent steel workers
18 and Mittal Steel USA can work together to meet these
19 challenges. Weirton can continue over the long term
20 to manufacture the high quality tin mill products for
21 which it is known. It is an important, positive sign
22 that both management and workers have asked me to be
23 here today to support them on this issue.

24 For this plant and this community to
25 survive, we must continue to confront and stop the

1 importation of dumped Japanese tin mill into our
2 market. The Japanese shield their industry with
3 managed economy and an overly cheap currency. These
4 distortions enable them to easily dump manufactured
5 product abroad.

6 The 2005 U.S. trade deficit with Japan was
7 \$83 billion. That gets overshadowed by the \$202
8 billion deficit with China, but it our nation's second
9 largest deficit and a huge number, reminding us that
10 Japan exports much more to us than we do to them.

11 It would be unfortunate if dumped tin mill
12 exports from Japan resumed. It would put Weirton on
13 the receiving end of such unfair trade practices and
14 be extremely harmful. We need -- we need -- the
15 dumping orders on tin mills from Japan to continue to
16 help correct the trade distortions in that sector.

17 In the late 1990s, Weirton was under assault
18 as tin mill imports from Japan increased 86 percent.
19 Then the Commerce Department looked at the numbers and
20 told the world the reality; that this industry faced
21 huge 95 percent dumping margins from Japan.

22 This Commission then found in 2000 that
23 these high margins injured our tin mill industry. The
24 people of Weirton were grateful that their government
25 tackled and blocked that unfair foreign trade, and

1 they understand what will happen if you decide to end
2 this order on tin mill steel from Japan. Simply
3 stated, our industry will be swamped by imports from a
4 highly distorted market with significant excess
5 capacity.

6 The situation is not ideal for the U.S. tin
7 mill producers today. While productivity has
8 increased 65 percent in the U.S. tin mill industry
9 since the 2000 order, the industry remains injured.
10 Only 3,769 workers remain in the industry as jobs are
11 down 35 percent, and U.S. production of tin mill is
12 down nearly 18 percent since 2000. I'd be very
13 worried for the future of Weirton if this order does
14 not remain in effect.

15 Since I came to Congress in 1983, one of my
16 top priorities has been to join with my colleagues in
17 support of our domestic steel producers, workers and
18 communities. I'm proud to serve on the executive
19 committee of the Congressional Steel Caucus and am
20 proud of how we've worked in a bipartisan way to stand
21 up for our U.S. steel industry and workers. Steel
22 production is a tradition in our communities. We
23 fight hard to ensure that tradition can continue into
24 the next generation.

25 In conclusion, a significant component of

1 the industrial base of my state and our country, as
2 well as our high wage, high skilled jobs, are at stake
3 in this case. Therefore, my constituents and I urge
4 you to find in favor of U.S. industry and keep these
5 orders in place against Japanese mill producers.

6 Again, thank you for the opportunity to
7 share my views with you today, Mr. Chairman.

8 CHAIRMAN KOPLAN: Thank you for your
9 appearance and your presentation. The full text of
10 your statement will be in the record.

11 MR. MOLLOHAN: Thank you.

12 CHAIRMAN KOPLAN: Let me see if my
13 colleagues have any questions or comments.

14 COMMISSIONER LANE: Congressman Mollohan, I
15 just wanted to thank you for coming and giving us your
16 perspective, and thank you for your service to the
17 state. Thank you.

18 MR. MOLLOHAN: And we thank you for your
19 service to the state and country. Thank you, Ms.
20 Lane. Thank you.

21 CHAIRMAN KOPLAN: Thank you, Mr. Mollohan.
22 Madam Secretary?

23 MS. ABBOTT: Our next witness is the
24 Honorable Peter J. Visclosky, United States
25 Congressman, U.S. House of Representatives, 1st

1 District, Indiana.

2 CHAIRMAN KOPLAN: Welcome back

3 MR. VISCLOSKY: Mr. Chairman, thank you very
4 much to yourself, as well as the members of the
5 Commission. I would ask that my entire statement be
6 entered in the record.

7 CHAIRMAN KOPLAN: It will be.

8 MR. VISCLOSKY: I appreciate the opportunity
9 again to present testimony during your five-year
10 review.

11 Since 2000, I am struck that things have
12 continued to change relative to steel in America. You
13 see the ratio of steel produced in the United States
14 between integrated facilities and electric furnaces
15 change. You continue to see import and export figures
16 change. You see the ownership of various companies
17 change.

18 The integrated facility farthest east along
19 the southern shore of Lake Michigan used to be
20 headquarters when your original order was entered in
21 Bethlehem, Pennsylvania. Subsequently during this
22 pendency it was headquartered in Cleveland, Ohio, and
23 today in Rotterdam. To its west, a facility was
24 headquartered in Japan that today is headquartered in
25 Pittsburgh, Pennsylvania.

1 In East Chicago, Indiana, a firm was
2 headquartered in Chicago, Illinois, today in
3 Rotterdam, and to its west a firm was headquartered in
4 Cleveland, subsequently purchased by a firm
5 headquartered in Cleveland and today headquartered in
6 Rotterdam.

7 There has been a constant, and that is
8 inexorable decline of good paying, high quality jobs
9 in not only the domestic steel industry, but
10 manufacturing in northwest Indiana, the State of
11 Indiana and the United States.

12 To the extent that is because of greater
13 efficiencies, good management, hard working employees
14 I certainly accept that. To the extent we've seen
15 inexorable job loss because people have manipulated
16 the international trading system, they have violated
17 international trading standards, I certainly would ask
18 for your continued serious consideration in making
19 sure that our laws are abided by.

20 Another constant is the fact that the
21 international trading community remains very great.
22 In 2000, the Commission found that the Japanese
23 producers involved in this matter had dumped tin mill
24 product and that this dumping had directly caused
25 injury to the American manufacturing sector.

1 Now the Commerce Department has concluded
2 that those same Japanese producers would once again
3 dump in this market if the order was lifted and that
4 they would do so at levels similar to those in 2000.

5 As always, I would ask for your continued
6 serious, careful consideration of the matter before
7 you, and I would ask that the relief be kept in place.

8 I thank you again for the opportunity to
9 return and spend some time with you.

10 CHAIRMAN KOPLAN: Thank you for your
11 appearance. Let me see if any of my colleagues have
12 any questions or comments.

13 (No response.)

14 CHAIRMAN KOPLAN: If not, I very much
15 appreciate you coming back.

16 MR. VISCLOSKY: Mr. Chairman, thank you very
17 much.

18 CHAIRMAN KOPLAN: Thank you for your
19 testimony.

20 MS. ABBOTT: Our next witness is the
21 Honorable Shelley Moore Capito, U.S. Congresswoman,
22 United States House of Representatives, 2nd District,
23 West Virginia.

24 CHAIRMAN KOPLAN: Welcome.

25 MS. CAPITO: Thank you. Thank you for

1 welcoming me back.

2 CHAIRMAN KOPLAN: Yes.

3 MS. CAPITO: It's a privilege for me to be
4 here, and I appreciate the opportunity to testify.
5 I'll just go ahead with my statement.

6 CHAIRMAN KOPLAN: Yes. You may proceed.

7 MS. CAPITO: All right. I want to thank the
8 Commissioners for your careful deliberations that
9 ensure that our trade remedy laws work for our people
10 and communities in West Virginia and across the
11 country.

12 I also want to take a moment to say hello to
13 Commissioner Charlotte Lane, a good friend and fellow
14 West Virginian. I've got to get that in the front of
15 my statement.

16 I'm here today on behalf of the workers in
17 the steel industry of West Virginia that is centered
18 really in Weirton and the northern panhandle region of
19 West Virginia. I represent the 2nd Congressional
20 District of West Virginia, which stretches across
21 central West Virginia, but does not include Weirton.

22 However, it's important I think for me to be
23 here today because the continued success of the Mittal
24 Steel-Weirton facility is critical to the future
25 viability of our state's manufacturing base.

1 In turn, continuation of the dumping order
2 against tin mill steel producers from Japan is vital I
3 think to the survival of the Weirton steel area and
4 the economic livelihood of that community. The people
5 of Weirton have been manufacturing steel since 1909.
6 The knowledge base of steel production and
7 manufacturing runs deep and over several generations.

8 If this dumping order against Japan is
9 removed, I believe that the Japanese tin mill product
10 will flood our market, and the future of this Weirton
11 plant and that community will be placed in jeopardy.

12 The American steel industry certainly faces
13 a range of current challenges. I know you're dealing
14 with these daily practically. Global overcapacity,
15 increasing foreign subsidies, particularly in China,
16 high energy costs and continued unfair dumping of
17 product from abroad in a range of sectors threaten to
18 drive away the gains that the steel industry has made
19 since 2001.

20 President Bush's imposition of tariffs in
21 2002 after the Section 201 investigation gave the
22 steel industry I think an important respite from
23 foreign dumping and allowed the industry to retool and
24 restructure. Increased productivity, consolidation
25 and renewed capital investment have greatly helped.

1 As you well know, the dumping order that you
2 are considering today was imposed in 2000 because tin
3 mill steel was being egregiously dumped on our market
4 in the late 1990s. Volumes of imports were
5 skyrocketing, and prices were plummeting. That
6 increase in volume of imports, coupled with crashing
7 prices, led to an assessment of dumping margins of
8 over 95 percent.

9 When it was imposed, the order had an
10 immediate impact as Japanese producers cut their
11 imports and then ceased importing here altogether
12 after 2000.

13 In the last year, the domestic tin mill
14 industry has made important gains that would not have
15 been possible without the order. For example,
16 domestic tin mill productivity was up an impressive 65
17 percent over the years between 2000 and 2005.

18 The people of Weirton have been asked to
19 sacrifice too many times I think in the past 25 years.
20 They have faced a continued onslaught of unfair trade
21 practices. Thanks to the community and its
22 patriotism, the facility has survived and at times
23 thrived.

24 Once again the community is renewing its
25 commitment to being a world-class producer of steel.

1 They will succeed in this effort as they have always
2 prevailed when their backs are against the wall. West
3 Virginia will remain a leader in tin mill producing
4 for decades to come. However, if the tin mill
5 industry instead faces a surge in dumped Japanese
6 product, all bets are off. The continued viability of
7 Weirton would again be called into question.

8 I'm here today because I'm committed to a
9 strong West Virginia economy that provides high wage,
10 high skill employment for our people. I've advocated
11 tax investment and general policy incentives to
12 encourage the growth of manufacturing and industry in
13 West Virginia and the nation. However, a level
14 international trade playing field is critical. As
15 long as we practice fair trade, West Virginia can
16 compete with anyone.

17 Domestic policy incentives will not work if
18 our foreign competitors continue to engage in unfair
19 practices that do great harm to our U.S. producers.
20 The steel industry in West Virginia is legendary. The
21 economic health of our entire state depends on a
22 healthy steel industry. Steel has made it possible
23 for generations of West Virginians to achieve the
24 American dream, and similar positive impacts of steel
25 can be seen on a range of communities across the

1 nation.

2 On behalf of the workers and community of
3 Weirton and people across my beautiful state, our
4 beautiful State of West Virginia, who depend on steel
5 for their livelihoods I urge the continuation of this
6 dumping order on tin mill steel. It's the right thing
7 to do for the state and the nation.

8 I thank you again for the opportunity to
9 present my views. Did you get I'm from West Virginia?
10 Should I say that one more time?

11 CHAIRMAN KOPLAN: I think I'll call on
12 Commissioner Lane at this point.

13 COMMISSIONER LANE: Thank you. It's always
14 nice to hear from my fellow West Virginians. Thank
15 you for coming.

16 MS. CAPITO: Thank you.

17 CHAIRMAN KOPLAN: We very much appreciate
18 you coming back.

19 If there are no other comments or questions
20 from the dais, thank you.

21 MS. CAPITO: Thank you.

22 CHAIRMAN KOPLAN: You're excused.
23 Madam Secretary?

24 MS. ABBOTT: Our next witness is Zackary
25 Mazey, Deputy General Counsel to the Governor of West

1 Virginia, on behalf of the Honorable Joe Manchin III,
2 Governor of West Virginia.

3 CHAIRMAN KOPLAN: Good morning.

4 MR. MAZEY: Good morning, Mr. Chairman,
5 members of the Commission. I'm Zackary Mazey. I'm
6 here on behalf of Governor Joe Manchin of the great
7 State of West Virginia.

8 CHAIRMAN KOPLAN: Could you move that
9 microphone close to you?

10 MR. MAZEY: Is that better?

11 CHAIRMAN KOPLAN: Yes.

12 MR. MAZEY: Okay. Mr. Chairman, members of
13 the Commission, good morning. Though I am unable to
14 join you in person today for this hearing, I am
15 grateful for this opportunity to submit my views on
16 the sunset review of the antidumping order on the tin
17 mill steel from Japan.

18 I'm honored to serve the people of the great
19 State of West Virginia as their governor, and it is on
20 their behalf that I ask the Commission to maintain the
21 current antidumping order on Japanese tin mill
22 products.

23 As governor, ensuring that West Virginia has
24 a vibrant economy that supports good jobs and strong
25 communities is my first priority. One of my signature

1 initiatives for the state is my job creation plan,
2 West Virginia Open For Business. Our plan focuses on
3 building blocks of job retention and job creation,
4 good government, quality education, accessible health
5 care and a 21st century infrastructure.

6 In West Virginia, we are doing everything we
7 can to help our businesses grow and attract new
8 investment to the state. I'm confident that this hard
9 work will pay off and that the economy in West
10 Virginia will thrive as a result.

11 As we strengthen West Virginia's economy, we
12 recognize that there are larger forces that also
13 impact our ability to compete such as the rules that
14 govern international trade. No amount of state
15 business incentives, policy reforms or new state
16 investment can ensure we have a healthy state industry
17 if our foreign competitors are allowed to engage in
18 unfair trade practices that undermine U.S. producers.
19 That is the issue we face here today.

20 A key driver of West Virginia's economy is
21 manufacturing, particularly steel production. The
22 steel industry supports thousands of good paying jobs
23 for hard working men and women in West Virginia, and
24 each of those jobs in turn supports additional
25 employment in the businesses that supply the steel

1 industry and provide services to steel workers and
2 their families.

3 Steel industry jobs make it possible for
4 West Virginian families to buy their first homes,
5 afford quality health care, save for their children's
6 college educations and retire with security. Thus,
7 entire communities depend on a healthy steel industry.

8 Because the steel industry is so important
9 to West Virginia's economy I reacted quickly when the
10 Mittal plant in Weirton, West Virginia, announced last
11 November that its hot end would remain closed and that
12 the plant would be refocusing on its tin mill
13 production.

14 In the wake of this announcement, I
15 established the Mittal Steel-Weirton Task Force, a
16 working group charged with developing a plan to deal
17 with the reorientation of the mill's operations to
18 stimulate economic development and job creation in the
19 community of Weirton.

20 The task force is composed of state and
21 local government officials and representatives from
22 Mittal and the Independent Steelworkers Union.
23 Together we are working together to maintain the
24 vibrancy of Weirton's local economy.

25 In order for us to succeed, we must address

1 the larger forces that impact Weirton's ability to
2 compete. One of the factors upon which viability of
3 the domestic tin mill industry depends is the
4 maintenance of the current order on tin mills from
5 Japan.

6 The order under review today was imposed to
7 help level the playing field for domestic producers,
8 and it continues to be of vital importance to the
9 State of West Virginia. The dumping of tin mill from
10 Japan that led to the imposition of this order in 2000
11 was dramatic with rapid increases in volume and
12 decreases in prices that led to the assessment of
13 dumping margins of over 95 percent.

14 The order had an immediate impact, and
15 Japanese producers ceased exporting tin mill to the
16 United States after 2000. The domestic tin mill
17 industry has made important strides with breathing
18 space the order provided, consolidating and
19 reorganizing operations and greatly increasing
20 productivity, yet the industry remains vulnerable.

21 Demand for tin mill products is down, and
22 domestic capacity, market share, operating income and
23 employment in the tin mill industry have all declined
24 since 2000. Revocation of the present order would
25 lead to resumed dumping of Japanese tin mill imports,

1 further debilitating an already susceptible domestic
2 industry.

3 The managers and workers at Weirton and the
4 community of Weirton have sacrificed much over the
5 decades to keep the Weirton mill a viable competitor
6 in the face of unfair trade practices. Once again
7 today they are sitting down together to work out a
8 plan for making the facility a world-class tin mill
9 producer that can maintain its presence in West
10 Virginia for many more decades to come. If the tin
11 mill industry instead faces a surge in dumped Japanese
12 product, these plans would be in jeopardy.

13 Our state is doing everything we can to
14 support a viable tin mill industry at Weirton, West
15 Virginia. We have brought together leaders from
16 industry, labor and government to plan for the future
17 of the industry, but at the state level we cannot make
18 any plans that would counteract the serious harm that
19 unmitigated, unfair trade practices can cause. That
20 is why we depend on robust domestic trade laws and
21 those who enforce them to ensure our industry can
22 compete on a level playing field.

23 On behalf of the State of West Virginia, I
24 urge you to maintain the antidumping order on tin mill
25 from Japan. I make this request also on behalf of

1 hundreds of West Virginians who make their living in
2 making tin mill and on behalf of thousands who have
3 depended on the industry's health to maintain small
4 businesses open, to go to college, to pay their doctor
5 bills and to retire with dignity.

6 Thank you for the opportunity to present
7 these views.

8 CHAIRMAN KOPLAN: Thank you for your
9 testimony. Let me see if there are any comments from
10 the dais.

11 COMMISSIONER LANE: Mr. Mazey, thank you for
12 appearing on behalf of the governor. I know that he
13 would have been here had he not been in Europe on
14 state business. I thank you for coming on his behalf.

15 MR. MAZEY: Thank you, Commissioner Lane.

16 CHAIRMAN KOPLAN: If there's nothing else,
17 you're excused. Thank you very much.

18 MS. ABBOTT: Our next witness is the
19 Honorable Edwin J. Bowman, State Senator, 1st
20 District, West Virginia.

21 CHAIRMAN KOPLAN: Good morning.

22 MR. BOWMAN: Thank you very much. My
23 written testimony has been submitted, but I would like
24 to speak to you besides the written testimony and
25 offer some comments.

1 CHAIRMAN KOPLAN: The full text will be
2 included in the record.

3 MR. BOWMAN: Thank you, sir.

4 Mr. Chairman, members of the Commission, I
5 come before you today as the voice of thousands of
6 active and retired steelworkers to request that you
7 keep the antidumping order on tin- and chrome-coated
8 steel products in place for five additional years.

9 Mr. Chairman, if I may just take a brief
10 moment and deviate from my comments to recognize my
11 good friend, Charlotte Lane, Commissioner Lane,
12 someone who has been a friend of mine for a long time
13 and we're very proud of in West Virginia and actually
14 even worked for me for a short period of time. She
15 may have forgotten that, but I hired her as a lobbyist
16 for the West Virginia Municipal League, and she did an
17 excellent job.

18 I'm sure I can go on and on, but you all
19 have worked with her long enough that you can
20 recognize that any of the good things I can say are
21 absolutely accurate.

22 Mr. Chairman, members of the Commission, I
23 am a lifelong resident of the City of Weirton. I am
24 also a retired Weirton Steel employee. I was employed
25 for 28 years in industrial relations. I've had the

1 privilege of serving my community, the City of
2 Weirton, as a councilman for four years and the mayor
3 for eight years. I am now in my third four-year term
4 as a West Virginia State Senator.

5 Being a lifelong resident of the City of
6 Weirton was a great place to live, a great place to
7 grow up in. We were very proud. We were a very proud
8 community in the fact that we were recognized as the
9 melting pot of America.

10 I'm indicative of that in the fact that I am
11 the grandson of Hungarian immigrants. My wife's
12 grandparents came from Yugoslavia. I can go on and on
13 because that is the mix of our community. Europeans
14 who came over to this country to find work and provide
15 for their families, work ethic was number one in our
16 community. Family values were number one in our
17 community.

18 Unfortunately, in 1979 we had 13,000
19 steelworkers. We are presently down to approximately
20 1,200 steelworkers today. Not only have we lost the
21 jobs, but our community has been devastated. Our
22 schools have been adversely affected. Our local
23 businesses have been adversely affected.

24 In Charleston I speak about this subject
25 often, and when I speak about the people that I

1 represent, and let me stop for a moment. When I say
2 the steelworkers, let me just remind you that those
3 steelworkers at the Weirton plant are not only from
4 the State of West Virginia.

5 There are literally thousands of
6 steelworkers who came from the State of Ohio and from
7 Pennsylvania that were also employed at our Weirton
8 plant, but we were devastated because of the
9 antidumpings that occurred. Because of that, we have
10 seen the adverse effects upon our people and our
11 businesses.

12 As I say in Charleston when I speak about my
13 people, because I think it reflects upon their
14 character, never once can I recall a steelworker who
15 lost their job coming to me and asking for some
16 government subsidy, some government handout. What
17 they asked me for is please help me find a job.

18 I think it's a testament to their character
19 that all they've ever asked for is the opportunity to
20 provide for their family because they're proud
21 individuals, men and women. That's all they want to
22 do is have a better life for their family.

23 Because of the antidumping activities that
24 occurred over the years, we have suffered the
25 consequence, and we continue to face those challenges.

1 Mittal Steel Company has given us an opportunity that
2 we believe we can become one of the leaders in the tin
3 mill products throughout the world if given the
4 opportunity.

5 Just five years of the imposition of some of
6 the orders and the antidumping orders you've put in I
7 do not believe is enough. I believe because of the
8 length of time that occurred that Japan and others
9 that have taken and not followed the rules has caused
10 the consequence that we are deserving of additional
11 years of this order.

12 Mr. Chairman, members of the Commission, I
13 want to conclude with where I began. I come here
14 today as the voice of thousands of active and retired
15 steelworkers to request that you keep the antidumping
16 order on tin- and chrome-coated steel products in
17 place for an additional five years.

18 I thank you for the opportunity to come
19 before you. I'll be glad to answer any questions you
20 may have.

21 CHAIRMAN KOPLAN: Thank you very much for
22 your testimony.

23 Commissioner Lane?

24 COMMISSIONER LANE: Thank you for coming,
25 and thank you for putting a personal aspect on this

1 case. I think it's always important that we recognize
2 that there are people involved in these cases that we
3 hear, and certainly as a long-time employee and a
4 state representative you can give us a very unique
5 perspective, so thank you for making that long trip
6 from Weirton to Washington. Thank you.

7 MR. BOWMAN: Thank you.

8 CHAIRMAN KOPLAN: Thank you again. Let me
9 see if there are any other questions or comments.

10 (No response.)

11 CHAIRMAN KOPLAN: If not, you're excused.

12 MR. BOWMAN: Thank you, Mr. Chairman.

13 CHAIRMAN KOPLAN: Thank you.

14 Madam Secretary?

15 MS. ABBOTT: Opening remarks in support of
16 continuation of the order will be by James C. Hecht,
17 Skadden, Arps, Slate, Meagher & Flom.

18 CHAIRMAN KOPLAN: Good morning.

19 MR. HECHT: Good morning. The antidumping
20 order before you in this proceeding has certainly been
21 the subject of spirited discussion since it was
22 entered, including five plus years of vehement
23 litigation by the Respondents in an attempt to
24 overturn it. We are confident that this litigation
25 will come to a final resolution on the merits and that

1 the Commission's original finding will be vindicated.

2 We hope today to show you that the record in
3 this proceeding in fact presents a relatively
4 straightforward story, one that compels an affirmative
5 finding that revocation would be likely to lead to a
6 recurrence of material injury in the near term.
7 Indeed, in a number of respects the record here
8 presents an even stronger basis for an affirmative
9 finding than in the original determination.

10 Respondents have chosen to focus their
11 argument largely on extraneous issues and attempts to
12 deflect attention from the fundamental facts on record
13 based on the opening 20 pages of their brief attacking
14 the data collected in this review, an effort we
15 believe is without basis and will be shown to have no
16 merit.

17 Respondents in another 20 pages discussing
18 macro developments in the steel industry at large and
19 the supposed invulnerability that has resulted from
20 consolidation and greater efficiencies in the
21 industry, they spin out an extended tale relating to
22 the Herfindahl-Hirschman Index to suggest the domestic
23 industry has pricing power, an argument that is almost
24 180 degrees opposite from what they said in the
25 original investigation.

1 In all of this there is precious little
2 about what the record actually shows for this
3 industry. In other words, Respondents seem to prefer
4 to speculate and ruminate about how changes might
5 affect the industry rather than looking at what has
6 actually happened.

7 Given what the data show, it is not hard to
8 understand why. The truth is, no matter how you look
9 at the data it does not tell a good story for
10 Respondents.

11 What does it show? First, the industry
12 clearly has improved, and the order has been
13 effective. Indeed, the industry has done what it said
14 it would do in terms of restructuring the long-term
15 competitiveness. The result has been improvement
16 across virtually every indicator, even as the industry
17 struggles to establish profitability and long-run
18 health.

19 Has this translated into the invulnerability
20 Respondents suggest? Hardly. The staff report
21 correctly describes the industry's financial results
22 as lackluster, and there is no question the industry
23 faces numerous challenges, including the growing
24 presence of non-subject imports, significant cost
25 pressures and, of particular note, declining demand.

1 In fact, U.S. consumption of tin mill products has
2 declined by about 650,000 tons since 2000.

3 In the context of these serious challenges,
4 the record shows convincingly that Japanese imports
5 would return in force to this market if the order is
6 revoked. Remarkably, while Japanese producers claim
7 to have reduced capacity their capacity utilization
8 has actually fallen significantly, almost 10
9 percentage points over the period of review. Their
10 home market is shrinking, and their export markets are
11 declining as well. Simply put, they have nowhere else
12 to go.

13 The record is also quite clear in terms of
14 likely price effects. Respondents' suggestion that
15 contracts somehow immunize this industry from foreign
16 competition or that imports do not compete with
17 domestic product were wrong before and cannot in our
18 view be seriously advanced on the record here. It's
19 not credible, the evidence does not support it, and it
20 is not economically rational.

21 This order reflects a success story. The
22 industry is taking steps it needs to and that it said
23 it would to establish long-term competitiveness in the
24 context of an extremely challenging market and a
25 significantly declining demand.

1 While the industry continues to struggle to
2 sustain profitability, there is a real opportunity to
3 see a beleaguered industry regain its footing and
4 health, establishing a dependable, long-term and
5 vibrant source of supply for the domestic market. We
6 urge you not to put that progress in jeopardy by
7 allowing a return of unfair trade.

8 Thank you.

9 CHAIRMAN KOPLAN: Thank you for that.
10 Madam Secretary?

11 MS. ABBOTT: Opening remarks in opposition
12 to continuation of the order will be by William
13 Barringer, Willkie Farr & Gallagher.

14 CHAIRMAN KOPLAN: Good morning, Mr.
15 Barringer.

16 MR. BARRINGER: Good morning. It's a
17 pleasure to be here.

18 Let me begin today by pointing out what
19 hopefully is already evident to the Commission, namely
20 that Petitioners' case rests on nothing more than the
21 following proposition: Because the Japanese producers
22 have some excess capacity they will use this capacity
23 to shift tin mill products to the United States if the
24 antidumping duty order is terminated.

25 This of course assumes that the conditions

1 that prevailed in 2000 and the period investigated in
2 the Commission's original investigation will prevail
3 today. It also ignores the fact that the Commission
4 was divided in its original determination, was divided
5 in its determination on this product in the safeguards
6 proceeding and that the Court of International Trade
7 has found the Commission's initial determination to be
8 deficient.

9 Before turning to how circumstances have
10 changed and what this means in the context of this
11 proceeding, I want to remind the Commission that this
12 proceeding is very different from most of the other
13 flat-rolled sunset reviews that have or will come
14 before the Commission. Those cases mostly involve
15 multiple countries and in some products multiple
16 proceedings.

17 This case involves only Japan and a product
18 which accounts for only a tiny fraction of Japan's
19 production. It also involves a product which is
20 produced by relatively few mills in the world. Since
21 the original investigation, the Japanese industry has
22 consolidated, has cut capacity and has made profits,
23 not volume, the centerpiece of its production
24 strategy.

25 Perhaps equally important, it has virtually

1 abandoned the U.S. market as is evidenced by the fact
2 that notwithstanding significant excess capacity in
3 cold-rolled and no antidumping duties on Japan, Japan
4 is shipping limited quantities of high-end, non-
5 commodity cold-rolled products to the U.S. at the
6 lowest level in many years.

7 As the Commission will recall, the period
8 covered by the initial investigation was the period
9 which followed the Asian financial crisis and the
10 collapse of steel demand in Asia. It was a period
11 when prices had fallen precipitously, mills were
12 desperately looking for markets around the world,
13 large portions of the U.S. industry were in
14 bankruptcy, and red ink was the norm for the industry
15 worldwide.

16 The circumstances today could not be more
17 different. Prices remain at close to peak levels
18 across the industry and globally. Demand remains
19 strong. The U.S. industry has consolidated,
20 rationalized and become profitable with dramatically
21 lower costs due largely to improved labor
22 productivity, the shedding of unfunded legacy costs
23 and the shuttering of some of the least efficient
24 facilities.

25 These changes are not unique to the U.S.

1 Indeed, the global industry has consolidated and
2 rationalized. Prices are near record levels in all
3 markets, and production, while at record levels, is
4 demand driven because the biggest producers in
5 virtually all markets are restraining production in
6 order to maintain prices at profitable levels.

7 I would also note that the consolidation,
8 the cost cutting and the discipline in the market for
9 tin mill products has probably been more dramatic than
10 in other flat-rolled products. The concentration in
11 the industry has increased, the cost reductions have
12 been more dramatic, and the pricing power relative to
13 the consuming industry has been greater.

14 What does all this mean in terms of tin mill
15 products? First, both the U.S. and Japanese
16 industries have cut capacity to reflect declines in
17 demand for this product globally. Second, substrate
18 has now located based on the most profitable products
19 rather than to maximize capacity utilization for each
20 production line.

21 Third, the imperative to generate cashflow
22 to survive which characterized the period covered by
23 the initial investigation has been replaced by the
24 imperative to generate profits and to maintain prices
25 at levels which will sustain the industry long term.

1 Is the industry vulnerable? No. Its costs
2 are down. It is now owned by global players with
3 strong balance sheets, and much of the demand is tied
4 up in long-term contracts.

5 Thank you.

6 CHAIRMAN KOPLAN: Thank you, Mr. Barringer.
7 Madam Secretary?

8 MS. ABBOTT: The first panel in support of
9 continuation of the order please come forward.

10 Mr. Chairman, all witnesses have been sworn.

11 (Witnesses sworn.)

12 CHAIRMAN KOPLAN: Thank you. You may
13 proceed, Mr. Hecht.

14 MR. HECHT: Thank you, Mr. Chairman, and
15 good morning again.

16 For the record, I am Jim Hecht, counsel to
17 United States Steel Corporation, and before you hear
18 from the rest of our panel, I wanted to give you an
19 overview of some of the critical facts in this record.

20 In terms of the key points, first, the
21 amount of excess capacity in Japan has actually
22 increased while the order has been in place. This is
23 because the Japanese producers are losing sales in all
24 major markets, including Japan. These developments
25 will certainly encourage Japanese producers to

1 increase shipments to the United States where
2 customers are looking for lower prices. Meanwhile,
3 domestic producers actually lost money during the
4 period of review, despite the benefits of the orders.
5 Thus, they are in no position to withstand another
6 surge of dumped imports at this time.

7 In terms of the statutory factors, let's
8 first look at volume. As you will see, the record
9 demonstrates that Japanese producers have enormous
10 incentives to resume shipping large volumes of tin
11 mill steel to the United States. This slide reflects
12 the fact that Japanese producers claim to have reduced
13 their subject capacity by almost 600,000 net tons over
14 the period of review. Nevertheless, although Japanese
15 producers have allegedly reduced capacity, their own
16 data indicate that their excess capacity has actually
17 increased over the period of review. According to the
18 staff report, their capacity utilization rate fell
19 from 87.1 percent in 2000 to 78.3 percent last year.

20 This slide puts that unused capacity in
21 context. The bar on the right represents U.S. imports
22 of subject tin mill from Japan during 1999,
23 approximately 330,000 net tons. The bar on the left
24 shows how much excess capacity Japanese producers
25 reported last year, over 420,000 net tons. In other

1 words, according to their own data, the Japanese
2 producers could ship more dumped imports to the U.S.
3 than they did during the last year of the original POI
4 merely by drawing upon their excess capacity without
5 diverting sales from any other customer.

6 Why do the Japanese producers have so much
7 excess capacity? Once again, their own data provide
8 the answer. To begin with, as you see here, sales by
9 Japanese producers in their home market have fallen by
10 over 300,000 net tons since 2000. This wouldn't be so
11 bad if Japanese producers could simply increase their
12 exports to other markets, but they can't. As you see
13 here, their exports have also fallen by about 300,000
14 tons since 2000. The Japanese producers are obviously
15 losing sales around the world.

16 Let's take China as an example because in
17 other five-year reviews the Commission has heard
18 foreign steel producers boast about their strong sales
19 to China. The Japanese producers in this review can
20 make no such claim. Japanese trade statistics show
21 that Japanese exports to China and Hong Kong have
22 fallen by more than 60 percent since 2000.

23 Thus, as the staff report makes clear, the
24 Japanese producers have no ability to shift tin mill
25 products to non-U.S. markets. They could, however,

1 rapidly increase shipments to the U.S.

2 In fact, Japanese trade statistics show
3 while the order has been extremely effective at
4 preventing sales of dumped imports, the various
5 exclusions that have been granted allow the Japanese
6 producers to remain active here. Those customer
7 contacts will allow them to rapidly increase shipments
8 if the order is revoked.

9 The Japanese producers will no doubt allege
10 that they have no interest in this market, but as this
11 slide shows, they literally have no other attractive
12 options. The blue bar represents the more than
13 300,000 tons of exports that they shipped to the U.S.
14 in 1999. The red bar shows Japan's five largest
15 export markets last year. These data show that the
16 U.S. is the best potential market for Japanese
17 producers. Indeed, even with the order in place, the
18 U.S. was Japan's fifth-largest market for tin mill
19 exports last year.

20 The bottom line is this: Japanese producers
21 are losing sales everywhere. Their only plausible
22 strategy is to ship a lot more tin mill products to
23 the U.S., and they will do so if this order is
24 revoked.

25 Now, let's consider how a new surge of

1 dumped imports would affect U.S. prices. The Japanese
2 producers have a history of underselling. This chart
3 shows how Japanese underselling increased dramatically
4 over the period of investigation, and here you see how
5 the Commission has previously found that U.S.
6 purchasers are very sensitive to changes in price.
7 Because of this price sensitivity, U.S. producers
8 cannot simply disregard low-priced imports but must
9 often lower their own prices in order to avoid losing
10 sales.

11 The record in this review shows that, if
12 anything, U.S. purchasers have become even more
13 sensitive to price. During the original
14 investigation, no purchaser identified price as the
15 most important factor in purchasing decisions. Now it
16 is seen as the most important factor by more
17 purchasers than any other factor, even quality.

18 During the original investigation, half of
19 the purchasers considered price a very important
20 factor in purchasing decisions. Now, almost all of
21 them do. These are big changes and show that the
22 purchasers are more concerned than ever to get the
23 lowest price.

24 The Japanese producers may allege that U.S.
25 prices are locked in by the long-term contracts that

1 exist between some purchasers and domestic producers,
2 but this is simply not correct. First, the price
3 terms in these contracts can be and are influenced by
4 changes in market conditions. Second, customers can
5 and do cut their volume if they receive better volume
6 from other producers. And, finally, low-priced
7 Japanese offers would certainly affect future contract
8 negotiations. Thus, preexisting contracts will not
9 prevent dumped imports from depressing or suppressing
10 U.S. prices.

11 Finally, let's consider the likely impact of
12 these dumped imports. Here, you see what happened the
13 last time the Japanese producers had unrestricted
14 access to this market: over \$200 million in losses.
15 During the original investigation, the Japanese
16 producers denied that they were the cause of this
17 injury. The record shows, however, that the
18 industry's condition improved significantly after the
19 order was imposed. Nevertheless, you can also see
20 that domestic producers actually lost money over the
21 period of review.

22 This slide shows that domestic producers
23 have not been able to obtain a strong rate of return
24 on their assets.

25 These difficulties have occurred even though

1 domestic producers have made extraordinary efforts to
2 improve their competitiveness. As part of those
3 efforts, more than 1.1 million tons of domestic tin
4 mill capacity have been shuttered since the order was
5 imposed. Furthermore, domestic producers have worked
6 hard to become more productive. That work has paid
7 off. Since 1999, the last full year of the original
8 POI, the industry's productivity has increased by 38.4
9 percent.

10 Despite improvements in the industry's
11 productivity, however, its costs also increased
12 significantly over the period of review due in large
13 part to higher raw material costs as well as higher
14 energy costs. Meanwhile, apparent U.S. consumption of
15 tin mill products has fallen by over 600,000 tons
16 since 2000. This is not because of any temporary
17 cyclical downturn. It appears to be the result of
18 long-term trends similar to what the Japanese
19 producers are facing in their home market.

20 While U.S. consumption is falling, imports
21 from nonsubject countries are rising. As a result,
22 U.S. producers are losing market share, making them
23 even more vulnerable to a surge of dumped Japanese
24 imports.

25 In conclusion, the record evidence

1 overwhelmingly supports an affirmative determination.
2 U.S. producers are extremely vulnerable to injury.
3 U.S. purchasers are looking for low prices, and
4 Japanese producers literally cannot afford to stay out
5 of this market. Together, these facts leave no doubt
6 that revocation of the order will result in material
7 injury.

8 I would like to turn to our first witness,
9 Mr. Scherrbaum.

10 MR. SCHERRBAUM: Good morning. My name is
11 Joe Scherrbaum. I'm the vice president, sales, United
12 States Steel Corporation. I am responsible for the
13 marketing of all of the company's flat-rolled products
14 throughout North America, including tin mill products.

15 Before assuming my current position, I was
16 responsible for the marketing of the steel produced by
17 our European operations, and prior to that, I was the
18 general manager of our tubular products division.

19 I am, therefore, familiar with all of the
20 products that we make, which range from seamless
21 tubular products that are used in oil and gas wells to
22 flat-rolled steel used in making automobiles.

23 My experience has taught me that demand for
24 these diverse steel products is driven by factors that
25 are unique to that product. Indeed, that is perhaps

1 more true of tin mill products than any product that
2 we make. Producers of tin mill products, like
3 producers of other steel products, have been forced to
4 compete with unfairly traded imports. But tin mill
5 producers in the United States and Japan have, for
6 many years, been forced to deal with one problem that
7 is truly unique to that business.

8 As your data shows, industry-wide demand for
9 tin mill products has been falling in the United
10 States for some time. This is also true of Japan.
11 The reason for this decline is that substitute
12 materials have been replacing tin mill products in
13 certain applications. This is an ongoing problem and
14 is not simply the symptom of a cyclical downturn.
15 Moreover, while demand for tin mill products has been
16 increasing in some developing countries, these
17 increases are relatively small, and, in many cases,
18 the incremental demand in those markets is being met
19 by new capacity being built in those countries.

20 You should, therefore, be highly skeptical
21 of any suggestions that there is booming demand
22 somewhere in the world that will create major
23 opportunities for tin mill producers located in
24 developed nations such as Japan. This is simply not
25 true.

1 Declining demand in the United States and
2 Japan has two important implications for our business.
3 First, it means that the Japanese industry needs
4 access to this market more than ever. I was really
5 struck by the information about the Japanese industry
6 that is contained in your prehearing report. This
7 shows not only that the Japanese producers have large
8 excess capacity, even after idling some plants, but
9 also shows just how much their home and export markets
10 have been shrinking. The prospect that an industry in
11 that distressed condition with such a track record of
12 injurious dumping in this market might be given the
13 ability to dump in this market with impunity is,
14 frankly, alarming.

15 The flip side of the coin is that declining
16 demand also makes the tin mill business difficult for
17 us in this country. Even if there is no unfair trade
18 going on in the market, it's not easy to make money in
19 those circumstances. Because of the order, however,
20 and because of certain measures that we have been able
21 to take during the time when the order has been in
22 effect, we have finally begun to turn around our tin
23 mill operations.

24 We acquired certain tin mill facilities from
25 the former LTV Steel and National Steel. We have made

1 these facilities and our existing facility at Gary,
2 Indiana, more productive, and we have successfully
3 integrated all of these plants. At the same time, we
4 have closed down our relatively less-efficient
5 facility at Fairlas, Pennsylvania, and we chose not to
6 bring back into operation certain facilities at
7 Aliquippa, Pennsylvania, that were closed by LTV
8 before they were acquired by U.S. Steel.

9 As a result, the business is now, at long
10 last, generating a marginal profit on a reasonably
11 consistent basis, but we still have some way to go and
12 still have to contend with a number of difficult
13 problems, even putting falling demand aside.

14 For one thing, the returns that we are
15 earning on our tin mill business, while welcome, are
16 not stellar, by any means. In this public hearing, I
17 can't talk about the specific numbers involved, but
18 the Commission knows what those numbers are, and you,
19 therefore, know what I mean.

20 In addition, we are facing stiff competition
21 from nonsubject imports. While these imports have not
22 been priced as aggressively as Japanese imports were
23 prior to the order, they are a source of concern.

24 Permitting the Japanese to do what they did
25 to this market before the order would add supply

1 pressures to this market that would completely undo
2 what we have been able to accomplish in terms of our
3 financial performance.

4 We are also not yet where we would like to
5 be in terms of capital investments. U.S. Steel's
6 capital budget is not unlimited. Our tin mill
7 business must compete with our other product lines for
8 the funds that are available. When U.S. Steel decides
9 where to allocate capital, one of the main things that
10 it looks at is the current and future profitability of
11 the business relate to our other product lines. By
12 that measure, our tin mill operations still lag
13 behind.

14 We continue to make progress in this
15 business. However, that could change. There are
16 certain capital investments that we would like to make
17 to enhance our ability to serve our customers. To
18 give just one example, if the funds were available, we
19 would take a serious look at installing tension-
20 leveling equipment on several of our coating lines
21 that will enable us to make a flatter product that
22 would appeal to some of our customers.

23 Furthermore, I would like to emphasize to
24 the Commission that while we do not see eye to eye
25 with some of our customers on the need to maintain

1 this order, we are committed to working with all
2 consumers of tin mill products to ensure that they get
3 what they need when they need it and to make certain
4 that there will be a future for this product. These
5 are interests that we all share.

6 We experienced some difficulties in meeting
7 the on-time-delivery expectations of our customers in
8 2004 and once again at the end of 2005. You may have
9 questions about that, which we would be happy to
10 answer. For present purposes, however, I would simply
11 make the point that our recent problems are due to
12 events that were not entirely within our control.
13 These relate primarily to a delay in bringing back
14 online our Number 14 blast furnace at our Gary works,
15 which was entirely rebuilt. This caused us to be
16 temporarily short of steel, but all of the steel that
17 we need is now in the pipeline, and this problem will
18 soon be a thing of the past.

19 Finally, we are also working with our
20 customers to stimulate demand for tin mill products to
21 the maximum extent possible. We are a member of the
22 Canned Food Alliance. The Canned Food Alliance is a
23 group sponsored by the American Iron and Steel
24 Institute, Can Manufacturers Institute, and certain
25 end users of tin mill products. The members of the

1 alliance include producers of tin mill products and
2 major food processors and can makers. Among other
3 things, the alliance serves as a source of information
4 on the nutritional value and appeal of canned food and
5 promotes the advantages of canned food versus
6 alternatives.

7 We regard this as a very important endeavor.
8 Helping to maintain demand for steel containers is
9 just as important to us as our efforts to modernize
10 our plants and make them more productive.

11 In closing, I would like to say that this
12 order is a textbook case of how our trade laws are
13 supposed to work. We have used the relief against
14 unfair trade provided by the order to get a critical
15 head start toward getting our house in order. I urge
16 the Commission to keep the order in place so that we
17 can finish the job in a market where fair trade, not
18 unfair trade, is the rule of the day. Thank you for
19 the opportunity to appear before you today.

20 MR. GAGLIANO: Good morning. I'm Gerry
21 Gagliano, and my position is the manager of sales and
22 service for tin and container products at U.S. Steel.
23 In this position, I regularly deal with all of our
24 major tin mill customers on a wide range of issues.
25 This morning, I would like to discuss how the market

1 works and why you should maintain the order on dumped
2 imports from Japan.

3 First, this is a relatively small market.
4 Accordingly, information flows very quickly throughout
5 the market. As soon as one purchaser gets a better
6 price, other buyers demand the same deal. This means
7 that if dumped imports from Japan affect the price for
8 anyone, they typically influence prices across the
9 industry. If one of the other domestic producers has
10 to lower its prices to match the Japanese, I will hear
11 about it from my customers. Even customers who
12 haven't bought from the Japanese will know that prices
13 are falling, and they will put pressure on their
14 suppliers to lower prices.

15 Secondly, almost all of our sales are made
16 by contract. These contracts typically require
17 intense and lengthy negotiations which are often
18 profoundly influenced by developments in the market at
19 the time. I'm not talking about negotiations that
20 last for a few hours or even a few days. In this
21 industry, negotiations over a single contract may last
22 six months or more. Most of these negotiations focus
23 on price. I cannot overstate how much our customers
24 care about getting the best possible price, how hard
25 they fight for every dollar, and how they use all of

1 their leverage to get a better deal.

2 If purchasers have access to dumped steel,
3 they will use that against us as well. Whether or not
4 they specifically mention foreign prices to us, the
5 mere fact that such imports are available will make
6 them less willing to agree to our terms.

7 Third, while I understand that some have
8 suggested that long-term contracts insulate domestic
9 producers from foreign competition, I can assure you
10 this is not the case. Without getting into
11 confidential information, I think it is very critical
12 for you to understand that these contracts typically
13 contain a number of provisions whereby price or
14 quantity terms can be and are influenced by changes in
15 market conditions, including competitive offers from
16 other producers, changes in market levels, and so
17 forth.

18 In addition, the volume our customers take
19 on these agreements can vary significantly based upon
20 market conditions and other options they have in terms
21 of supply. In most cases, we are not aware that
22 customers have shifted business to another supplier
23 until we see the impact in reduced order volume. If
24 we see a resumption of unfair trade in this market, we
25 will see the effects throughout our business in the

1 near term, regardless of the length of our contractual
2 relationships.

3 Fourth, I understand that Japanese producers
4 claim that because of consolidation in the domestic
5 industry, we can force purchasers to accept whatever
6 prices we want. This is simply not correct. Let me
7 give you an example of what happened in the real
8 world.

9 During early 2004, our raw material costs
10 were soaring, so in April of 2004, we asked our
11 customers for a competitive market price adjustment of
12 \$70 per net ton just to cover our increased costs.
13 Every one of our major customers resisted this
14 increase.

15 In January of 2005, we asked for another
16 market price adjustment of \$85 per net ton, as well as
17 an 8 percent increase in our base price. These were
18 modest increases, much lower than what U.S. Steel has
19 obtained for other flat-rolled products during 2004.
20 Once again, we believe that higher raw material costs,
21 as well as the fact that we were still trying to
22 recover from years of operating losses on this
23 product, required us to make this attempt. While we
24 were ultimately able to obtain some improvement,
25 prices generally remained much lower than were

1 warranted. Of course, if dumped Japanese imports had
2 been available, it would have been impossible to
3 obtain any increases.

4 Fifth, this market is highly competitive.
5 Every customer can choose from a variety of domestic
6 and foreign suppliers. This fierce competition
7 explains why domestic producers have found it so
8 difficult to pass along higher costs to our customers.

9 And, finally, Japanese imports will widely
10 be accepted in this market. Japanese producers are
11 well known to U.S. purchasers, both because of their
12 shipments during the late 1990s and because they
13 continue to ship substantial volumes of excluded
14 products to the United States. Their quality is
15 excellent, and their quality would be accepted for any
16 major specification. Their knowledge of this market
17 and their reputation among U.S. purchasers would
18 enable them to rapidly increase sales if the order
19 were revoked.

20 For all of these reasons, revocation of the
21 order will have an immediate and harmful effect on
22 U.S. Steel. Information about the price and
23 availability of Japanese imports will spread quickly.
24 Our customers, even those with long-term contracts,
25 will use this information to obtain lower prices.

1 I understand and accept that hard-fought
2 negotiations are a critical and necessary part of our
3 business, and I don't blame our purchasers for using
4 whatever leverage they have, but we should not have to
5 meet import pricing that reflects unfair trade. I
6 urge you to keep this order in place. Thank you for
7 the opportunity to speak to you today.

8 MR. PETERSON: Good morning, Mr. Chairman
9 and members of the Commission. I am Craig Peterson,
10 vice president of commercial for USS-POSCO Industries,
11 a position I have held since January of 1998. As vice
12 president, I oversee the sales of all sheet and tin
13 mill products for UPI. In the past, I was the general
14 manager of tin mill sales for UPI, and I have over 20
15 years of experience selling steel products.

16 UPI is a joint venture between U.S. Steel
17 and POSCO, located in Pittsburgh, California, about 45
18 miles east of San Francisco. We produce tin mill
19 products for a handful of customers, nearly all of
20 whom are located in California. As the only domestic
21 producer of tin plate west of the Mississippi, UPI is
22 ideally located to supply tin mill products used to
23 package California's wide variety of fruits and
24 vegetables.

25 The western United States, representing

1 about 20 percent of the U.S. market for tin plate, has
2 been UPI's natural and historic market for more than
3 four decades. In fact, 90 percent of UPI's tin plate
4 is shipped to customers within 85 miles of our
5 facility. In 1986, the year the joint venture was
6 formed, UPI invested over \$450 million to
7 significantly upgrade the quality and efficiency of
8 our steel-finishing capabilities and, in particular,
9 our ability to produce world-class, high-quality tin
10 plate.

11 UPI is not an integrated mill; that is to
12 say we purchase semifinished, hot-rolled steel from
13 fully integrated mills and convert it to finished tin
14 mill products. Prices for hot-rolled steel, or hot
15 bands, as they are called in the industry, are
16 volatile and have risen dramatically since mid-2004.
17 UPI's prices for tin plate have not kept pace with
18 increased prices for hot bands, natural gas, and other
19 raw materials.

20 In order to be profitable in this
21 environment, UPI needs to operate at high rates of
22 production. Any substantial loss of volume would
23 threaten UPI's ability to remain a viable tin mill
24 supplier.

25 While UPI's geographic location may provide

1 a competitive edge against domestic tin plate
2 producers in the East, we are vulnerable to foreign
3 imports arriving from Japan. Indeed, in 1999, the
4 year prior to the imposition of the antidumping order.
5 Japanese imports to the West Coast of the United
6 States reached their peak of nearly 163,000 tons,
7 almost twice the amount that arrived in 1997. In
8 addition, between 1997 and 1999, half of all Japanese
9 tin plate imported into the United States arrived at
10 West Coast ports.

11 Imports of Japanese tin plate have been
12 rising steadily since 1997 and stopped only after the
13 imposition of the antidumping order in 2000. Allowed
14 to increase at the same rate as between 1997 and 1999,
15 Japanese imports would have doubled to 320,000 tons,
16 or 60 percent of today's West Coast market for tin
17 plate.

18 The market for tin plate in the West has
19 declined from 789,000 tons in 1997 to 540,000 tons in
20 2005. UPI was adversely affected by the 163,000 tons
21 of imported tin plate from Japan in 1999, and it goes
22 without saying that the current, much smaller market
23 cannot absorb 1999's levels of imports from Japan,
24 much less the over 320,000 tons of imports that would
25 have come by 2005 if imports had continued to increase

1 as they did between 1997 and 1999.

2 We believe that if the current antidumping
3 order is revoked, Japanese tin plate producers will
4 pick up where they left off in 1999 by returning to an
5 aggressive campaign of underselling in an attempt to
6 match 1999's import levels. That tonnage of imports
7 would necessarily and significantly affect UPI's
8 production, shipments, and employment levels.

9 The basis for all sales of tin plate is
10 price. Imported and domestic tin plate are
11 interchangeable. The only reason California can
12 manufacturers would choose not to purchase from UPI, a
13 bona fide, nearby supplier, is lower price.

14 Underselling was the Japanese strategy from
15 1997 to 1999. Underselling will continue to be their
16 strategy if the antidumping order is revoked. With
17 the volume of imports that will hit the West Coast
18 market, UPI will be forced to meet Japanese prices to
19 retain any reasonable sales volume.

20 The pricing effect of imports is magnified
21 by the fact that there is a very small number of
22 buyers, each of whom accounts for significant tonnage.
23 There is no way an aggressive campaign by the Japanese
24 to undersell UPI would not spread to all of UPI's
25 customers. As there are only three or four major

1 customers, the effect of Japanese pricing would be
2 immediate and dramatic on UPI's current sales. UPI's
3 choice would be losing the business or meeting lower
4 prices. Either would hurt. The current price/cost
5 squeeze would be greatly aggravated if UPI were forced
6 to reduce prices to meet Japanese competition.

7 Although sales of tin mill products are
8 generally made pursuant to contracts, those contracts
9 typically allow buyers to vary the tonnage purchased
10 at their discretion. Thus, increased imports would
11 immediately affect both sales volume and prices.

12 UPI has made a tremendous financial
13 commitment to produce first-rate tin mill products.
14 We have invested over \$450 million to upgrade the
15 quality and efficiency of our sheet and tin mill
16 products. UPI is ideally located to supply food can
17 manufacturers in California. We have been certifiably
18 successful in meeting our customers' needs and have
19 consistently demonstrated the best on-time, tin plate
20 performance of any tin mill producer in the United
21 States. UPI must continue to invest in technology,
22 plant, and equipment to remain a viable, high-quality
23 supplier of tin plate.

24 We have recently received approval to invest
25 an additional \$8 million in our tin mill operations

1 that likely would be canceled if Japanese imports
2 again undercut our prices and take 30 percent or more
3 of the West Coast market.

4 In summary, UPI is at grave risk of being
5 seriously affected by the large increase in imports
6 from Japan if the antidumping order is revoked. Thank
7 you very much for your attention to this matter of
8 great importance to UPI, and I would be pleased to
9 answer any questions the Commission might have.

10 MR. GOEDEKE: Good morning, Mr. Chairman and
11 Commissioners. My name is Tom Goedeke. I'm the
12 director of tin mill products sales and marketing for
13 Mittal Steel USA. I've worked in the steel industry
14 for 39 years, and during much of that time, I've
15 worked in the tin mill products sector.

16 I started with Bethlehem Steel in 1967,
17 working in the quality assurance department, and then
18 I headed up quality assurance in the tin mill. For
19 the last 18 years, I've been involved in steel sales
20 and marketing. Both under ISG and Mittal, I have
21 continued on as head of the sales and marketing effort
22 of our tin mill products throughout the United States.

23 Our prehearing brief addresses all of the
24 factors that the Commission must consider in a sunset
25 review, so I will focus my comments on issues with

1 which I have the most familiarity in my capacity as
2 director of sales and marketing. First, I'll address
3 the importance of price in purchasing decisions and
4 the interchangeability among tin mill products from
5 various countries, including Japan and the United
6 States.

7 I've been selling steel since 1988. As a
8 salesman, my job is to get the highest price I can for
9 my product. In negotiations with my customers, I'm
10 sitting across the table from someone who has the
11 exact opposite goal, which is to pay the lowest price
12 possible for my product. There is nothing wrong with
13 that; it's business.

14 In the tin mill products business, supply
15 contracts are negotiated annually, typically at the
16 end of the year, to set price and volume targets for
17 the following year. This was the case in 1999, and it
18 hasn't changed since then.

19 There is a list price book for tin mill
20 products. Every year, generally in October, each
21 individual steel producer announces a price increase
22 for the next year. Negotiations then start with each
23 customer to set a discount rate off of the list price.
24 We meet with each customer and negotiate the pricing
25 and volume for the next year. In reality, the

1 discounts off the list price have been so high that
2 the list price has very little resemblance to the
3 actual pricing in the tin plate sector.

4 Customers generally will tell all the
5 suppliers of tin mill products, We have X number of
6 tons we're looking to buy, and we need your best
7 price. Then each supplier will say, We would like X
8 number of tons of volume, and here is our price. Then
9 there will be a back-and-forth negotiation on price
10 and volume. I've had customers not buy from me
11 because my price was one percentage point too high.

12 When the customer gets the lowest price they
13 can get, they go to that lowest seller and say, all
14 right, how much volume do you want? Then the
15 customer will go to the next supplier and say, If you
16 want the volume you asked for, you've got to meet a
17 certain number, and so on until the customer's volume
18 needs are met.

19 Each customer is different. Some will buy
20 at various prices from various suppliers while others
21 will want the same price from all suppliers. In any
22 event, price, and by that I mean paying the lowest
23 price possible, is important to any customer, and the
24 annual negotiations on price are always intense.

25 Now, I'm not in the office with my customers

1 when they are dealing with their foreign suppliers,
2 but it simply does not make sense, and I find it
3 difficult to believe, that they would only go to the
4 foreign mills after they have completed their
5 negotiation with domestic mills. There may be some
6 product specifications they absolutely want to buy
7 from the foreign supplier. In most cases, though, tin
8 mill products are highly interchangeable. That is not
9 to say that tin mill product is a commodity product,
10 but, rather, any major mill can, for the most part,
11 produce requested specifications just as well as any
12 other mill. It's true for foreign and domestic mills
13 alike.

14 So we see our customers pulling back volume
15 when they get a better foreign price. They will go
16 out to the domestic suppliers, and instead of buying,
17 for example, 300,000 tons, they will only buy 250,000
18 or 200,000 tons a year from the domestic mills. This
19 causes the domestic mills to fight even harder and
20 lower their price even more to get that smaller amount
21 of volume.

22 If the antidumping order on Japanese tin
23 mill products is revoked, we would expect to see our
24 customers going back to the Japanese with volume and
25 looking to get a lower price from them, just like they

1 were doing in the late 1990s before the trade remedy
2 was put in place. It is a given, understood industry-
3 wide, that the Japanese producers make a good product.
4 I can't imagine there is any buyer out there today who
5 would look at a Japanese supplier with a low price and
6 say, I'm sorry. I can't buy from you right now
7 because I have to start a qualification process. It
8 just isn't realistic.

9 If the order is revoked, we expect that the
10 Japanese will come back into this market with low
11 prices, which will definitely have a negative impact
12 on our business. We will either see volume go away,
13 or we'll have to cut our prices to try to keep the
14 volume. As the Commission is well aware, the material
15 costs continue to be at high levels, so cutting price
16 would not be a good option for us. Because of excess
17 capacity in the United States, we are already having
18 trouble securing necessary price increases to
19 compensate for increased costs.

20 If we can't offer a lower price, someone
21 else can. Without the antidumping order, the someone
22 else will be the Japanese in most cases.

23 I would like to make one final point. There
24 can be no doubt that the North American tin mill
25 products industry and the steel-packaging industry is

1 fragile. It's under threat from all directions. It
2 is under threat from alternative packaging. Go to the
3 grocery store, and you'll find the Folger's coffee can
4 isn't a can anymore; it's now a plastic tub. Tuna is
5 packed in pouches. Go to the Home Depot and look at
6 Behr paints. It may look like a metal can, but look
7 closely. The body and bottom are molded plastic.

8 So the industry is fragile, and material
9 substitution is one part of the threat. The other
10 part is lifestyle changes. People are eating out
11 more. When they do eat in, people don't have time to
12 cook the way they used to, so they will stop by the
13 local grocery store, go to the deli section, get the
14 ready-to-eat, ready-cooked meal. They will bring it
15 home and heat it up.

16 So the market in North America is facing
17 difficult times. We believe that the can is a
18 superior container for holding foods that is healthy,
19 safe, and convenient, but not all customers look at it
20 that way, and demand has declined significantly. So
21 that's another challenge we are facing.

22 At Mittal Steel USA, we are doing everything
23 we can to hold the industry together. If the
24 antidumping order is removed, and dumped imports
25 return to the market, as they most assuredly will,

1 that will put the industry in an even worse position.
2 We have a lot of people whose jobs and families are at
3 stake. There is no doubt in my mind that the
4 revocation of the order will substantially damage, if
5 not destroy, the U.S. tin mill industry. Mittal Steel
6 USA and the domestic industry need the order to be
7 continued if we're to survive.

8 I'm grateful for the opportunity to testify
9 before you today. Thank you for your attention.

10 MR. STEPHANS: Good morning, Mr. Chairman
11 and Commissioners. My name is Bill Stephans, division
12 manager for tin mill products at Mittal Steel USA's
13 facility in Weirton, West Virginia.

14 Commissioner Lane, Commissioner Pearson,
15 it's nice to see you again. I'm glad you were able to
16 come and see our operation earlier this month, and I
17 appreciate the opportunity to testify before you here
18 today.

19 I started in the steel industry in 1970 and
20 worked at LTV Steel for over 30 years. Most of that
21 time, about 27 years, I worked in the tin plate
22 business. I was the operations manager at LTV's
23 Aliquippa plant from 1981 to 1999. Then I went to the
24 Indiana Harbor plant and took on responsibility for
25 both of LTV's tin mills. I went to work at ISG in

1 2004 at about the time that ISG acquired Weirton
2 Steel. Under Mittal, I am now responsible for the tin
3 mill operations at the Weirton plant.

4 Allow me to give you some background about
5 the Weirton plant, its history, and what we expect its
6 future to look like. The first plant at Weirton was
7 established in 1909. Weirton Steel was originally
8 started as a tin mill operation. Eventually, it
9 became a fully integrated steel plant with 2.4 million
10 tons of raw steel-making capacity. Weirton made the
11 entire range of flat-steel products, from slabs to hot
12 rolled, cold rolled, galvanized, and tin- and
13 chromium-coated steel products.

14 Late last year, Mittal decided to take the
15 Weirton plant back to its roots and return it to being
16 a world-class, tin mill products specialist. This has
17 meant idling the blast furnaces, steel-making, and
18 hot-dipped galvanized lines. Now, rather than
19 producing raw steel at the plant as a fully integrated
20 operation, the Weirton facility instead sources slabs
21 from Mittal's Sparrows Point and Cleveland facilities.
22 We then hot roll the slabs into coils in the hot-strip
23 mill and further cold roll, anneal, temper, and
24 ultimately plate the steel with a tin or chromium
25 coating.

1 With this configuration, Mittal seeks to
2 maximize the efficient use of all of the facilities
3 that have been brought together under one
4 multinational company. With the consolidation, we now
5 have the ability to move resources within the company
6 between facilities that were previously owned and
7 operated by separate owners, and it isn't just slabs
8 that we are moving between facilities. We're also
9 moving some equipment intra-company.

10 At Weirton, in connection with the plant's
11 return to a focus on tin mill products, we are
12 evaluating capital improvements and investments to
13 further enhance the operation.

14 One significant improvement we are working
15 on is our side-trimming capability. All tin mill
16 products must be side trimmed; that is, the edges must
17 be trimmed to the width specified by the customer
18 before the product is shipped. Right now, we have
19 off-line trimmers that do this. This is less
20 efficient than using in-line trimmers because the
21 coils must be uncoiled and recoiled, which reduces
22 yield and increases cost.

23 Installing in-line side trimming on our
24 plating lines avoids that step in the process. In
25 fact, the equipment for the chrome line project is

1 coming from a chrome line at Sparrows Point that was
2 shut down about a year ago. This will improve
3 quality, cost, efficiency, and yield. This is a
4 significant project, which we expect will result in a
5 significant improvement in our operations.

6 Another project that we are working on is
7 adding an in-line tension leveler, which will help
8 improve the flatness of the product. The tin sheet
9 has to be as flat as possible so that when you cut a
10 sheet of tin plate and lay it on the table, you would
11 not see any ripples or waves whatsoever. It would be
12 just as flat as the table top. That is our aim, and
13 that is what many of our customers are expecting.

14 This tension leveler will give us the
15 capability to do that. It is a quality-improvement
16 project which is not necessarily one that could be
17 justified purely in economic terms. We're doing it to
18 improve quality for our customers.

19 These are major projects that require
20 significant capital investment, millions of dollars.
21 The tin plate industry, like all sectors of the steel
22 industry, is highly capital intensive. These trimmers
23 and tension levelers, as well as all of the other
24 equipment required to make tin plate, are expensive to
25 purchase and maintain.

1 Mittal is investing in its tin mill
2 operations because we expect that this market will
3 continue to be viable and can be a profitable business
4 for the company. At the same time, however, we have
5 seen softening demand for tin mill products, and we
6 are seeing more and more substitute materials in the
7 packaging industry. We would like to see the
8 antidumping order on Japanese tin mill products remain
9 in place because there is no room in the market for
10 dumped material.

11 We have a lot at stake in terms of
12 investments that we've already made and are about to
13 make to improve our business. We don't want to see
14 these investments jeopardized by falling prices and
15 lost sales due to dumped imports. This is an
16 important part of Mittal's business, and we want to
17 see it continue to be an important part of the
18 business for years to come.

19 Thank you very much for permitting me to
20 appear today and testify before the Commission.

21 MR. KLINEFELTER: Mr. Chairman, members of
22 the Commission, Bill Klinefelter. I'm the legislative
23 and political director of the United Steelworkers
24 Union.

25 It's a pleasure for me to be before this

1 Commission, and there's probably not many people who
2 will say that to you, but I will say that because the
3 union testifies on the Hill all of the time. I've
4 testified on some issues for years and years and years
5 with no resolution. I know, and the union knows, that
6 when we come before this Commission and do our work of
7 advocacy in our testimony that at the end of the day
8 there will be a speedy decision in the matter we
9 testify on, and, in all likelihood, it will be to the
10 benefit of the workers and the communities in which
11 they serve, and that's why it's a pleasure to come
12 before people who actually make decisions that affect
13 real people and real communities.

14 We need your help to keep this going. We
15 need these orders to stay in place. Let me tell you a
16 story. As usual, I'm going to deviate from my
17 testimony. Let me tell you a story.

18 Right after the bankruptcy of Bethlehem
19 Steel, I went up to Sparrows Point up in Baltimore.
20 We had a meeting of the retirees, and it wasn't a
21 meeting; it was a wake and a riot. It was hundreds,
22 actually probably a thousand people who had worked all
23 of their lives at Bethlehem Steel, who expected that
24 they were going to receive retiree health care, and
25 they were there, and they were angry, and they were

1 upset because their retiree health care was gone.
2 They were confused, and they didn't understand what
3 was going to happen with their pensions, and we tried
4 to explain that at least we had the PBGC as a backup
5 so that they were going to receive part of their
6 pensions.

7 That was then; this is now. Because we have
8 had the opportunity to create a consolidated and
9 viable steel industry in this country, we were able to
10 negotiate with the successors, which are now Mittal,
11 of Bethlehem Steel these voluntary employee benefit
12 associations.

13 Right now, so far, Mittal has put in \$321
14 million into this fund, and it's serving benefits to
15 121,000 retirees, and these benefits, they don't make
16 up entirely what people had lost, but they do go a
17 long way in helping people with supplemental Medicare
18 and their prescription drugs. The catch is these
19 benefits are predicated on profitability and the
20 profitability of the industry, and for this stretch of
21 time, we've had profitability, but that profitability
22 needs to continue, and we need to gain profitability
23 in the tin mill section.

24 So when we come here, and we ask for things
25 to be continued, we are asking things to be continued

1 in a very uncertain world, and we're trying to make
2 the world less uncertain for those folks who suffered
3 the most during the steel crisis from 1998 until the
4 year 2000.

5 So it's always a pleasure to be before this
6 Committee because I know that you understand, and have
7 always understood, the value of your work to the
8 people of the communities in which these industries
9 exist.

10 I might also add, it's also a pleasure for
11 the union to be here with Mark Glyptis, although he is
12 not a member of the United Steelworkers of America; he
13 is the president of the Independent Steelworkers
14 Union. I think everyone understands that we have
15 marched in lock step throughout the steel crisis,
16 mutually supportive of each other in our aims, and our
17 aims are to keep employment in our steel facilities
18 and to make sure that our retirees are treated with
19 respect and dignity, and I thank you.

20 MR. GLYPTIS: Good morning. Bill, I'm proud
21 to be here with you as well.

22 Mr. Chairman and Commissioners, I'm Mark
23 Glyptis. I'm president of the Independent
24 Steelworkers Union, which represents about 1,300
25 steelworkers at the Weirton Steel plant, now owned by

1 Mittal Steel USA. I've testified before you numerous
2 times.

3 The story that Bill just gave talked about
4 what took place at Sparrows Point. Those types of
5 meetings with retirees take place all over the
6 country. What's happened to the steel industry, and
7 what's happened to the steelworker retirees is a
8 travesty. Retirees were promised benefits. They were
9 promised health care benefits. The unions negotiated
10 those benefits. They were promised pensions, and
11 those benefits evaporated.

12 Those benefits evaporated because of the
13 policies that our country took, the administrations of
14 different presidents, and I'm greatly troubled by
15 what's happened in this country to the people that we
16 ought to have a great deal of respect for. Those
17 retirees didn't do anything wrong. They didn't do one
18 thing wrong, yet they lost their health care, they
19 lost their pensions, and it was only through the
20 efforts of the USW, to a great extent, as well as the
21 ISU, that at least a portion of those benefits was
22 able to be restored. So I echo many of the views that
23 Bill Klinefelter has just spoken about.

24 I worked in a steel mill for over 30 years,
25 and I'm a third-generation steelworker. I could

1 testify that when I went home as I was growing up, we
2 always ate supper together, and almost every evening
3 my father spoke about what took place in the mill that
4 particular day. Before my father, I remember vaguely
5 my grandfather, who also worked in the mill, talking
6 about how the mill ran that day, did they have a good
7 turn, and Weirton Steel was the entire community.

8 Unfortunately, things have changed
9 significantly. A mill that at one time employed
10 13,000 employees employs 1,300 employees today. When
11 I testified here back in the year 2000, during the
12 investigation to determine whether antidumping orders
13 would be put in place, I talked about how I personally
14 had seen Japanese product at a facility of a customer
15 located at Weirton property. We have a unique
16 situation at Weirton in which many of our tin
17 customers are located in the city, just a mile or so
18 away from the mill, and we have unique relationships
19 with those customers.

20 I remember visiting the customers in my
21 capacity as president of the Independent Steelworkers
22 Union, and it was horrifying to see Japanese steel in
23 our customers' plants. It made you wonder, how can
24 they deliver a product from Japan to Weirton, and that
25 customer can buy it cheaper than what we can make it

1 for? The only way that that took place, and it's been
2 proven, I think, beyond any doubt whatsoever, is that
3 that product was illegally dumped.

4 Since the antidumping order went into place,
5 the Japanese tin products have gone away. That really
6 helped our company, but it wasn't enough. As you're
7 well aware, Weirton Steel, the original petitioner in
8 this case, no longer exists. We had gone into
9 bankruptcy. We were originally bought by the
10 International Steel Group, and now we're part of a
11 much larger, multinational company, Mittal Steel USA.
12 But throughout that period, our union has continued to
13 strive to make Weirton a more competitive plant. We
14 agreed to work with ISG's management to restructure
15 our union agreement, to change our work rules, and to
16 reduce the workforce.

17 As I mentioned earlier, we had 14,000
18 employees. The city was built around our steel mill.
19 Main Street goes right through the heart of our mill.
20 It's breath taking, when the mill is running, that you
21 actually drive right through the heart of the mill.
22 I'm not sure if there is any other plant in this
23 country that could boast about that. We're proud of
24 that mill, and we love the mill.

25 It's all changed, and it's changed because,

1 in my view, the trade laws of this country were not
2 strictly enforced, and they have to be enforced. This
3 particular case is of vital importance to Weirton and
4 to this country. If we allow the Japanese to bring
5 back dumped steel, our community will be totally
6 devastated. We can compete on a global basis. There
7 is not any question about that. We've conceded to
8 globalism. But give us a fair chance to compete.
9 Okay?

10 You must uphold the tariffs. You must not
11 allow the Japanese to bring their product into the
12 American markets. They can still sell product. The
13 95 percent margins must be maintained.

14 Our compensation structure has changed with
15 the union. The foreign producers talk about, in their
16 prehearing brief, a 40 percent increase in wages for
17 steelworkers in the tin mill sector, but that doesn't
18 paint a complete picture. The whole compensation
19 structure changed when ISG came in, and it stayed the
20 same under Mittal. The benefit plans; they are gone.
21 They are gone. The PBGC has taken over our plan, as
22 with many of the plans in the steel industry. Our
23 retirees, in many cases, get a fraction of what they
24 did before. Our benefits have been scaled back.

25 Mr. Klinefelter talks about a VEBA. The

1 VEBA was an excellent way of providing some benefits
2 for our retirees, but they only get back a fraction of
3 what they lost. I applaud the USW for negotiating the
4 VEBAs in the steel industry.

5 If the antidumping order is revoked, the
6 Weirton facility, as I mentioned earlier, will be put
7 in jeopardy. I appear before you to state this basic
8 fact. The Independent Steelworkers Union will
9 continue to fight against unfairly priced foreign
10 steel imports, and we stand in solidarity with our
11 brothers and sisters of the USW. Our fight for a
12 decent standard of living and basic health care
13 benefits for our American workers will not cease. We
14 remain dedicated to keeping Weirton a viable plant for
15 many years to come, and we will remain diligent in the
16 cause for the American steel industry.

17 We are working hard at being the most
18 efficient steelworkers in the world. In all of the
19 testimony that I've been at, I've never heard anyone
20 say that we are not the most efficient steelworkers in
21 the world. I think that's undisputed.

22 Thank you very much for giving me the
23 opportunity to appear here this morning.

24 MR. KAPLAN: Good morning. I'm Seth Kaplan
25 of CRA International, and I've been asked by the

1 Petitioners to explain the role of pricing information
2 in the tin plate market. Let me briefly summarize the
3 accrued knowledge, the economics, and operations
4 research literature, and then turn to this industry.
5 My study attached to the brief of Skadden, Arps and
6 U.S. Steel explains this in detail.

7 As a threshold matter, the single most
8 important mechanism in a market economy is the
9 information contained in prices. The first thing you
10 learned in an economics class is that demand is
11 determined by the price of the owned product and the
12 price of substitute products. In operations research,
13 the first thing you learn about, and that's the
14 discipline behind logistics and purchasing, is that
15 prices are essential to making these decisions
16 correctly. In auction and bidding theory, pricing and
17 pricing information are central both to the auction
18 design and bidding strategy. In trade theory,
19 relative prices between imports and the domestic
20 product drive international trade.

21 In the tin plate market, tin plate makes up
22 about 40 to 100 percent of the cost of the products in
23 which it is used, according to the staff report. The
24 notion that purchasers ignore pricing information from
25 competitive suppliers just goes against 200 years of

1 economic theory, and it's just incredible that a
2 single person who is in charge of 70 percent of the
3 costs of their company is going to ignore the prices
4 from some bidders and in negotiations with others.

5 Further, the producers of tin mill products
6 will find their prices out, the market prices, without
7 having to be told competitors' bids. That's why it's
8 called the "invisible hand."

9 So the two major contentions, first, that
10 certain purchasers ignore the prices of various
11 competitors of substitute products when making their
12 decisions, is inappropriate. It begs incredulity. It
13 defies everything in anybody who is trained in
14 economics. It defies anyone who goes out and shops
15 for a house or shops for a car and says, "Yeah, I
16 found out the price of the other place, but I guess it
17 just doesn't matter."

18 The second point is that in a market with a
19 lot of information, you don't have to be told what the
20 price is of a competitor when you're bargaining with
21 somebody. They don't have to tell you, oh, someone
22 else gave a lower price. You will find it when you
23 lose volume and when you lose share.

24 So those are the major conclusions of the
25 study. Please take a look. Thank you.

1 MR. HECHT: Thank you, Mr. Chairman, and we
2 reserve the balance of our time.

3 CHAIRMAN KOPLAN: Thank you. Thank you all
4 for your direct presentation. I very much appreciate
5 it. It was very informative. We'll begin the
6 questioning with Commissioner Aranoff.

7 COMMISSIONER ARANOFF: Thank you, Mr.
8 Chairman. I want to be the first to say thank you to
9 the entire panel for being with us here this morning.
10 We appreciate all of your testimony, and it's always
11 really helpful to have all of the industry witnesses
12 to tell us about your business.

13 I come to this case myself as really
14 completely a blank slate. I know this case has a lot
15 of history that I wasn't here for, and I've already
16 stayed up quite a few nights trying to bone up on it.
17 So, hopefully, you'll be able to help me with more of
18 that this morning.

19 I want to start with some questions about
20 the contracting process. One of the things that I'm
21 trying to understand, because contracts are so much
22 more prevalent in this industry than they are in some
23 other segments of the steel market, is what are the
24 essential benefits, both to producers and to
25 purchasers, from making most of the sales through

1 contracts? Who wants to start with that? Maybe, Mr.
2 Gagliano, do you want to take a stab at that?

3 MR. GAGLIANO: I certainly would,
4 Commissioner. I think the benefits are seen on both
5 sides of the house, and that is from a supplier's
6 standpoint, from our standpoint, we would see some
7 consistency in a base production level, if you will,
8 through our facilities. From a customer's standpoint,
9 they could be replying on a base supply from a
10 consistent supplier and a base set of specifications,
11 if you will.

12 I think it just provides continuity
13 throughout the entire supply chain. They can plan
14 their business much more efficiently, plan ahead.
15 There aren't as many disruptions. So contracts,
16 longer-term contracts, are beneficial, I think, to the
17 entire business relationship.

18 COMMISSIONER ARANOFF: Okay. One of the
19 things that we've heard in this review is that there
20 has been a trend toward longer-term contracts in the
21 industry, so let me ask the three companies who are
22 here today, have you noticed a trend toward longer-
23 term contracting, and what do you think would be
24 driving that trend?

25 CHAIRMAN KOPLAN: If you could reidentify

1 yourselves for the record each time you speak, it
2 would be helpful because of the number of witnesses.

3 MR. GAGLIANO: This is Gerry Gagliano again.
4 I guess it goes to my last answer, and that is just
5 the continuity. There are fewer suppliers these days.
6 There are fewer customers. There are fewer tin plate
7 purchasers. The insurance of that stability of your
8 supply and consistency of your supply is leading
9 everyone to look forwards longer-term contracts to be
10 able to, once again, plan your business in a longer
11 fashion and not be disrupted by short-term
12 circumstances.

13 COMMISSIONER ARANOFF: Okay. Did any of the
14 other gentlemen from Mittal or UPI want to comment on
15 that? Mr. Goedeke?

16 MR. GOEDEKE: Tom Goedeke, Mittal Steel. We
17 have not seen an upward trend in the longer-term
18 contracts. It's been fairly consistent over the last
19 five years for contracts over one year.

20 COMMISSIONER ARANOFF: Okay. Mr. Peterson?

21 MR. PETERSON: I don't know that there has
22 been a trend toward more long-term contracts. The
23 nest of customers we have is so small that virtually
24 all of them have one agreement or another. But the
25 contracts typically give both parties some assurance

1 of continuing supply and some assurance future price
2 negotiations will take place.

3 So there's commitments on both sides, but
4 there is a lot of flexibility in these contracts. Not
5 all contracts have specific tonnages attached to them.
6 In some cases, there are ranges of tonnage so buyers
7 have the discretion to purchase some amount of their
8 steel away from us.

9 COMMISSIONER ARANOFF: Okay. I appreciate
10 that answer, and actually, Mr. Peterson, that leads me
11 right into the next question that I was going to ask.

12 My understanding of the way the contracts
13 work in the industry is that neither the price nor the
14 quantity is fixed over the term of the contract, and
15 so I understand you're all telling me that contracts
16 create stability in the market, and I want to
17 understand what the mechanism is that creates that
18 stability. I guess I understood you, Mr. Peterson, to
19 be saying that while quantity is not fixed, there is a
20 range, so maybe there is a minimum that contributes to
21 that, but I invite you all to explain to me exactly
22 how, when price and volume are not fixed, the contract
23 creates stability in the market.

24 MR. SCHERRBAUM: Joe Scherrbaum, U.S. Steel.
25 My comment to that would be it is not full stability,

1 so to speak. I would call it a limited stability
2 where it does have a volume target that we have agreed
3 to supply and a customer has agreed to produce.
4 However, as we have said in the prior testimony, there
5 is the option the customer has, if market prices
6 change, particularly if market prices get lower, they
7 do have the option to potentially discuss adjusting
8 the prices and/or just buy less volume from us. I
9 would not phrase it as a firm stability but more or
10 less limited.

11 COMMISSIONER ARANOFF: Do contracts in
12 general contain a minimum volume that you're
13 guaranteed, or is it just a general level of
14 expectation?

15 MR. SCHERRBAUM: I would say they vary
16 contract by contract. Each one is a little bit
17 different.

18 COMMISSIONER ARANOFF: Mr. Hecht?

19 MR. HECHT: Just to insert one comment
20 because I'm going to start, I'm sure, sensing a little
21 sensitivity from our clients because these are pretty
22 sensitive arrangements, as you can imagine, but given
23 the importance of this issue, we would certainly be
24 happy to discuss as much as we can confidentially in
25 addition to what you can get in here.

1 One thing to just throw out is some of these
2 contracts do have confidentiality clauses in them, so
3 it might make sense, if you would like to see those,
4 for example, or the terms of them, to ask the people
5 this afternoon or maybe even the other folks out there
6 if they would be willing to have those provided. We
7 certainly would be happy to analyze them in detail. I
8 just wanted to put that as a caveat because I know my
9 guys are going to be a little sensitive about giving
10 great detail on it.

11 COMMISSIONER ARANOFF: I understand that,
12 and I appreciate that very much. I will ask the
13 Respondents this afternoon as well, but any detail
14 that you can provide confidentially about how the
15 price and quantity terms in the contracts work or
16 maybe different examples of how they vary would be
17 very helpful.

18 I'll ask another question.

19 MR. RYAN: Excuse me, Commissioner Aranoff.
20 I think Mr. Peterson had something to add to that
21 answer.

22 COMMISSIONER ARANOFF: Oh, sure. Mr.
23 Peterson, go ahead.

24 MR. PETERSON: Craig Peterson from UPI. In
25 answer to your question about long-term contracts,

1 those long-term contracts that we have do not have
2 fixed prices for the term of the contract. At best,
3 within a multiyear contract, fixed pricing lasts for
4 really no more than one year of whatever number of
5 years are attached to that contract.

6 COMMISSIONER ARANOFF: Okay. Thank you. I
7 guess, if you are able confidentially to discuss the
8 pricing mechanisms, sometimes in long-term contracts,
9 you might see formulas for adjusting prices over a
10 period of time. I don't know if that's the way it
11 works here or if they are just simply renegotiated at
12 certain intervals. So that's what I'm interested in
13 understanding.

14 One of the comments that a number of the
15 witnesses made this morning is that in annual
16 contracting it's fairly typical for there to be annual
17 contracts and for them to be negotiated toward the end
18 of the year. Looking at the bid data that we have in
19 our staff report, which is, of course, confidential,
20 I'm not sure I see that pattern. Things look like
21 they are pretty spread out over the course of the
22 year. What has been people's experience in terms of
23 this typical pattern that you're describing to me of
24 an annual contract negotiated at the end of the year?
25 To what extent is that really the rule? Mr.

1 Scherrbaum, do you want to speak to that?

2 MR. SCHERRBAUM: Joe Scherrbaum with U.S.
3 Steel. I would say that is the norm. Normally, these
4 contracts are annual, and they are normally a calendar
5 year, so the contract negotiations normally begin in
6 the fall with the intention to have them concluded by
7 year end so the new agreement can go in place in
8 January.

9 COMMISSIONER ARANOFF: Okay. I guess I
10 would just say, Mr. Hecht, Mr. Ryan, Mr. Salonen, I
11 know these things are confidential. You can't show
12 all of them to your clients that came from the
13 purchasers, but if you could take a look at that bid
14 data and see if you can explain to us why they are not
15 necessarily consistent with the pattern that the
16 witnesses have described, that would really be
17 helpful.

18 MR. RYAN: We would be happy to do that.
19 Thank you.

20 MR. HECHT: We would be happy to do that as
21 well. One note: I think you were speaking mainly of
22 the annual contracts. Obviously, the multiyear ones
23 would be on a staggered path as well.

24 COMMISSIONER ARANOFF: That may be part of
25 the explanation. Thank you very much, and thank you,

1 Mr. Chairman. I'm sorry. Mr. Gagliano?

2 MR. GAGLIANO: Thank you. Gerry Gagliano
3 again. One other point I would like to make is that
4 while those negotiations may begin in the fall for the
5 coming year, they may last for many months, and the
6 agreement, in many cases, is not concluded or
7 finalized at the start of the next year, and it may go
8 months and months until you arrive at a final
9 agreement.

10 COMMISSIONER ARANOFF: Okay. Thanks. I'm
11 going to come back to this issue in the next round.
12 Thank you, Mr. Chairman.

13 MR. SALONEN: Mr. Chairman, before we
14 continue, Mr. Klinefelter has a pressing engagement
15 and was asking if there are any questions, could they
16 be directed to him at this time, or may he be excused?

17 CHAIRMAN KOPLAN: Let me see if there will
18 be any questions from the dais. It doesn't appear so.

19 MR. SAONEN: Thank you very much, Mr.
20 Chairman.

21 CHAIRMAN KOPLAN: Yes. You're excused, Mr.
22 Klinefelter.

23 MR. KLINEFELTER: Thank you.

24 CHAIRMAN KOPLAN: My situation is a bit
25 different from Commissioner Aranoff's. I participated

1 in the original investigation, and I made a negative
2 determination. However, I approach this review with
3 an open mind. What that means is I'm not beyond
4 redemption.

5 I will ask you to address certain findings I
6 made then in the context of this review. I recognize
7 that Japan exited the U.S. market in early 2000, but
8 what I am starting with you is an attempt to first
9 understand what has changed since my original
10 determination. I recognize that some of these issues
11 have been discussed in your direct presentations, but
12 let me run through some of that with you all, if I
13 can.

14 Beginning with Mr. Goedeke and Mr. Stephans,
15 in the original investigation, I found that the record
16 indicated Weirton had difficulty sourcing imported
17 slab, which adversely affected its on-time delivery
18 performance. For example, one purchaser, whose
19 identity was bracketed, indicated that it did not
20 purchase the full amount of tin plate from Weirton in
21 1999 because of Weirton's very poor on-time
22 performance. I found that this problem led to some of
23 the 1999 price declines. Tell me, what has been the
24 situation with regard to on-time performance during
25 this current review period?

1 MR. STEPHANS: Bill Stephans, Mittal Steel,
2 Weirton. Our on-time performance over the last couple
3 of years, which is really the only period that I could
4 answer to, up until the end of last year had been
5 continually improving with the steel-making situation
6 at Weirton, even with the slab purchases, or I should
7 say slab transfers, from the Sparrows Point and
8 Cleveland plants had been continuing to improve over
9 that period through 2005.

10 Earlier this year, we had a temporary
11 disruption in our operations due to an internal water
12 main break, which had a short-term impact on our on-
13 time performance, but up until late last year, it had
14 been continuously improving.

15 CHAIRMAN KOPLAN: Thank you for that.

16 MR. SALONEN: Mr. Chairman, if I may, as Mr.
17 Stephans noted, he has only been at the Weirton
18 facility for the last couple of years, and, of course,
19 Mr. Goedeke was not part of Weirton during the
20 original investigation. We would be happy to go back
21 and review the delivery schedules over the period for
22 you, if you would like.

23 CHAIRMAN KOPLAN: Would you do that and
24 submit it post-hearing? I would appreciate that, Mr.
25 Salonen.

1 MR. SALONEN: Absolutely. Certainly.

2 CHAIRMAN KOPLAN: Thank you very much. What
3 about the other domestic producers?

4 MR. SCHERRBAUM: If I can comment on -- Joe
5 Scherrbaum with U.S. Steel -- delivery performance for
6 U.S. Steel, during the year 2005, we had, we think, a
7 very solid delivery performance. As I mentioned in my
8 direct testimony, late in the year, our delivery
9 performance did deteriorate.

10 We had a one-time event where we had a large
11 capital project, the largest one our company has had
12 since the early 1990s, to completely reconstruct our
13 largest blast furnace at our Gary works. The project
14 did take longer than anticipated due to some
15 construction delays and some change in scope during
16 the project. We ran into some bad weather. Anyhow,
17 we did get it up and going but a little later than
18 planned. During that process, it did put some strain
19 on our in-process inventory, our finished inventories
20 for our customers, but now we did get up and running
21 in late January. The supply chain is filling, and we
22 expect that to be completely behind us very, very
23 soon.

24 CHAIRMAN KOPLAN: Thank you. Mr. Peterson?

25 MR. PETERSON: Craig Peterson with UPI. We

1 have a long history of providing excellent on-time
2 performance to our customers on the West Coast. The
3 only two times I can think of where we fell from that
4 high level was when we had a serious fire which burned
5 down our coal mill in 2001, and in 2004, when our
6 supply of hot bands became a little difficult. Our
7 supply of hot bands was lengthened out a little bit,
8 and the result was that we were late with customers
9 for some period of time.

10 CHAIRMAN KOPLAN: But in 2005?

11 MR. PETERSON: In 2005, I think our delivery
12 performance was good.

13 CHAIRMAN KOPLAN: Thank you. Moving to my
14 next question, I found the data submitted by Weirton
15 showing the volume of nonattainment of contract
16 purchase levels which was claimed increased along
17 with, and I'm quoting, "increased along with the
18 increase in Japanese shipments to the U.S." In my
19 opinion, I thought that that demonstrated otherwise.
20 I found that those data demonstrated that while there
21 may have been a coincident rise in subject imports in
22 nonattainment of Weirton's contractual volumes, only
23 an significant amount of that volume was attributable
24 to subject imports.

25 My question is, since Japan has left the

1 U.S. market at the beginning of this review period,
2 has the domestic industry regained the share of sales
3 it alleged was lost then to subject imports, or has
4 that business simply shifted to nonsubject imports?
5 Mr. Hecht, do you want to begin with that?

6 MR. HECHT: I think the story is that
7 roughly when Japan exited the market, the industry did
8 regain a significant portion of that. You had the 201
9 intervening, and I think that was the period when the
10 industry saw its highest market share of the period.
11 Since the lifting of the 201, you've seen subject
12 imports, as we described in the initial presentation,
13 capturing a larger share of that market. The import
14 competition has become more fierce in recent years,
15 particularly with declining markets in some places
16 around the world as well.

17 CHAIRMAN KOPLAN: You said subject. What
18 about --

19 MR. HECHT: Nonsubject. I'm sorry.

20 CHAIRMAN KOPLAN: That's what I thought you
21 meant.

22 MR. NARKIN: Chairman Koplan, this is Steve
23 Narkin with Skadden, Arps.

24 CHAIRMAN KOPLAN: Yes, Mr. Narkin.

25 MR. NARKIN: If I could just add to Mr.

1 Hecht's answer.

2 CHAIRMAN KOPLAN: Sure.

3 MR. NARKIN: I think if you were to look,
4 and the data are actually confidential, but in the APO
5 version of the staff report at page 1-11, you do see a
6 difference between what happened in the period of
7 review and then what happened in the period of
8 investigation. I actually have that backwards.

9 If you look at the line item for all
10 countries for the period of investigation, you see an
11 increase, and I won't try to characterize what that
12 is.

13 CHAIRMAN KOPLAN: I understand that.

14 MR. NARKIN: And then in 2000, you see a
15 decrease, and then with some -- down due to 201, you
16 see total imports remaining roughly flat over that
17 whole period, the point being you did see rising
18 imports and a shrinking market during the period of
19 investigation. You don't see that during the period
20 of review.

21 CHAIRMAN KOPLAN: You're finished, Mr.
22 Narkin?

23 MR. NARKIN: Yes.

24 CHAIRMAN KOPLAN: Mr. Kaplan?

25 MR. KAPLAN: I would like to add one further

1 point. The performance of the industry improved with
2 the presence of the nonsubject imports despite
3 declining demand. So you can distinguish between the
4 effects of the imports between the period of
5 investigation and the period of review on that basis
6 alone.

7 CHAIRMAN KOPLAN: Thank you. Did anybody
8 else want to add to that? If not, thank you very
9 much.

10 Next, I found that domestic producers
11 focused their sales on regions near their mills and
12 that competition for more than half of the subject
13 imports was attenuated with a majority of imports from
14 Japan being sold in the West. If we lift the order,
15 where do you estimate the geographics of their reentry
16 would be, and what is the basis for your answer? I do
17 note that in 2004 and 2005, 60.6 percent, and this is
18 public, and 59.7 percent, respectively, of nonsubject
19 imports were being shipped to the Midwest.

20 The first question I have for counsel is, do
21 you agree with the data reflected in the Staff Table,
22 IV-3, in Chapter IV of our Staff Report that describes
23 where those imports have been coming in, which parts
24 of the country now?

25 My question for the industry witnesses,

1 while counsel is looking that up, is, where do you
2 estimate the geographics of the Japanese reentry would
3 be, and what is your basis for that, if we lift the
4 orders?

5 MR. PETERSON: Craig Peterson, UPI.
6 Certainly, our expectations would be that Japan, if
7 the order were revoked, would continue to ship large
8 amounts of tin plate into their logical port of entry
9 to the United States, which is the West Coast. They
10 have a long history of having done that in the years
11 leading up to 1999, so it would be natural to expect
12 that were the order to be revoked, that that would
13 quickly start again.

14 CHAIRMAN KOPLAN: Mr. Scherrbaum?

15 MR. SCHERRBAUM: I think our response may
16 differ a little. I would think that it would be
17 spread across the country, as it was prior to 1999.
18 If approximately 50 to 60 percent prior to that were
19 to the West Coast, the other 40 or 50 percent still
20 would be where some of the major markets are for tin
21 consumption, and a lot of that is in the Midwest and
22 the East. We would think that they would go
23 nationwide.

24 CHAIRMAN KOPLAN: Mr. Goedeke or Mr.
25 Stephans?

1 MR. GOEDEKE: Tom Goedeke, Mittal Steel. I
2 concur with what the gentleman said from U.S. Steel.
3 I think the imports would go where the customers'
4 plants are, where their consuming locations are, and
5 that would be West Coast, Midwest, and the East Coast.

6 CHAIRMAN KOPLAN: Thank you. I see my time
7 has expired. Mr. Vaughn, is it on the question of
8 that table? You need the mike.

9 MR. VAUGHN: This is Stephen Vaughn for
10 Skadden, Arps. On the table, we will take a look at
11 the data and compare it and get back to that in the
12 post-hearing brief.

13 I did want to make one additional point,
14 which is that we have looked at, and this is public,
15 census data regarding Japanese imports of tin mill at
16 this time, and if you see, for example, that data
17 shows that a great deal of their shipments in recent
18 years have come into other regions of the country
19 besides the West, particularly the Gulf coast. So
20 that does, in fact, indicate that upon revocation they
21 will be active throughout the country, just as they
22 were, as Mr. Scherrbaum indicated earlier, during the
23 period from 1997 to 1999.

24 CHAIRMAN KOPLAN: Thank you all very much.

25 MR. RYAN: With regard to the table -- this

1 is John Ryan -- this is based on Commission
2 questionnaire data. I don't have any current reason
3 to question it, but we would like to compare the
4 customs data and get back to you on that in the post-
5 hearing brief.

6 CHAIRMAN KOPLAN: I would appreciate that.
7 Thank you very much.

8 Vice Chairman Okun?

9 VICE CHAIRMAN OKUN: Thank you, Mr.
10 Chairman, and I join my colleagues in welcoming all of
11 you here today. It's a pleasure to have you here and
12 to have your take on the industry at this point. I
13 guess we're all situated differently. Having been
14 here for six and a half years now, I've seen a number
15 of these cases come back that I sat on the first
16 review, and most of them, five years later, I have to
17 relearn the industry to remember what was going on,
18 and this case, as we all know, has been one that I
19 felt has never left us. But it's important, I think,
20 to still talk about changes since the original
21 investigation since the litigation all has been about
22 the original investigation.

23 Let me start there. I know, in response to
24 Commissioner Aranoff, you'll be providing information
25 with regard to the bid data confidentially, which I

1 understand, and I think that's important in
2 understanding whether there have been any changes
3 since the original investigation and how the bids work
4 and how the pricing works.

5 My first question I'm going to put to
6 counsel, I guess -- I'll start with you, Mr. Hecht --
7 which is, in looking at pricing, is there anything you
8 would say with regard to what's more probative than
9 looking forward with regard to pricing? Should we be
10 looking more closely at the bid data we've collected
11 or the quarterly pricing data in trying to make
12 projections going forward?

13 MR. HECHT: I guess I would say, and invite
14 others to comment as well, it seems to me the bid data
15 that's been collected is pretty sparse, not real in
16 depth. Obviously, there is some potential problem
17 with AUV data, as you've seen in the past, but it
18 seems to me, and, Steve, you may want to comment as
19 well, that the AUV data may be a little bit more
20 detailed in this investigation.

21 MR. RYAN: If I could add to that.

22 VICE CHAIRMAN OKUN: Yes, Mr. Ryan.

23 MR. RYAN: We have the situation that we
24 don't have any subject imports. They disappeared
25 during the period of review. So it seems the

1 Commission, as is normally the case, you have to look
2 back to what the data showed when the imports were in
3 the market, and that bid data from the original
4 investigation, therefore, I think, is the most
5 probative data that you have with regard to what the
6 pricing of imports is likely to be were the order
7 revoked.

8 VICE CHAIRMAN OKUN: Yes.

9 MR. VAUGHN: Just to follow up on what Mr.
10 Hecht said --

11 VICE CHAIRMAN OKUN: If you all could just
12 keep reidentifying yourselves for the record.

13 MR. VAUGHN: Stephen Vaughn for U.S. Steel.
14 One of the things that you did in this investigation
15 is you do have a pretty significant amount of pricing
16 product data as well as the AUV data, and in this
17 case, I think that both those sources of data show
18 fairly consistent patterns, namely that you had
19 relatively mild price increases, which is consistent
20 with the testimony that you're hearing from our
21 witnesses.

22 So I think that whether you look at AUV data
23 or the pricing product data, I think you'll see a
24 pretty consistent pattern there in terms of what's
25 been happening in the market in recent years.

1 VICE CHAIRMAN OKUN: I appreciate those
2 comments. Again, I think it points out the importance
3 of understanding whether there have been changes in
4 the contract process since the original investigation
5 in helping us evaluate potential pricing pressure
6 going forward, so I look forward to that further post-
7 hearing information.

8 You referenced AUVs, Mr. Hecht, I submit,
9 the AUVs we've collected for domestic shipments. Do
10 you have any comment with regard to how probative it
11 is to look at AUVs for global pricing when we turn to
12 the question of what the most attractive markets are
13 for Japanese product?

14 MR. HECHT: That's where I thought you were
15 going in your last question, but I may have
16 misinterpreted it. You know, I think it's limited
17 because of product-mix issues, but I do think, if you
18 look at the larger patterns, it can be probative. In
19 part, it certainly shows, I think, over the period a
20 situation where U.S. prices tended to be higher
21 throughout most of the period. You saw a little bit
22 of a shift of that in 2005, although, again, it's hard
23 to know how much of that might be due to product mix,
24 and I'm referring now to some of the Japanese export
25 AUV data.

1 A couple of points that are interesting: In
2 their brief, they try to argue that these export
3 markets are more attractive right now because of
4 pricing. We certainly don't think that that is
5 justified on the record. When you look at the entire
6 period, and certainly a reasonably foreseeable period
7 of time, U.S. pricing has tended to be higher, and
8 even with their own data, if you look at sort of a
9 principal export market like Mexico, which, I think,
10 is actually their highest export market, their own
11 data show lower AUV data in Mexico than in the U.S. in
12 terms of the prices here.

13 So I guess I would say limited, but you have
14 to be cautious, given the product-mix issues, but I
15 think that it can glean some information.

16 MR. NARKIN: Vice Chairman Okun, this is
17 Steve Narkin.

18 VICE CHAIRMAN OKUN: Yes.

19 MR. NARKIN: If I could just add to that
20 briefly, this argument that the Japanese producers
21 have made that 2005 prices in other markets are higher
22 than the U.S., that that is more attractive to them,
23 and that's where they are increasingly focusing their
24 export efforts, if you look at the Japanese producers'
25 data for 2005, you don't see that. You see that in

1 all of the major markets, their shipments are
2 declining at the same time that supposedly you see
3 this change where prices in other markets are going
4 up.

5 VICE CHAIRMAN OKUN: Okay. Obviously, we're
6 going to spend some time this afternoon with the
7 Respondents with regard to where their export markets
8 are. But with regard to the point you just made about
9 where there have been declines, and I know that the
10 industry witnesses have referenced a declining U.S.
11 market, is there anything else you would add with
12 regard to what that means with regard to the
13 importance of price in this market? In other words,
14 if I look at the record that we've gathered for the
15 period of review versus the original investigation,
16 one of the points that I see there is that there were
17 more purchasers who talked about the importance of
18 price than we saw during the original investigation.
19 I think you've probably pointed that out as well.

20 Help me understand why you think that is.
21 Does it have to do with the restructuring of the
22 domestic industry where you have less producers? Does
23 it have to do with the purchasers? What's your best
24 take? And again, I want to hear from the industry
25 witnesses on this, on the importance of price in the

1 market now vis-a-vis during the original
2 investigation. Mr. Peterson?

3 MR. PETERSON: Craig Peterson, UPI. I don't
4 see any change in the relevance of price now or in the
5 period of investigation. It has always been a
6 critical part of any contract negotiation. For a can
7 maker, tin plate represents the single largest cost
8 for producing that can. Pricing negotiations have
9 always been intense, and pricing has always been of
10 extreme importance.

11 VICE CHAIRMAN OKUN: Okay. Do other
12 industry witnesses want to comment? Yes, Mr.
13 Gagliano?

14 MR. GAGLIANO: I would say that, for our
15 company, prices are up versus that period of time and
16 intentionally so, and it was needed due to the
17 escalation of our dramatic increases in our cost
18 structure. So it was something that was absolutely
19 necessary for us to make decisions to stay in this
20 business. So, yes, our prices are higher currently
21 than they were in that period of time, and it was
22 something that was absolutely necessary for us to
23 remain in the business.

24 VICE CHAIRMAN OKUN: Do any other witnesses
25 want to comment on that? Mr. Kaplan, would you like

1 to comment on pricing now and then?

2 MR. KAPLAN: Well, I think that the evidence
3 from both the original investigation and here,
4 especially the evidence compiled by the Commission in
5 its reply to the Court, shows how important pricing
6 information has been and how important prices have
7 been in this market. But I would also like to add
8 that the market has been declining in terms of demand
9 over the period of review, and it's my experience that
10 nothing focuses the mind more on the price than
11 declining demand.

12 So I think it's always been very important,
13 but in a time of declining demand where the customers
14 are under pressure, and this is their most important
15 cost in their production process, maybe the responses
16 reflect the pressure they are under.

17 VICE CHAIRMAN OKUN: Okay. I appreciate all
18 of those comments.

19 Then if I could turn to another change in
20 conditions of competition since the original
21 investigation with regard to the structure of the
22 domestic industry, you've had an opportunity to talk
23 about that, and I see my yellow light has come on, but
24 my question is if there is anything else you wanted to
25 add to address Respondents' argument that the change

1 in the nature of the domestic industry here means that
2 you're better positioned.

3 You have companies who before were not
4 integrated who now might be integrated and better able
5 to supply their raw material, all of which, in the
6 Respondents' view, would make you less vulnerable to
7 pressure from the subject imports. Anything further
8 that you felt like you haven't had a chance to say
9 with regard to that?

10 MR. NARKIN: Vice Chairman Okun?

11 VICE CHAIRMAN OKUN: Yes.

12 MR. NARKIN: This is Steve Narkin.

13 VICE CHAIRMAN OKUN: Yes, Mr. Narkin.

14 MR. NARKIN: In general, they have made this
15 argument that because of more concentration in terms
16 of domestic suppliers, the domestic industry has
17 pricing power. Now, they downplay, to the point of
18 virtually ignoring it, the fact that the availability
19 of imports from other countries is obviously a
20 consideration in terms of whether domestic suppliers
21 have purchasing power.

22 That's not the way the Department of Justice
23 looks at it. The Department of Justice looks at
24 import competition. Moreover, that's not just
25 theoretically looked at. They have looked at it twice

1 in the context of this industry. They looked at it
2 very carefully when U.S. Steel acquired National
3 Steel, and they decided not to challenge the merger.
4 They did make what's called a second request for
5 information at that time, which means they explored
6 this whole issue thoroughly. Later, when ISG acquired
7 Weirton, they didn't even issue a second request.

8 Now, they did not make a statement publicly
9 as to the reasons why they decided to let these
10 acquisitions proceed, but our information, and U.S.
11 Steel participated actively in the DOJ process of
12 resolving these issues, is that import competition was
13 a major reason why they decided not to block the
14 acquisition.

15 Last, but not necessarily least, I would
16 like to point out, during the earlier investigation,
17 when the Japanese producers were trying to make the
18 argument that the purchasers had the bargaining power,
19 they were asked, given the limited number of domestic
20 suppliers that offset the concentration at the
21 purchaser level, and they said, oh, no, you have to
22 realize there are all of these other nonsubject
23 imports that are out there.

24 That's a long-winded answer, but I wanted to
25 clarify that.

1 VICE CHAIRMAN OKUN: That's okay. I know
2 you can't see that my red light is on, but I do
3 appreciate hearing the rest of that answer, so I
4 appreciate the indulgence of my colleagues in letting
5 you finish. Thank you.

6 CHAIRMAN KOPLAN: Thank you.

7 Commissioner Hillman?

8 COMMISSIONER HILLMAN: Thank you. I, took,
9 would join my colleagues in welcoming you all this
10 morning. For those of us that have been living
11 through the saga of this case, the 201 and all of the
12 litigation connected to it, I guess it's a pleasure to
13 see you all here and to talk further about tin and
14 chrome, but we welcome it.

15 Let me, I hope, follow up just a little bit
16 on this issue of pricing. I'm sorry that we keep
17 beating on this, but obviously this was front and
18 center throughout this litigation, and it is really
19 focused on what we got right and what maybe we didn't
20 get right in terms of both the data that we got, the
21 record that we had before us in the original
22 investigation, and not wanting to go down this road
23 any further.

24 It strikes me, in reading the record for
25 this investigation, that you have a very different

1 posture in terms of the data presented on the process
2 itself of setting prices. In the original
3 investigation, there was a fair amount of testimony
4 that negotiations with domestic producers were
5 completely segregated from negotiations with import
6 sources, particularly Japanese sources, and that the
7 prices from one, in essence, never bled into the other
8 and that the negotiations with the domestic industry
9 were conducted and completed, and then there were
10 negotiations with import sources, particularly the
11 Japanese.

12 This record doesn't say that, or at least
13 the record is significantly toned down on this topic
14 so that at least the record seems to indicate, from
15 the purchasers' side, that there is more openness
16 about the discussions that may involve references to
17 import prices or alternative prices, that there is not
18 this separation. I'm wanting to hear from the
19 industry witnesses whether they think that is true and
20 to what extent you think it is attributable to the
21 fact that you're negotiating with people other than
22 the Japanese. The Japanese have not been here.

23 Is this change simply a change in the way
24 it's described, or has there been an actual change in
25 the pricing negotiations and practices in terms of how

1 much you know about import competition prices in this
2 review than you knew at the time of the original
3 investigation? Do any industry folks want to comment?
4 Go ahead.

5 MR. GAGLIANO: Gerry Gagliano, U.S. Steel.
6 I would say, from our perspective, that there is a lot
7 of participation these days, much more than five years
8 ago, in terms of around the world. In other words,
9 this has become a global market. Globally, purchasing
10 is affected here in the States. Whether or not our
11 customers specifically reference in our negotiations
12 another foreign supplier, and I can tell you that that
13 has happened on occasion, so references are made
14 during negotiations, sometimes very specifically,
15 sometimes not referenced at all. But we do know that
16 pricing around the world influences what is going on
17 here, and that pricing does affect our negotiations,
18 whether it's specifically referenced during our
19 discussions or not.

20 COMMISSIONER HILLMAN: And you would suggest
21 that that has happened to a greater extent in the last
22 five years than it would have happened during the
23 timeframe of the original investigation.

24 MR. GAGLIANO: Yes, I would.

25 COMMISSIONER HILLMAN: Okay. Mr. Peterson,

1 would you have a view on this?

2 MR. PETERSON: Craig Peterson, UPI. I don't
3 really see any difference in terms of buyers exposing
4 foreign prices to us after the original period of
5 investigation than before the period of investigation.
6 They are always there. They have always been there.
7 Whether buyers are forthright in telling us exactly
8 what they are or whether they hint or whether they
9 just, in some other fashion, bleed it out into the
10 marketplace, they continue to exist at levels, I
11 think, no more strongly today than they did during the
12 period of investigation.

13 COMMISSIONER HILLMAN: Okay. Other
14 comments?

15 MR. SCHERRBAUM: If I may. Joe Scherrbaum,
16 U.S. Steel. Over the last five years, in addition to
17 the consolidation that was mentioned in our industry,
18 in addition, our customers have also had some
19 continued consolidation. They are global companies.
20 I think we all are much more aware of what's going on
21 in the world, and there is a lot more interplay of the
22 impact of imported pricing into the U.S. than before
23 just because of everybody being more sophisticated and
24 more global.

25 COMMISSIONER HILLMAN: Then if I can go to

1 the issue of the contracts and the various meet-or-
2 release provisions, changes in either price or volume
3 -- again, I'm just trying to understand -- would you
4 describe the meet-or-release clauses or other price or
5 volume escalators, deescalators, as having been
6 actually invoked as opposed to they are in the
7 contract, but they don't actually get realized? Have
8 there been actual changes in the price or volume of
9 what you're shipping compared to what was in the
10 original contract as negotiated? Has that happened
11 more often in the last five years or less often?
12 Again, I'm trying to compare the period of the
13 original investigation with now in terms of how often
14 your customers have said, I want to invoke this clause
15 in the contract and actually make a price change or
16 make a volume change that was permitted under the
17 terms of the contract.

18 MR. RYAN: This is John Ryan. Could I just
19 interject that, as Mr. Hecht has sort of pointed out
20 before, with very few players in the market, this type
21 of specific contract negotiation information is highly
22 sensitive to both purchasers and the producers, but to
23 the extent people can comment on it, they should, of
24 course.

25 COMMISSIONER HILLMAN: I appreciate that,

1 and if there are specifics on this issue of the meet-
2 or-release clauses, whether they are specific only to
3 domestic competition or whether they reference any
4 competition, and, again, how often they have actually
5 in practice been invoked that could be put in the
6 post-hearing, that would be helpful.

7 If there is anything that could be said just
8 on the general trend of whether it seems to the
9 industry as though this has happened more often in
10 this five-year review than it did during the original,
11 that would be helpful. If there is nothing you can
12 say on the public record, fair enough.

13 MR. SALONEN: Eric Salonen for Mittal Steel.
14 We'll be happy to address that in the post-hearing.

15 COMMISSIONER HILLMAN: If I can then go to
16 the demand issue, you've all described the decline in
17 demand, and, on the other hand, Respondents have
18 indicated in their brief that some of this may be a
19 function of the prices of the alternative forms of
20 packaging, particularly aluminum and PET resin,
21 plastic stuff, and that the prices of both the PET
22 products and the aluminum are going up, which may make
23 tin products relate to those now more cost
24 competitive.

25 Help me understand whether once you get to

1 certain level of price gap between the alternatives,
2 whether that's what moves it or whether there is
3 something inherently more desirable about either the
4 aluminum or the plastic products that means that once
5 that demand has shifted, it's not coming back, no
6 matter what the price gap might be between the
7 alternative packaging products.

8 MR. PETERSON: Craig Peterson, UPI. In my
9 experience, customers do not share with us what those
10 price gaps are between tin plate and alternative
11 packaging materials.

12 COMMISSIONER HILLMAN: Okay. We know from
13 sitting here, having had cases on PET resin and on the
14 inputs to aluminum, where we're well aware of what
15 those prices are. Do you have a sense generally of
16 whether, again, once somebody has made the decision to
17 switch from using a can to using a plastic product or
18 an aluminum product, can they just as readily shift
19 back?

20 MR. GAGLIANO: Gerry Gagliano, U.S. Steel.
21 To answer the question on the ease of transition back
22 to steel, I truly couldn't answer that, but what I can
23 say is that we are aware of certain sectors of the
24 business that had moved to plastic a few years ago
25 which had made the decision, just recently because of

1 the hurricane activity and the increase in resin
2 prices, to move back into steel just within the last
3 few months. So the cost of those companies to
4 transition their raw materials from plastics back to
5 steel, I couldn't tell you, but I do know, in fact, it
6 can happen, and it has very recently.

7 COMMISSIONER HILLMAN: I guess what I'm
8 trying to understand -- that's very helpful -- is to
9 the extent that we do see this decline in demand, how
10 much of it is what I believe you testified to, that
11 consumers are buying ready-to-eat meals, we're all
12 eating out, we're all microwaving, we're not cooking
13 anymore, as opposed to a switch to PET resin products
14 or aluminum products.

15 MR. GOEDEKE: Tom Goedeke, Mittal Steel.
16 Our customers would like to have us believe that many
17 times these switches to alternative packaging are due
18 to the price of steel, but I think what you're seeing
19 in many cases is a market segmentation where our
20 customers' customers will use various forms of
21 packaging, and many times these alternative packages
22 cost more than the steel package, but they are able to
23 get a higher price.

24 So it's the convenience aspect. It's
25 something new, it's product differentiation, and

1 that's what the packagers of food products are looking
2 for. So you will see this differentiation in the
3 marketplace.

4 COMMISSIONER HILLMAN: Others commenting on
5 demand issues. Your general forecast, as I see it
6 going forward, is that we should expect continuing
7 declines in demand. Is that a fair assessment of
8 where everybody thinks demand is going in the U.S.
9 market? Mr. Gagliano?

10 MR. GAGLIANO: Gerry Gagliano, U.S. Steel.
11 Once again, we do see the trend of declining demand
12 over the last five years. We're looking at perhaps a
13 flattening out of that in the near future. I think
14 Mr. Scherrbaum mentioned in his opening testimony
15 about our activity in the Canned Food Alliance, the
16 Steel Packaging Council, which is a part of the AISI.
17 We're actively involved in promoting the use of canned
18 food throughout the country, and there are a lot of
19 venues that we're involved in with articles and
20 distribution networks and chefs. We are going to
21 colleges and universities to promote actual studies
22 involving steel cans that do not exist today. The
23 plastics industry is there, the steel industry has not
24 been, and we are promoting that. So we're actively
25 working on a lot of things to change that demand

1 curve.

2 COMMISSIONER HILLMAN: Mr. Hecht, the red
3 light has come on, so if you have a very quick
4 comment, but other than that, I'll wait until the next
5 round.

6 MR. HECHT: Very quick. Jim Hecht. I think
7 there is a lot of information on the record in
8 general, not just on the producers' side, about
9 declining demand, including purchasers who may be even
10 closer to some of the reasons, which we would be happy
11 to talk through as well in our brief.

12 COMMISSIONER HILLMAN: Thank you.

13 CHAIRMAN KOPLAN: Thank you.

14 Commissioner Lane?

15 COMMISSIONER LANE: Thank you. Good morning
16 and welcome to today's proceeding.

17 I would like to start with Mr. Stephans and
18 Mr. Glyptis perhaps. How many of your customers do
19 you have in the Weirton area, and how many of those
20 customers, by their contract, are allowed to use
21 product other than what you produce?

22 MR. SALONEN: Commissioner Lane, if I may
23 intercede here, I believe Mr. Stephans might consider
24 that to be getting into some confidential information.
25 We would be happy to address that in the post-hearing.

1 CHAIRMAN KOPLAN: You need to keep
2 reidentifying.

3 MR. SALONEN: I'm sorry. Eric Salonen for
4 Mittal Steel.

5 COMMISSIONER LANE: Okay. If that is
6 confidential information, then if it can be provided
7 in the post-hearing, that would be appreciated.

8 MR. SALONEN: We would be happy to do that.

9 COMMISSIONER LANE: Okay. Thank you.
10 I'll stick with Mr. Stephans. You said that
11 Mittal's Weirton plant receives its steel slabs from
12 another Mittal plant. Can you tell me, either now or
13 post-hearing, what percentage of the production at
14 Sparrows Point is transferred to the Weirton plant?

15 MR. SALONEN: Again, Eric Salonen for Mittal
16 Steel. Commissioner Lane, I guess we're still getting
17 into confidential areas. We would be happy to provide
18 that in the post-hearing.

19 COMMISSIONER LANE: Okay. I'm sure that
20 this next question fits in the same category. When
21 the transfers are priced, what is the basis for the
22 pricing, and, specifically, I would like to know if
23 the cost that is used for any cost-based-transfer
24 accounting includes fully distributed costs at the
25 Sparrows Point plant, including capital-related costs.

1 MR. SALONEN: Eric Salonen for Mittal Steel.
2 I think we have a trifecta. We would be happy to
3 address that in the post-hearing.

4 COMMISSIONER LANE: Okay. Thank you.

5 Mr. Stephans, you mentioned specific
6 investments that you may be considering. Are these
7 investments related to upgrades of older equipment or
8 capacity additions or some combination of these or
9 other objectives?

10 MR. STEPHANS: The upgrades that we're
11 speaking of really are upgrades of older equipment.
12 They are additions to our plating lines and really
13 address our quality and cost issues, including
14 improvement in yields. The tension leveler is the
15 same issue. It's an improvement in quality. It's an
16 upgrade to our present equipment.

17 COMMISSIONER LANE: Okay. Thank you.

18 Mr. Peterson, you indicated in your prepared
19 statement that your operation purchases steel for your
20 tin plate operations. Has your company ever produced
21 its own steel for tin plating?

22 MR. PETERSON: Craig Peterson, UPI. The
23 answer is no.

24 COMMISSIONER LANE: Do you shop around for
25 the best-priced steel, and where do your supplies come

1 from?

2 MR. PETERSON: I'll answer your second
3 question first. Our supplies come to us from both of
4 our parent companies, U.S. Steel and POSCO.

5 COMMISSIONER LANE: What has been your
6 experience regarding increases in steel prices over
7 the past five years on a dollar-per-ton basis?

8 MR. PETERSON: I don't know if I can --

9 COMMISSIONER LANE: You can provide that
10 post-hearing if it's confidential or if I'm asking you
11 to come up with a number off the top of your head.

12 MR. RYAN: We would like to clarify the
13 question. The steel that you're talking about; is
14 that the hot band price of the steel that UPI
15 purchases as its feed stock, or is that the price of
16 the tin plate that is the subject of the
17 investigation? We would be happy to provide either.

18 COMMISSIONER LANE: Good answer. Thank you.

19 Mr. Peterson, in your prepared statement,
20 you mentioned a planned \$10 million upgrade at your
21 plant. Could you describe that planned upgrade? What
22 will it accomplish from a capacity of efficiency
23 standpoint, and what would be the timetable for
24 completing that upgrade?

25 MR. PETERSON: Craig Peterson, UPI. The

1 planned improvement in tin mill operations will not
2 increase capacity at all. It is simply to replace old
3 equipment, in some cases equipment that has been in
4 place since 1949, and to streamline other processing
5 features in the tin mill process to help reduce costs.

6 COMMISSIONER LANE: Okay. Thank you.

7 Mr. Goedeke, you mentioned the ability or
8 likelihood of your customers to quickly shift to
9 Japanese product if they reenter the market. I'm not
10 sure if you meant that the qualification process has
11 been streamlined or is more efficient now or whether
12 your customers have ongoing familiarity with the
13 quality of Japanese product. Could you expand on your
14 statement and briefly explain the qualification
15 process that your customers generally follow?

16 MR. GOEDEKE: Tom Goedeke, Mittal Steel. If
17 a customer is getting material in from an unknown
18 source, they will generally buy small quantities at
19 first, run it through their operation to make sure it
20 works well, all the way through the operation, from
21 shearing to coating to fabrication of containers.
22 However, if they have a known quantity, a known
23 source, they will many times circumvent this process
24 or eliminate it altogether.

25 The Japanese are very, very good competitors

1 with known high quality around the world, so it is my
2 strong belief that if the Japanese wanted to come in
3 tomorrow with vast quantities to supply a certain
4 application, our customers would not require any kind
5 of qualification because they know they are a superior
6 product in the marketplace.

7 COMMISSIONER LANE: Would anybody else care
8 to add to that answer? Okay. Thank you.

9 In the prehearing brief by Respondent
10 interested parties, they point out discrepancies in
11 the data submitted for the safeguard mid-term review
12 in 2003, the effectiveness of import relief study in
13 2005, and the current sunset review in 2006, in many
14 different areas, including capacity utilization, labor
15 productivity, operating income, and operating margin.
16 Some of the differences, particularly in comparing the
17 2003 and 2004 data reported in the effectiveness of
18 import relief study and the questionnaire responses
19 for the case are very significant. I can't go into
20 all of the numbers for proprietary reasons, but
21 basically the industry income and margins reported for
22 this case tend to show poorer financial results than
23 the data reported in the earlier study.

24 Respondents claim that the domestic industry's
25 justifications for such discrepancies range from

1 unhelpful to unsatisfactory to nonsensical.

2 Mr. Hecht, would you care to explain those
3 discrepancies?

4 MR. HECHT: I certainly disagree with their
5 characterization. It's, I think, going to require
6 confidential submissions to show that, from our
7 standpoint, we don't believe we have any. We believe
8 the data we reported were fully consistent in the two
9 proceedings. So they have raised another question
10 with regard to cost reporting for U.S. Steel which we
11 think is completely off track, and we are working with
12 staff now to explain why that is. If you look at the
13 changing costs from one year to the next that they are
14 talking about, I think it's apparent on its face that
15 the suggestion that there is some manipulation of
16 costs is ridiculous. But we will continue to work
17 with staff, and I'm confident we can resolve that to
18 your satisfaction.

19 COMMISSIONER LANE: Okay. Does anybody else
20 care to respond to that? Mr. Salonen?

21 MR. SALONEN: Yes, Commissioner Lane. Eric
22 Salonen, Mittal Steel. I just would echo Mr. Hecht's
23 statements and also point out, of course, that to the
24 extent the Commission is concerned about the data it
25 has received, it always has, at least as far as the

1 domestic industry is concerned, the opportunity to
2 verify that data, something that foreign producers
3 typically are beyond the reach of since they are not
4 here, and we are.

5 COMMISSIONER LANE: Mr. Stephans, I think I
6 would like to go back to you. On page 36 of the
7 Mittal brief, you stated that it will take several
8 years to realize recent and proposed capital
9 investment. I'm not sure I understand what you mean
10 by that statement. Could you please explain what you
11 mean and, in responding, tell us what recent and
12 proposed capital investments you are talking about and
13 give a more precise estimate of how long it will take
14 to undertake these investments or realize benefits
15 from those investments? That, once again, is probably
16 something for post-hearing.

17 MR. SALONEN: Commissioner Lane, Eric
18 Salonen for Mittal Steel. Yes, we would be happy to
19 address that in the post-hearing.

20 COMMISSIONER LANE: Okay. I see that my
21 light is about ready to change, so I'll wait until the
22 next round. Thank you all.

23 CHAIRMAN KOPLAN: Thank you.

24 Commissioner Pearson?

25 COMMISSIONER PEARSON: Thank you, Mr.

1 Chairman. Good afternoon to the morning panel. Good
2 to have you here. Nice to see some familiar faces and
3 some who I have only just seen today.

4 I'm curious. It's quite clear, based on the
5 testimony, that we are talking about an industry that
6 is facing a decline in apparent consumption. The
7 trend is there. I have not heard any testimony to the
8 effect that that's likely to turn around, that there
9 is going to be some innovation that changes that.

10 So as we do our analysis of this industry,
11 particularly the financial performance, should we
12 expect that firms in this industry would be able to
13 achieve returns on investment in the face of declining
14 consumption that would be equal to returns that might
15 be achieved for another business that happened to be
16 enjoying rising consumption? Mr. Hecht?

17 MR. HECHT: I guess, just to kick it off, I
18 think that that tells you two things in terms of your
19 statutory analysis. One, it goes to the effectiveness
20 of the orders, which is while the industry's
21 performance was, I think, lackluster through the
22 period, as the staff characterized it, it was
23 significantly better than it was when the Japanese
24 subject imports were in the market, and I think that
25 is strong evidence that these orders were effective

1 and allowed the industry to perform better even in a
2 period of declining demand.

3 I think the second factor it goes to is
4 vulnerability, and for the reasons you state, I think
5 declining demand is a challenge in terms of the
6 returns to the industry and profitability, and while
7 they are working to meet those challenges, I think it
8 clearly does show vulnerability and the extent to
9 which a return of subject imports would be injurious.

10 MR. RYAN: Commissioner Pearson, John Ryan.
11 I would add to that, I think, in Mr. Peterson's
12 opening statement, he, in particular, talked about the
13 West Coast market and declining demand there and the
14 challenges they would face in a declining market were
15 Japanese imports to come back in. In other words, to
16 echo Mr. Hecht's comments, it's a particular
17 vulnerability in a declining market.

18 COMMISSIONER PEARSON: Could I perhaps hear
19 from some of the businessmen directly involved in the
20 business as to whether they might anticipate a
21 different level of returns from an industry with
22 declining consumption compared to one with rising
23 consumption? Mr. Scherrbaum, you referenced that
24 issue somehow in your opening statement. I didn't
25 make a note of it, but you said something to the

1 effect that returns in this business would have to
2 compare favorably to returns in other businesses if
3 there were going to be capital injections into tin
4 mill, something like that.

5 MR. SCHERRBAUM: Joe Scherrbaum. Yes, I did
6 reference that in my statement, and what we said is
7 we, throughout the past couple of years, have now
8 become marginally profitable in this tin mill
9 business, not yet up to where some of our other
10 businesses are, and for us to continue to reinvest
11 significantly in this industry, we need to continue to
12 show increases in profitability.

13 However, we also hope that this does not
14 continue to be a declining market. As Mr. Gagliano
15 talked about earlier, we are expending a lot of effort
16 in a number of areas with the AISI and the Canned Food
17 Alliance to continue to promote the use of steel for
18 packaging and hope that the demand does not continue
19 to decline all the way down to nothing basically.
20 Hopefully, as Mr. Gagliano said, if it has stabilized,
21 we can continue to improve our performance in this
22 business.

23 COMMISSIONER PEARSON: Other comments?

24 Mr. Kaplan, perhaps you could comment on the
25 economics behind this decision. When you've got an

1 industry with a large fixed capital stock with not a
2 lot of good alternate uses, at least as I understand
3 it, and you've got declining consumption, one would
4 anticipate perhaps an extended period of subpar
5 returns for such an industry, wouldn't one?

6 MR. KAPLAN: Well, if industries are not
7 meeting their cost of capital, you would expect the
8 industry to contract.

9 COMMISSIONER PEARSON: An industry to do
10 what?

11 MR. KAPLAN: Contract.

12 COMMISSIONER PEARSON: Contract.

13 MR. KAPLAN: That's correct. And I think if
14 you look at the capacity situations and the statements
15 by U.S. Steel in terms of what they opened and didn't
16 open, that reflects a situation where the industry
17 isn't returning its cost of capital. But you do reach
18 an equilibrium situation, at which point the industry
19 is not growing or not shrinking, and the fact that at
20 levels of high demand during the original
21 investigation the industry performed more poorly than
22 in the periods of declining demand now where they are
23 shedding some capacity is indicative of the benefits
24 of the order because you're doing better in a place
25 where demand is lower.

1 Now, it also points to the challenges of the
2 domestic industry in facing both declining demand and
3 higher material costs now and goes to the
4 vulnerability of removing the order and allowing in
5 imports that injured the market in periods of better
6 times.

7 COMMISSIONER PEARSON: And you're quite
8 confident that one should attribute the modest
9 improvement in performance to the order and not to the
10 closure of some of the overcapacity in the United
11 States.

12 MR. KAPLAN: Well, given the globalized
13 nature of the marketplace, the presence of nonsubject
14 imports in the market, the rising costs of inputs, the
15 declining demand, and the fact that the industry has
16 improved, I think it points squarely at the imports as
17 the source of the troubles during the late nineties,
18 and certainly the removal has a material benefit,
19 maybe not the only one, during the period where the
20 margins have been in place in which the imports have
21 been absent.

22 COMMISSIONER PEARSON: Mr. Vaughn?

23 MR. VAUGHN: Stephen Vaughn. Commissioner
24 Pearson, I think one strong piece of evidence in
25 support of what Mr. Kaplan is saying is look at what

1 happened early in the period of review before a lot of
2 these changes in the marketplace had taken place. We
3 saw an immediate improvement in the operating
4 performance of the industry from 1999 to 2000, even
5 before a lot of the other factors took place. So that
6 provides further support to the conclusion that it is
7 the order that's having a big part of this effect.

8 So you obviously have a number of things
9 that are moving parts here in this industry, but when
10 you can isolate as much as you can the effects of
11 these other things versus the effects of the order, it
12 becomes clear that the order is, in fact, making a big
13 difference.

14 COMMISSIONER PEARSON: Well, I have some
15 experience in industries where there have been periods
16 of overcapacity -- not a lot of fun, I can assure you.
17 Those were industries where aggregate consumption was
18 growing, and one or more firms would get
19 overenthusiastic and build too much capacity, and
20 margins would go to pieces, and everybody in the
21 industry would suffer, and then after a couple of
22 years, things would work their way out, maybe with
23 some plant closures in the process.

24 Here, I think there is an overcapacity issue
25 still, if I'm reading the numbers correctly. You've

1 got four firms all represented here. I really don't
2 envy a lot the situation that you're in because you
3 look around the room, and unless consumption
4 stabilizes quickly or some additional capacity is put
5 to another use, there may be a continued period of
6 relatively low returns. The industries that I'm more
7 familiar with didn't require any import competition to
8 achieve wide variations in results in response to
9 overcapacity and then working off that capacity. It
10 was all done by decisions made by the domestic
11 industry. If anyone would want to comment on that,
12 that's fine, otherwise -- Mr. Vaughn?

13 MR. VAUGHN: I think part of what the
14 Commission needs to take into account is how do these
15 issues get resolved? Do they get resolved through
16 market-based competition, or do they get resolved
17 through producers in other markets taking advantage of
18 this market through unfair trade?

19 Apparently, the types of problems that
20 you're describing for this industry appear to exist in
21 Japan as well. We're seeing enormous amounts of
22 excess capacity over there. They have an option,
23 which is, if the order is revoked, to dump in this
24 market and try to avoid some of those market-based
25 consequences that you're talking about.

1 I think one of the purposes of the trade
2 laws is to make sure that when these types of
3 conditions occur, they are solved through market-based
4 practices, not through unfair trade.

5 COMMISSIONER PEARSON: We could have an
6 interesting philosophical discussion on market-based
7 solutions here. It's not obvious to me that an order
8 that currently appears to be preventing any subject
9 imports is a market-based approach to the challenge
10 posed by Japan, but that's neither here nor there.

11 My red light has come on, Mr. Chairman, so
12 over to you.

13 CHAIRMAN KOPLAN: Thank you, Commissioner.
14 Commissioner Aranoff?

15 COMMISSIONER ARANOFF: Thank you, Mr.
16 Chairman.

17 I want to go back briefly I hope to the
18 questions that I was raising in the first round. Some
19 of my colleagues have followed-up, so hopefully
20 there's not too much left to ask. My first question
21 will actually be following up on something
22 Commissioner Hillman asked you to brief for the post-
23 hearing in terms of adjustments that have been made to
24 contracts and she had asked you to explain that.

25 When you look at contracts that you've

1 entered into over the period of review there is some
2 indication in our information that to the extent there
3 have been price adjustments made under price
4 adjustment mechanisms and contracts those have perhaps
5 been more likely to be adjustments in favor of the
6 domestic producer in terms of like a raw material
7 surcharge than they necessarily have been to be an
8 adjustment in favor of the purchaser because of market
9 conditions.

10 That's just a general impression I got from
11 looking at some of our information, so I'm hoping that
12 you will go through your own experiences and tell me
13 when there have been price adjustments under your
14 contracts, to whose benefit they've been and what the
15 reasons have been behind them.

16 MR. HECHT: Jim Hecht. We would be happy to
17 do that in our brief.

18 COMMISSIONER ARANOFF: Okay. Thanks. I
19 won't belabor that anymore because I know all that
20 information is confidential. I want to ask some
21 questions about the reasonable period of time. This
22 is mentioned in several of your briefs.

23 My question to you is given that we have
24 these contracts of a year or more does that mean that
25 we should be looking at a longer period as the

1 reasonable period of time under which we might see the
2 impact of revoking the order or are there are other
3 reasons why we might see the affects of re-entry of
4 Japanese imports into the market quite quickly so that
5 we don't even need to consider a longer period?

6 MR. RYAN: The reasonable period of time in
7 the SAA anyway is beyond an imminent period and often
8 in a threat case the Commission would look to a year
9 or more to see what the threat of imports might be,
10 what affect they might have.

11 You often in a threat case would look at
12 contracts for major machinery and equipment and you
13 would see that those contracts are renegotiated
14 periodically as big sales are available. So I think
15 your view then of the reasonable period of time which
16 is beyond that imminent period and you would take a
17 similar approach.

18 You need to take a reasonably foreseeable
19 period of time into the context of the case at hand.
20 Although we do have contracts as Mr. Peterson
21 mentioned the price is negotiated at least annually
22 which is certainly a reasonably foreseeable period of
23 time of one year in which that all of contract pricing
24 would adjust.

25 Also even during that one year between here

1 and the end of the calendar year there is all of the
2 flexibility in quantities within those contracts. So
3 there's quite a bit of changes that would be immediate
4 and much sooner imminent. Much sooner than imminent
5 reasonably foreseeable period of time that would take
6 place.

7 Then I think in response to your specific
8 question, yes, the context of the case should inform
9 what is reasonably foreseeable.

10 COMMISSIONER ARANOFF: I guess the trouble
11 that I'm having is that I've seen in your testimony
12 you spin out sort of two different timing scenarios
13 for the re-entry of the Japanese product.

14 On the one hand we're hearing that there's
15 maybe months, maybe even six months of negotiations
16 before a contract is awarded and then the contract
17 lasts a year or more, so in that kind of scenario
18 you're looking at maybe 18 months or more before you
19 could have a Japanese producer actually win and start
20 supplying a contract.

21 On the other hand I'm also hearing you say
22 well, the Japanese producers, they're already really
23 qualified with your customers, there wouldn't be any
24 delay for qualification, so as soon as they could
25 enter the market they could start having a price

1 impact. Are both those things true?

2 MR. SCHERRBAUM: This is Joe Scherrbaum,
3 U.S. Steel. I would agree more with the latter that I
4 would think that if this order was lifted that we
5 would see immediate impact.

6 I agree that Japanese products are already
7 accepted by our customers and we would begin to see
8 some immediate offers even if the product is not quite
9 here yet as we enter into the second half of this year
10 some offers on product to be shipped as soon as they
11 could which would put pressure on prices.

12 MR. PETERSON: Craig Peterson, UPI. Two
13 comments here. Firstly not all of UPI's business is
14 tied to contracts, so whatever tonnages are available
15 could come in immediately in the event of the
16 revocation of the order.

17 I think secondly because on the west coast
18 the Japanese have a long history of supplying tin
19 plate. They have been qualified for various can sizes,
20 various can applications long ago and that process has
21 already been well-developed and is in place, subject
22 to a change in price their resurgence back into the
23 marketplace could be immediate especially with those
24 customers with whom we have no contractual obligation.

25 COMMISSIONER ARANOFF: Appreciate that

1 answer.

2 Mr. Gagliano, did you want to add something?

3 MR. GAGLIANO: I think it's important to
4 note without getting into confidential information
5 that many of these contracts don't expire at the same
6 timeframe. They're cyclical. They stagger throughout
7 the period. Those that are on annual contracts we
8 would be looking at this fall beginning to negotiate
9 for future business, so we would cede and support Mr.
10 Scherrbaum's comments.

11 We could be seeing impacts very quickly in
12 our overall business.

13 The other thing to mention here is that
14 while we're negotiating and whatever given period of
15 time, whether it be six months or 12 months, during
16 that period of time we're obviously continuing to ship
17 to our customers at some certain price and any impacts
18 of pricing in the entire marketplace that changes
19 during those negotiations will affect those
20 negotiations and the eventual outcome.

21 So during that period of time that we're
22 negotiating any changes in the pricing including
23 lower-priced Japanese imports to the states would
24 impact those negotiations dramatically.

25 COMMISSIONER ARANOFF: Thank you very much.

1 I'm going to actually ask a question for Mr.
2 Glyptis who is almost completely obscured by Mr.
3 Salonen back there. Knowing how busy Mr. Klinefelter
4 is I didn't want to dare delay him for the question,
5 but I'll ask you since you are still here with us.

6 In their brief the Respondents claim that
7 the consolidation and cost reductions in the tin mill
8 industry have greatly benefitted workers in the U.S.
9 industry. I wanted to ask you whether and to what
10 extent you agree with that argument.

11 MR. GLYPTIS: Mark Glyptis, Independent
12 Steel Workers Union. The number of employees working
13 in the tin industry has been greatly reduced. We've
14 seen the workforce reduced by a significant margin.
15 Productivity has increased by a significant margin.
16 Our productivity is up 65 percent, but our workforce,
17 the number of employees working in the tin sector, has
18 been greatly reduced.

19 What we did in the contract was we
20 negotiated small pay increases for lesser benefits in
21 our healthcare and in the pension. We had defined
22 benefit plans that were terminated and the bankruptcy
23 process had been taken over by the PBGC. So pay-wise
24 we're very close to where we were.

25 Maybe a slight increase. Many less people

1 overall, and the sacrifice is coming primarily on the
2 benefits side of our contract.

3 COMMISSIONER ARANOFF: I appreciate that
4 answer and wanted to thank you again for taking the
5 time to be here with us today. We don't always spend
6 as much time on the employment factors when we're
7 looking at the condition of the domestic industry as
8 perhaps we should given their prominence in the
9 statute.

10 Let's see. My yellow light is coming on, so
11 I think I'll save my next question for the next round.

12 Thanks, Mr. Chairman.

13 CHAIRMAN KOPLAN: Thank you.

14 This is for the domestic producers. Several
15 of you -- and this has just come up again with
16 Commissioner Aranoff -- testified that it can take as
17 much as six months to negotiate these contracts with
18 canning goods and you also noted that many of the
19 contracts don't include volume or specific price.

20 I believe Mr. Peterson mentioned six months
21 in his earlier statement. What goes on over these
22 lengthy negotiating periods? I'm just trying to
23 understand because I heard Mr. Gagliano say that
24 pricing around the world affects what's going on here,
25 so if we're looking over a six month period and prices

1 are changing all around the world what prolongs the
2 process is what I'm trying to understand.

3 I'd like to hear from the domestic producers
4 on that.

5 MR. PETERSON: Craig Peterson, UPI. I don't
6 recall a tin plate negotiation lasting six months with
7 our company.

8 CHAIRMAN KOPLAN: Okay.

9 MR. PETERSON: I think that was Mr.
10 Gagliano's statement and not my own. Nonetheless tin
11 plate negotiations can be protracted certainly over
12 the course of two or three months.

13 It's a simple factor of buyer is trying to
14 accumulate as much competitive information as they can
15 present to us. In the course of negotiations we can
16 after listening to them and hearing what the
17 competitive environment is, make some decision on
18 whether or not we're going to agree to become
19 competitive and end negotiations successfully or not.
20 That process of collecting information and sharing
21 information can go on for several months.

22 However, during that time supplies are not
23 terminated. We continue to supply all of our
24 customers during that period with the expectation that
25 negotiations will eventually end to a mutually

1 beneficial conclusion.

2 CHAIRMAN KOPLAN: Anybody else? Mr.
3 Gagliano?

4 MR. GAGLIANO: Gerry Gagliano, U.S. Steel.
5 I guess I would say that frankly it takes that long of
6 a period of time or it can take that long because we
7 have not come to terms on the pricing and we've not
8 met what the customer is demanding nor what we're
9 looking for in terms of return to our products.

10 I hope it's more than pointing to my
11 negotiating skills.

12 CHAIRMAN KOPLAN: I wasn't attributing that
13 to it.

14 Yes?

15 MR. GOEDEKE: Tom Goedeke, Mittal Steel.
16 Contract negotiations, they vary significantly from
17 company to company or buyer to buyer let's say. Some
18 buyers have very specific goals as to the kind of
19 pricing they want. They have gathered what they feel
20 are the steel pricing availabilities from domestic and
21 various foreign suppliers, so the negotiations can
22 maybe last a month or two.

23 Others want to continue to negotiate because
24 they think they can get lower pricing as they continue
25 to drag it out. That may be three or four months.

1 Then you have the other extreme where some buyers just
2 think the market is changing all the time and they
3 don't want in their own mind to be disadvantaged to
4 their competitors.

5 It's very intense. It's one buyer doing all
6 the buying for all the tin plate in their company for
7 the entire United States. They may also have input if
8 they have overseas operations for what's going on
9 around the world in terms of purchasing of tin mill
10 products.

11 CHAIRMAN KOPLAN: Thank you. Let me come
12 back to my original determination again. With respect
13 to pricing I found that there was a price leader whose
14 identity in the public version of my views was
15 bracketed. I found that it announced its price list
16 for the upcoming year each fall and that purchasers
17 attempted to negotiate discounts off that list price.

18 Recognizing the fact that there's been
19 consolidation during the review period tell me what
20 has developed with respect to price leadership with
21 respect to the domestic industry, and if you could
22 include in your answer the role of nonsubject imports?

23 Start with you, Mr. Scherrbaum.

24 MR. SCHERRBAUM: Joe Scherrbaum, U.S. Steel.
25 My opinion is since the consolidation I would say that

1 there is not a significant domestic price leader. I
2 think that we all are trying to do the best thing we
3 can for our companies and I think it's just about a
4 level field between the domestic mills on pricing and
5 foreign and nonsubject imports as to price leadership
6 in this market. I think it's leveled out.

7 CHAIRMAN KOPLAN: Thanks.

8 Mr. Goedeke?

9 MR. GOEDEKE: I concur with those comments.

10 CHAIRMAN KOPLAN: Mr. Peterson?

11 MR. PETERSON: I do as well.

12 CHAIRMAN KOPLAN: Thank you very much. I
13 also found that there was substantial consolidation
14 among canners in the 1990s that led to their increased
15 bargaining power. How have canners affected pricing
16 during this review period?

17 MR. SCHERRBAUM: Joe Scherrbaum. I guess
18 the only comment I would make from our customer
19 perspective is that the canners have continued to
20 consolidate during this review period. They have
21 become more national and also more global, more
22 astute, more sophisticated buyers and are just a very,
23 very difficult negotiation.

24 CHAIRMAN KOPLAN: Anyone else on that?

25 MR. PETERSON: Yes. Craig Peterson, UPI.

1 There has even I think as late as this year been
2 additional consolidation among can makers, but they
3 have always represented a very consolidated industry
4 with whom to deal.

5 CHAIRMAN KOPLAN: Thank you.

6 MR. SALONEN: Mr. Chairman, Eric Salonen
7 from Mittal Steel. Just to add as I'm sure you saw in
8 our prehearing brief we had included as exhibits
9 excerpts from the SEC filings and annual reports of
10 the major purchasers and all of whom identified a very
11 intensively competitive price competitive market in
12 which they were competing.

13 CHAIRMAN KOPLAN: Thank you. Yes. Mittal's
14 prehearing brief at page 2 states that domestic demand
15 for the like product has declined over the period of
16 review with consumption falling from 3.7 million shore
17 tons in 2000 to 3.1 in 2005. This trend line is
18 consistent with the pattern of consumption during the
19 original investigation when total domestic consumption
20 declined by 2.1 percent.

21 In your prehearing brief at page 15 USS-
22 POSCO reports that global demand is also declining and
23 you note as did our staff that part of this decline is
24 attributable to shifting consumer preferences in
25 advancements in substitute packaging materials with

1 displacing the like product.

2 In light of this trend for nearly 10 years
3 even if the order is lifted why would you make
4 significant capital investments in the near term?

5 MR. PETERSON: Craig Peterson, UPI. The
6 marketplace in which we operate even though it has
7 contracted quite a bit still leaves room for us to
8 operate at relatively high levels. So as I mentioned
9 even in a declining environment the marketplace we
10 participate in remains a viable one.

11 Secondly tin plate for us is one of only
12 three products we produce, so it is a critical part of
13 our overall operations and we expect it to be for the
14 foreseeable future.

15 CHAIRMAN KOPLAN: Anyone else want to get in
16 on that? If not, capacity utilization has fluctuated
17 during the period of review. Those in opposition to
18 continuation of the order state that the subject tin
19 mill industry has also changed significantly with
20 several companies merging in capacity being reduced
21 they say by 23 percent in Japan.

22 You argue that Japanese producers of the
23 subject product continue to be dependent on export
24 markets for much of their output and that they have
25 seen exports to our market's decline during the period

1 of review, but according to the data in our staff
2 report in Table 4-8 based on responses to our
3 questionnaires home market consumption in Japan
4 increased to 65.5 percent in 2005.

5 What would be their incentive to ramp up
6 subject imports to the U.S.?

7 Yes, Mr. Vaughn?

8 MR. VAUGHN: Yes. Looking at this table we
9 made a couple of points out of this. First of all it
10 is true that 65.5 percent of their shipments went to
11 their home market in 2005. I think if you look across
12 that row for example in 2001 it was 65.7 percent.
13 That seems to be fairly stable.

14 Similarly if you look at the bottom line in
15 terms of exports that also seems to be --

16 CHAIRMAN KOPLAN: Yes. I think it went up
17 about four percent over that full period starting with
18 2000, right?

19 MR. VAUGHN: That's correct, although it's
20 important to recall that in 2000 for example they were
21 still making some subject exports to the United States
22 during that period and we would anticipate for example
23 that if the order were revoked and they were once more
24 in a position to ship potentially hundreds of
25 thousands of tons to the United States that you would

1 see that shift again.

2 They do appear to be unable to make more
3 shipments than any other market. Their home market
4 shipments have been declining steadily, their export
5 shipments have been declining steadily. They either
6 have a choice of simply shutting down more capacity,
7 continuing to run at a low-capacity utilization, or
8 increasing exports to the United States.

9 Given the fact that they already export more
10 than one-third of their products and given the fact
11 that they remain active in this market and were
12 extremely active in this market before it just seems
13 obvious that would be the direction that they would
14 choose to follow.

15 CHAIRMAN KOPLAN: Thank you for that.

16 Vice Chairman Okun?

17 VICE CHAIRMAN OKUN: Thank you.

18 Let me just continue a little bit about the
19 different export markets for Japan and just return I
20 think it was you, Mr. Hecht, who talked about Mexico
21 and in your charts on Chart 10 you have a chart
22 talking about Japan's five largest export markets.

23 I guess my question would be and maybe for
24 producers, but if you have any other additional
25 information which is Mexico, do you agree that there's

1 increasing demand there? We talked about the
2 statistics show a declining global demand, but for
3 Mexico itself is demand increasing? Do you know?

4 MR. SCHERRBAUM: This is Joe Scherrbaum. I
5 do not know for sure, but could make the assumption as
6 we said that in developing countries there is some
7 demand increase going on and I would think Mexico is
8 part of that. However, I also believe and we can get
9 more information on this is that the Mexican tin mill
10 producers also are growing their capacities.

11 VICE CHAIRMAN OKUN: Yes, Mr. Vaughn?

12 MR. VAUGHN: Vice Chairman Okun, this is
13 Steven Vaughn. I'd just like to put that Mexican
14 figure in perspective. It is correct that it was
15 their largest export market in 2005 of 172,000 metric
16 tons. However, in 2003 they shipped over 201,000
17 metric tons to that market.

18 So they appear to be losing ground in that
19 market as well.

20 VICE CHAIRMAN OKUN: That's helpful.

21 Anything else that you could provide post-
22 hearing, Mr. Scherrbaum, what you had just mentioned
23 with regard to what might be going on Mexico would be
24 helpful to hear and then with regard to their other
25 markets including the Philippines and Iran.

1 I haven't heard anything mentioned. I know
2 you have talked about China and what you see with
3 those increasing home market shipments I guess there.
4 So I appreciate those and anything further that you
5 can put on the record would be great.

6 Then now let me turn to the role of
7 nonsubjects as we look forward. I guess first I guess
8 I'd ask a question for the producers which is do you
9 think the role of nonsubjects has changed at all since
10 the original investigation?

11 In other words in the original investigation
12 the four nonsubject countries that were in the staff
13 report that were identified as the largest source of
14 nonsubject imports were the same four countries
15 identified in the original investigation as having
16 favorable product quality and consistent product
17 quality relative to U.S. produced tin and chromium
18 coated sheet, but these countries were not with the
19 exception of France viewed as purchasers as having
20 lower prices.

21 Is that still your view of the role of
22 nonsubjects in this market?

23 MR. SCHERRBAUM: I'm really not sure what
24 your question is.

25 VICE CHAIRMAN OKUN: Well, I guess it's

1 looking for in other words in looking at the role of
2 nonsubjects one could argue and I think Respondents
3 have argued that if you're looking at this market as
4 Japan and you come in at all that they may simply
5 replace nonsubject imports because nonsubjects have
6 increased both their market share and their shipments
7 to the United States even as demand to the United
8 States has declined.

9 I guess my question is if we were to lift
10 the order would the Japanese imports simply replace
11 what's already being served by nonsubjects, and if
12 not, why not?

13 MR. SCHERRBAUM: I'm not sure. I can't
14 answer that. I think obviously the tin plate buyers
15 would have to make that decision. It's clear to us
16 and to us on the west coast that were the order to be
17 revoked that we would see an increase in Japanese
18 tonnage and whether or not that would come at the
19 expense of France or Germany I don't know.

20 VICE CHAIRMAN OKUN: Other producers?

21 Yes, Mr. Gagliano?

22 MR. GAGLIANO: My sense of that would be
23 that we would just add another competitive supplier to
24 the marketplace. I don't see that there would be
25 displacing the non-subject imports, but it would just

1 be adding another level and another area of
2 competition for our domestic mills.

3 MR. NARKIN: Vice Chairman Okun?

4 VICE CHAIRMAN OKUN: Yes.

5 MR. NARKIN: This is Steve Narkin. If I
6 could just add to that. If you look at the Table I-1,
7 the confidential version -- and the numbers are
8 confidential, so I can't talk about them here -- I
9 think you see that's not what they did during the
10 original investigation.

11 VICE CHAIRMAN OKUN: Not what the
12 Japanese --

13 MR. NARKIN: Yes.

14 VICE CHAIRMAN OKUN: -- subject imports did.
15 Right. I understand that. That's why I'm asking
16 whether there are any changes. In other words is it
17 because the nonsubject imports at this point are
18 closely -- you would expect them to remain higher
19 priced than Japanese imports into the United States,
20 and if so, why?

21 Are there quality differences? Any
22 acceptability differences? You've talked about the
23 Japanese being able to enter readily both because
24 they've been selling what's been excluded and also
25 their quality was regarded as high during the original

1 investigation.

2 MR. KAPLAN: Well, I'd make two points.

3 VICE CHAIRMAN OKUN: Yes, Mr. Kaplan.

4 MR. KAPLAN: As a threshold matter to enter
5 the market they're going to have to drop prices and to
6 drop prices in the market as a whole otherwise they
7 wouldn't be replacing anybody. So as a first matter
8 of price there would be a negative price effect. On
9 the quantity side the question is who they would be
10 replacing and I think there's two ways, maybe three
11 ways economists look at it.

12 The first is to look at the original
13 investigation as Mr. Narkin just mentioned. Another
14 way with a neutral assumption is that it would be
15 proportional given that the products are all very good
16 substitutes for each other. That's the way for
17 example when the Commission itself does its modeling
18 for 332 investigation for the President or free trade
19 agreements make some neutral economic assumptions.

20 So I think both of those types of methods
21 would lead you to believe there would be a
22 disproportional affect on the domestic industry
23 because it has a higher share of the market and then
24 you'd have the price effect in any case.

25 VICE CHAIRMAN OKUN: Mr. Ryan, and then Mr.

1 Hecht.

2 MR. RYAN: Chairman Koplan before called our
3 attention to Table 4-3 in the staff report and if we
4 look at the west the nonsubject imports are about
5 88,000 tons now and as Mr. Peterson testified before
6 the anti-dumping order was in affect Japanese imports
7 were 160,000 tons, so even if you were to take on face
8 value the Respondents' argument that they would simply
9 be replacing other nonsubject imports in the west, you
10 have definitely a doubling of import market share that
11 would certainly have an effect on UPI in the west
12 coast market.

13 VICE CHAIRMAN OKUN: I appreciate the other
14 information given with regard to the regionality and
15 what was discussed in the original, so I will look at
16 that as well.

17 Mr. Hecht?

18 MR. HECHT: Jim Hecht. Just to supplement a
19 little bit what Seth said, too, I think to keep in
20 mind not only the volumes and what they did before
21 when they were here, but even if you look at some of
22 the purchaser comments here you hear talk about that
23 they could serve some of the big runners and the
24 commodity-type projects that are associated with large
25 volumes.

1 Obviously they're here with excluded which
2 might be more specialty products. You have record
3 testimony about a variety of specialized applications
4 they can serve. I don't see any gap anywhere in terms
5 of what they could serve. They obviously have a
6 strong incentive to come back here volume-wise and I
7 think there's no reason to believe they could not
8 compete across the board.

9 VICE CHAIRMAN OKUN: Appreciate all those
10 comments. If I could follow-up on a question I
11 believe Commissioner Lane raised earlier about those
12 customers who are located on site and I know that the
13 responses are confidential to the question she posed.

14 I just wanted to make sure that in
15 responding to that post-hearing you take a look at the
16 Respondents' allegations with regard to the issue of
17 there seems to be some dispute I guess and I want to
18 make sure that the answers you respond with are clear
19 with regard to whether this has to do with have they
20 bought the same amount, and is there anything that
21 requires them to do that and whether that has changed
22 since the original investigation.

23 MR. SALONEN: We'll be happy to do that in
24 the post-hearing.

25 VICE CHAIRMAN OKUN: Okay. Great. I

1 appreciate that. With that I believe I've covered all
2 my questions. Thank you very much for all your
3 answers. I appreciated it very much.

4 CHAIRMAN KOPLAN: Thank you.

5 Commissioner Hillman?

6 COMMISSIONER HILLMAN: Thank you.

7 Just following up a little bit on the demand
8 issue just to make sure we have a good record on it.
9 If any of the companies keep in the ordinary course of
10 business demand projections for 2006, 2007, even into
11 2008, if those could be put on the record in your
12 post-hearing briefs I would very much appreciate.

13 MR. HECHT: Jim Hecht. We will do that.

14 COMMISSIONER HILLMAN: Then a subissue of
15 the demand issue. It concerns the issue of tin free
16 steel. The overall demand obviously has been under
17 pressure. Under the review you've all testified to
18 that affect. Do you agree with the items raised in
19 the staff report that the chromium coated or tin free
20 steel is a particularly declining part of the tin mill
21 product market?

22 Is there anything you want to say about
23 demand for tin free steel as opposed to looking at it
24 in the aggregate?

25 Mr. Gagliano?

1 MR. GAGLIANO: Gerry Gagliano, U.S. Steel.
2 I guess a couple of comments along that line is we
3 have seen some demand decrease relative to tin free
4 steel. Two things that we're aware of. One is
5 there's ongoing environmental concerns about chromium
6 on the coating. Although nothing has been done at
7 this point there are studies being done.

8 We know there's more of an affect in Europe
9 at this point, but that's always a concern of the
10 domestic industry, so that is one concern. The other
11 is as many of our customers have converted and down
12 gauged specifically on what is termed an easy open end
13 as they have moved from chrome coated or TFS to tin
14 plate.

15 So while you're seeing that kind of
16 specification of an end of a can it is being converted
17 from used to be TFS to tin plate.

18 COMMISSIONER HILLMAN: Okay. I appreciate
19 that answer.

20 Mr. Goedeke?

21 MR. GOEDEKE: Tom Goedeke, Mittal Steel.
22 There are a couple of things going on with TFS. Also
23 as more and more cans are made by the two piece
24 process, D&I, where you would have two ends one on the
25 top and one on the bottom you've eliminated one of

1 those ends, so therefore many times the ends would
2 both have been chrome so that has been a reduction in
3 the amount of TFS that's out there.

4 Second thing you see on tuna it's gone from
5 -- it's not gone. There is some conversion of the
6 shallow drawn tuna cans which are made from tin free
7 steel. That has gone to pouches, so that's reduced
8 the demand for TFS. The other issue is a slight
9 environmental issue.

10 If you're in an area of the country where
11 you have high VOC requirements when you're using tin
12 free steel or TFS you have to put an organic coating
13 on both sides of the end. That's because the chrome
14 is very abrasive and it will cause problems in the
15 drawing operation if you don't have an organic coating
16 on it.

17 So to reduce the amount of VOCs a can maker
18 may switch back from chrome plate to tin plate where
19 they only have to put an organic coating on the inside
20 of the can. The outside with tin plate. The tin is a
21 natural lubricant and they don't have to coat it. So
22 these are some of the factors that have caused the
23 reduction in the use of tin free steel.

24 COMMISSIONER HILLMAN: That's very helpful.
25 Do you have a sense of what portion of the cans now

1 are the two piece DNI process as opposed to the old
2 fashioned two separate ends?

3 Mr. Peterson?

4 MR. PETERSON: Craig Peterson, UPI. I think
5 the sense we all have is that two piece can is growing
6 rapidly and to what extent it has replaced three piece
7 cans I'm certainly not sure, but obviously the can
8 makers can answer that question very, very quickly.

9 COMMISSIONER HILLMAN: I appreciate that. A
10 couple of then -- well, let me start with a legal
11 issue. Obviously the statute requires the Commission
12 to consider its prior injury determination including
13 the volume, price affect and imports before the order
14 was issued.

15 Obviously this case presents a somewhat
16 unusual situation in which as a result of the Court
17 proceedings the most recent Commission opinion is a
18 negative injury determination. Granted it is now on
19 appeal before the Fed Circuit.

20 In this circumstance I'm wanting you to
21 brief how the Commission should comply with its
22 obligation to consider its prior injury determination
23 when the current prior injury determination is a
24 negative one. I don't know if there's anything you
25 want to comment on now, but I would ask for that to be

1 addressed in your post-hearing brief.

2 MR. HECHT: Jim Hecht. I think we would
3 like to do it in the brief to give it a full
4 treatment.

5 COMMISSIONER HILLMAN: Another probably
6 brief oriented question, but the Japanese Respondents
7 have argued that the accuracy of the Commission's
8 record is called into question by data submitted by
9 several of the producers that differs from the data
10 that was submitted in response to the request of the
11 Commission in the Section 204 review with respect to
12 the 201 relief provided on tin mill products.

13 I wondered if the domestic producers could
14 provide an explanation in the post-hearing brief as to
15 why the data submitted in the 204 monitoring report
16 differs from the data that was submitted for purposes
17 of this review.

18 Mr. Vaughn?

19 MR. HECHT: Jim Hecht.

20 COMMISSIONER HILLMAN: I'm sorry.

21 MR. VAUGHN: Commissioner Hillman, we'll
22 obviously provide that. You referred to the 204
23 monitoring investigation?

24 COMMISSIONER HILLMAN: I'm sorry. The 204
25 review investigation. Excuse me. The 204 report that

1 was done. The 18 month mid-term report. Well, no.
2 The 204 report.

3 MR. VAUGHN: There were two. There was the
4 204 monitoring report and the 204 effectiveness
5 report.

6 COMMISSIONER HILLMAN: No, no, no. The 204
7 report that was done midway through the 201 release.

8 MR. VAUGHN: The monitoring report.

9 COMMISSIONER HILLMAN: The monitoring
10 report.

11 MR. VAUGHN: Okay.

12 MR. HECHT: Commissioner Hillman, Jim Hecht.
13 We can I think endeavor to do that, although I think
14 their comparison was if I'm correct --

15 COMMISSIONER HILLMAN: Yes. I'm sorry. It
16 is. That is correct. I'm sorry.

17 MR. HECHT: So it's effectiveness you would
18 like to --

19 COMMISSIONER HILLMAN: Clearly obviously you
20 can look at the Respondents' brief and understand what
21 their arguments are with respect to the data
22 discrepancies. I'm just wanting to hear your
23 explanation of why we see the data discrepancies that
24 they are pointing out.

25 MR. HECHT: Absolutely. As I mentioned

1 before I think our data is consistent.

2 COMMISSIONER HILLMAN: Okay. If I can then
3 go if I sort of step back and look at the big picture
4 of what the Respondents are arguing their contention
5 is as I read it there is at some level a cap on the
6 volume of imports created by two things: one by what
7 they describe as the very limited overlap in
8 specifications for tin products between the
9 domestically produced products versus the imported
10 product.

11 On page 62 of their brief they go through
12 this chart where they come up with a number indicating
13 a fairly small overlap in the specific specifications
14 that are purchased and supplied by the domestic
15 industry versus the tin specs that are purchased from
16 imported sources.

17 That in combination with the advantage that
18 the domestic industry has because of quicker lead
19 times in their view leads to this general sense that
20 there is if you will some kind of cap number, that
21 imports will never get more than X percentage of
22 market share.

23 I wondered if you could comment on both
24 issues. One, is there a big difference in the specs
25 of products that are provided by the domestic industry

1 versus those that typically tend to be imported?

2 Mr. Gagliano? Go ahead.

3 MR. GAGLIANO: Gerry Gagliano, U.S. Steel.
4 Your first point is it's our belief that if anything
5 the Japanese tin plate producers have expanded
6 capabilities over the domestic tin plate producers and
7 can essentially produce essentially every
8 specification as consumed here in the United States.
9 That's our view.

10 COMMISSIONER HILLMAN: On the flip side are
11 there specs that are not produced in the United States
12 that can producers must go overseas to get?

13 MR. GAGLIANO: Yes, there are currently.

14 COMMISSIONER HILLMAN: Okay.

15 MR. GAGLIANO: Yes, there are currently.

16 COMMISSIONER HILLMAN: How significant would
17 that volume be?

18 MR. GAGLIANO: Our estimate of that specific
19 volume -- and I'm going to ask my counsel whether or
20 not we would want to provide that later on.

21 COMMISSIONER HILLMAN: Fair enough.

22 MR. GAGLIANO: To answer your second point
23 and that was lead time issues all of the tin mill
24 producers face that lead time issue in one way or
25 another whether it's from the west coast to the east

1 coast or from China to Los Angeles. There are ways
2 around that that all tin plate producers can certainly
3 find and one of them is warehousing.

4 Lead time planning. We've talked about
5 planning ahead, a consistency in business and
6 certainly our customers are in that mode. They can
7 plan well in advance and material could be produced,
8 shipped to this country and warehoused which would
9 alleviate any lead time issues or delivery problems.

10 COMMISSIONER HILLMAN: Again, it's more what
11 they're arguing is that the purchasers here will favor
12 the domestic industry over all imports for a very
13 substantial portion of their market share, their
14 needs, because you have quicker lead time.

15 Given that the red light is on I may try to
16 come back to this issue. I would ask Mr. Hecht and
17 other counsel on this issue of the spec for you to
18 address in your post-hearing brief the arguments and
19 the data presented in Respondents' brief at page 62 in
20 terms of the degree of overlap on the particular spec
21 issue.

22 MR. RYAN: Would it be appropriate for Mr.
23 Peterson to answer this question now or are we out of
24 time now? Maybe we can make the next round.

25 CHAIRMAN KOPLAN: Go ahead.

1 COMMISSIONER HILLMAN: My colleagues are
2 being indulgent this afternoon. Thank you.

3 Go ahead, Mr. Peterson.

4 MR. PETERSON: Well, I wanted to comment
5 particularly on the issue of the wherewithal of the
6 Japanese to manage their logistical supply chains
7 favorably to compete with us, with domestic mills. I
8 can say that the Japanese have developed over time the
9 methodology for warehousing steel nearby customers'
10 locations to provide, in essence, just in time
11 delivery in which cases they can actually beat our
12 lead time.

13 All it takes is for them to manage the
14 inventories locally and to provide just in time
15 delivery. They've accomplished that many, many times.
16 It's not something that is foreign to them at all.

17 COMMISSIONER HILLMAN: I appreciate those
18 responses. Thank you.

19 CHAIRMAN KOPLAN: Thank you.

20 Commissioner Lane?

21 (No response.)

22 CHAIRMAN KOPLAN: I can call you again.

23 COMMISSIONER LANE: I'm sorry. I was
24 distracted. The first question I have relates to the
25 Office of Investigation Memo DD046 in which the

1 Commission published alternate tables for the volume
2 of nonsubject imports and consumption based on
3 nonsubject shipments of imports based on data from
4 questionnaire responses rather than official
5 statistics of the Department of Commerce.

6 Is it reasonable to base the data in the
7 staff report for nonsubject imports in shipments of
8 imports on questionnaire data?

9 Mr. Hecht, let's start with you.

10 MR. HECHT: Yes, Commissioner Lane. I think
11 we'd like to if we could have the opportunity to
12 thoroughly analyze that. We've started to look at it.
13 I think I would say the trends certainly are the same
14 we think, demonstrate the same things, but we would
15 like a chance to see why there are some differences in
16 that data and comment on it.

17 COMMISSIONER LANE: Mr. Salonen?

18 MR. SALONEN: Thank you, Commissioner Lane.
19 I think I would join Mr. Hecht and say we would like
20 the opportunity to analyze that more thoroughly so we
21 could give you a complete answer in the post-hearing.

22 COMMISSIONER LANE: Okay. Thank you.

23 Does anybody else have a response?

24 (No response.)

25 COMMISSIONER LANE: Okay. Thank you. I'd

1 like to turn to the subject of energy costs. I
2 understand that energy costs are a significant portion
3 of your costs and we have been experiencing volatile
4 and high prices in some energy markets.

5 For your natural gas costs and in states
6 where you can buy electricity on the market would you
7 please tell me whether you purchase natural gas or
8 electricity on a daily or monthly spot basis or
9 whether you use long-term contracts?

10 MR. SALONEN: Eric Salonen. As for Mittal
11 Steel we I think saw a similar question come from the
12 investigator yesterday. We're collecting that
13 information and we'll be happy to provide that in the
14 post-hearing.

15 COMMISSIONER LANE: Mr. Vaughn?

16 MR. VAUGHN: Yes. We did submit some
17 information to the staff on that yesterday and we will
18 continue to see if we have any additional points to
19 make on that or any additional information to provide.
20 We'll be happy to do that in the post-hearing.

21 MR. RYAN: Similarly -- this is John Ryan --
22 for UPI as well. We did get that question from the
23 staff yesterday, but we'd like to submit that as part
24 of our post-hearing brief because it's a large part of
25 costs and therefore company confidential information.

1 COMMISSIONER LANE: I understand that.
2 Depending upon your answers if you find out that you
3 do not use long-term supply contracts could you tell
4 me if you hedge any or all of your spot needs using
5 futures or any other hedging mechanisms?

6 MR. RYAN: We'd be happy to answer that as
7 well.

8 MR. SALONEN: Us as well.

9 COMMISSIONER LANE: Okay. Thank you. Now,
10 I think you've touched on this question, but I would
11 like for you to specifically address the market power
12 argument in your post-hearing brief. What is your
13 best argument that consolidation has not created a
14 small number of producers with significant market
15 power?

16 Mr. Hecht?

17 MR. HECHT: We'll do that thoroughly. Could
18 I make one comment on it here as well?

19 COMMISSIONER LANE: Certainly. I mean, I've
20 been afraid to ask real questions because I keep
21 getting the answer is confidential.

22 MR. HECHT: First of all I think one easy
23 answer is look at the data. This has happened in the
24 market. You can see how well the industry is doing
25 and ask yourself does that look like an industry that

1 has market power? When you hear them making the
2 argument that the substitute products have gone up in
3 price much more than our product has does that, again,
4 sound consistent with that story?

5 I'd like to refer back to something Mr.
6 Narkin referred to at the outset and just read you
7 something they said at the original hearing when they
8 were arguing that the purchasers had market power.
9 Commissioner Miller I think at the time said well,
10 aren't the domestics pretty big guys, too?

11 They said, but the reason we are all here
12 today is because there are foreign suppliers in the
13 U.S. market as well, so you take the seven U.S.
14 suppliers, you take the three Japanese suppliers, you
15 take the three European suppliers and the five or six
16 others, Korean, Brazil, and so forth, you've got 15
17 fixed suppliers in the U.S. market and only six big
18 customers.

19 In fact you have numerous suppliers and only
20 a few large customers and that's the difference here.
21 So it's completely inconsistent to come in here and
22 argue that you ignore the foreign sources of supply.
23 I guess one other point I'd make in the context of
24 this whole litigation and this to our mind difficult
25 to understand question did Japanese imports affect

1 price, look at what they were arguing here.

2 How is this relevant to the leverage of the
3 purchasers unless you thought those foreign sources of
4 supply were impacting price? That's what they were
5 arguing. Now, we've spent five years going through to
6 see can we prove did this guy tell that guy that
7 affected his price? I mean, I think that's pretty
8 strong evidence of it right there.

9 COMMISSIONER LANE: Does anyone else want to
10 comment on that?

11 Mr. Peterson?

12 MR. PETERSON: Yes. Craig Peterson, UPI. I
13 mean, I can tell you that UPI today does not enjoy any
14 more pricing power than it did five years ago and that
15 our customers seem to have as many options of supply
16 today as they did several years ago.

17 COMMISSIONER LANE: Mr. Kaplan?

18 MR. KAPLAN: Commissioner, I want to
19 reiterate some of the points that Mr. Narkin said and
20 extend them. The first is there's been two
21 investigations by the anti-trust division of the
22 Department of Justice looking exactly at this issue.

23 To give you an idea of what they do during a
24 second request is they subpoena emails, they call up
25 every customer. They're preparing for litigation and

1 their sole concern is whether the merged entity could
2 make an anti-competitive price increase that's
3 profitable.

4 The way they do that, what market power
5 means is that the domestic producer, the merged firm,
6 could cut back supply to raise prices and that would
7 work. It would be successful. What they found was no
8 twice. The records are voluminous. They're preparing
9 for federal litigation. There's discovery, emails,
10 internal documents, internal reports, consultant
11 reports, phone records, purchasing logs, call logs.

12 After that investigation they felt that
13 there would be no market power. During the second
14 acquisition, the ISG Weirton one, they did not bother
15 to go through that process having felt they know
16 enough about the industry.

17 Further this industry is not something that
18 is not understood. At the Department of Justice
19 they've formed a special steel task force knowing what
20 was going on during all the bankruptcies anticipating
21 that there would be certain mergers and acquisitions.
22 So for the Respondents to conclude that flies in the
23 face of a much more thorough investigation with much
24 more complete information.

25 So I guess that's the major point with

1 respect to those investigations. I'd also further
2 like to add that when the Department of Justice looks
3 at these mergers they explicitly look at foreign
4 supply and potentials of foreign supply in determining
5 whether there could be market power.

6 I would turn you to the press release of the
7 recent merger involving Whirlpool and Maytag which by
8 the number of firms domestically might appear more
9 concentrated and yet they explicitly made comments to
10 the availability of imports from multiple sources as
11 the reason that they did not try to block the merger
12 and did not feel that there would be market power post
13 merger.

14 So I hope all that information helps in
15 evaluating any claims of market power in this
16 industry.

17 COMMISSIONER LANE: Okay. Thank you.

18 MR. RYAN: Could I add just one point to
19 that, Commissioner Lane?

20 COMMISSIONER LANE: Yes.

21 MR. RYAN: This is John Ryan. With regard
22 to market power you'd expect to see in a concentrated
23 industry that's exercising market power some profits.
24 You'd expect to see good return on investments, you'd
25 expect to see something like an exercise in market

1 power in the condition of the industry. You certainly
2 don't see that here.

3 It contradicts any notion that this industry
4 is exercising market power and extracting super normal
5 prices and profits.

6 COMMISSIONER LANE: Thank you. I have one
7 more question, but I'll wait until the next round.

8 Thank you.

9 CHAIRMAN KOPLAN: Sure.
10 Commissioner Pearson?

11 COMMISSIONER PEARSON: Let me start with a
12 brief apology to those who don't have access to the
13 confidential staff report because the question that I
14 want to raise goes directly to that to Table 3-9 which
15 deals with the selected financial data of producers.
16 What's noteworthy to me from this table is that there
17 are some disparities in performance across firms that
18 I don't really understand.

19 It's not apparent to me why would be seeing
20 the types of disparities that we're seeing. If you
21 were to look on page 3-23 the second category in the
22 table where it's looking at raw material cost that I
23 think is perfectly understandable. You have some
24 difference noted between integrated firms and
25 nonintegrated firms.

1 It seems to me that makes perfect sense.
2 The next category of direct labor also seems to me to
3 make pretty good sense. Then we get to other factory
4 costs and frankly I don't understand at all what's
5 going on there. Earlier in my career I had the
6 opportunity to do a fair amount of data compilation.

7 I'm occasionally possessed of normal human
8 clumsiness, so I've made my share of errors in data
9 and I'm wondering if there might possibly be a data
10 error that's showing up in other factory costs or is
11 there something going on that's driven by special
12 charges or other factors relating to restructuring of
13 firms?

14 I understand you probably can't say much in
15 public, but I think you probably see what I'm getting
16 at. Then if you flip over the next page, 3-24, those
17 same disparities from the previous page come through
18 to cost of goods sold, okay? Would anyone care to
19 comment on this?

20 This is a convoluted way of asking a
21 question, but is the question clear? See, Mr. Kaplan
22 had the good sense to leave when I was asking that, so
23 we can't turn to him.

24 Mr. Hecht?

25 MR. HECHT: Jim Hecht. Just to lead it off

1 I don't know that it's going to be particularly
2 instructive there have been as I mentioned before one
3 issue raised with respect to our costs which I think
4 probably do not go to answer what you're talking
5 about, but I think we can fully explain and we'd be
6 happy to address any issues with our own data but it's
7 really difficult to comment on other parties' data but
8 also both for confidential reasons and just practical
9 reasons as well.

10 COMMISSIONER PEARSON: Well, and it's
11 entirely possible that the questions that occur to me
12 best could be dealt with through a verification
13 process and maybe that's the best way to go. If in
14 response to my meanderings you can kind of see what
15 I'm getting at and if counsel for any of the parties
16 would be prepared to offer some thoughts in post-
17 hearing I would certainly appreciate it.

18 I mean, I don't want to go into the vote on
19 this having doubts about the numbers we're looking at
20 because it's not impossible that someone would look at
21 this and think are costs being allocated kind of
22 arbitrarily in such a way to make the financial
23 performance of this industry look worse than it
24 actually has been?

25 I would guess that's probably not what's

1 happening, but a creative mind could infer that.

2 Shifting then to my --

3 MR. HECHT: Jim Hecht. I mean, it goes
4 without saying obviously that we do not think that's
5 the case. It's certainly not the case for what we're
6 -- I just want to make the record clear on that. We
7 would be happy to address any questions you have.

8 MR. RYAN: I would echo that sentiment as
9 well. This is John Ryan here.

10 COMMISSIONER PEARSON: Having dealt a lot
11 with data I know that if you slice it one way it can
12 look different than if it's sliced another way, so
13 let's just make sure we've sliced things here in a way
14 that's consistent across firms and that is I hope
15 sensible to me.

16 MR. SALONEN: Commissioner Pearson, Eric
17 Salonen from Mittal Steel. I confess I did not bring
18 the confidential staff report with me so I don't have
19 those numbers committed to memory, but we'll take a
20 close look at them and address your question.

21 COMMISSIONER PEARSON: Yes. I would never
22 recommend committing them to memory, but do take a
23 look. My last question.

24 As has been mentioned your industry hasn't
25 been overwhelmingly profitable during the period of

1 review despite the presence of the order and the
2 concomitant absence of subject imports from Japan, and
3 so obviously there must be factors other than subject
4 imports that have influenced the industry's
5 performance.

6 Could you please discuss some of those
7 factors? I mean, we could look at it in a
8 hypothetical sense not implausible that the order is
9 extended and you've got another five years without
10 Japanese imports. What are going to be the factors
11 that affect the industry performance going forward?
12 Have been in the past and going forward?

13 Mr. Hecht?

14 MR. HECHT: I'll just kick it off to get
15 folks started again. In terms of your question what
16 other factors affect the performance during the period
17 of review I think as we mentioned before and there's
18 likely more than this, but certainly major ones to
19 look at are declining demand, increased competition
20 from nonsubject imports and cost increases as well.

21 Those have all been significant factors. I
22 think those factors likely will continue to be things
23 you look at. On the other hand the industry as we've
24 talked about has made major strides I think as well in
25 terms of restructuring and becoming more cost

1 competitive, more productive. Exactly what they said
2 they would do in the course of the 201 proceeding.

3 I think that they're committed as you've
4 heard today to making those efforts succeed, working
5 with this industry to make this industry succeed and
6 their customers as well. So that's, again, why we see
7 this as a success story. I think that this order has
8 allowed us to improve.

9 We still face challenges and if we see a
10 continuation of this relief which we hope we will we
11 think there's some real bright signs for this industry
12 even in the context of those challenges.

13 COMMISSIONER PEARSON: Mr. Scherrbaum?

14 MR. SCHERRBAUM: Yes. If I can, again, just
15 add Mr. Hecht mentioned the consolidation. It really
16 just for our company concluded within the last couple
17 of years. I can just say that we're working very,
18 very hard to improve our performance in this business.

19 Internally we now have tin plate facilities
20 from three different companies, we're sharing best
21 practices and attempting all we can do to reduce our
22 costs while still dealing with some of the other
23 market issues that Mr. Hecht mentioned.

24 MR. RYAN: If I could add just one point on
25 that.

1 COMMISSIONER PEARSON: Mr. Ryan. Yes.

2 MR. RYAN: With regard to other factors I
3 think the factors that Mr. Hecht listed are those that
4 are present in the market, but the SAA states that
5 when the industry is facing difficulty from a variety
6 of sources and is vulnerable to dumped industries, the
7 Commission should take that into account then its
8 sunset review determination. So that in thinking about
9 these other factors, we would hope the Commission
10 would take the instruction from the SAA into account.

11 COMMISSIONER PEARSON: Of course, but with
12 the subject imports not in the market and still the
13 performance being suboptimal I just am wanting to
14 understand why it's stayed suboptimal throughout the
15 POR.

16 Any other thoughts? Mr. Vaughn?

17 MR. VAUGHN: Well, I mean, I think a lot of
18 the factors have already been covered, but certainly
19 there's a lot of reason to believe that if you look
20 over the period of review raw material costs have not
21 always been where they were. Certainly I think the
22 investigators should be making what efforts it can to
23 bring those under control.

24 There's been an earlier discussion of energy
25 costs which is obviously very significantly over the

1 end of the period review. As you've heard the
2 domestic industry is making real efforts to do what it
3 can to promote demand for this product, and to work
4 with the purchasers and to encourage demand for this
5 product.

6 So there are reasons to believe that going
7 forward the industry's performance could continue to
8 improve. Certainly it takes time to recover
9 especially when you face these other difficult
10 environments, but there's also I think you've heard
11 from the witnesses here a lot of reasons for optimism.

12 COMMISSIONER PEARSON: Mr. Salonen?

13 MR. SALONEN: Yes, Commissioner Pearson.
14 Thank you. To echo the sentiments of my colleagues at
15 the risk of repeating testimony you've already heard,
16 but just to reiterate as Mr. Stephans testified at
17 Weirton they're making investments to improve the
18 quality of the product, to improve their costs,
19 improve their yields and to improve their efficiency.

20 As Mr. Glyptis has testified the workers
21 there have made enormous sacrifices in order to
22 restore Weirton to being a world-class tin mill
23 specialist which is what it started out as.

24 So I think that as you're looking forward
25 and you're looking at the consolidation that Mittal's

1 tin mill facilities have gone through over the last
2 three years you can expect to see a -- synergy is an
3 overused word very often, but I do think that you will
4 begin to see the synergies coming out of that in terms
5 of improved performance and improved competitiveness.

6 COMMISSIONER PEARSON: Mr. Peterson?

7 MR. PETERSON: Craig Peterson, UPI. I'll be
8 very quick. At UPI the major issue limiting some of
9 our profitability has been the volatility of our raw
10 material, hot bands. We were not able to pass along
11 to our tin mill customers the big increases in hot
12 band prices we incurred beginning in mid-2004.

13 COMMISSIONER PEARSON: Thank you.

14 Thank you all very much.

15 Mr. Chairman, I have no further questions.

16 CHAIRMAN KOPLAN: Thank you. Commissioner
17 Aranoff?

18 COMMISSIONER ARANOFF: Thank you, Mr.

19 Chairman. Just a few short questions I hope.

20 I'm going to display my ignorance here by
21 following up on some of the demand questions that my
22 colleagues were asking. One thing I haven't yet
23 understood on this record is why does the trend
24 towards two-piece cans reduce consumption?

25 MR. PETERSON: Craig Peterson, UPI. I

1 think, and I'm certainly no expert on this and the can
2 makers can give you, I'm sure, a very detailed answer,
3 but by and large, it takes less steel to produce a
4 two-piece can than it does a three-piece can.

5 And again, they clearly are the experts, but
6 in a three-piece can, the ends have to have some
7 overlap so that they can be seamed to the body, which
8 although a tiny amount of steel, given the number of
9 cans that are produced annually, some 30 billion food
10 cans each year, those small differences can result in
11 significant changes in the tonnage required to produce
12 those cans.

13 COMMISSIONER ARANOFF: Okay. Thanks. That
14 actually is very helpful.

15 One last question. In a recent sunset
16 review, the Commission looked at steel beams and voted
17 to revoke that order. And one of the things that was
18 very much in the background in that case was that the
19 original determination in the period of investigation
20 had overlapped very significantly with the Asian
21 financial crisis.

22 And there were some events that took place
23 there in terms of the incentives of Asian producers to
24 send product to the United States in very large
25 quantities all of a sudden that were very much in the

1 background of the Commission's looking at would those
2 conditions recur in the reasonably foreseeable future.

3 And I'd like to ask you either here or in
4 your posthearing brief if you could compare the
5 situation here, since the original period of
6 investigation also kind of tracks the Asian financial
7 crisis. Are there those same kind of one-time events
8 that aren't likely to recur? Were they at work in the
9 original period of investigation here? Just a general
10 compare and contrast. Mr. Vaughn, you wanted to
11 start?

12 MR. VAUGHN: Yes. Just to make a couple of
13 points, and we'll certainly look at this more in the
14 posthearing brief. A couple of points to make,
15 though.

16 As I understand it, one of the arguments
17 involving the Asian crisis was that was kind of a
18 temporary, one-term thing where there was a downturn
19 of demand in the other markets that the Japanese
20 producers normally supply, and because of that
21 downturn in demand in those other markets, Japanese
22 producers were more likely to come into the United
23 States.

24 Here, on this record with this product,
25 you've seen continuing decline in demand for the

1 Japanese producers. Obviously the conditions in Asia
2 may not be comparable to what's going on with the
3 Asian crisis, but in terms of this product, Japanese
4 producers are finding it difficult to sell this
5 product in their home market. They're finding it
6 difficult to sell this product in export markets.

7 So in that sense, the situation that you
8 have is very similar to the situations that you saw in
9 a number of industries say in the 1998 period but
10 which you're still seeing in this industry today. So
11 that's just one point that we'd like to get on the
12 record.

13 COMMISSIONER ARANOFF: Okay. Mr. Kaplan,
14 did you want to say something?

15 MR. KAPLAN: Yes. And I would also look at
16 what the various producers were doing in their export
17 markets and how many export markets there were and
18 whether they were increasing or decreasing.

19 I think a comparison between the financial
20 performance of the industries with respect to their
21 vulnerability of increased imports is also something
22 that would be worthwhile to put the effects of any
23 potential surge in context.

24 I think the size of the surge in the
25 previous investigation, any injury it did compared to

1 the size in this one is something to look at, and the
2 fact that the Commission found injury with such a
3 small increase in imports in this original
4 investigation and compare that to the other
5 investigation as well.

6 So there's a whole series of distinctions
7 between these two cases, and I think many of them are
8 apposite in terms of finding vulnerability and
9 recurrence of injury.

10 COMMISSIONER ARANOFF: Okay. Thank you very
11 much. I certainly invite all of you to brief that
12 more if you'd like to. And with that, I have no
13 further questions. I just would like to thank the
14 morning panel very much for spending this much time
15 answering our questions. Thanks, Mr. Chairman.

16 CHAIRMAN KOPLAN: Thank you, Commissioner.

17 I don't have any additional questions.
18 However, I do have a request, and this is for the
19 parties. Regarding your comments on the issue of
20 alternate tables in OINV Memo Inv. 046, DD-046, given
21 the release date of April 10, 2006 on our public EDIS
22 file, I understand from staff that we need to have
23 written comments from you all by May 2 of 2006.

24 I also understand that our investigator
25 actually called around about this the week of the

1 17th. So I'm making the request that you get those
2 comments in by then in order for the staff to
3 integrate that in time.

4 Mr. Hecht?

5 MR. HECHT: We will definitely do so.

6 CHAIRMAN KOPLAN: Okay. Mr. Salonen?

7 MR. SALONEN: Yes, sir, we will.

8 CHAIRMAN KOPLAN: I think I left out Mr.
9 Narkin.

10 MR. RYAN: No, we'll do that as well. This
11 is John Ryan for UPI.

12 CHAIRMAN KOPLAN: Okay.

13 MR. RYAN: We'll take care of that.

14 CHAIRMAN KOPLAN: And this request is for
15 Respondent's counsel as well. And I see that
16 Respondent's counsel is nodding in the affirmative
17 that they will get those comments in by then.

18 Thank you very much. I'll turn to
19 Commissioner Lane. No, I won't. I'll turn to Vice
20 Chairman Okun.

21 VICE CHAIRMAN OKUN: Actually I don't have
22 any questions, but thank you.

23 CHAIRMAN KOPLAN: I guess I knew that.

24 VICE CHAIRMAN OKUN: Yes.

25 CHAIRMAN KOPLAN: Are there additional

1 questions from the dais? Go ahead.

2 COMMISSIONER HILLMAN: I do have just I hope
3 a couple quick followups with respect to the issue of
4 excluded products, and obviously some of this goes to
5 how comparable our data from the original is to that
6 obtained in this review.

7 After the order was issued, there were three
8 specific tin mill products that were excluded from the
9 scope of the order. I'm trying to get a sense if you
10 have it of the magnitude of those products. How
11 significant are they? Would they affect the
12 comparability of our data between the original
13 investigation and the sunset review?

14 Obviously we have collected data on all
15 excluded products, but it doesn't help me ferret out
16 the difference between the three that were excluded
17 after the order was issued.

18 MR. HECHT: Jim Hecht. I'll confess I don't
19 have that at my fingertips. We could try to see if we
20 could do that. Obviously, as you said, you do have
21 the total volume of excluded, but you'd like a
22 breakout.

23 COMMISSIONER HILLMAN: Okay. Well, just
24 some way to understand how significant they are so
25 that when we try to do this comparison of, you know,

1 the original period to what data we have now, I have
2 some way of understanding how important were those
3 particular exclusions.

4 MR. HECHT: Yes. Right. We can try to find
5 that out.

6 COMMISSIONER HILLMAN: Okay. And then a
7 second question somewhat related to this issue of the
8 excluded product. In U.S. Steel's brief and in
9 Mittal's brief, the argument was made that the
10 Commission should consider the Japanese producers'
11 capacity to produce both the subject and the excluded
12 product in terms of looking at how readily how much
13 product could come in from Japan.

14 I just want to make sure I understand it.
15 Are you arguing that the Japanese producers are likely
16 to switch from making the excluded products to making
17 the subject product if the order should be revoked?

18 Mr. Vaughn.

19 MR. VAUGHN: Commissioner Hillman, what we
20 were really trying to get at, I mean, we would assume
21 that they're selling about as much of the excluded
22 products in this market as they can. But what we were
23 saying is is that what they've done in terms of
24 answering the questionnaire is they have allocated
25 capacity to the excluded products versus the subject

1 products.

2 And what we're saying is it's our
3 understanding that all of that capacity can be used to
4 make the subject product, and therefore, to the extent
5 that some of the capacity that's currently allocated
6 to the excluded product is not being used at all, that
7 that is available excess capacity that can be used to
8 make the subject product in increased shipments to the
9 United States. That was the main focus of our --

10 COMMISSIONER HILLMAN: All right. Just to
11 make sure I understand it. So what you're saying is
12 that there is idle excess capacity that has been
13 allocated specifically to the excluded products.

14 MR. VAUGHN: Yes.

15 COMMISSIONER HILLMAN: Okay. Which is
16 different to me than an argument that they're going to
17 stop making the excluded products and start making
18 subject product if we were to revoke the order.

19 MR. VAUGHN: That's correct. The argument
20 that we are making here is not so much an argument
21 based on product shifting. It's an argument based on
22 how do you make determinations about total available
23 capacity.

24 COMMISSIONER HILLMAN: Okay. And, Mr.
25 Salonen, would you agree that you're not suggesting

1 that there is a reason that we should assume the
2 Japanese would move out of production of the excluded
3 products in order to move into subject product?

4 MR. SALONEN: That is the argument we made.
5 That said, I wouldn't foreclose that depending upon
6 what kind of prices they could get for subject
7 products, how it affects their costs of production,
8 the efficiencies on their runs and so forth,
9 information we obviously don't have. But you're
10 correct. That is the argument we made in the
11 prehearing brief. We made the same argument as U.S.
12 Steel.

13 COMMISSIONER HILLMAN: Okay. Mr. Vaughn?

14 MR. VAUGHN: Yes. Just to clarify, I mean,
15 I want to agree with what Eric said. I mean, to the
16 extent -- and I'm not sure there's any way we could
17 know this -- but obviously, to the extent it would
18 make more sense for them to shift, we don't want to
19 foreclose that possibility. But the focus of our
20 argument was on how much actual capacity do they have
21 that could be used to make the subject product.

22 COMMISSIONER HILLMAN: Okay. All right.
23 I'm not sure exactly where that leaves me, but I
24 appreciate that answer.

25 Then last question is with respect to hot

1 band versus tin mill. As I understand that, the
2 argument is made that there's always a gap between hot
3 band and tin mill but that that gap has been narrowing
4 over time.

5 Have we reached the point at which there is
6 a preference to go ahead and sell product as hot band
7 and not move it on downstream in terms of the gap
8 between the two products? I mean, Mr. Peterson,
9 you're not really in the hot band business, so for
10 either Mr. Scherrbaum or on the middle side.

11 MR. SCHERRBAUM: Joe Scherrbaum with U.S.
12 Steel. Our preference is to make all products, I
13 mean, both hot- and cold-rolled, galvanized and tin
14 mill product.

15 COMMISSIONER HILLMAN: All right. But to
16 the extent that there is demand and good prices on the
17 hot side, are you selling more in that market rather
18 than moving it downstream for tin?

19 MR. SCHERRBAUM: Right. We are on the tin
20 side meeting all the commitments that we have made.
21 So no, we are not excluding making tin product that
22 will enable us to sell more hot-rolled product, if
23 that's your question.

24 COMMISSIONER HILLMAN: Okay. Okay. Mr.
25 Goedeke, you're in a little bit of a different

1 situation, but any comment on this issue of the
2 relative attractiveness of the hot band market, hot-
3 rolled market?

4 MR. GOEDEKE: I can't comment on the
5 attractiveness of it. I can only say that we are not
6 shorting out any customers or any demand out there in
7 tin mill products to sell any other products.

8 COMMISSIONER HILLMAN: All right. All
9 right. I appreciate those responses. And I too would
10 like to join my colleagues in thanking you all for
11 your perseverance throughout this hearing and into
12 this afternoon. Very much appreciate it.

13 CHAIRMAN KOPLAN: Thank you, Commissioner.
14 Commissioner Lane.

15 COMMISSIONER LANE: I just have one
16 question, and it's for Mr. Glyptis. I understand from
17 your original testimony that Weirton has returned to
18 its roots of making tin plate. What are the
19 possibilities of restarting any of your idle
20 facilities at Weirton?

21 MR. GLYPTIS: The blast furnaces were taken
22 down in a fashion that they can be restarted.

23 COMMISSIONER LANE: They can or can't?

24 MR. GLYPTIS: They can. Okay? They can be
25 restarted. The possibility does exist. It's a

1 strategic decision that Mittal would make based on
2 demand. At the time of the indefinite idling of two
3 blast furnaces at Weirton, we were improving our
4 costs. It was a decision made strategically to limit
5 the amount of hot metal capacity that could be made
6 within the corporation.

7 As far as our galvanized lines, that
8 possibility does exist as well. So to put a
9 percentage, I would not give either one a high
10 percentage, but I would say the possibility does exist
11 on both the blast furnaces as well as our galvanized
12 lines.

13 COMMISSIONER LANE: And have you been given
14 any benchmarks or goals that if the workers at Weirton
15 reached that the possibility is better that more of
16 the facilities would be reopened?

17 MR. GLYPTIS: We have not been given any
18 guarantees. There is benchmarking that goes on within
19 the corporation, and quite frankly, there's
20 comparisons made between each of the facilities, not
21 only on costs but logistics, logistically as well. So
22 there's quite a bit of detail and analysis that goes
23 on as to which units run and which units do not run.

24 But I could definitively say that as
25 recently as a couple weeks ago, in a discussion with

1 the senior management of Mittal out of Chicago, that I
2 was told there was a discussion on the fashion in
3 which the furnaces were taken down and that assets
4 were preserved.

5 MR. SALONEN: I don't want to interrupt, Mr.
6 Glyptis, but I'm going to intervene here because I
7 don't know how much we may be intruding into internal
8 discussions.

9 COMMISSIONER LANE: Okay. So if there's
10 something more that can be added in posthearing, that
11 would be fine.

12 MR. SALONEN: I'd be happy to do that.

13 COMMISSIONER LANE: I would appreciate it.
14 Okay. Thank you, Mr. Glyptis.

15 MR. GLYPTIS: You're welcome.

16 COMMISSIONER LANE: And thank you for coming
17 today.

18 MR. GLYPTIS: Thank you.

19 COMMISSIONER LANE: Mr. Chairman, that's all
20 I have.

21 CHAIRMAN KOPLAN: Thank you, Commissioner.
22 Commissioner Pearson.

23 (No response.)

24 CHAIRMAN KOPLAN: Commissioner Aranoff?

25 (No response.)

1 CHAIRMAN KOPLAN: At this time, I see that
2 there are no additional questions from the dais.

3 Mr. Corkran, do staff have questions of this
4 panel?

5 MR. CORKRAN: Douglas Corkran, Office of
6 Investigations. Thank you, Chairman Koplan. Staff
7 has no additional questions.

8 CHAIRMAN KOPLAN: Okay. Thank you.

9 Mr. Barringer, do you all have questions of
10 this panel before they're released?

11 MR. PORTER: Mr. Chairman, we have no more
12 questions for the panel.

13 CHAIRMAN KOPLAN: All right. Well, with
14 that, this concludes the morning and part of the
15 afternoon session of today's hearing. I want to thank
16 all of you for coming, for your testimony, for your
17 answers to our questions. I look forward as well to
18 your posthearing submissions. I thank you for that
19 very much.

20 We will take a break for lunch of one hour.
21 And I'm getting some smiles up here. I would note
22 that this room is not secure, so any business
23 proprietary information that you have with you if you
24 would take from the room during the break, and I'll
25 see you back here in an hour.

1 (Whereupon, at 1:37 p.m., the hearing in the
2 above-entitled matter was adjourned to reconvene this
3 same day, Thursday, April 27, 2006.)
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1 mill steel a year, which I believe is about one-half
2 of the total tin mill consumed in the production of
3 food cans. I have to tell you that although I love
4 coming to Washington in the spring, I feel somewhat
5 awkward sitting here today. It is never pleasant for
6 a customer to be caught in the middle of a
7 disagreement between its suppliers.

8 However, I came here today because I
9 believe it is critical that the Commission have a
10 complete understanding of the true competitive
11 dynamics that exist in the buying and selling of tin-
12 mill steel in the United States. And, frankly, I
13 believe that you can only obtain such an understanding
14 by talking with the largest customers. That is why I
15 am here today.

16 We should probably start this discussion by
17 highlighting the dramatic changes that have taken
18 place since I first addressed you in 2000, shortly
19 before the anti-dumping order was imposed. At that
20 time, I had multiple U. S. mills from which to buy
21 and, yes, I admit I encouraged them to compete for my
22 business. We could choose from U. S. Steel, National
23 Steel, Bethlehem, LTV and Weirton. Each one of them
24 was a large integrated mill with plenty of production
25 capacity to supply substantial portions of our tin-

1 mill steel requirements.

2 Today, the situation is very, very
3 different. There are just two integrated mills in the
4 U. S., both with comparable tin-mill capacity. Any
5 leverage that I may have had before is now long gone.
6 There is absolutely no question that today is truly a
7 seller's market for tin-mill steel. This can be
8 verified by looking at the mills' behavior during the
9 past two years as consolidations, acquisitions, and
10 mergers took place. Once those consolidations were
11 concluded, long-standing historic practices were
12 unilaterally changed by U. S. Steel and Mittal, the
13 only remaining integrated mills.

14 Among those changes were: freight
15 equalization and the one-quarter-inch width surplus.
16 These practices had been part of the price of steel
17 for well over fifty years. The elimination of freight
18 equalization by these two giants increased the price
19 of tin-mill products to purchasers by millions of
20 dollars overnight. Similarly, the elimination of the
21 quarter-inch width surplus, which had been included in
22 the price ever since tin products were first sold, was
23 an unanticipated price hike imposed at their will
24 without negotiations or discussions with their tin-
25 mill steel customers because they now had the power to

1 unilaterally do so.

2 However, the biggest demonstration of the
3 domestic mills' new power was their flagrant disregard
4 for existing contracts that were in effect at the time
5 when they unilaterally imposed surcharges on tin-mill
6 steel purchases. In all my years of buying steel, I
7 had never seen such a demonstration of raw leveraging
8 of market power. Over the past two years, these
9 surcharges, combined with raises in the base price,
10 have caused tin-mill steel prices to increase at a
11 greater magnitude and a faster rate than any time in
12 the last twenty years. Members of the Commission, the
13 steel-supplier element of this marketplace is very
14 different than it was in 2000.

15 Another significant change in the tin-mill
16 market since 2000 is the prominence of multi-year
17 supply contracts. In 2000, supply agreements were
18 generally based on annual contracts, as Mr. Goedeke
19 described to you earlier. These contracts were
20 negotiated at the end of every year for the following
21 calendar year. Today, multi-year supply agreements
22 are common. In fact, they are the norm. These multi-
23 year contracts last from three to more years in
24 length. I can tell you that at Silgan nearly all of
25 our steel purchases today are based on multi-year

1 contracts.

2 As a result, much of our tin-mill steel
3 requirements are locked in by these multi-year
4 contracts, so that even if the order on Japanese tin-
5 mill steel were lifted tomorrow, Silgan would have
6 little ability to shift purchases from current
7 suppliers in the reasonably foreseeable future.

8 Next, I want to address an argument you
9 heard this morning that domestic and foreign tin-mill
10 steel are perfect substitutes for each other. Members
11 of the Commission, this claim is simply not true. To
12 Silgan anyway, there is a very big difference between
13 a domestic supplier and a foreign off-shore supplier
14 with respect to the types of tin-mill steel that can
15 be purchased and the services we require.

16 I think you know that we make a large
17 variety of tin cans. This requires us to purchase
18 many different tin-mill specifications. In fact, we
19 buy more than 500 different steel specs every year.
20 Of these, however, we will buy only a few, less than
21 ten from off-shore suppliers. Longer lead times and
22 the inability to modify or cancel orders limits the
23 specs we can purchase from off-shore suppliers. This
24 is particularly true for certain types of tin-mill
25 steel for food cans.

1 In our business, as can maker, we must have
2 the flexibility to call steel suppliers and say, for
3 example: The harvest is different than we expected and
4 we need to double one spec but cut another one by one-
5 third, for instance. Such flexibility is just not
6 available with any off-shore supplier.

7 With off-shore suppliers, by the time we
8 would make this sort of a call, the steel would
9 already be on a boat headed for the U. S. and we would
10 be forced to take delivery of material we no longer
11 need. We simply cannot take this risk, and therefore
12 choose carefully any specifications that we will
13 purchase from off-shore suppliers.

14 This is why the claims you heard this
15 morning are wrong. Off-shore supply is not a perfect
16 substitute for domestic supply. In addition, I want
17 to tell you the reverse is also not true. Domestic
18 supply is not a perfect substitute for off-shore
19 supply. For example, of the half dozen specs we
20 currently purchase from off-shore mills none are
21 available from domestic mills in the United States.

22 For example, we purchase extra-wide tin-mill
23 steel from foreign suppliers. For some of our
24 equipment, we require specifications of 42 to 48
25 inches wide. One of the products made with wide steel

1 is what we refer to as 603 ends. These are the tops
2 and bottoms of institutional or restaurant-sized food
3 cans. Our equipment to produce these ends is designed
4 to run the extra-wide steel providing increased output
5 efficiency without which we would not be able to
6 satisfy our customers' volume requirements.

7 Domestic mills can produce tin-mill steel at
8 only 38 to 39 inches wide; and while, theoretically,
9 we could purchase narrow steel and adjust our machines
10 to handle it, the business reality prevents us from
11 doing this. If we were to use U. S.-produced narrow
12 coils, we would lose 16% of our output, increase our
13 costs, and constrain our capacity to a point that we
14 would be unable to meet our customers' demands for
15 those ends without installing more equipment.

16 Thus, when considering the production of 603
17 ends, domestic and foreign tin-mill steel are not
18 functionally equivalent. On a big-picture level, you
19 should also know that we are very concerned about
20 alternative packages that were referred to by several
21 of the earlier panelists. Mr. Goedeke, in particular,
22 mentioned this. He talked about the Folgers' coffee
23 cans and tuna pouches and things like that. We, at
24 Silgon, are trying to promote the development and the
25 expansion of tin-food cans by new changes in shaped

1 cans and easy-open ends, and some other things you may
2 have already seen in the marketplace. But many of
3 these developments require special steel, which the
4 domestics do not produce, or, until recently, they
5 have shown very little interest.

6 Such products include the extra-wide
7 material that I already discussed. Polymer coated or
8 laminated steel and high-formability steel. The high-
9 formability steel is the easy open-ends. As a major
10 can maker, we are seeing an increased demand for
11 packages from our customers like that and we are
12 promoting that to try to help sustain or grow the tin-
13 can market.

14 Up until two years ago, we made salmon cans
15 from standard tin-mill steel. Now, 100% of our salmon
16 cans are produced from a polymer-coated steel that is
17 not available from any U. S. producer. It is
18 available from three producers in Europe as well as
19 two in Japan. Our customers prefer this and if it
20 were available from a U. S. producer, we would
21 certainly buy it from them. Until the U. S. producers
22 can produce this product and others like it, we are
23 compelled to buy them off-shore.

24 The very real differences between domestic
25 supply and off-shore supply that I have described can

1 be seen in Silgan's recent purchasing history. I can
2 confirm to you that in the year 2005 and currently,
3 100% of our purchases from off-shore suppliers were
4 products that cannot be produced by the domestic
5 mills.

6 I next want to talk to you about a topic you
7 heard earlier this morning, and one which Commissioner
8 Hillman asked questions about, and that is I think you
9 referred to it as: meet or release, Commissioner
10 Hillman. That is what we would call a meet comp,
11 which is short for meet competition. Some of our
12 contracts are long-term contracts that have that
13 provision, but just to be clear, not all of the
14 contracts contain that. Some certainly do, others do
15 not.

16 I also want to clarify that, from our
17 standpoint, there is a big difference between a meet-
18 comp provision and what is called a favored-nation's,
19 which although I didn't hear it mentioned, I think was
20 in some of the briefs you received earlier. And just
21 for clarification, a favored-nation's clause is
22 essentially a provision which simply states that if a
23 steel supplier is going to offer a lower price to
24 others than Silgan, as the largest purchaser in the
25 market, will get that price. That is all it says.

1 A meet-comp provision is different.
2 A meet-comp provision is very specific. It provides
3 us, the buyer, an opportunity, if we choose to, to
4 tell a supplier that he must match a competing bid or
5 we will be released from our obligation to purchase a
6 specific quantity under the contract.

7 It is important to note that the meet-comp
8 provisions in those Silgan contracts which do have
9 them require that the competing bid match the
10 identical specification, the same quantity, and the
11 same delivery location, they relate only to specific
12 items and they are not applied to across-the-board
13 purchases or prices.

14 This morning you heard an allegation that
15 termination of the anti-dumping duty will allow can
16 companies to use the Japanese to lower domestic prices
17 through such a meet-comp provision in contracts.
18 Members of the Commission, this claim is a distortion.
19 Market realities severely limit the opportunity to use
20 these provisions.

21 Let me state some factual history. Silgan
22 has never used an off-shore import price to trigger a
23 meet-comp provision with a domestic mill. We know we
24 can't and the domestic know we can't. They know full
25 well that we are not able to purchase the vast

1 majority of our needs from off-shore suppliers, and so
2 utilizing the meet-comp provision to affect an across-
3 the-board price reduction is not a realistic
4 possibility.

5 Members of the Commission, at the end of the
6 day, terminating the anti-dumping order will not have
7 much real-world effect on my friends at the domestic
8 mills. Our multi-year contracts prevent us from
9 sourcing significant quantities from Japanese
10 suppliers until those contracts end. As I have
11 already mentioned, there will always be a limited
12 number of specifications for which Japanese or any
13 other off-shore tin-mill supply is applicable. For
14 those specifications which we would consider buying
15 outside the U. S., Japanese suppliers will be
16 competing with other off-shore suppliers, not the
17 domestic mills.

18 Thank you for your time and attention. I
19 would be happy to answer any questions you may have.

20 CHAIRMAN KOPLAN: Thank you, Bob. Mark?

21 MR. SPRINGFIELD: Good afternoon, my name is
22 Mark Springfield. I am the Director of Steel
23 Purchasing & Packaging Operations for Ball Packaging
24 Company. You may be familiar with the Ball name from
25 the caning jars that many of us grew up with.

1 Although Ball no longer owns the company that produces
2 the famous jars, we still try to play a helpful role
3 in your lives.

4 My company provides the steel cans and ends
5 that contain the canned fruits, vegetables, infant
6 formulas, soups, seafood and pet foods that provide
7 value to you and your families. In March 2006, Ball
8 Corporation bought U. S. Can Corporation's American
9 operations which became our new aerosol and special
10 packaging division. It is American's largest
11 manufacturer of aerosol containers. Our world-wide
12 employment now is approximately 15,600 employees with
13 approximately 11,000 employed in the United States and
14 about 3,000 employed in domestic steel can
15 manufacturing across ten states.

16 We also currently purchase tin plate on
17 behalf of another company that manufactures steel
18 ends. Ball is one of the largest purchasers of tin
19 plate in the U. S. I have been Ball's Director of
20 Purchasing for two years. My appearance here is an
21 attempt to provide a purchaser's point of view. I
22 hope the Commission will understand that Ball has long
23 and healthy relationships with many of the parties on
24 both sides of this issue.

25 Two of our plants are sited on Mittal

1 Steel's Weirton property and some of our others are
2 located in the same states as the mills which produce
3 tin plate. For instance, in addition to the two
4 plants in West Virginia utilizing tin plate, we have
5 two in California, three on Ohio and one in Maryland.
6 I personally have worked in the steel industry for
7 twenty-five years, ten of it involving tin-plate
8 marketing and sales. The last two of which in the
9 commercial organization was as general manager of
10 container appliance sales for National Steel
11 Corporation.

12 I still value the friendships acquired over
13 that time. The health and prosperity of the U. S.
14 tin-mill producers is important to Ball. I am here
15 today only because Ball strongly believes that the
16 lifting of the anti-dumping order on Japanese tin-mill
17 products cannot have a negative impact on our key
18 domestic suppliers, while at the same time, it will
19 promote steel availability to can producers.

20 I would therefore like to make the following
21 comment: As the Commission is aware, at the time of
22 the original finding, there were seven producers of
23 tin-mill products in the United States. Now there are
24 four with the two largest controlling the proponent
25 portion of the domestic-productive capacity.

1 Disruptions in either of the two large producers can
2 cause and has caused limitations, or inadequate on-
3 time delivery performance.

4 It should also be kept in mind that since U.
5 S. Steel supplies substrate to UPI, production
6 problems at U. S. Steel, in part, can have secondary
7 consequences elsewhere. Presently, both U. S. Steel
8 and Mittal are working through production disruptions
9 caused by the delayed spurt of the furnace and the
10 flooding of the timber mill. This has caused Ball
11 considerable difficulty covering our needs during the
12 summer months of this year as they are two of our
13 largest suppliers.

14 We are trying to use steel service centers,
15 which stocks some basic tin-mill products to overcome
16 our short-term needs. During the frequent periods in
17 which the mills experience production problems, there
18 is simply not enough timely U. S. production to fill
19 in. It is hard to imagine how the can industry could
20 preserve during these situations without a number of
21 previously qualified foreign sources capable in total
22 of providing the ample amounts available at the
23 required times.

24 Consolidation of the tin-plate capacity has
25 marginalized tin-mill buyers. For example, despite

1 the fact that Ball is one of the largest tin-mill
2 customers, we do not receive consistent, adequate
3 delivery performance from our suppliers. An
4 additional concern for all of us, as tin-mill product
5 customers, is the potential lowering of tin plates'
6 importance within the spectrum of products offered by
7 the new steel industry giants.

8 In the context of Mittal's operation, tin-
9 plate production was key for Weirton Steel, and it is
10 only a small component of Mittal's product offering.
11 Ball Packaging Corporation, in an attempt to create
12 some market presence, has affected mergers and formed
13 purchasing alliance to help protect itself by creating
14 a bigger footprint to producers during periods of
15 tight steel availability or unexpected seasonal
16 customers' surges. Having some other choices for tin
17 plate helps supplement our domestic supply while
18 trying to maintain our timely obligations to our
19 customers and ultimately you, the consumers.

20 Secondly, while Ball does buy some foreign
21 steel, almost nothing for its U.S. plants is from
22 Japan. In fact, very little was bought from Japanese
23 producers prior to the initial trade action.
24 Generally, since the start-up of our second two piece
25 drawn and iron food can plant in Milwaukee, the

1 dominant share, 65% to 85% of the steel, following
2 imports has been for our DNI applications. Successful
3 manufacture of this can requires steel possessing very
4 low levels of internal inclusions, tight dimensional
5 aspects and consistency coil-to-coil.

6 In this regard, the domestic producers have
7 been unable, despite numerous attempts since 2000, to
8 qualify their material for this application.
9 Additionally, Ball's goal is to use wider and wider
10 substrates so as to maximize our DNI's plants
11 sufficiencies. Currently, our largest volume runner
12 is over 43 inches wide. Again, because no domestic
13 producer can manufacturer this product, our present
14 sourcing for this application is entirely foreign.
15 One domestic steel company has indicated that they may
16 be able to consistently produce it. Our required
17 width and quality levels, we are currently attempting
18 to qualify them.

19 Additionally, the cornerstone of Ball's
20 relationship with its steel-supplier community rests
21 on the vendor's superiority in the areas of quality,
22 timely product availability, as well as the supplier's
23 commercial offering over time. For Ball, if the
24 supplier, domestic or foreign, cannot provide material
25 that meets our qualification criteria -- in other

1 words, capable of meeting our seasonal surges and day-
2 to-day business delivery requirements, price becomes
3 less relevant.

4 Ball believes that it is to our advantage if
5 we can find local sources of supply since production
6 lead times are shorter, and, therefore, add greater
7 flexibility in meeting changes in our customers'
8 demands. Please consider that this can change, but
9 when the crops come due, the cans must be ready.

10 In fact, Ball typically purchases roughly
11 between 75% and 85% of its requirements domestically
12 despite having suppliers from every country, other
13 than Japan, available to it. In 2005, Ball Food
14 Packaging purchased approximately 270 specifications
15 and less than 20 were placed with foreign suppliers,
16 and even fewer were sourced from both foreign and U.
17 S. suppliers. However, we recognize that all mills
18 from time to time have upset conditions.

19 For instance, the Weirton Coal Mill fire of
20 1994, the UPI Coal Mill fire of 2001, U. S. Steel's
21 delayed furnace start up in 2005, or Mittal Steel's
22 present problems from a flooded temper mill. Ball
23 must have access to the entire global tin-plate supply
24 community as an economically viable alternative so as
25 to minimize the disruptive effects when those

1 instances do occur.

2 I would remind the Commission if ever Ball
3 wanted to change its domestic sourcing policy, it
4 would have been in the 2004-2005 time period, during
5 which the domestic steel industry asserted its new
6 economic mite by reallocating substrates, supplied
7 other products, raising prices to crippling levels,
8 unilaterally imposing surcharges while at the same
9 time eliminating advantageous fire programs that had
10 long been part of the fabric of the U. S. market.

11 Finally, since we recognize that the
12 Commission's interest in the potential effects of
13 lifting the order on the domestic steel industry, Ball
14 would offer the following observations. Given the
15 Asian region's startling economic growth, the Japanese
16 may not be interested in entering the U. S. tin-plate
17 market in the first instance. However, noting Ball's
18 lengthy and stringent qualification process, and
19 assuming the Japanese producers would be successful,
20 their value to Ball would be several quarters to a
21 year or more away and would possibility
22 support our DNI application.

23 They could also serve as a back-up role,
24 providing options and situations in which the domestic
25 production would fall short of Ball's requirements

1 from a quality or supply standpoint and within the
2 framework of our supply arrangements already in place.
3 This is presently the role of the other foreign
4 suppliers, historically and currently, that have been
5 served by Ball.

6 Thank you for your kind attention. If you
7 happen to have any questions which I can answer.

8 CHAIRMAN KOPLAN: Thank you, Mark. Dave?

9 MR. GILL: Good afternoon. Mr. Chairman, I
10 would like to follow up, in part, a thing from this
11 morning and, in particular, I would like to introduce
12 myself to Ms. Lane, as I am a former resident of
13 Weirton and a graduate of West Virginia University,
14 and a mountaineer forever by the way.

15 My name is Dave Gill and I am vice president
16 and general manager of Nippon Steel Trading America,
17 located at the Pittsburgh, Pennsylvania office. In
18 that capacity, I am responsible for timber product
19 sales in the United States. I have over 32 years of
20 experience in this industry, both as an employee of
21 the domestic industry and presently as an executive in
22 the steel-trading enterprise, handling both domestic
23 and imported tin-mill products.

24 Please excuse my nervousness today as this
25 is a somewhat uncomfortable situation for me. Nearly

1 six years ago, I was on the other side of this issue,
2 supporting a position of the anti-dumping order on
3 behalf of Weirton Steel and actually testified in this
4 room. It is for this reason that I think the
5 perspective that I can offer the Commission today is
6 unique. I was part of the domestic industry that saw
7 anti-dumping duties and now I am part of an industry
8 that handles both domestic and imported products in a
9 vastly different market than existed over the 1997-
10 1999 period.

11 Between 1989 and 2000, I was general manager
12 of timber products steel sales for Weirton Steel,
13 which is now a part of Mittal Steel Group. Therefore,
14 I am very familiar with Weirton's operations at the
15 time of the original investigation. Since September
16 2001, I have worked as an executive for Nippon Steel
17 Trading America, servicing both domestic and imported
18 product accounts, including non-subject sources
19 outside of Japan. The largest percentage of our sales
20 is in fact domestic product. With respect to tin-mill
21 products, our company acts as a distributor for Ohio
22 Coatings Company located in Yorkville, Ohio.
23 Therefore, I am also very familiar with the current
24 market for tin-mill products, including the rolling
25 characteristics of imports supply and domestic supply

1 within the market.

2 Let me start off with a few observations
3 based on my experience as a long-time employee of the
4 original petitioner in this case, Weirton Steel.
5 Specifically, I want to address the restructuring that
6 has occurred within the domestic industry since the
7 time of the original investigation. You have already
8 heard a great deal from this panel about the
9 consolidation that took place in the industry since
10 the anti-dumping order was imposed, including the
11 market power on the more concentrated tin-mill steel
12 industry as in the current market.

13 These observations are accurate. Market
14 power has shifted, and in the market the four
15 operating domestic mills have a much greater advantage
16 than they did in 1997 and 1999. But I want to talk to
17 you about another aspect of restructuring, and,
18 specifically the industry's dramatically reduced cost
19 structure. The reduced costs are not just about
20 consolidation of assets. They are also about the
21 rationalization of assets. The implementation of new
22 progressive labor agreements and finally, the
23 elimination of enormous legacy costs.

24 To a certain extent when I listened to this
25 morning's testimony, it was as if very little had

1 changed in the domestic industry. What I heard was
2 that the domestic industry has made progress but it is
3 still vulnerable absent the continued protection of
4 the anti-dumping order. I find that characterization
5 extremely difficult to believe. I find it difficult
6 to believe because I was at Weirton when the mill was
7 struggling. At Weirton, I worked within the
8 limitations of a small 85-year-old blast furnace, the
9 oldest continuous caster in the business, and flexible
10 work rules, and a mountain of legacy costs built over
11 years of unrealistic labor agreements. Anyone paying
12 attention at Weirton knew the score. It was very
13 difficult to compete under any circumstances whether
14 domestic mills or imports.

15 So, when Weirton fought the anti-dumping
16 petition in 1999, I fully supported the position of my
17 company. We needed the help. But that was
18 yesterday's domestic steel industry and yesterday's
19 steel market. It is not today's industry or market.
20 Since the imposition of the anti-dumping order,
21 consolidation and asset rationalization has allowed
22 the domestic steel industry to free up hundreds of
23 millions of dollars in wasted resources, created
24 perhaps as much as a billion dollars worth of new
25 operational synergies, new labor agreements and the

1 elimination of legacy cost obligations further slashed
2 costs.

3 These traumatic changes were not isolated
4 events. They have occurred across the industry,
5 including the tin-mill segment, and including Weirton
6 Steel. The market in which the domestic tin-mill
7 steel industry operates is also very different from
8 the one I saw in 1999. Less volume is being moved by
9 fewer producers at substantially higher prices with a
10 trend toward greater specialization.

11 The market is stable largely because of the
12 reduced number of domestic producers and the fact that
13 the cost disparities among the domestic producers were
14 not nearly as pronounced as they once were. For the
15 domestic tin-mill steel industry, these changes have
16 moved the industry towards an entirely different
17 posture vis-a-vis their customers and their
18 competition.

19 When I was general manager of sales at
20 Weirton Steel, the sales team worked under the
21 constant knowledge that the mill was cash strapped and
22 the tin operation was the mill's strongest cash-
23 earning asset. Quite frankly this made us very
24 sensitive in sales negotiations in an environment with
25 seven domestic players in the market as well as

1 imports. The intra-industry competition was brutal
2 given Weirton's disadvantages. Weirton was higher
3 costs and the other domestic mills knew it. The
4 competition manifested itself in many different ways.

5 From a personal perspective, I can't help
6 but wonder why U., S. Steel and the other big
7 integrated mills where they were six years ago.
8 Perhaps the strategy was to sink Weirton. I need to
9 remind the Commission that Weirton was the sole
10 petitioner in the original investigation. In fact, I
11 believe during the original investigation, Senator
12 Rockefeller and former Weirton CEO Dick Reader (ph)
13 described to the Commission nothing short of a
14 conspiracy on the part of the larger integrated tin-
15 mill producers to deny Weirton every relief given
16 their absence at the hearing. I think that speaks
17 volumes about the nature of the competition in the
18 market at that time.

19 Well, times have changed. Weirton isn't
20 Weirton any more. It is part of a larger vertically
21 integrated operation, Mittal Steel, that operates on a
22 global basis. Weirton's old hot end has been shut
23 down and it now receives far more cost competitive
24 slabs from other Mittal facilities. Weirton's labor
25 force is far more lean and productive. There is

1 absolutely no comparison between the Weirton assets
2 running at the time of the original investigation and
3 the assets now being operated by Mittal.

4 I am certain similar changes and dramatic
5 improvements have occurred at other domestic mills as
6 well. I see the difference in today's domestic tin-
7 mill steel industry. I don't deal with Weirton's
8 tin-mill products any more but I see Weirton in the
9 market. They are extremely competitive. As I stated
10 earlier, I also distribute product for a domestic
11 producer. That product is extremely high quality,
12 better quality than what I saw in the market in 1997
13 and 1999.

14 In short, the domestic industry is in a far
15 better position now than it was back then. The
16 domestic mills manage their costs much better and have
17 the ability to cover those costs. There is also not
18 the same sense of urgency to chase volume. The mills
19 will walk away from the volume if the price is not
20 where they want it to be.

21 In terms of imports, I thought I would also
22 offer you my trading-company perspective in this case,
23 and specifically my experience handling Japanese steel
24 in this market, whether non-subject tin-mill products
25 or other steel products. In this regard, I found it

1 curious that this morning's testimony suggested that a
2 surge in Japanese tin-mill products would follow any
3 revocation of the order. I doubt that. The Japanese
4 mills are the most disciplined suppliers we deal with
5 in the global market today.

6 From our perspective worldwide, Japanese
7 steel is more difficult to obtain than any other
8 sources of supply. Indeed, there have been times in
9 this market where Nippon Steel, our own parent
10 company, has been unwilling to provide the steel we
11 need so they can service other markets, particularly
12 in Asia. As I speak, I have ten inquiries with Nippon
13 Steel for light-gauge, coil-rolled steel in which the
14 mill has been unwilling to offer a price or offered
15 uncompetitive prices, even though I knew the current
16 market is supporting very attractive and profitable
17 pricing.

18 I see no reason to believe that this would
19 be any different with tin-mill products when prices
20 outside the United States are so much higher. If the
21 Japanese mills are unwilling to ship coil-rolled to
22 this market, one of the highest price markets in the
23 world, why would they ship tin-rolled products to this
24 market which is one of the lowest priced? The U. S.
25 market is not attractive.

1 Finally, whatever the import breakdown, I
2 think the last five years has resolved whether imports
3 serve more than a relatively fixed portion of the
4 market. Imports and domestic material are not true
5 substitutes. High volume, long-term contracts are the
6 demand of the domestic mills. Imports tend to serve a
7 market for spot purchases and specifications not
8 typically produced by the domestics and in smaller
9 quantities.

10 There is in fact very limited opportunities
11 for imports to compete with domestic supply given the
12 presence of these long-term agreements. Therefore,
13 you will continue to see a largely distinct market for
14 imported tin-mill products in which imports compete
15 against each other and not with domestic product.

16 I appreciate this opportunity to speak to
17 you today, thank you.

18 MR. PRUSA: Good afternoon. My name is Tom
19 Prusa. I am a professor at Rutgers University. As my
20 presentation, I am going to make three points. First,
21 the global steel market is very different today than
22 it was in 2000. A large number of mergers and
23 acquisitions, both in the United States and abroad,
24 have brought new-found pricing and volume discipline
25 and better balance between supply and demand. Second,

1 the domestic tin-mill industry is not vulnerable to
2 injury. Today's tin-mill industry bears little
3 resemblance to the industry that requested protection
4 in 2000.

5 Third, it is very unlikely that once the
6 anti-dumping order is revoked that imports of tin
7 from Japan will increase in the foreseeable future.
8 The domestic industry's claims of excess capacity in
9 Japan will lead to increased shipments to the United
10 States. However, a look at Japanese behavior, using
11 actual trade data, reveals that this assertion is
12 flat-out wrong.

13 Let me begin by remarking on how different
14 global steel markets are today than in 2000. That is
15 true both here in the U. S. and also abroad. First of
16 all, overall steel demand is up, way up. Given the
17 integrated nature of most tin production, we must
18 acknowledge that overall demand for flat-rolled steel
19 changes the outlook for tin. Strong demand for other
20 products may limit the ability of mills to provide
21 feed stock for their tin-mill operations. As reported
22 by the ITC in its Steel Effectiveness Study, steel
23 demand has grown by 6% to 7% in each year since the
24 original investigation.

25 With such strong demand, producers are

1 finding an increasingly diverse set of buyers to
2 market their products. Secondly, steel consolidation
3 has not been limited to just U. S. steel makers.
4 Steel mergers have occurred around the world: in
5 Japan, in Europe, in Brazil, just to name a few. The
6 Iron and Steel statistics Bureau finds a sharp
7 increase in concentration in recent years.

8 Concentration will only increase if the
9 Mittal-Arcelor merger goes through. The ITC's Steel
10 Effectiveness Study also finds an increase in
11 concentration. In addition to all the synergies made
12 possible by consolidation, the mergers have helped
13 create a better balance between supply and demand.
14 This, in turn, has led to better price discipline.
15 The steel industry consolidation helps keep new
16 capacity in check as fewer steel companies mean less
17 risk of making duplicate investments.

18 The consolidations here and abroad have been
19 good for pricing. As steel makers get larger, they
20 better understand that their individual actions can
21 influence the market as a whole. By contrast, back in
22 2000, individual producers in the diffuse steel
23 industry neither believed nor appreciated how they
24 affected the market.

25 Mittal Steel certainly understands the idea.

1 Consider what Mittal said at a recent presentation to
2 investors: "Consolidation is contributing to increased
3 discipline by producers." Does Mittal think this is
4 important? It must. It took time to stress the point
5 when talking with the investment community, the
6 precise people that it needs on board if Mittal is
7 going to make the Arcelor merger happen.

8 Japanese steel makers also understand how
9 the industry has changed. Consider this statement by
10 Nippon Steel's president Okio Mimura: "Our strategy is
11 to concentrate more on price than production, which is
12 why we have reduced output for export by one million
13 tons." The message being conveyed is clear: Mills are
14 not about to chase volume at the expense of price.

15 The changes in the steel industry are
16 particularly relevant to the tin sector. As the
17 Commission acknowledged in its 2001 safeguard
18 determination, tin is different from other flat-rolled
19 products. It is a unique product. There are fewer
20 firms making tin than making other flat-rolled
21 products. That was true in 2000 and it is especially
22 true today. The cost of making tin discourages firms
23 from opening new tin mills. Over the last fifteen
24 years, there has been a dizzying amount of new hot-
25 rolled, cold-rolled, and corrosion-resistant capacity

1 installed. By contrast, tin is a stable market.

2 Let's now look at the impact of
3 consolidation in the United States. The restructuring
4 and consolidation that has occurred since 2000 has
5 fundamentally changed the operating efficiency, cost
6 structure, and buying power of the U. S. tin-mill
7 industry. There is no real dispute over these facts.
8 On their Web site, the United Steel Workers call it
9 "the most significant restructuring in over one
10 hundred years."

11 At ITC hearings in 2003 and 2004, steel
12 executives such as Wilbur Ross, Thomas Usher and Roy
13 Tourance (ph) touted the remarkable improvements in
14 the industry's productive efficiency. I found it
15 interesting that in the domestic industry's pre-
16 hearing briefs they ignored the consolidation issue.
17 However, not talking about it doesn't make it go away.
18 The reality is: the impact of consolidation is far
19 reaching and measured in the hundreds of millions of
20 dollars annually.

21 But let me emphasize. I am not talking
22 about the entire flat-rolled industry. The hundreds
23 of millions of dollars in annual cost savings is the
24 benefit accruing just to tin-mill operations. As a
25 result of four major mergers, today's tin-mill

1 industry bears little resemblance to the industry in
2 2000. The consolidations have reduced domestic tin
3 capacity by 25%. Less capacity means the highest
4 cost, the least efficient facilities have been
5 eliminated. This makes today's domestic industry
6 stronger.

7 Less capacity also promotes pricing
8 discipline. Again, this makes today's domestic
9 industry stronger. Overall the industry's
10 restructuring has resulted in both significantly lower
11 costs and also sufficiently increased pricing power.
12 In fact, as I will discuss in a few minutes, the
13 Bureau of Labor Statistics reports that no other U. S.
14 industry has similar levels of concentration in
15 pricing power.

16 I note that the tin-mill industry's dramatic
17 increase in pricing power is found using both the four
18 firm-concentration ratio and also the HHI measure, the
19 two most commonly used measures of pricing power.

20 Let's take a closer look at cost savings.
21 Since 2000, new labor agreements have significantly
22 lowered labor costs. One measure of efficiency, labor
23 productivity, highlights the change in the industry's
24 fortunes. In 2000, the domestic industry produced 216
25 tons of steel per 1,000 work hours. Today, the

1 industry reports that 357 tons of steel are produced
2 per 1,000 work hours. This is a mind boggling 65%
3 improvement.

4 For comparison, the Bureau of Labor
5 Statistics reports that the average U. S.
6 manufacturing industry's productivity improved 27%
7 over the same time period. Does this productivity
8 change matter? You bet it does. Simply put, it
9 transforms a struggling industry into a money-making
10 industry. For instance, think back to the industry's
11 operating profit during the original investigation.
12 The industry reported that over 1997 and 1999, it lost
13 over \$200 million.

14 Now, let's ask the question: What would have
15 the industry's performance been with current
16 productivity numbers, but if nothing else changed?
17 That is, suppose wages do not change, all of our costs
18 do not change, prices do not change, legacy costs
19 remain in tact, and so on and so forth? Can we
20 isolate and identify the impact of the improvement in
21 labor productivity?

22 Actually, given the way the ITC reports
23 financial data, this is a straight-forward exercise.
24 We simply plug current productivity into the
25 industry's reported financial statements to calculate

1 wage costs. Doing so reveals that the industry would
2 have made over \$300 million more dollars than it did.

3 In other words, the industry would have
4 reported a positive operating profit. This is pretty
5 impressive. A \$300-million turn around, even though
6 subject imports remained at their 1997 to 1999 level.
7 The point: Even if nothing else about the tin-mill
8 industry had changed, the extraordinary improvement in
9 labor productivity alone means the domestic tin-mill
10 industry would have been profitable. It's important
11 to note that the cost saving changes are still in
12 effect and will continue to be in effect for the long
13 term.

14 Now, in fact, it is likely that as
15 impressive as this improvement is, our calculations,
16 nonetheless, represent a serious understatement to the
17 industry's transformation. Here's why. As the
18 Commission is well aware, there are numerous areas
19 where the industry's current reporting significantly
20 differs from its four previously certified sworn
21 submissions. As recently as the September 2005 steel
22 effectiveness report, the domestic industry certified
23 that its labor productivity was actually 427 tons per
24 1,000 work hours. If this prior report is correct,
25 the industry's improvement is significantly better

1 than the current record suggests.

2 We are confident the Commission will get to
3 the bottom of this reporting issue. We simply note
4 here that the discrepancies are found throughout the
5 domestic industry's data: from early years to more
6 recent years, from labor productivity to cogs, from
7 SG&A to operating income. The deviations are huge and
8 seriously distort the current record.

9 Setting the domestic industry's disturbing
10 reporting practices aside, let me return to the
11 industry's improvements. Labor productivity is not
12 the only way the industry has strengthened its
13 position. Over \$15 billion of legacy costs were
14 dumped by domestic mills with 10 facilities. Reading
15 the domestic industry's briefs, none would never know
16 this happened. In 2000, the domestic industry had \$15
17 billion in legacy debt. Today, that huge debt is
18 gone. Obviously eliminating such a huge debt helps
19 the bottom line.

20 The challenge is figuring how much benefit
21 accrues to tin operations. According to the data
22 reported to the ITC effectiveness study, tin
23 operations account for about six percent of all flat-
24 rolled employments. With this six percent figure in
25 mind, I show that the dumped legacy costs result in at

1 least \$100 million of annual cost savings to tin
2 operations. As discussed in the brief, actual cost
3 savings are likely quite a bit more. But even with my
4 conservative \$100 million estimate, in conjunction
5 with the labor productivity improvements discussed a
6 few minutes ago, the fact is today's tin industry's
7 annual costs are at least, at least \$200 million less
8 than they were in 2000.

9 Cost saving synergies are more difficult to
10 quantify, but also effect the industry's health. For
11 instance, according to a Mittal spokesman, the Weirton
12 facility is Mittal's highest cost producer. In an
13 earlier era, Weirton's shortcomings would have meant
14 ongoing losses. But, because it is now part of a far
15 larger operation, the Weirton facility can remain
16 profitable by taking advantage of the efficiencies of
17 other Mittal facilities. Specifically, in late 2005,
18 Mittal announced it would permanently idle Weirton's
19 hot end. According to Mittal, the decisions to shut
20 down Weirton's hot end should not be taken as a sign
21 of weakness, but rather as evidence of Mittal's
22 overall efficiencies, efficiencies that are only
23 possible because of Mittal's greater scope.

24 Mittal may claim implementing the shutdown
25 raises a short-term cost. However, the Commission

1 must focus on the long run benefits of this decision.
2 Mittal's decision optimizes its overall operations.
3 Moreover, the decision to shut down Weirton's hot end
4 has nothing to do with the tin mill antidumping order.
5 The fact that Weirton's hot end is inefficient has
6 nothing to do with Japanese imports.

7 The consolidations have also had a
8 significant impact on the domestic industry's pricing
9 power. The two most common measures of pricing power
10 are the four firm concentration ratio and the HHI.
11 Given that there are only four domestic firms, the
12 four firm concentration ratio is obviously 100
13 percent. According to the BOS, no other U.S.
14 manufacturing industry has such a high concentration
15 ratio.

16 The HHI is more complicated to calculate.
17 In an exhibit to the pre-hearing brief, the
18 calculation is detailed. For today, I note at the
19 time of the original investigation, the tin industry's
20 HHI was about 1,500, or what the Department of Justice
21 calls moderately concentrated. According to the
22 Department of Justice guidelines, firms are presumed
23 to have market power and are said to be highly
24 concentrated when the HHI is greater than 1,800.
25 Today, domestic tin mill industry's HHI stands at over

1 3,500. Is this a big change? You bet it is.
2 According to the BOS, no other U.S. manufacturing
3 industry has such a high HHI measure.

4 The domestic industry's position is at the
5 buyer side, is also concentrated, and, as a result,
6 supplier side concentration does not matter. Well,
7 let take a look at the can makers. And contrast with
8 the picture just seen, the supplier side's
9 concentration has been stable throughout the POR. In
10 fact, even with the Ball-U.S. Can merger, there's only
11 a modest increase in the buyer side HHI.

12 So what does this all mean? The relative
13 pricing power of the domestic producers has doubled.
14 The domestic mills are no longer the little kids on
15 the block. Six years ago, major can makers held a
16 bigger share of the tin market than the domestic mills
17 did. Today, it is the domestic mills, who dominate.
18 Let me emphasize, that the pricing power associated
19 with supplier concentration is widely acknowledged by
20 all academic and government economists. Mary White,
21 the former chief justice -- chief economist at the DOJ
22 simply and amply states, "seller concentration
23 matters."

24 There are a couple of major can makers here
25 today that can talk about the new terms of negotiation

1 with the higher concentrated -- highly consolidated
2 and concentrated tin mill industry. Long standing
3 practices, such as freight equalization and quarter-
4 inch surplus, are distant memories. The imposition of
5 raw material and energy surcharges are now common.

6 Overall, the combination of cost reductions
7 and improved buying power has put the domestic tin
8 mill industry in a very strong position. For example,
9 look at the price-cost gap, which I define as a
10 difference between the average sales value per ton
11 less cogs per ton. In 2000, the industry reported
12 that it lost eight dollars per ton. Today, the
13 industry reports a price-cost gap of plus \$35 a ton.
14 This is quite a turnaround. But once again, I note
15 that this understates the industry's true price-cost
16 gap. In the chart here, I depict the price-cost gap
17 as sworn and certified by this very same industry
18 within the last year. As seen, the currently reported
19 gap is about half what this same domestic industry
20 reported to the Commission just a few months ago.

21 The ITC traditionally views capacity
22 utilization as an important component for
23 understanding the industry under review. It must be
24 recognized, however, that in a tin mill industry,
25 capacity utilization tells little about profitability.

1 Tin is a downstream steel product, the end of a long
2 chain of production. All along the chain, domestic
3 mills have the option of selling steel. There is no
4 compelling reason to push the product all the way down
5 the line.

6 As the Commission is well aware, domestic
7 steel producers have been constrained by the lack of
8 raw materials for much of the past 18 months. There
9 are many, many press reports of buyers being put on
10 allocation. Some of those effected are here today.
11 But, there are literally hundreds of others, from re-
12 rollers, to pipe manufacturers, to service centers.
13 In fact, even the domestic industry's briefs
14 acknowledge the shortages. In spite of these
15 shortages, the staff report indicates that "the
16 domestic industry's capacity utilization was greatest
17 for anneal and tin coating, and that there was excess
18 capacity available for every stag of production."
19 Thus, the domestic tin mill capacity utilization is
20 higher than hot rolls, higher than cold rolls, and
21 higher than corrosion resistance. This is impressive,
22 but still it doesn't tell us much about the industry's
23 health.

24 The lack of probative value associated with
25 capacity utilization is found in the Commission's

1 steel effectiveness report. During the period of time
2 when the other flat-rolled products had relatively low
3 capacity utilization, the industry reported that it
4 made 13 to 16 percent profits. I, also, note that the
5 tin mill industry reported in that same steel
6 effectiveness report that it was making very large
7 profits with high capacity utilization. Moreover, in
8 three of the five year-to-year comparisons during this
9 POR, tin capacity utilization and operating income
10 move in opposite directions. Said different, more
11 likely than not when capacity utilization goes up,
12 operating income goes down.

13 As discussed above, industry officials
14 acknowledge that the consolidations have had a
15 profound effect on the steel industry's operation.
16 One reality of the new tin steel industry is that
17 capacity utilization is a somewhat dated and
18 irrelevant metric for profitability.

19 Summing up, the message is quite clear.
20 Between the hundreds of millions of dollars in cost
21 savings stemming from the new labor contracts, the
22 hundreds of millions of dollars in cost savings
23 stemming from dumped legacy costs and the millions in
24 dollars of increased revenue stemming from its
25 strengthened bargaining power, the domestic industry

1 is not vulnerable.

2 My next major point is that once the order
3 is revoked, it is very unlikely that there will be a
4 significant increase of imports of tin from Japan.
5 The domestic industry assumes that excess capacity in
6 Japan will lead to an increase in Japanese shipments
7 to the U.S. market. This is baseless speculation.
8 The tin mill market, in general, and the Japanese, in
9 particular, do not operate like the domestic industry
10 alleges. A look at the data rejects their assertion.
11 Let's look at two examples of actual Japanese
12 behavior.

13 First, let's look at the cold-rolled steel
14 market. Cold-rolled is a great comparison product.
15 It is the one flat-rolled product where the United
16 States has not had any antidumping duties. This would
17 seemingly be the perfect test case of the domestic
18 industry's conjecture; yet, despite the fact that
19 there is no antidumping duty on Japan and despite the
20 fact that cold-rolled is selling for very high prices,
21 Japanese exports to the U.S. are very low. Let me
22 preface my comments by noting that the Japanese report
23 that their capacity utilization for cold-rolled is
24 lower than for tin mill. Let me just say that if the
25 domestic industry's view were correct, it, therefore,

1 follows that the Japanese incentive to export cold-
2 rolled to the United States would be even greater than
3 their incentive to ship tin mill. So, if we so
4 evidence of their conjecture for cold-rolled, surely
5 it must also be faults for tin.

6 Let me, also, point out that cold-rolled
7 prices are very high. In this chart, I plot the
8 annual average U.S. cold-rolled price for each year of
9 this review. As shown, the U.S. price for cold-rolled
10 was much higher in 2004 and 2005 than any other time
11 in the past five years, about \$250 a ton higher. If
12 the domestic industry's allegation were true, low
13 capacity utilization in Japan, plus high cold-rolled
14 prices in the United States would give rise to an
15 import surge. Yet, there's been no increase in
16 imports from Japan. That's right, no increase. In
17 the chart, I present the quantity of cold-rolled
18 imports from Japan during each year during the POR.
19 As shown, once one takes into account the two-year
20 period when 201 relief was imposed, we see that U.S.
21 imports of cold-rolled from Japan in 2004 and 2005
22 were at very low levels; in fact, their lowest level
23 in years.

24 Let's ponder for a moment what we just
25 demonstrated. The domestic industry's theory that

1 excess capacity in Japan will inevitably lead to
2 increased U.S. imports is false. They have
3 allegations. We have actual data. The fact is this,
4 Japanese imports that are not subject to antidumping
5 duties do not surge, even in the face of record high
6 U.S. prices.

7 The second example involves tin mill price.
8 The Skadden brief emphasizes the purported dangers of
9 unrestrained Japanese tin mill producers. Rather than
10 simply speculate about the issue, why don't we look at
11 the data. Not all Japanese tin is subject to the
12 antidumping order. Let's see what we can learn by
13 looking at the excluded tin price. Here, I plot the
14 quantity of excluded tin imports from Japan. Let me
15 reassure you I've not redisplayed the cold-rolled
16 example. I must admit, however, the parallels are
17 striking and there's good reason. The same pricing
18 and sales discipline is at work in both markets. Once
19 again, you can see that excess capacity in Japan has
20 not led to an increase in imports. Only one
21 conclusion can follow, there's no reasonable basis
22 that Japanese tin imports will surge.

23 The final message I want to convey is the
24 reduced incentives for Japan to supply the U.S.
25 market. Demand for tin is much stronger in other

1 markets. Domestic mills acknowledge this in their
2 briefs. Purchasers confirm this in their
3 questionnaires. As discussed in the brief, tin plate
4 demand in China is expected to double by 2010. The
5 difference in packaging consumption patterns between
6 developing countries and developed countries
7 highlights the growth issue. In China, for example,
8 about eight containers are consumed per person per
9 year. By contrast, in the United States, about 375
10 containers are consumed per person per year. Said
11 another way, the developing countries have a lot of
12 catching up to do.

13 While Chinese tin capacity is also
14 increasing, it's not keeping up with demand. But even
15 with this additional tinning capacity, China will need
16 more black plate. So whether China imports tin or
17 black plate, the result is the same. The Japanese
18 have a significantly reduced incentive to ship tin and
19 black plate outside Asia.

20 Prices in the market confirm what industry
21 experts are saying, namely, demand for tin is stronger
22 in other markets. The table displayed give prices.
23 The first item listed is the U.S. producer's AUV over
24 all sales, which is \$747 a ton. Below that, is a list
25 of AUVs Japan receives in its biggest markets. At

1 home, Japanese mills received \$900 a ton. On sales to
2 Iran, Japanese mills receive \$902 a ton. On sales to
3 China, Japanese mills receive \$793 a ton. In fact,
4 out of Japan's top 20 markets, all but two have higher
5 export values than the current U.S. domestic AUV. And
6 these differences are not trivial. The Japanese are
7 receiving upward of 20 percent more in other markets
8 than the U.S. AUV.

9 This pricing differential will come to no
10 surprise to U.S. producers. Mittal shipped 120,000 of
11 tin to China. Overall, U.S. producers' export AUV in
12 2005 was \$775 per ton, about \$28 more per ton than
13 they received at home. The data show high demand and
14 high prices in other markets. As a result, it simply
15 does not make economic sense for the Japanese to
16 divert shipments from other buyers to the U.S. market.
17 I thank you for your time.

18 MR. PORTER: Mr. Chairman, that concludes
19 our affirmative presentation.

20 CHAIRMAN KOPLAN: Yes, thank you, very much.
21 I appreciate, very much, your testimony and for all of
22 you being here this afternoon and I will begin the
23 questioning. Could we put your slides back up on the
24 screen for a moment?

25 MR. PRUSA: Sure. Which one would you like?

1 CHAIRMAN KOPLAN: The one that preceded this
2 one. It's up there now. That's it, prices in other
3 markets higher than in the U.S., page 45. In several
4 places in your brief, Dr. Prusa, you referred to the
5 Japanese industry being smaller today before --
6 smaller today and "remains focused on its large
7 domestic market and nearby markets in Asia." That's
8 at page two. Later state, "that over the past five
9 years, Japanese producers have reduced their capacity,
10 expanded their relationships with Asian customers, and
11 continue to focus on more specialized products." And
12 that's at page 67. You go on to say that "Japanese
13 producers ship primarily to supply their own home
14 market needs and export their remaining production to
15 other export markets where demand is strong and prices
16 have been increasing." But despite all of this, I
17 noted on page 74 of your brief and 76 and, again, in
18 Exhibit 20, that your top export market is not in
19 Asia, but rather Mexico. Am I correct?

20 MR. PRUSA: Yes.

21 CHAIRMAN KOPLAN: Okay, where your export
22 shipments AUVs have increased over the past three
23 years by 70 percent. I've looked at your Exhibit 20
24 in the brief. Now, even though Mexican AUVs are lower
25 than other export markets, the fact that they are

1 priced at \$30 below U.S. AUVs in 2005, I fail to
2 understand why you wouldn't want to -- why the
3 Japanese would not want to shift exports from the
4 Mexican market to the U.S., if these orders come off,
5 and they can get a higher price right across the
6 board. I'm at a bit of a loss on that. I'd like to
7 hear from the industry --

8 MR. PRUSA: I was going to say, I think the
9 can makers would probably give you that answer.

10 CHAIRMAN KOPLAN: Yes. I'd like to hear
11 from them on that.

12 MR. PRUSA: Exactly.

13 CHAIRMAN KOPLAN: That's a bit of a problem
14 for me, because, by far, Mexico is the biggest
15 customer. Could I hear from the purchasers?

16 MR. MOORES: John Moores with Silgan
17 Containers. I can just take a shot at answering it --

18 CHAIRMAN KOPLAN: I appreciate it.

19 MR. MOORES: -- being somewhat familiar with
20 the Mexican market. There's really one -- as my
21 recollection is, there's only one major tin plate
22 supplier in Mexico, which can only supply about 50
23 percent of the requirements within Mexico. What I
24 would see happening, if the Japanese tried to shift
25 away from the Mexican market, I think you would see

1 the market reacting by pricing it at a point where it
2 would just continue to draw into the market the
3 Japanese shipments. That's where the majority of, at
4 least of that 50 percent that's not supplied by the
5 domestic tin plate supplier, the majority of that
6 supply comes from Japan. They rely on that within the
7 market. I just do not see Japan shifting away from
8 that. That's been a long-term supply point for Japan.
9 And so, my belief is that they would continue to focus
10 that market, since that's been a focus for so long --
11 or supply that market since it's been a focus for so
12 long.

13 CHAIRMAN KOPLAN: But, as I am looking at
14 the two markets now, Mexico and the U.S., you get a
15 higher price in the U.S. today; correct?

16 MR. MOORES: Based on those numbers that
17 appear?

18 CHAIRMAN KOPLAN: Well, the numbers you've
19 got up there. In red, you've got \$30 lower than U.S.
20 price; right?

21 MR. MOORES: Yes.

22 CHAIRMAN KOPLAN: I'm afraid I just -- I'm
23 not there. I don't quite get your reasoning on that.

24 MR. SPRINGFIELD: I think in the case of
25 fall --

1 CHAIRMAN KOPLAN: Mr. Springfield, yes? I'm
2 sorry --

3 MR. SPRINGFIELD: I'm sorry.

4 CHAIRMAN KOPLAN: -- if you all --

5 MR. SPRINGFIELD: -- Mark Springfield, Ball
6 Corporation.

7 CHAIRMAN KOPLAN: Right. Thank you.

8 MR. SPRINGFIELD: In the case of Ball,
9 shifting suddenly like that becomes very difficult,
10 given our internal qualification requirements. We
11 haven't had Japanese qualified previously. We would
12 have to bring them on and do so. For us, the
13 qualification process is fairly lengthy and fairly
14 stringent. The activity that you're demonstrating
15 here would have to exist over a considerable amount of
16 time to be of any benefit for us, if it was a benefit
17 at all.

18 CHAIRMAN KOPLAN: I'm glad you brought that
19 up, because I wanted to get into the qualification
20 requirements.

21 MR. SPRINGFIELD: Great.

22 CHAIRMAN KOPLAN: So, let me do this. This
23 morning what I heard from the domestics is that
24 qualifying Japanese product does not take an
25 inordinate amount of time in this country and that

1 they basically wouldn't miss a beat. Is there some
2 way you could document to me what, in your estimation,
3 it would take to qualify for Japanese imports to come
4 back in with the qualification process? Exactly what
5 has been your own experience with that?

6 MR. SPRINGFIELD: My experience, in general,
7 is it takes from six months to a year for a supplier
8 to qualify. My personal experience with the Japanese,
9 in terms of some of the material that we buy from them
10 for a Canadian operation that we have, is you can
11 probably add six months or more to that process.
12 There are just cultural hurdles that need to be
13 overcome, in terms of working through that
14 qualification process. There's not only -- there's
15 the language. There's the difference, in terms of the
16 analytical pace to the process. There's an exchange
17 of samples. There's a review of the specifications.
18 There's a specifications review meeting typically.
19 There's follow-up, in terms of capability. There's
20 sample exchanges. There's comparisons, in terms of
21 results on those samples. Then there's, perhaps, the
22 first trial. Then there's the follow-up from the
23 first trial, in terms of comparison of results. If
24 that's all satisfactory, then it's laying out the time
25 of production for the second trial, getting the

1 technical people together for that second trial;
2 scheduling it on the line, running the material for
3 the second trial, if it's successful. And then, you
4 go through that same process for the third phase.

5 We have three phases in our qualification
6 process successively greater, in terms of the
7 requirements that we specify from our qualifying
8 supplier. Each one, of course, is integral to the
9 whole process. So, if you fail any one phase, then
10 you're, in essence, back at the beginning. And it's
11 not unusual through that qualification process to
12 discover surprises, in terms of what you thought might
13 work as a material and what could work as a material.
14 So, there's a certain closed loop to it until you're
15 ultimately successful. Some never get from phase one
16 to phase three. The material and the supply is not
17 consistent enough to stand --

18 CHAIRMAN KOPLAN: Can you provide
19 documentation for me post-hearing on what you're
20 saying?

21 MR. SPRINGFIELD: I think we have -- someone
22 will take a shot at getting you better information.

23 CHAIRMAN KOPLAN: Thank you. I would, also,
24 like to hear from Silgan on this.

25 MR. MOORES: I think we would basically

1 concur with everything that Mark said. And we would
2 be able to provide our qualification procedure. It is
3 a document procedure that outlines what the phases are
4 and we could provide that.

5 CHAIRMAN KOPLAN: I appreciate that. Mr.
6 Gill, can you add anything to this discussion? You've
7 been on both sides you said.

8 MR. GILL: Yes. I would agree with what Mr.
9 Springfield said. My experience with the Japanese,
10 that they're extremely -- they have an extremely
11 methodical approach to everything. So, it's not just
12 a typical qualification of entering an order and then
13 running it through their plant and then determining
14 the outcome. They have to make sure that they
15 understand everything before they offer any product.
16 And from a legal standpoint, this is just my
17 experience with them, everything, they want to make
18 sure that they're not doing anything improperly and
19 they want to make sure that the specification is
20 exactly what they understand it to be. And as Mark
21 said, you send samples to Japan and that just requires
22 more questions from them. And I would agree that,
23 sometimes, it takes -- we're in the process now of
24 trying to qualify a laminated product and it's taken
25 over a year, just because of the exchange of ideas and

1 questions that we have with them. So, I find that
2 what he says is factual.

3 I wanted to make a comment, too, about
4 Mexico, if I could?

5 CHAIRMAN KOPLAN: Absolutely.

6 MR. GILL: I think what that shows is I
7 think the Japanese loyalty, that when they have a
8 strategy, that they stick to it. They've been in the
9 Mexican market for decades. When I was at Weirton
10 Steel, we shipped a Weirton Steel product to Mexico,
11 as well, and they were one of the largest suppliers
12 down there. And to follow up with what Mr. Moore
13 said, the Mexicans cannot take care of their own
14 requirements, so they have to have imports. And so,
15 they've been in that market forever and I think that
16 that's the reason behind it. And so, they wouldn't
17 arbitrarily move that product from Mexico to the
18 United States, in my opinion. And the last comment is
19 that I think if you looked at the pricing, in June of
20 2006, you'll see it's much higher than \$717. We're
21 not there yet, but prices have increased significantly
22 in Mexico.

23 CHAIRMAN KOPLAN: I appreciate your
24 response. I will say, I'm hearing two different
25 versions of how difficult it would be for reentering

1 into the U.S. market. So, I guess I would appreciate
2 further detail from both sides for purposes of the
3 post-hearing on this issue. I will also say, I
4 appreciate your response with regard to the facilities
5 coming back in from Mexico, where there is currently a
6 higher U.S. price. And if that could be expanded on,
7 counsel, post-hearing, I think this issue is fairly
8 significant, at least for me.

9 MR. PORTER: We will definitely do so, Mr.
10 Chairman.

11 CHAIRMAN KOPLAN: I appreciate that. Thank
12 you, very much, and I will turn to Vice Chairman Okun.

13 VICE CHAIRMAN OKUN: Thank you, Mr.
14 Chairman, and I join in welcoming this panel this
15 afternoon. I appreciate your willingness to be here
16 and answer our questions and for the information
17 you've provided thus far.

18 In your testimony and in the briefs, there's
19 been a discussion about changes since the original
20 investigation and I wanted to follow-up on a number of
21 those things. But, let me start first with the
22 existence of the multi-year contracts and the
23 description that was given about the meet comp
24 provisions versus the favored nations and what that
25 means, in terms of this market. I wanted to see if

1 there is anything further you could provide in post-
2 hearing. I understand this is confidential with
3 regard to how often those have been invoked. Well,
4 let me start with that.

5 MR. OWEN: Robert Owen from Silgan
6 Containers. As I've mentioned, we've never, recollect
7 in history --

8 VICE CHAIRMAN OKUN: On both? I mean, I
9 know you said -- was that the meet comp you had never
10 --

11 MR. OWEN: Yes.

12 VICE CHAIRMAN OKUN: And then the second
13 one, I'm just blanking right now on the name of it.

14 MR. OWEN: Favored nations.

15 VICE CHAIRMAN OKUN: Right, yes, your
16 favored nations.

17 MR. OWEN: Yes.

18 VICE CHAIRMAN OKUN: Favored nation
19 routinely done? Or --

20 MR. OWEN: Well, we check -- from time to
21 time, we check. We have audit rights, what we call
22 third-party audit rights and I think we've only done
23 that once. We'll provide that in details later.

24 VICE CHAIRMAN OKUN: If you could provide
25 that post-hearing, that would be great.

1 MR. OWEN: Okay.

2 VICE CHAIRMAN OKUN: What about, Mr.
3 Springfield, is that -- if you could turn on your
4 microphone, please?

5 MR. SPRINGFIELD: Mark Springfield, Ball
6 Corporation. Arrangements are like flowers in the
7 field. They're all different and some of the ones
8 that we have structured are different than,
9 apparently, what Bobby structured. We would be happy
10 to provide. We can post-hearing.

11 VICE CHAIRMAN OKUN: Okay. That would be
12 very helpful. Can you say, in this setting, whether
13 you have a meet comp provision, as well, or is that
14 confidential, the type of structure?

15 MR. OWEN: I would prefer not to.

16 VICE CHAIRMAN OKUN: What's that?

17 MR. OWEN: I would prefer not to.

18 VICE CHAIRMAN OKUN: Okay. I appreciate
19 that. That's fine. Okay, well, if you can provide
20 additional information post-hearing on that, that
21 would be extremely helpful. Mr. Springfield, let me,
22 also, follow-up with you. You have done, in talking
23 about what role you would expect the Japanese
24 suppliers to play in the market, if the order were
25 lifted, you had talked about some of the supply

1 problems that you have with the domestic industry and
2 that you would see them, I think you used the word
3 "backup role" and a couple of other things. I just
4 wanted you to expand on that a little bit and help me
5 understand whether that would -- how they would -- how
6 the Japanese role -- how you see the Japanese role
7 vis-a-vis other non-subject imports right now. In
8 other words, is what you're saying, in the current
9 market, what you deal a lot with the domestic industry
10 and your purchasing a lot of the product; but you have
11 other suppliers, at this time, as well as backups,
12 and, therefore, you see the Japanese as just another
13 one of those non-domestic suppliers?

14 MR. SPRINGFIELD: Again, Mark Springfield,
15 Ball Corporation. I guess what I would like to call
16 to the attention of the Commission is the fact that we
17 have other foreign opportunities available to us now.
18 But because of the way we do business, the kind of
19 market that we're here, the flexibility we require, in
20 terms of changing our specifications on the fly, we
21 prefer not to engage in a lot of foreign support,
22 other than in our two-piece operations or specialized
23 products that lend themselves to that or can't be
24 satisfied domestically.

25 The small piece of foreign that we buy for

1 three-piece applications is pretty much what I just
2 suggested, that it's backup. If we have something
3 blow up at a particular supplier, we know we have an
4 option that way. We like to maintain some
5 relationship with some foreign suppliers, just so that
6 if you do get into trouble, you have a communication
7 channel and a means of getting back and forth to one
8 another quickly, so you can bring in material to help
9 mitigate an upset condition, and we would see the
10 Japanese serving in that same role.

11 VICE CHAIRMAN OKUN: Okay. And then just in
12 terms of during the original investigation, the role
13 that the Japanese played, in terms of supplying your
14 company's needs, has there -- if I were to look at the
15 contracts you have now versus what you had prior to
16 the order being imposed, will I see much of a change
17 in how much is being sourced from a non-domestic
18 source?

19 MR. SPRINGFIELD: Well, it depends. Again,
20 the primary application we're bringing in for is our
21 DNI application. That is entirely foreign. So,
22 that's what I think you would see from the original
23 submittal is the increase in foreign purchases,
24 because our volumes of DNI production have increased
25 since the original submittal back in 2000. We opened

1 up a second DNI plant in 2002 that is continuing to
2 reach our higher production levels. And as they do
3 that, we'll be drawing in higher and higher steel to
4 satisfy that requirement.

5 VICE CHAIRMAN OKUN: Okay, that's helpful.

6 MR. PORTER: Commission Okun, can I make
7 just one quick point on --

8 VICE CHAIRMAN OKUN: Yes.

9 MR. PORTER: -- when you -- this is Dan
10 Porter for the record. When you do that examination,
11 I do urge that you put Canada in a little different
12 category, because all the industry guys today have
13 been very careful of distinguishing offshore supply
14 and they didn't say import, because they view the sole
15 Canadian tin mill supplier, DeFasco, in a different
16 category than they would with, you know, the Asians or
17 the Europeans, because of the proximity of the DeFasco
18 mill. So, when you're looking at numbers, I just want
19 you to take that into account.

20 VICE CHAIRMAN OKUN: Okay. I appreciate
21 that. Do you think that has changed at all since the
22 original investigation? I asked the Petitioners this
23 morning, because there was some information in the
24 original investigation with regard to non-subjects and
25 looking -- actually, very comparable for not just

1 Canada, but the others. Do you think that there's
2 been a change or you think that's still --

3 MR. PORTER: Excuse me. I think the biggest
4 change is the -- you know, I can say, at last, a
5 fairly dramatic increase in the U.S. market by
6 DeFasco. I believe the numbers, I believe these are
7 public numbers, are in the staff report or you can do
8 it from basically ITC data, that show the Canadian
9 share about five percent of the U.S. market today,
10 which is quite higher than it was during the original
11 investigation, again, just using the straight import
12 statistics. And, of course, the reason for that is
13 that you had a two-year period, in which all imports
14 were kicked out of the market, because of 201, except
15 for Canada. Canada used that time to establish
16 relationships, work with their customers on what they
17 wanted, and because of proximity, the customers, I
18 believe, and we have them right here, treat DeFasco
19 more like a domestic mill than an offshore supplier.

20 VICE CHAIRMAN OKUN: Okay. And then could I
21 have someone from Silgan, Mr. Owens or others, comment
22 on the question that I was asking Mr. Springfield,
23 about the role you would see Japanese -- if the order
24 were to be lifted, the role the Japanese would play
25 and whether that would be a different role than they

1 played during the original investigation for your
2 company's purchases.

3 MR. MOORES: John Moores with Silgan
4 Containers. If I would just start off by answering
5 that question by touching on DeFasco quickly. We have
6 increased our buy with DeFasco, as well as, if you
7 look at 2002 to 2005, our foreign purchasers across
8 the board have risen, both offshore and what we would
9 call non-domestic. But, as we look at the role that
10 the Japanese could play, as some of the things that
11 Mr. Springfield highlighted, because of the
12 flexibility that we require, there's only a very
13 narrow niche and DNI is one of those niches that
14 foreign mills fit well into. So, really, what we view
15 the Japanese as is more or less another alternative
16 against what is currently being supplied by foreign
17 mills. They are not a good fit into the bulk of our
18 specifications, because of the fact that they're not
19 flexible. You've got this long logistic train that
20 you have to build into the process. They really fit
21 into that very narrow range that's currently filled
22 with foreign mills.

23 VICE CHAIRMAN OKUN: Okay. Yes, Mr. Owen?

24 MR. OWEN: Yes, Robert Owen from Silgan.
25 I'd like to just make one more point about DeFasco

1 mill, if I may. We actually buy some material from
2 DeFasco for one of our plants in the U.S. by necessity
3 when one of the largest domestic mills refused to ship
4 to that plant.

5 VICE CHAIRMAN OKUN: Okay. Okay, I
6 appreciate those comments. And in light of my yellow
7 light coming on, I will wait to ask the next question
8 until the next round. Thank you.

9 CHAIRMAN KOPLAN: Thank you. Commissioner
10 Hillman?

11 COMMISSIONER HILLMAN: Thank you. And, too,
12 will thank this panel for your time and for staying
13 with us through the day. Maybe, I can follow-up with
14 just a couple of quick questions in response to the
15 questions that the Chairman was raising, in terms of
16 the qualifications, just so I understand it. Mr.
17 Springfield, when you're doing a qualification, is it
18 by company? By plant? By specific rolling facility?
19 By spec? I mean, when you say somebody is qualified,
20 who is the somebody?

21 MR. SPRINGFIELD: Well, to try and recall
22 those examples, Commissioner, it would be by company.
23 It would be by producing mill. It could be by plant,
24 depending on the application, because equipment
25 functions differently in different plants.

1 COMMISSIONER HILLMAN: Okay. And the fact
2 that, as I understand it, at least as I recall from
3 the original record, the Japanese, during the original
4 investigation, were fully qualified, as I understand
5 it, at all major U.S. purchasers for all plants and
6 all products, as I recall. I can check. But would
7 that hold over? In other words, once you're
8 qualified, how long do you stay qualified?

9 MR. SPRINGFIELD: The information I have is
10 that they weren't qualified with Ball. They were in
11 the process of trying to qualify --

12 COMMISSIONER HILLMAN: Okay.

13 MR. SPRINGFIELD: -- among applications --

14 COMMISSIONER HILLMAN: That's after -- while
15 I'm refreshing my recollection. For those for whom
16 the Japanese were qualified, can anybody say anything
17 here about whether that qualification would still be
18 applicable today. If the order were to be revoked and
19 the Japanese would come back in the market, would the
20 fact that they were once qualified, as recently as
21 2000, carry over to imports from Japan now?

22 MR. MOORES: John Moores with Silgan
23 Containers. First off, they were not qualified across
24 all entire aspects.

25 COMMISSIONER HILLMAN: Okay.

1 MR. MOORES: Where they supplied, they were
2 qualified, obviously --

3 COMMISSIONER HILLMAN: Okay.

4 MR. MOORES: -- but not across the whole
5 supply chain. And, yes, they would have to requalify.

6 COMMISSIONER HILLMAN: Completely requalify,
7 start from scratch?

8 MR. MOORES: Requalify. And there are
9 several reasons for that. As our customer base mix
10 changes and the supply base changes, where they
11 supplied in 1999 would not necessarily be the same
12 place they would supply today, if we did bring them
13 back in. And consequently, also, the customer base at
14 that location supplied is likely not the same. So, it
15 would trigger other qualifications.

16 COMMISSIONER HILLMAN: Okay. And for both
17 of us, once someone is qualified, for how long does
18 that qualification typically last?

19 MR. MOORES: Of course, for the length of
20 time that they supply. And then, it's almost a case-
21 by-case basis. If supply is interrupted, you have to
22 look at the circumstances around that interruption.
23 Of course, if it's a quality-driven interruption,
24 where because of a quality issue, they are withdrawn,
25 that entails a whole different qualification --

1 COMMISSIONER HILLMAN: Got it.

2 MR. MOORES: -- than if it's just a supply
3 interruption.

4 COMMISSIONER HILLMAN: Okay. Mr.
5 Springfield, anything different in your end?

6 MR. SPRINGFIELD: Yes. Mark Springfield,
7 Ball. I would agree with that, that we would --

8 COMMISSIONER HILLMAN: Okay.

9 MR. SPRINGFIELD: -- treat it similarly.

10 COMMISSIONER HILLMAN: Okay. And then on
11 the contracting issue -- oh, I'm sorry, go ahead, Mr.
12 Owen.

13 MR. OWEN: Commissioner, if I may, just one
14 more -- I'm sorry, one more thing about qualification.
15 I think it's important to note, and I think John said
16 this, but I want to make sure that you realize, they
17 have to qualify for each spec at each plant. And
18 right now, as I said earlier in my testimony, we buy
19 over 500 specs. They're qualified for none, as of
20 now. So, they would have to start for each individual
21 spec. And as Mark Springfield mentioned, in some
22 cases, that can take as long as a year.

23 COMMISSIONER HILLMAN: Okay. That is what I
24 was trying to understand, whether it was corporately,
25 individual plants, individual production lines --

1 MR. OWEN: Spec by spec.

2 COMMISSIONER HILLMAN: -- and by spec.

3 Okay. I appreciate that. Then, if I can go to the
4 questions the Vice Chairman was asking on the pricing
5 contracts, themselves. I very much appreciate the
6 testimony in terms of how these contracts function.
7 If, in the course of responding on these details, if
8 you could help us with a sense of what portion of your
9 contracts have these meet comp, as you're describing
10 it, provisions; what portions would have these favored
11 nations provisions in them; and help me understand a
12 little bit of, if you will, the burden of proof. I
13 mean, do you just go to somebody and say, gee, I got
14 this quote out there, you've got to meet it? Or how
15 does that process work?

16 MR. CARSON: Dan Carson, Silgan Containers.
17 First of all, let me say, and I'm constrained by
18 confidentiality provisions in our supply contracts, in
19 getting into too specific information, but I believe I
20 can address your question somewhat generally. We have
21 some contracts with meet comp provisions. We have
22 some with favored nations provisions. We have some
23 with both. The meet comp provisions are specific as
24 to a specification, as to a time, as to a volume, and
25 as to a price. If they were to be invoked -- as Mr.

1 Owen said earlier, he's not done that or we've not
2 done that as a company -- but where we to do that,
3 there are, also, provisions that permit the current
4 supplier to audit that statement that we might make,
5 to verify all of the information that we have given to
6 them, so that they can have certainty that we're not
7 simply picking up a telephone and saying, here's
8 something I've got, you have to meet it. That's not
9 the way it works at all.

10 COMMISSIONER HILLMAN: Okay. And, again, if
11 there is something that can be added in the post-
12 hearing on specifics of the portions of the contracts
13 and how these clauses work. Mr. Porter?

14 MR. PORTER: Commissioner, I would like to
15 just raise a procedural issue and at least get it out
16 there on the table. I believe, as Dan said, they're
17 constrained because there are these confidentiality
18 provisions in the contracts that they have with the
19 mills. My understanding today, and maybe we can ask -
20 - the Chair ask this, my understanding today is
21 domestic mills have waived their confidentiality,
22 which would permit the customers to give you the
23 actual contracts. And if that's the case, Silgan is
24 willing to waive its side of confidentiality and then,
25 therefore, you can have the actual document to look at

1 the actual language.

2 COMMISSIONER HILLMAN: I appreciate it. I
3 heard it, at least this morning, I don't know whether
4 it was Mr. Hecht or Mr. Vaughn, who suggested that the
5 confidential was, in essence, on your side of the
6 table. But, obviously, if it's on both sides, again,
7 clearly, we understand these would continue to be
8 subject to our BPI provisions, protective order.
9 We're not talking about releasing any of this
10 publicly. But, obviously, I think it would help if we
11 could actually see some of these provisions. You can
12 hear us all struggling to try to understand exactly
13 how these meet comp, favored nation, et cetera, given
14 how much of the litigation and everything else
15 connected to this has focused on price and price
16 competition and when and where and how it occurs and
17 how we measure it. Whatever both sides can do to try
18 to help us understand this, I think, really would be
19 extremely useful. So, I don't know whether, at some
20 point, counsel and our staff can get together to work
21 out this notion of whether both sides can allow us to
22 see, I'm not even saying all, but some way to look at
23 some of these clauses, so that we can make sure that
24 we are correctly understanding how they function,
25 would be very helpful.

1 MR. PORTER: Commissioner Hillman, we fully
2 agree with you and we are going to interpret your
3 comment as a direct request that customers supply
4 these agreements to you. And, again, we will try to
5 work this out with counsel, but at least I believe I
6 heard that counsel say that it was not a concern to
7 them. They were only concerned, because they thought
8 that Silgan was concerned. And we're telling you,
9 Silgan doesn't have concerns, so I think we might can
10 give you these contracts.

11 COMMISSIONER HILLMAN: I'm sort of putting -
12 - I see Mr. Vaughn in the back. I'm not sure I see
13 Mr. Hecht. But, in any event, you've heard this
14 discussion. I assume that if there is some reason on
15 the domestic mill side, that there is an objection to
16 this, we need to hear about it sooner rather than
17 later, and it needs to be clearly communicated to all
18 counsel, so that everybody is under a mutual
19 understanding about what we're doing with these
20 contracts.

21 CHAIRMAN KOPLAN: I agree with Commissioner
22 Hillman and I ask that the process that's been
23 described be followed post-hearing.

24 MR. PORTER: We'll do so, Mr. Chairman.

25 CHAIRMAN KOPLAN: Thank you.

1 COMMISSIONER HILLMAN: I see some nodding
2 heads in the back, I think. Okay, thank you, very
3 much.

4 CHAIRMAN KOPLAN: It appears that those in
5 support of continuation are nodding in the affirmative
6 on that.

7 COMMISSIONER HILLMAN: If I could then go to
8 another issue and that was this issue of alternative
9 packaging. I know that Silgan's 10K was excerpted in
10 some of Mittal's brief, referring to Silgan's plastic
11 container business. To the extent that Silgan is in
12 both ends of this, can you help us understand the
13 plastic container business vis-a-vis the tin can
14 business? And for me, I'm trying to make sure I
15 understand whether -- how much of it is price driven,
16 as opposed to how much of it is a complete shift in
17 consumer taste going to plastic, aluminum, or other
18 products. I mean, do you shift when the price
19 relative to one or the other goes or is it purely once
20 it's shifted over, it's never coming back?

21 MR. MOORES: Mr. John Moores, Silgan
22 Containers. Unfortunately, the answer is, it's a mix.
23 There's obviously some that is driven just by consumer
24 preference or more of the product manager's preference
25 to maybe put a new look on the package and, then,

1 there's also some driven because of cost. As Silgan
2 looks at it, though, as opportunity and why the large
3 investment that we've made in the quick top end
4 technology, because we feel that we can affect
5 actually a swing, definitely stop any swing going in
6 the other direction because of convenience, but more
7 so change that swing and redirect it back to cans.
8 Because, one of the drivers is convenience. We've
9 done numerous market studies to show that in all the
10 packaging, cans with quick top ends are one of the
11 preferred packages. So, it is a preferred package by
12 the consumer. It's a convenient package. So, there's
13 actually, in our opinion, some optimism to at least
14 change that maybe slightly downward trend of canned
15 foods to obviously flat and hopefully growing that
16 market.

17 And we concur with some of the statements
18 that were made earlier about the investment of time
19 and resources into the marketing of the food can. Of
20 course, the steel companies are doing it and also the
21 can companies. So, hopefully, that answers your
22 question, but --

23 COMMISSIONER HILLMAN: I may have a little
24 follow-up, but given that the red light has come on,
25 I'll save that for the next round. Thank you.

1 CHAIRMAN KOPLAN: Thank you. Commissioner
2 Lane?

3 COMMISSIONER LANE: Good afternoon and
4 welcome to the afternoon panel, or almost evening
5 panel, I might say. Mr. Gill, I might like to start
6 with you. I have a question as to what the nature is
7 of Nippon trading, as opposed to Nippon Steel.

8 MR. GILL: Nippon Steel Trading America is
9 exactly that. It's a trading company. So, we buy and
10 sell metal products, mostly steel, and almost all
11 steel products, some aluminum. So, we're in the
12 business of buying products and then selling them to
13 someone else. In our particular case, our company is
14 primarily owned by Nippon Steel. There is some
15 ownership involved with another trading company. In
16 our particular case, we sell, for the most part,
17 domestic-made product. So, we have arrangements with
18 certain companies in the United States. I mentioned
19 Ohio Coatings during my testimony, where that
20 particular company will make a product and they sell
21 it to us and then we're responsible for the
22 distribution. So, I would sell to Ball, I would sell
23 to Silgan and to the rest of the can makers in the
24 industry.

25 COMMISSIONER LANE: Okay. Thank you. And

1 you made reference to when you were at Weirton, you
2 were aware that Mexico was the biggest export market
3 for the Japanese product. Could you tell me how long
4 that relationship had been in existence? Was it in
5 existence at the time of the 2000 investigation and
6 order?

7 MR. GILL: Yes. I began my career with
8 actually National Steel in the mid-1970s in
9 California. And we, at that time, National Steel, was
10 shipping some product to Mexico. And even at that
11 time in the mid-1970s, the Japanese were shipping tin
12 mill products to Mexico. So, it's been over 30 years,
13 as far as I'm concerned.

14 COMMISSIONER LANE: Okay. But, do you think
15 that even prior to the order that we're talking about
16 now, Mexico was the biggest market for the Japanese
17 product?

18 MR. GILL: Outside of Japan?

19 COMMISSIONER LANE: Yes.

20 MR. GILL: I don't have the numbers in front
21 of me. I would think during that time, the United
22 States probably was a significant area that they
23 shipped to and Mexico had to be close.

24 COMMISSIONER LANE: Okay. Thank you. We'll
25 stick with you.

1 MR. GILL: All right.

2 COMMISSIONER LANE: In your opening remarks,
3 you said that there is no comparison between Weirton's
4 assets during the original investigation and Weirton's
5 or Mittal's assets today. Were you referring to their
6 tin production assets or their total assets?

7 MR. GILL: Total.

8 COMMISSIONER LANE: Okay. Mr. Prusa, you
9 presented an exhibit, which shows that leaving all
10 factors unchanged, except labor productivity, the 1997
11 to 1999 losses of the industry became a profit. Isn't
12 normal in the industry that productivity gains are
13 achieved by spending money, either with new, more
14 efficient equipment, or a higher paid, better trained
15 workforce, or some combination of such changes? If
16 so, what does your productivity adjustment standing
17 alone really tell us?

18 MR. PRUSA: I think you might say,
19 typically, what you just said, but we're talking about
20 the steel industry and we're talking about a steel
21 industry that went through four massive
22 consolidations. And so, that productivity number is a
23 direct result, not of the investments, but of
24 basically Bankruptcy Court breaking the USW contracts
25 and USW going to LTV, then ISG, and adopting a very

1 progressive new labor contract that allowed much more
2 labor flexibility, far fewer job categories, and a
3 significant elimination of thousands of jobs with a
4 very minor -- in fact, there's been an increase in
5 total steel production. This is not about
6 investments. This is about changing union contracts
7 that handicapped the mills' ability to produce
8 effectively. It's all about the new contracts. It's
9 not about a measure of new investments and all of a
10 sudden, I've got a computerized mind. This is
11 overnight. ISG had new contracts that forced everyone
12 else -- and, in fact, we submit in the brief, in post-
13 hearing, Weirton states in its bankruptcy that the new
14 contracts that everyone else signed put its labor
15 contract on competitive terms.

16 COMMISSIONER LANE: Under what?

17 MR. PRUSA: That Weirton states in its
18 bankruptcy documents that the contracts that the other
19 mills got coming out of bankruptcy were now putting
20 Weirton in an uncompetitive position and they were
21 telling the Bankruptcy Court, we need our contracts
22 broken with the workers, so we can get a contract
23 that's like the other guys, that allows us to have the
24 same kind of labor flexibility and productivity.
25 That's also in the exhibit. This is not about new

1 investments. This is about new contracts.

2 MR. PORTER: Commissioner Lane, if I may
3 just take a stab at answering your question?

4 COMMISSIONER LANE: Yes, you certainly --
5 Mr. Porter, right?

6 MR. PORTER: Yes. Sorry, Dan Porter for the
7 record, Commissioner Lane. The chart that Professor
8 Prusa presented was really just a visual demonstration
9 of the savings that occur when you have increased
10 productivity. We're not really suggesting that the
11 financials would look like that had the productivity
12 been in place. It was simply really to show that they
13 would have had 300 extra million dollars to do
14 whatever they wanted to do. They could have taken it
15 to the bottom line. They could have invested it in
16 new machinery. They could have done anything. It was
17 just the idea to show the magnitude of the savings and
18 not really show what the earnings would have been.

19 COMMISSIONER LANE: Okay. Thank you. Now,
20 I'd like to turn to page 36 of your pre-hearing brief.
21 And what you state, "the spectacular improvement of
22 the tin industries' operations has not excluded the
23 steelworkers." I would like to explore some of the
24 impacts on the steelworkers that are reflected in the
25 data in this case. On page 30 of your pre-hearing

1 brief, you point out that four firms have shed 44
2 percent of their workforce. That number is based on
3 your Table 8 on page 31 of your brief, which shows the
4 employment levels going from 33,800 jobs to 18,210
5 jobs. This is a loss of 15,590 jobs in the industry.
6 Are you suggesting that the loss of 18,210 jobs in the
7 industry is spectacular improvement for the steel
8 workers?

9 MR. PRUSA: I'm sorry, I don't have a copy
10 of the brief. I believe the numbers are quoting the
11 total employment figures for these companies. That's
12 not tin industry changes, I believe. Right, those are
13 the -- thank you, Dan. Tom Prusa, by the way. That's
14 total employment. So, yes, do I believe that there
15 are hundreds of steel workers, who have lost their
16 pension plans and healthcare cost? I agree with you
17 completely. The point there, in the brief, is that
18 wages have gone up significantly since 2000, all
19 right. The unions understood that to get their LTV,
20 get National, get Weirton out of bankruptcy, Bethlehem
21 out of bankruptcy, it was required that they change
22 from being a very low productivity and try to become
23 more like, let's say, Nucor, whose output per worker
24 was significantly higher than these other mills. All
25 right, so this is a result of the competition among

1 domestic mills. The workers, who remain at these
2 mills, have done very well.

3 COMMISSIONER LANE: Okay. Could you look at
4 Figure 2, at page 36 of your pre-hearing brief, and
5 briefly describe what that table is based on and how
6 it effects our analysis in this case?

7 MR. PRUSA: Sure. Figure 2 plots using the
8 public data collected by the ITC on wages reported by
9 the steel mills. And it, also, for comparison, plots
10 inflation. And I normalized, that it basically shows
11 you how rapidly the wage rate, that's the black line,
12 is growing and how rapidly inflation has been going up
13 since 2000. And according to numbers submitted by the
14 domestic industry, wages have gone up by 40 percent
15 since 2000 in the tin industry and by contrast,
16 inflation, since 2000, has gone up 13 percent.

17 COMMISSIONER LANE: Okay. I would like for
18 you to look at that same table and you, also, have in
19 that same table the wage rates, 1997 through 1999, and
20 --

21 MR. PRUSA: I'm sorry, can you -- what
22 table, I'm sorry, Commissioner?

23 COMMISSIONER LANE: Okay. The hourly wage
24 rate data that you used from Table 3-7 of the staff
25 report. It's also shown on page 1-1 of the staff

1 report.

2 MR. PRUSA: Oh, staff report, I'm sorry.

3 COMMISSIONER LANE: Yes. That table shows
4 that wage rates for 1997 through 1999 were higher than
5 in 2000. Do you know how the increase in the hourly
6 wage rate from 1997 through 2005 compares to the
7 consumer price index? And, maybe, I would just ask
8 you to prepare a chart for that and submit it post-
9 hearing.

10 MR. PRUSA: Yes, I'd be happy to. And I'm
11 not sure --

12 COMMISSIONER LANE: What I would like you to
13 do is take your table --

14 MR. PRUSA: Do I go --

15 COMMISSIONER LANE: -- and go back to 1997.

16 MR. PRUSA: 1997, fine. Yes. It's a little
17 bit hard -- I mean, it's obviously doable, but given
18 the massive differences in how the industry keeps
19 reporting wages, it's difficult, as you know, across
20 these five different submissions. They keep reporting
21 significantly different. What --

22 COMMISSIONER LANE: Well, I would like for
23 you to just use the hourly wages that you used on
24 Table 3-7.

25 MR. PRUSA: Sure; okay.

1 COMMISSIONER LANE: Okay. Thank you.

2 Sorry, Mr. Chairman.

3 CHAIRMAN KOPLAN: Thank you, Commissioner.
4 Commissioner Pearson?

5 COMMISSIONER PEARSON: Thank you, Mr.
6 Chairman. Permit me to extend my welcome to the
7 afternoon panel, very good to have you here and
8 interesting to have such a diverse cross section of
9 experience in the tin mill industry and the downstream
10 products industry.

11 So far from the record, I've gotten the
12 impression that in a market with declining apparent
13 consumption, the U.S. tin mill industry still is
14 dealing with excess capacity relating to investments
15 made years ago. But, based on some things I've heard
16 now, I'm not completely sure that that's correct. So,
17 is this correct or should we have a different view of
18 the capacity of the tin mill industry?

19 MR. MOORES: John Moores with Silgan
20 Containers. You know, sitting here this morning
21 listening to the talk about the capacity and so on and
22 so forth -- now, obviously, I'm not an economist. I'm
23 not a can maker. So, how I look at it is very
24 differently. When I pick up the phone and I need
25 plate, I cannot get it all the time. Today, as we sit

1 here today, I have a line down, because one of my
2 suppliers could not get me plate that I needed. So,
3 simplistically put, every year, since I've been
4 involved in this portion of the business, we have
5 struggled to get plate. And it's not a monthly
6 occurrence, it's not a weekly occurrence, it's a daily
7 occurrence. Considerable amount of our resources are
8 directed at just trying to fight fires, because we do
9 not have the plate that we have requested on time when
10 we requested it. So, just, again, very simplistically
11 put, when we need plate, it's not always there. So,
12 the capacity may be out there, but it's clearly not
13 being directed to fulfill Silgan Container's needs,
14 which is, as stated earlier, we're the largest
15 purchaser of tin plate in North America, in the U.S.,
16 and the mills are not satisfying our needs on a timely
17 basis.

18 COMMISSIONER PEARSON: And when you indicate
19 that they're not doing it on a timely basis, what type
20 of lead time are they requiring to meet your needs?

21 MR. MOORES: Well, the typical lead time is,
22 for the domestic mills, around eight weeks. And the
23 problem that we run into is not that they don't accept
24 our orders, because, for the most part, they do.
25 There is some give and take, as we place orders that

1 are usually eight to 12 weeks out, they book them.
2 For the most part, they accept them. What happens
3 though is after they accept them and we have a promise
4 date, the promise date doesn't line up to when we get
5 the plate. When it comes to that date, we're sitting
6 there waiting for the plate and it doesn't come. Now,
7 that's not true for all of our suppliers, I will
8 admit. But for the Midwest, particularly, that is
9 definitely the case.

10 COMMISSIONER PEARSON: Any other thoughts on
11 that?

12 MR. SPRINGFIELD: Yes. This is Mark
13 Springfield, Ball Corporation. I'd like to echo those
14 thoughts. We've had consistent on-time delivery
15 problems since the entire time I've been at Ball.
16 Again, some suppliers are better than others and when
17 you have situations like we're dealing with now, it
18 just exacerbates the whole delivery performance issue,
19 because there's some major production upsets that
20 we're working through. But even prior to the
21 production upsets, we would find that even though we
22 could place our material within the standard lead
23 times, delivery performance against those lead times
24 was spotty. And even today, as I speak, the
25 availability that we're looking for in the summer

1 months is not available and we had to look for help
2 elsewhere.

3 COMMISSIONER PEARSON: Mr. Porter?

4 MR. PORTER: Excuse me, Commissioner,
5 actually I have one sort of thought on what we've just
6 heard. And Commissioner Pearson, I think you've hit
7 it on the head, because the issue that I think you're
8 struggling with is what does excess capacity mean.
9 And really, what does it mean on the U.S. side; what
10 does it mean on the Japan side. And what we're
11 hearing today is that excess capacity doesn't
12 necessarily mean what the domestics are making out.
13 What their position is, I have excess capacity, it
14 means, I can definitely supply all of my customer's
15 needs. Well, what you've just heard today was,
16 despite the reported low capacity utilization rate or
17 certainly substantial excess capacity of U.S. mills,
18 Silgan has a line down because they can't get
19 material.

20 Well, something is a bit off here. I think
21 what's off is the argument you've heard from the
22 domestics. Something else is going on. Total excess
23 capacity doesn't mean that supply can be delivered on
24 a timely basis.

25 COMMISSIONER PEARSON: Professor Prusa?

1 MR. PRUSA: Sorry. Tom Prusa. In fact, I
2 believe that the man from UPI today said this morning
3 that he couldn't get hot-rolled, so he could make tin
4 plate. That's an example where he's going to show,
5 therefore, that he did not produce tin plate at full
6 capacity. If you can't get hot-rolled or even if
7 you're an integrated mill, if you're not sending hot
8 to your tin operations, you're going to show excess
9 capacity. So, he has a joint venture with USX; yet,
10 USX was not sending UPI hot-rolled. He's going to
11 have excess capacity in his tin lines. But, that
12 tells you little about the desire for people to buy
13 the tin from UPI. He can't get his joint venture
14 partner to give him hot-rolled steel. He said it this
15 morning. So, excess capacity really is a questionable
16 concept when you've got so many reported shortages and
17 allocations in an industry.

18 COMMISSIONER PEARSON: So, you are
19 suggesting -- well, you're not disputing that capacity
20 figures for tin mill production that are in the staff
21 report?

22 MR. PRUSA: Well, I would say --

23 MR. PORTER: Let me take that. We're not
24 disputing the accuracy, except as we laid out in the
25 first part of our brief. But barring that, we're not

1 disputing that domestics sort of did their best in
2 trying to say, here's my practical capacity and here's
3 my production. And I think all around the table, both
4 sides, they did their best with that question.

5 What we're saying is what is the
6 significance of the excess that you see. That's what
7 we're sort of challenging, their interpretation of the
8 significance of the excess. They're saying
9 automatically that that means we can supply all
10 demand. And what you're hearing from the real world
11 is that interpretation is not true.

12 COMMISSIONER PEARSON: And further to that,
13 are you making the case that the installed tin mill
14 capacity well may be there, but that the domestic
15 industry has either found it difficult or unprofitable
16 to obtain steel to put into the front end of tin mill
17 or so they can run it?

18 MR. BARRINGER: Can I just try this? Bill
19 Barringer, Wilkie Farr and Gallagher.

20 COMMISSIONER PEARSON: Certainly, Mr.
21 Barringer.

22 MR. BARRINGER: I think there are two
23 different circumstances that one has to look at. Most
24 steel mills have greater rolling capacity than they
25 have raw steel capacity. It's not matched one for

1 one. So, you may have a million tons of raw steel
2 capacity and 1.2 million tons of rolling capacity,
3 which may be hot-rolled, cold-rolled, galvanized, tin
4 mill, whatever, okay. So, the first problem you have
5 in dealing with the capacity figure is, okay, how do
6 you deal with that. And if you decide that you're
7 going to put all of your raw steel into hot-rolled and
8 cold-rolled and galvanized and none of it into tin
9 mill, you're going to have a low utilization rate for
10 your tin mill line, okay. So, one is sort of the
11 global constraint.

12 The second is, and I think it's important in
13 this context, if you look at 2004, 2005, as a general
14 matter, you will see that prices of other flat-rolled
15 products went up much more dramatically than tin mill
16 products. So, if I'm maximizing my profits, I'm going
17 to give priority to those products, which I make the
18 most profit on, okay. And that, the fact that I'm
19 pushing it into cold-rolled is what is hurting my
20 capacity utilization for tin mill. It has nothing to
21 do with the tin mill demand, because you're not
22 supplying the tin mill demand, except when you've
23 supplied everything else. I hope that --

24 COMMISSIONER PEARSON: Mr. Moores?

25 MR. MOORES: May I have one other quick

1 item? All capacity is not the same. We have certain
2 bottlenecks in our industry, because of the change of
3 our specifications away from the old SR to DR. So,
4 now there are bottlenecks. And so when I hear these
5 capacity numbers, I do not believe that they're
6 specific to our truly where our requirements are
7 today. They're just general capacity. Because, I
8 know that, and I am sure that my colleague at Ball
9 would agree, that there are specific specs that we
10 cannot get. And we repeatedly go to the mills, ask
11 for those specs, and we're told no capacity, no line
12 time. There may be line time for things we don't
13 need; but for what we need, this does not exist.

14 COMMISSIONER PEARSON: Okay. Thank you,
15 very much. It's a helpful discussion. The light has
16 turned red, so, Mr. Chairman.

17 CHAIRMAN KOPLAN: Thank you. Commissioner
18 Aranoff?

19 COMMISSIONER ARANOFF: Thank you, Mr.
20 Chairman. I want to join my colleagues in welcoming
21 the afternoon panel. We appreciate the time you're
22 spending with us today and probably will continue to
23 spend with us for a little while yet.

24 I want to begin with questions. Mr. Owen, in
25 your testimony you had mentioned, and this was in the

1 brief as well, the elimination of the freight
2 equalization and the quarter inch width surplus as
3 being unilaterally imposed price increases by the
4 domestic industry. You also talked about surcharges
5 that were imposed. The question I have for you is
6 this.

7 In the past six-plus months we've considered
8 a number of review cases involving orders on steel
9 products and in every single case we have been told
10 that the second half of 2004 and the beginning of 2005
11 were just wildly anomalous periods of time for the
12 steel industry starting from the most basic products
13 and going multiple products downstream, that demand
14 was very large worldwide, that prices were going up
15 everywhere, that domestic producers were imposing
16 surcharges, so I ask you, does it have anything to do
17 with concentration in this industry? Is there really
18 anything unusual about what was going on in tin mill
19 as opposed to what was going on in every other steel
20 product?

21 MR. OWEN: I think the question that I would
22 ask when you give the other examples is how many of
23 those buyers are spot buyers without contracts?

24 When I said they unilaterally imposed using
25 their muscle to impose things, what I guess I implied

1 in that statement was we had long term contracts that
2 had no provisions for those sorts of things. So I
3 guess our question to them is why would one enter into
4 a long term contract if the other party could come in
5 at any point in time and say well, things have changed
6 now so I'm going to have to raise your price. What's
7 the point of a contract?

8 COMMISSIONER ARANOFF: That actually was
9 going to be my next question to you.

10 We had Petitioners testify this morning that
11 the purchasers really want the certainty of these
12 contracts, and we're having you testify and saying
13 they have all the power and they're beating up on you.
14 Why are contracts so prevalent in this part of the
15 market when they're less so for other steel products?

16 MR. CARSON: Dan Carson, Silgan Containers.
17 If I may respond to that.

18 Silgan has built its business based upon
19 long term supply contracts for containers to some of
20 the most significant food packing companies in this
21 country. Those contracts by and large are
22 requirements contracts. Thus, we're required to be
23 there with a can, as Mark so eloquently stated
24 earlier, when the crop comes in.

25 We back that up then with contracts with our

1 primary suppliers. Long term contracts. These are
2 contracts, again I can't get into specifics on any one
3 of them, but generally I can say that they all have a
4 term, they all have a pricing provisions. Contrary to
5 what you heard this morning there is no annual
6 renegotiation of pricing. They all have a quantity
7 specification in it.

8 Now that can vary by contract. It might be
9 a requirements provision, a percentage of our
10 requirements. It might be a minimum purchase
11 requirement on our part. It might be a range stating
12 a minimum to a maximum. But nevertheless it has a
13 purchase obligation in it.

14 These are firm contracts, they're formal
15 contracts. There's no question about it, you'll see
16 them assuming that we get past the lawyers agreement
17 that we spoke of earlier. So you'll have the
18 opportunity to see that.

19 Mr. Owen earlier spoke about the fact that
20 we had unilateral price increases imposed upon us
21 despite the fact that we have formal contracts, and
22 that that was a result of the market power of the
23 particular suppliers involved.

24 Now there seems to be a contradiction here.
25 You've got a formal contract on the one hand, yet

1 there is somebody who is acting presumably contrary to
2 what some of the provisions would be. In a perfect
3 world we would like to think that every party to a
4 contract would live up to every requirement of that
5 contract and every specification within that contract.
6 But as Mark said earlier, when the crop arrives, the
7 cans need to be there.

8 We have other requirements we have to be
9 concerned about and sometimes those requirements
10 require us to not be as specific in enforcing some
11 provisions of a contract as we might others. And it's
12 clear that the availability of the material is
13 absolutely critical. If we don't have the material,
14 we can't make the cans. If we don't make the cans,
15 the customer doesn't have anything to pack his
16 product. We've got a serious problem all around.

17 We had to deal with that issue back in the
18 timeframe that you're referencing.

19 COMMISSIONER ARANOFF: Okay. I appreciate
20 all those answers and I know, or at least hope, that
21 we are going to in fact get to see some of these
22 contracts so that we'll be able to think about this
23 for ourselves. But I will be interested in seeing in
24 particular, all the testimony this morning was yes, we
25 have these contracts but they're targets, neither

1 volume nor price is fixed. That doesn't sound like
2 what you're telling me. It sounds like you think they
3 are fixed.

4 MR. CARSON: Dan Carson again. We will rest
5 on the printed words in the contract. I think they
6 will support your latter comment.

7 COMMISSIONER ARANOFF: Okay. I appreciate
8 that.

9 I guess my final request with requested
10 contracts and the information that my colleagues have
11 requested is when we see these contracts I'd like to
12 know how much volume each different kind of term
13 applies to so we can get a sense, if we see a contract
14 that has a certain kind of clause into it, does that
15 apply to one ton or 100,000 tons. That will be --

16 MR. CARSON: I think you'll find that the
17 contracts themselves are clear on that. we could also
18 provide historical supply information if that was
19 desirable to you.

20 COMMISSIONER ARANOFF: Actually that would
21 be. It would be interesting to see what the contracts
22 say now, but it will be interesting to know how things
23 have evolved, so I appreciate that offer. Thank you.

24 There was some testimony earlier as well
25 about the percentage that both Ball and Silgan

1 products that they purchased off-shore. One of them
2 was about the DNI steel that's used in the two-piece
3 can production. At least I think that's what I heard,
4 so I wanted to clarify on that. Is that a product
5 that is not made by any domestic producer?

6 MR. SPRINGFIELD: Mark Springfield, Ball.

7 Speaking on behalf of our company, the lines
8 that we manufacture that product on require some very
9 sophisticated and high grade steel. There are certain
10 companies in the domestic marketplace that manufacture
11 a version of that but it's not to the standards that
12 our lines can consume. You have to have a concept
13 that these machines are built for speed and they're
14 thoroughbreds and they're very finicky, so they need
15 consistency coil after coil.

16 They also need a type of product that is
17 light enough to satisfy the maximum productivity of
18 the unit given the can size that we're running.

19 We've been widening out using wider and
20 wider substrate in order to manufacture more and more
21 efficiency and get more throughput through our
22 facilities. As we do both of those, as we require
23 more consistent product and as we require wider
24 product, those in the domestic industry haven't been
25 able to satisfy our qualification criteria.

1 I did mention that we have one domestic
2 company that wants to take a shot at it and we're very
3 willing to do that because we're interested in
4 domestic supply.

5 COMMISSIONER ARANOFF: Just following up on
6 that, let me ask you. My understanding is that demand
7 for this product to make the two-part cans is perhaps
8 the only area where U.S. demand is actually growing,
9 at least relative to other tin mill product. So to my
10 mind it doesn't make any sense for the domestic
11 industry to have no interest in serving this product.

12 Do you see this as an issue that's going to
13 resolve itself quickly, or is there some reason why
14 they just are not going to get into this product in
15 the reasonably foreseeable future?

16 MR. SPRINGFIELD: I think they can probably
17 answer this better than I can, but given the age of
18 their equipment and how they've got it matched in
19 terms of widths, it's probably difficult for them to
20 widen out their DNI product without considerable
21 capital expenditure.

22 COMMISSIONER ARANOFF: Okay, I appreciate
23 that answer, and I do direct that question also to the
24 domestic producers. If you could in post-hearing
25 indicate what you're doing in order to produce this

1 product and whether any of the planned capital
2 expenditures that you reported to us might go to this
3 issue.

4 Mr. Owen, did you want to add something
5 quick?

6 MR. OWEN: Yes, if I may I'd like to add,
7 there are two parts to your question, really. DNI
8 quality steel means a very clean inclusion-free type
9 clean steel that will go through this very high speed
10 equipment and it may be wide or narrow. The domestics
11 have the capability to make DNI quality in the narrow
12 steel, but not the wide steel.

13 COMMISSIONER ARANOFF: I appreciate your
14 clarifying that. So the issue here is width and not
15 quality.

16 MR. OWEN: Yes, and no. Part of the method
17 of making that high quality steel is not every drop
18 out of their caster can be used for slabs to make that
19 steel. It's kind of like the first can't and the last
20 can't but the ones in the middle can. So there are
21 still capacity constraints on their ability to make
22 that steel and we do run into that capacity constraint
23 just for the clean steel itself.

24 COMMISSIONER ARANOFF: Thank you very much.

25 Mr. Chairman, I see my red light is on.

1 CHAIRMAN KOPLAN: Thank you.

2 MR. SPRINGFIELD: Just one follow up
3 comment, please. It really requires both, the quality
4 and the width in order to make sufficient DNI
5 material.

6 Thank you.

7 CHAIRMAN KOPLAN: Thank you, Commissioner.

8 This morning I asked a question of the
9 domestic industry about price leadership in this
10 market and the general consensus, as I recall, was
11 that there isn't a price leader as such now. But
12 during the break I went back to our staff report and I
13 found what I'm about to quote, and then I'd like to
14 ask you a question. This is in chapter five and it's
15 on page seven, the first full paragraph. It says
16 this.

17 "Fourteen responding purchasers indicated
18 that there are price leaders in the U.S. market for
19 TCCSS. US Steel was named by 12 purchasers, USS-POSCO
20 was named by three purchasers; Mittal was named by
21 five purchasers; Ohio Coatings by two purchasers; and
22 Rasselstein was named by one purchaser as price
23 leaders."

24 It goes on to say, "Purchaser responses
25 sometimes varied by time period and region. One

1 purchaser," whose identity is bracketed, "indicated
2 that while US Steel has typically been a price leader,
3 the leadership role now appears to be shared with
4 Mittal after Mittal's purchaser of ISG."

5 I'd like to hear from Silgan and Ball, if
6 you could both give me your perspective on whether
7 there is a price leader in this market and how prices
8 are set.

9 MR. MOORES: John Moores with Silgan
10 Containers.

11 From our perspective, how we look at it,
12 we've always believed and thought it was freely
13 communicated out in at least our end of the business
14 that US Steel was the price leader. We all use US
15 Steel's price list. Everybody waits for US Steel to
16 announce first. I guess maybe it's the definition of
17 price leader. When I look at price leader it's just
18 kind of who drives the market, not referencing who has
19 the higher or lower price. But it seems the market is
20 paralyzed until US Steel makes their announcement and
21 then everybody follows in some fashion.

22 So from Silgan Containers' perspective, we
23 believe US Steel is the price leader.

24 CHAIRMAN KOPLAN: Discounts come off a price
25 list, is that what you're referring to?

1 MR. MOORES: Yes. There's a published price
2 list and then there's negotiated discounts off of the
3 published price list.

4 MR. SPRINGFIELD: Mark Springfield, Ball
5 Corporation.

6 We would agree with those comments. US
7 Steel is traditionally the price announcement leader.
8 My sense is that other companies defer to that
9 position. I think if you go back to 2005 and the type
10 of announcement that came out with respect to the
11 quarter inch and the freight equalization, the
12 announcement that US Steel made in those areas set the
13 tone for the rest of the market and you saw a certain
14 amount of following in line with that leadership.

15 We use the US Steel price book in our
16 negotiations and I think just from a traditional
17 standpoint they've served that role.

18 CHAIRMAN KOPLAN: Thank you.

19 MR. CARSON: Mr. Chairman if I may just add
20 to what Mr. Moores said earlier.

21 CHAIRMAN KOPLAN: Yes.

22 MR. CARSON: While he described a process
23 that takes place on an annual basis, the long term
24 contracts that we have in terms of pricing, that
25 process does not impact the pricing under those

1 contracts and that covers the vast majority of the tin
2 mill products that we purchase.

3 CHAIRMAN KOPLAN: Thank you.

4 For purpose of the post-hearing I'd like to
5 hear further from counsel for the domestics on this
6 particular issue.

7 Thank you.

8 USS-POSCO asserts that the Japanese have
9 excess capacity utilization and that their production
10 capacity amounts to no more than the idling of
11 production facilities awaiting the opportune time to
12 resume production, and if the order is lifted
13 producers would easily resume operating their idle
14 lines. That's at page 14 of their brief, and we've
15 heard this argument today.

16 I do note that at Table 4-8 of the staff
17 report in Chapter 4 at page 10, it indicates that over
18 the period of review capacity utilization in Japan
19 dropped from 87.1 to 78.3. I'd like you to respond to
20 what they say in their brief.

21 MR. PORTER: Commissioner Koplan, if I could
22 start things off.

23 CHAIRMAN KOPLAN: Yes. Would you reidentify
24 yourself?

25 MR. PORTER: I apologize, Mr. Porter, Dan

1 Porter, Willkie Farr for the record.

2 I'd just like to start off by noting that
3 the Commission in the original investigations, both
4 the Commission and the court have routinely stated
5 that excess capacity itself does not prove a threat of
6 injury. And what the Commission and courts have said,
7 what is needed is the domestic industry needs to
8 provide evidence of the propensity to use the excess
9 capacity to shift to the United States.

10 We submit that the only thing the domestic
11 industry has done is to show there's excess capacity
12 in Japan, but that's not the end of the story. The
13 question is will that capacity be used?

14 CHAIRMAN KOPLAN: Excuse me, but wasn't the
15 propensity demonstrated according to the Commission in
16 the original investigation? The propensity to shift
17 to the United States was part of that finding wasn't
18 it?

19 I realize they exited the market because
20 there's an order in place, but I'm saying when the
21 order went in place with 95 percent margins, that was
22 based on, in part, what my colleagues found, the
23 majority of my colleagues found was a propensity to
24 shift to the United States.

25 MR. BARRINGER: If I can just address that.

1 CHAIRMAN KOPLAN: I'd appreciate it.

2 MR. BARRINGER: One of the issues which I
3 think the Commission needs to deal with is is anything
4 that happened between 1997 and 1999 representative of
5 anything that is going to happen if and when this
6 order is taken off.

7 The circumstances of the Japanese industry,
8 the global industry, the U.S. industry, the economies
9 in Asia, I can go on factor after factor, are totally
10 different today. So for the Commission to say that we
11 find a propensity by the Japanese to use their
12 capacity to flood the U.S. market because they did it
13 in 1997 and 1999 to me would be the height of
14 absurdity.

15 I think you have to look at what are the
16 conditions today, and under these conditions would the
17 Japanese do that? You may be able to draw some
18 conclusions from what has happened previously, but
19 it's like fitting a round object in a square hole.
20 It's an entirely different situation today.

21 MR. PORTER: Mr. Chairman, if I can add one
22 thing.

23 Following on what Mr. Barringer said is what
24 we have presented is actual evidence of this
25 propensity in today's market today. I agree with, Mr.

1 Chairman, what the evidence looked like in '97 and
2 '99. But what we have demonstrated and Professor
3 Prusa's slide --

4 CHAIRMAN KOPLAN: You mean I was wrong then?

5 MR. PORTER: You're always right, Mr.
6 Chairman.

7 CHAIRMAN KOPLAN: No, I'd like to know. Are
8 you saying that for the record?

9 MR. PORTER: You were of course very correct
10 in your decision back then, Mr. Chairman.

11 But what we have presented today is evidence
12 of Japanese behavior with two critical things. Excess
13 capacity and high prices. What's seen is actually a
14 reduction in cold-rolled shipments to the United
15 States. I would submit that that evidence speaks more
16 to the propensity of shipments in the future in tin
17 mill than the evidence in '97 and '99.

18 CHAIRMAN KOPLAN: Thank you for that.

19 I'll turn to Vice Chairman Okun.

20 VICE CHAIRMAN OKUN: Thank you, Mr.
21 Chairman.

22 Let me follow up, Mr. Barringer, on the
23 comments you were just making about whether the
24 conditions we saw, those who voted in the affirmative
25 saw in '97 to '99 are likely to repeat themselves

1 where those conditions remain the same.

2 For me, and again we're in the process of
3 doing lots of reviews and in a number of reviews I've
4 differed with my colleagues on what I thought would
5 happen with regard to a number of these steel cases.
6 But I've got to say, I look at this record and I
7 actually see a lot of distinctions from those cases
8 where I've said no, this order ought to be lifted,
9 including on the demand side.

10 I'm reading your brief saying they've got
11 lots of places to go, demand in Asia. But I don't
12 think the numbers really support that. Again, the
13 Chairman had raised the Mexico issue.

14 Help me out on that because, again, if I saw
15 a market where tin is being used, going up and China
16 didn't have a developing capacity to provide their, I
17 hear your argument on China. I still think that the
18 numbers are not, again, quite as significant as I've
19 seen in other steel cases. I guess I'm going to ask
20 you a little bit more on that, whether this really
21 looks like a case where the Japanese have great
22 markets out there to go to and there's no way they'd
23 ever come back here.

24 MR. BARRINGER: Let me try that one.

25 The capacity utilization for cold-rolled is

1 around 70 percent, so it's nine percentage points
2 below the capacity utilization for tin mill products.

3 The Japanese are not flooding the U.S.
4 market with cold rolled. I think a fundamental thing
5 which was in Professor Prusa's presentation but
6 perhaps we need to emphasize, the major Japanese mills
7 are very very profitable. One of the reasons they're
8 very very profitable is that they're disciplined.
9 They are not looking to shove product out the door for
10 the sake of shoving product out the door. As a
11 result, if they find a profitable market here for tin
12 mill products they may increase their shipments here.
13 However, if they don't find a profitable market here
14 for tin mill products they are not going to ship here.
15 If you look at overall what they're shipping is their
16 highest margin product where they're at near full
17 capacity utilization which is corrosion resistant
18 steel.

19 So they are focused on profit maximizing
20 strategies, and one of the changes since the original
21 investigation is the consolidation of the industry.
22 That consolidation has led to greater discipline in
23 the industry as evidenced by Mittal Steel's statement.

24 As you get into higher and higher quality
25 products, more and more sophisticated products such as

1 tin mill products, what you will see is those products
2 are dominated by the mills that have consolidated and
3 are among the most disciplined in the world.

4 So what is driving steel, the big good steel
5 companies today is not getting volume out the door, it
6 is maximizing profits.

7 VICE CHAIRMAN OKUN: Let's turn to the
8 argument with regard to the concentration in the
9 domestic industry, both for you and Mr. Prusa as well,
10 which is the response that the Petitioners made this
11 morning was that if you're just looking at HHI index,
12 in fact you're not taking into account the fact that
13 there are foreign suppliers and I wanted to get your
14 response to that, and what they cite for support of
15 that is the fact that DOJ did not object to the
16 consolidation that went on.

17 MR. PRUSA: Let me get the first question. I
18 can leave it to the lawyers to discuss DOJ anti-trust
19 policy and procedures.

20 They are incorrect. The table that's in the
21 main brief does not include imports because that is in
22 fact how BLS does its calculations.

23 If you look in the exhibit, I include HHI
24 for all the import suppliers to the U.S. market. They
25 misstated or they didn't read the exhibit.

1 In the exhibit I go back and calculate HHI,
2 back since 2000, with imports in every year, and in
3 fact you get still a doubling of --

4 The basic reality is imports have the same
5 market share about now that they had in 2000.

6 VICE CHAIRMAN OKUN: Then let me ask this,
7 and I will look at that and I will obviously look at
8 what the Petitioners said, but if that were the case,
9 if it's as concentrated as your charts show, why
10 nothing from the Department of Justice? And they're
11 jumping up and down in the back row.

12 MR. PORTER: Thank you Commissioner Okun.
13 I'll address it from a legal standpoint and then Mr.
14 Owen's going to address it from the industry
15 standpoint.

16 First, Mr. Narkin today tried to argue that
17 the failure of the DOJ to take formal action to block
18 the mergers and acquisition somehow proved that the
19 domestic industry does not have market power.

20 I would submit that this is a fundamental
21 misunderstanding of the Hart-Scott-Rodino process.
22 The particular reason why the DOJ does not take formal
23 action to oppose a merger acquisition are not made
24 public. Unlike this process, unlike trade
25 proceedings, the Hart-Scott-Rodino process is not

1 transparent. No one knows why the DOJ decided not to
2 formally take action. It could have been lack of
3 resources. It could have been a belief about evidence
4 in court. It could have been a change in enforcement
5 policy. No one knows.

6 More importantly, the lack of DOJ action to
7 oppose the mergers occurred two years, the fact that
8 they occurred two years ago says nothing about whether
9 they have market power today. And in fact I note that
10 the failure to take DOJ action occurred prior to the
11 imposition of the surcharges that occurred in 2004.
12 So I just wanted to state that from a legal standpoint
13 and ask Mr. Owen to add some other comments.

14 VICE CHAIRMAN OKUN: Okay, Mr. Owen?

15 MR. OWEN: I'd just like to add that we are
16 aware of some very important factual information about
17 the DOJ's lack of action in that case. It would be
18 inappropriate to discuss it here, but we'd like to
19 give it to you in a post-hearing brief.

20 VICE CHAIRMAN OKUN: Okay, I will take a
21 look at that in a post-hearing brief.

22 Then let me set aside the index and whether
23 what we should or shouldn't take out of lack of action
24 by Department of Justice and just say let's look at
25 the record and see what these producers are doing, and

1 do they look like a highly concentrated industry?

2 Petitioners raised a couple of points on
3 that regard that I'd like you to respond to too, which
4 is one, if we look at other industries or even these
5 same companies in other lines of their product, they
6 may be highly profitable, they may control a much
7 larger share of the domestic market, and may or may
8 not have more market power. Whereas here, and again
9 this isn't compared to other cases we looked at, I
10 don't see a hugely profitable industry even over the
11 period where we've seen steel prices on other products
12 that we've looked at and reviewed out the roof. We
13 have seen prices go up.

14 They don't control as much of the market as
15 in some other cases. So help me out there. Where do
16 I see the market power in this case when in other
17 markets where these guys sell or produce product for
18 at least integrated producers, I would think they look
19 more like that.

20 MR. PORTER: Commissioner Okun, let me make
21 one point and perhaps Professor Prusa wants to add.

22 My response to that is that the purpose of
23 the exercise we're in now, it's less about comparison,
24 the market power let's say in tin mill versus market
25 power in cold-rolled or hot-rolled than the change

1 that has taken place since 2000. That's what were
2 really talking about there. So it's relative to the
3 market power in 2000 that's what's important, less
4 than a sort of direct comparison in other products,
5 and we submit that they are more concentrated, have
6 more market power. I think no one disputes that.
7 They have more market power today than they did in
8 2000. Then the question is, is there enough there to
9 allow the lifting of the order?

10 So it is quite possible I think,
11 conceptually, for them to have less market power than
12 they do in other products and still lift the order
13 because they're much different than they were in 2000.

14 VICE CHAIRMAN OKUN: I understand your
15 argument and again, I think that does go to whether
16 it's helpful to look at the cold-rolled example when
17 cold-rolled didn't have an order.

18 My yellow light's going to go on.

19 But I guess my point is this, or not my
20 point but I guess a question for you to brief more
21 post-hearing.

22 To the extent that you're making that
23 argument about do they have more market power since
24 2000, I guess help me in understanding how I see that
25 with regard to what the impact would be and whether

1 they're vulnerable when, again, this isn't an industry
2 that since 2000 has all of a sudden gone into the
3 great profitability that they're going to withstand --

4 MR. PORTER: We try to do that, Commissioner
5 Okun. What we said was okay, how do you show a change
6 in market power? So we did it from sort of the
7 standard economic approach and we used tools that the
8 Justice Department uses to measure market power. The
9 HHI is a standard tool that is used. So we tried
10 that, and then we went to the customers and said tell
11 us, do you think there's been a change and give us
12 real-world examples. We kind of presented both those
13 and we think the combination of those is evidence that
14 the market power is higher now than it was before.

15 VICE CHAIRMAN OKUN: I'll continue to look
16 at your arguments.

17 My red light is on. I may have a chance to
18 come back. Thank you.

19 CHAIRMAN KOPLAN: Thank you.

20 Commissioner Hillman?

21 COMMISSIONER HILLMAN: Let me follow right
22 along there with a little bit of questioning on this
23 issue of market power. The bottom line I'm looking at
24 is the chart you all put up there on the relative U.S.
25 price vis-a-vis every place else in the world. So I'm

1 struggling with if these guys have all this market
2 power and they can control all the prices, why aren't
3 they pushing prices up above every place else in the
4 world? Why are we the low price market if we've got
5 these producers that have such control over prices
6 that they can push you all wherever they want to push
7 you? They haven't pushed you very far very fast or
8 you wouldn't be the low-price market.

9 MR. PORTER: Commissioner Hillman, very
10 simple answer. Long term contracts. These contracts,
11 and you're going to get them now, and you're going to
12 see. You're going to see how long they are, when they
13 were signed, and at what price.

14 So if you have a contract, multi-year
15 contract signed in the prevailing conditions in 2002,
16 you're not going to see the high prices because it's a
17 long term contract that was set way before everything
18 sky-rocketed. I submit when you see these contracts
19 and see when they were signed, how big they are and at
20 what price, that will answer your question right now.

21 COMMISSIONER HILLMAN: All right. If
22 there's anything further, and again, take into account
23 here spot prices. I mean I understand contracts are
24 big in this industry. They are not all of the
25 industry. Again, it still begs the question of again,

1 if everybody's got so much power, I'm not seeing spot
2 prices in the U.S.. Again, we're still at these low
3 levels. So if you can try to help me lay out this
4 issue of why it is that the U.S. on both the contract
5 side and the spot side, remains so low if in fact the
6 U.S. industry has such great control over their
7 pricing.

8 And if I could go back to this issue, I am
9 sharing a lot of the questioning that Commissioner
10 Pearson was engaging in in terms of this issue of
11 availability or lack of availability, over long lead
12 times, et cetera. So if I could come back to that
13 issue first to try to make sure I understand it. As
14 we heard from the domestic industry this morning,
15 clearly US Steel is indicating yes, we agree that we
16 had these problems connected around this blase furnace
17 number 14. But other than that, you did not hear the
18 industry suggesting that they think there was some
19 particular period of time or any significant change in
20 terms of what was happening, in terms of lead times
21 and availability.

22 So if I could go back and just ask you to
23 help me compare if you can what your experience has
24 been in the most recent years versus what it was in
25 the original investigation in terms of lead times and

1 then particularly to compare the lead times that
2 you're seeing from the domestic industry versus if you
3 purchased imports. How did the two compare in terms
4 of their lead times for delivery to your facilities
5 for production.

6 Mr. Springfield?

7 MR. SPRINGFIELD: This is going to have to
8 be somewhat anecdotal given my recollection of the
9 1999-2000 time period. But as I recall it there was
10 so much excess capacity in '99 and 2000 the mills
11 would have the opportunity to expedite orders in less
12 than standard lead time. So if the lead times were
13 seven to eight weeks back then and somebody came in
14 and said hey, I have an unexpected change in demand,
15 the mills might be able to get it out in five.

16 Now what you see is I think because of a
17 combination of the upset conditions they've been
18 fighting through, somewhat how they are allocating
19 their metal, that the lead times are at least at the
20 standard production lead times or greater market lead
21 times or in excess of standard production lead times.

22 Then it's performance against those lead
23 times. You may place your order within whatever
24 criteria they have you place it in, but then they're
25 not able to produce to those criteria that they in

1 fact give you.

2 COMMISSIONER HILLMAN: Would you describe
3 that, the lack of performance, they agree that they'll
4 deliver in eight weeks but they in fact deliver in
5 nine or ten. Is that different than what you saw in
6 '99 or 2000? In other words they might have agreed in
7 the '99 time period to a faster lead time. Has the
8 percentage that's actually been delivered at the
9 scheduled lead time, has that increased?

10 MR. SPRINGFIELD: My observation is yes, and
11 I would say that the performance was probably better
12 back then because the mills were more interested in
13 this type of business than it is now.

14 COMMISSIONER HILLMAN: Mr. Moores, would you
15 have a view on this?

16 MR. MOORES: Yes, I would.

17 Generally speaking my recollection is that
18 it probably isn't much worse but it's highlighted more
19 today because in the past when we would go to place an
20 order and it was going to be late we had other
21 options. There was National, LTV, so on and so forth,
22 Bethlehem. So we would just shift and go to another
23 mill and say hey, we're having trouble, can you fill
24 this gap? Today when that happens we have no other
25 options. We just are late.

1 COMMISSIONER HILLMAN: But clearly you do
2 have import options. There are clearly non-subject
3 imports in the market.

4 MR. MOORES: Absolutely.

5 COMMISSIONER HILLMAN: How do non-subject
6 imports, imports from anywhere other than Japan, how
7 do those timeframes compare to domestic lead time?

8 MR. MOORES: I think it was described well
9 in some testimony this morning. Because you have to
10 plan a much longer lead time because of the logistics
11 train, so you plan ahead. You bring coils in, they're
12 warehoused, they're made available.

13 So when we look at on-time performance of
14 the foreign mills, it's 100 percent. They do not miss
15 deliveries. So we actually place critical operations
16 under foreign mills with the flexibility of the
17 specifications, because we have the confidence to know
18 they're going to deliver all the time. We don't have
19 to worry. We cannot say that with the domestic mills.

20 One of the other shifts, maybe to answer the
21 question, and I touched on it earlier, was that what
22 we buy today is different than what we bought in 2000.
23 So we've highlighted some bottlenecks within the
24 mills' capability, specifically DR Mittal and Clean
25 Steel. Both of those are bottlenecks that exist today

1 that I don't necessarily existed back in 2000 because
2 we weren't buying as much of those specific specs that
3 we are today. So there are clearly shortages in the
4 market today and capacity shortages today for those
5 specifications.

6 Without foreign mills we could not exist.
7 We could not fulfill our requirements within those
8 specific specifications. That's why some of these
9 delays in on-time performances may have gotten worse.
10 As we focus more on those specific specs, if there's
11 any hiccups in the system, and it appears at least in
12 my time involved in this there's been a hiccup every
13 year, it just highlights in those specific areas.

14 COMMISSIONER HILLMAN: Mr. Springfield, in
15 your original testimony you commented on that as a
16 general matter you favor purchasing from a local
17 supplier as close as possible to your facility. Help
18 me understand in light of these issues about delivery
19 times not meeting what you contracted for, et cetera,
20 again, why that is. Do you pay a premium to purchase
21 domestic local supply? How much of a premium? How
22 much does that price gap have to be before you're
23 willing to look to imports, or is it purely a function
24 of when the domestic production is not there when you
25 need it, that's when you go to imports?

1 MR. SPRINGFIELD: I think there are a couple
2 of things I would ask you to consider when you look at
3 those situations. One is that all foreign material is
4 not distant material. For instance, we have a
5 relationship with DeFasco in Canada and they're able
6 to deliver material in line with the U.S. production
7 lead times and we do rely on them in emergency
8 situations to bring in material.

9 I think we would probably echo Silgan's
10 comments with respect to our use of foreign off-shore
11 imports because of the longer lead times and the
12 difficulty to change a spec once it's in production,
13 you have to try to anticipate how long an upset
14 condition will exist within the domestic marketplace
15 and lay in supplemental orders somewhere down the road
16 in hopes that if the problem still lingers that you're
17 covered. You can't take advantage of that on a dime,
18 but you can try and plan ahead and protect yourself.
19 That's how we approach it.

20 COMMISSIONER HILLMAN: Do you pay a premium
21 for domestic production because in theory you can get
22 it faster?

23 MR. SPRINGFIELD: I think we favor that type
24 of business with more tonnage. We favor local
25 producers --

1 COMMISSIONER HILLMAN: Again, would you have
2 a view on whether you're willing to pay a premium for
3 purchasing from domestic producers because in theory
4 the lead times are shorter?

5 Mr. Owen? Mr. Porter?

6 MR. PORTER: If I could try to clarify why
7 there's some confusion on the panel.

8 Your question, Commissioner Hillman, is
9 premised on something that I believe we heard today
10 may not be true, and that is that a can company is
11 willing to buy the same specs from off-shore as
12 domestic mills because you're comparing sort of, are
13 you willing to pay a premium which is I'll buy from
14 you or I'll buy from you and I'll buy from you because
15 you're closer.

16 What we heard today, that the vagaries of
17 the harvest and the requirements they have on their
18 end, on their own customers' end, simply make the
19 difficulty of off-shore and the inability to cancel an
20 order, and it's not so much lead time as it's
21 flexibility. As Mr. Owen said, I want to at the last
22 minute have this order and double this one. It's the
23 flexibility that they want, and that flexibility
24 simply requires that 500 out of 520 specs be done
25 domestically.

1 So when you talk about premium you're
2 confused, because they think that they're buying very
3 different steel from off-shore to domestics.

4 COMMISSIONER HILLMAN: I appreciate those
5 responses.

6 Thank you.

7 CHAIRMAN KOPLAN: Thank you.

8 We'll now go to Commissioner Aranoff.

9 COMMISSIONER ARANOFF: Thank you, Mr.
10 Chairman, and I want to thank my colleagues for their
11 indulgence.

12 It seemed to me in listening to your basic
13 presentation this afternoon and in reading your brief
14 that you had two theories for why the volume of
15 Japanese imports wouldn't be significant if the orders
16 were evoked. One was a volume-based argument that
17 we've explored, this sort of natural feeling on
18 imports argument. Then there was the price argument.

19 I'll sort of start with a little entre' of
20 how I'm thinking about this, but I understood your
21 argument to be back during the original period of
22 investigation both the domestic industry, and to some
23 extent the Japanese producers because of the Asian
24 financial situation, sometimes had an incentive to
25 sell a product at a price that wouldn't make a profit

1 because they needed the volume to generate cash to
2 operate with. I think that's what I was hearing.
3 Your statement was that's not true any more, so the
4 Japanese don't have that same incentive to sell at any
5 price just to use capacity that they happen to have.

6 So I take that point, but I just wanted to
7 take it to its logical extreme.

8 If you do have capacity and if you can make
9 a small profit, enough money to contribute to lowering
10 your per unit fixed costs and make some on top of
11 that, it would still, I assume, be economically
12 rational to do that. So what I'm asking you is
13 doesn't your price argument depend not just on our
14 accepting that prices may be higher in other markets,
15 but also on our finding that any additional sales to
16 the United States from the excess capacity that you
17 admit that the Japanese producers have can't possibly
18 help their bottom line in any way.

19 Long question, but maybe there's a short
20 answer.

21 MR. PORTER: Commissioner, I'll take one
22 attempt and then pass it along to others.

23 I think it's a little different. You're
24 sort of doing what I call a bifurcated, making money
25 or not making money. What Mr. Barringer was talking

1 about was making more money on other products. So it
2 is entirely possible that the Japanese would say yeah,
3 maybe I can make money selling tin mill at some price
4 in the United States, whatever price level that is,
5 but I actually can make a lot more money shipping
6 cold-rolled next door to China, and I'm going to do
7 that. If I do that I don't have the feed stock to
8 make the tin mill. That's the, I think, thought
9 process that we're trying to explain that the Japanese
10 are going to.

11 I'm sure someone can show you the data that
12 there is a price level in the U.S. market that is
13 lower than the price level now and the Japanese still
14 can make money. Probably that can happen. But it's
15 this dynamic with the other products and the
16 profitability of those other products that we're
17 trying to explain.

18 COMMISSIONER ARANOFF: Mr. Porter, I
19 understand that and I take your argument, but I think
20 that argument, if I'm not wrong, calls for me to have
21 concluded that assuming the Japanese go to all those
22 better opportunities before they even look at the U.S.
23 market, they still have excess capacity. At least
24 that's what our data show and that's what I thought I
25 heard you all testify to earlier.

1 MR. PORTER: I agree. That is what the data
2 show. But then what you're getting at, Commissioner
3 Aranoff, what we're really getting at is getting into
4 the mind of the Japanese mill, if you will. What are
5 they going to do in a certain situation? We're
6 struggling with that.

7 I submit what your task is is to look at
8 evidence, to test the evidence versus speculation, the
9 guesswork.

10 I know perhaps Commissioner Okun may have a
11 little difference of opinion, but we believe the cold-
12 rolled example is direct evidence of what they do in
13 the very situation that you're talking about. And in
14 cold-rolled there was excess capacity. The prices
15 were good, and they didn't ship. So I say that's
16 direct evidence.

17 Now what evidence is being offered on the
18 other side that some other behavior is going to
19 happen? All they do is point to '97-'99, which we say
20 different time, different place.

21 MR. BARRINGER: Can I opine a little more on
22 this?

23 COMMISSIONER ARANOFF: Go ahead, Mr.
24 Barringer.

25 MR. BARRINGER: Thank you.

1 If you look at it logically, what a steel
2 mill wants to do is to be able to meet demand in the
3 peak market situation. Therefore, I think if you go
4 back years and years and years when mills were being
5 profitable they weren't necessarily running flat out.

6 What the dynamic is now, in the beginning of
7 2004 mills were essentially running flat out globally.
8 When the over-inventory situation occurred what you
9 saw in Japan, what you saw in the United States, what
10 you saw in Europe was a very logical behavior which
11 you would not have seen before consolidation. That
12 was they cut back production, lowered capacity
13 utilization, to stop the drop in prices. And in fact
14 that's what happened.

15 Then prices either leveled out, some went
16 back up, but you didn't see what we've seen so many
17 times in the steel industry which is this crash
18 because everyone continues to produce flat out despite
19 declining demand and the prices go down with it.

20 So I think one of the things that you kind
21 of need to get your arms around is the concept of what
22 makes a successful mill today versus what made a lot
23 of unsuccessful mills five years ago, six years ago,
24 eight years ago. I think the behavior of the Japanese
25 is such that it demonstrates that they're not going to

1 produce for the sake of producing, and frankly, I
2 think the behavior of the U.S. mills has also
3 demonstrated that. That's a big, big change.

4 Prices are staying high despite the fact
5 that demand is somewhat weaker or flat. It's an
6 enormous change.

7 COMMISSIONER ARANOFF: I appreciate those
8 answers, and anything that you can add in your post-
9 hearing is -- I understand your argument that you
10 don't need to operate at full capacity to be
11 profitable in any given year. My question still is
12 okay, but tell me the story about why it would be
13 economically rational not to use capacity that you
14 have lying around if you can make a profitable sale?

15 I'm expecting that the answer is maybe you
16 can't make a sale that looks good from the terms of
17 the Japanese producers, or maybe there's another
18 explanation. But whatever you can provide. That's
19 kind of where I'm going in taking your argument to its
20 logical extreme.

21 MR. GILL: If I could I'd like to follow up.
22 I've been chomping at the bit to answer some of the
23 questions.

24 COMMISSIONER ARANOFF: Go ahead, Mr. Gill.

25 MR. GILL: I was at Weirton and I want to,

1 if you don't mind, just follow up for a second on
2 Chairman Hillman's question about delivery.

3 The issue back then was not about price, it
4 was about volume and shipments. We had weekly
5 meetings to meet certain shipment goals because we
6 needed to do that to stay viable. We could offer the
7 industry at the time three to four week lead times, we
8 called them shot lead time orders, and we took pride
9 in it as a sales group and operating group that we
10 could take care of shipping material in three to four
11 weeks time.

12 But the illustration I want to make is that
13 it's so different today. This isn't just about Japan,
14 this is worldwide. What I see domestically, the
15 domestic mills are doing the same things. They're
16 idling capacity, cutting it back. The sole reason is
17 that if you offer less capacity you can keep the price
18 elevated. It's as simple as that.

19 I said previously that I sell for Ohio
20 Coatings, a tin mill in Yorkdale, Ohio. I can tell
21 you that they're operating at 60 percent of capacity
22 right now and the reason that they are is that their
23 primary black plate supplier is Wheeling Pittsburgh.
24 Wheeling Pittsburgh has them on allocation. So I can
25 sell less now because Wheeling Pittsburgh has decided

1 they want to sell cold-roll, they don't want to sell
2 black plate, so a facility that they own 50 percent
3 of.

4 When the market dropped in 2005 in the
5 United States I believe Mittal cut back three to four
6 blast furnaces, and I think we have to check the
7 record but I'm pretty sure that's accurate. I know
8 one was at Weirton when the market got soft. So it's
9 all the same reason that if you cut back this capacity
10 you can prop the price up until the market gets
11 healthy again. That isn't isolated to Japanese
12 business, that's worldwide. POSCO did the same thing
13 after the U.S. market started to shrink.

14 I think that's the whole point of this
15 argument. Things are different, very different. We
16 ran for volume when I was at Weirton. We had to to
17 cover our fixed costs. But they can't do it any more,
18 nobody can do that any more. People are going to run
19 their facilities as businesses now and they're going
20 to run them to make a profit.

21 COMMISSIONER ARANOFF: I appreciate that
22 answer, I thank all the witnesses for your answers.
23 Thank you very much, Mr. Chairman.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.
25 Commissioner Lane?

1 COMMISSIONER LANE: Thank you. I want to
2 start with Professor Prusa.

3 My first round I was intimidated by the red
4 light so I rushed through my questions and I'm not
5 sure that I was really clear as to what I wanted. So
6 I want to clarify the question that I was asking you.

7 The wage rates you used for your Figure 2
8 reflect the data in staff's report Table 3-1. Staff
9 has the same wage rates on Table 1-1 of its report and
10 includes wage rates for 1997, 1998, and 1999.

11 I was asking you to use that wage rate data
12 from Table 1-1 in the staff report to produce a chart
13 similar to your Figure 2, but running from 1997
14 through 2005.

15 MR. PRUSA: That was very clear. Your
16 follow-up right there.

17 COMMISSIONER LANE: Thank you.

18 Mr. Owen, I have a few questions for you.

19 If the domestic industry unilaterally
20 changes terms of its contract which I am hearing
21 should not be done because of the sanctity of a
22 contract, what then keeps you from walking away from
23 your end of the bargain, and especially if the orders
24 come off, just going out and buying the product from
25 the Japanese producers?

1 MR. CARSON: Dan Carson, Silgan Containers.
2 If I may --

3 COMMISSIONER LANE: Okay.

4 MR. CARSON: Contracts are binding on both
5 parties and we live up to our end of the contracts.

6 COMMISSIONER LANE: So you're saying that
7 the domestic industry breaks their contracts but you
8 won't do that?

9 MR. CARSON: We have a need for the material
10 that is covered by those contracts and we expect to
11 enforce our rights under those contracts at the same
12 time we live up to our obligations under them.

13 COMMISSIONER LANE: Thank you.

14 Professor Prusa, going back to you, I think.
15 On pages 39 through 42 of the pre-hearing brief you
16 describe annual cost savings to the domestic industry
17 due to the elimination of legacy costs which are
18 primarily pension obligations and OPEDS. Please
19 explain to me what point you are making in that
20 discussion, and are you arguing that these cost
21 savings should somehow be disregarded in our
22 evaluation of the domestic industry's financial
23 results?

24 MR. PRUSA: The point of that discussion in
25 the brief was that by the domestic industry's own

1 reporting to the ITC, most of that data I actually
2 pulled from previous ITC reports, that they had this
3 rather mind-boggling amount of debt, and that debt was
4 something they were going to have to pay off had they
5 not left it, had they not shed it through the
6 bankruptcy process.

7 The calculation that I gave there was to
8 attribute what fraction of the annual cost savings of
9 not owing \$15 billion, what fraction of that cost
10 savings each year accrues to the tin industry?

11 So that effectively would be costs that they
12 would have to be setting aside to meet their pensions
13 and health care benefits that they had promised
14 retirees and workers that now today those costs are no
15 longer on their back, and that directly benefits them,
16 in my estimate, at least \$100 million per year. So I
17 don't think you can disregard it. I'm saying that
18 their costs today would be higher, something that's
19 different from 2000, in that they no longer have this
20 huge debt obligation that actually was imposing upon
21 the tin industry about \$100 million of extra cost per
22 year.

23 COMMISSIONER LANE: Thank you.

24 At the time of the original investigation
25 shipments of tin and chromium coated steel sheets to

1 the western United States were largely of United
2 States and Japanese origin. Since the imposition of
3 the subject orders there does not appear to have been
4 any marked shift in U.S. shipments to the western
5 United States based on the staff reports at pages 4, 9
6 through 11. Who now supplies this region? Would it
7 be non-subject imports?

8 MR. OWEN: Robert Owen from Silgan.

9 We have several facilities on the west coast
10 and buy a large quantity, a large percentage of our
11 total purchases on the west coast. We now buy nearly
12 all of that material from UPI. We buy some from a
13 non-subject off-shore supplier.

14 COMMISSIONER LANE: Are any of those non-
15 subject from Japan?

16 MR. OWEN: We also have, up in the northwest
17 we have a salmon can plant and that's an excluded
18 product from Japan. A very small quantity.

19 COMMISSIONER LANE: Okay.

20 I was curious about the operation of your
21 facility. How many shifts do you run and how many
22 days a week do you run?

23 MR. OWEN: We have several plants there. I
24 think we have eight plants on the west coast and they
25 vary. They vary sometimes within a plant, the

1 different lines.

2 We have a DNI plant out there and typically
3 a DNI plant runs 24x7.

4 COMMISSIONER LANE: Do any of your other
5 facilities run 24x7?

6 MR. OWEN: Certainly during the pack they
7 do.

8 COMMISSIONER LANE: Thank you.

9 COMMISSIONER LANE: At page 14 of its brief
10 USS-POSCO Industries asserts that two Japanese
11 producers shut down tin mill production lines that
12 could be easily restarted. Do you agree that such
13 facilities could be easily restarted? And could you
14 comment how difficult it would be in terms of time,
15 labor, equipment upgrades, or expense for the
16 producers to restart these lines?

17 MR. PORTER: Dave, can you take a stab at
18 that or do you want to ask that back at the mill?

19 MR. GILL: Mark can help me, too.

20 Generally when you shut down a tin line or a
21 TFS line it does not take that long to start them back
22 up. It's not like shutting down a blast furnace or
23 idling a blast furnace. I would say really it could
24 be done in a matter of days, maybe weeks at most.

25 COMMISSIONER LANE: Thank you.

1 MR. GILL: But I think you asked the
2 question would they start them back up. There's no
3 reason to start them back up. Is that the concern,
4 that they would install more capacity?

5 COMMISSIONER LANE: I think the concern
6 would be that if the orders came off how easy would it
7 be if they wanted to to start the facilities back up?

8 MR. GILL: I don't think it would take that
9 long to start them back up, but the question is would
10 they do it, and the answer to that is no.

11 COMMISSIONER LANE: Mr. Owen?

12 MR. OWEN: If I may, just to bring up a
13 point that I tried to make earlier and maybe didn't do
14 it well.

15 At least at Silgan there is a very limited
16 number of specifications that we will buy off-shore.
17 So just by virtue of if the Japanese were to decide
18 they wanted to divert from some of the other more
19 profitable markets and for whatever reason come back
20 into the United States, as I tried to point out, they
21 would really be competing for that limited number of
22 specs that we buy from off-shore with other off-shore
23 suppliers. Not domestics.

24 COMMISSIONER LANE: Thank you.

25 MR. SPRINGFIELD: Commissioner Lane, just to

1 comment on Dave's answer. I'm going to waffle on it a
2 little bit.

3 You can bring a unit back up, depending on
4 how you took it down, but there is also the matter of
5 the crewing. Typically when a mill shuts a unit down
6 the crews go off in 100 different directions and the
7 biggest problem is getting the correct crews back to
8 run the facility adequately.

9 COMMISSIONER LANE: Thank you.

10 Mr. Chairman, that's all I have.

11 CHAIRMAN KOPLAN: Thank you, Commissioner.
12 Commissioner Pearson?

13 COMMISSIONER PEARSON: Thank you, Mr.
14 Chairman.

15 Mr. Gill, I'm interested in allocation
16 decisions regarding steel at an integrated mill. I
17 think you have some experience with that from your
18 time at Weirton.

19 Are the long term contracts for tin mill
20 products at low enough prices so that the domestic
21 industry currently is allocating as little steel as
22 possible to their tin mills and as much as possible to
23 more profitable products?

24 MR. GILL: In our case, in the case of Ohio
25 Coatings, yes. They have chosen to produce other

1 products rather than tin mill products.

2 COMMISSIONER PEARSON: Mr. Springfield, do
3 you have an experience that would lend itself to that
4 issue?

5 MR. SPRINGFIELD: My experience in part is
6 trying to buy from Dave.

7 (Laughter).

8 We do agree that the mills are redirecting
9 their capacity to more profitable product.

10 The way tin mill products has typically been
11 looked at by the mills is that it's been a fairly good
12 product, it's fairly stable over time, and that some
13 of the other flat rolled product will cycle around
14 that trend line, if you will.

15 What the mills seem to be doing, at least in
16 this environment, is not protecting the market but
17 moving capacity where the spot market is the
18 strongest.

19 MR. MOORES: If I may add, John Moores with
20 Silgan Containers.

21 I was told directly by two of my suppliers
22 that that's exactly what was happening. As an example
23 of kind of explaining why they felt that the current
24 price level was not sustainable, that was basically
25 their argument, that they're competing internally, and

1 part of my supply problem is that they're competing
2 internally for the substrate. So it was made clear to
3 me that that was going on.

4 COMMISSIONER PEARSON: Does this issue
5 explain what otherwise appears to be an anomaly in
6 our data in which the profitability of the tin mill
7 industry seems to be not strong in the United States
8 right now, despite the fact that from what you've
9 indicated they are running the mills judiciously and
10 not over-supplying the market?

11 MR. PORTER: Again Commissioner Pearson, Dan
12 Porter for the record.

13 I think the reduced profitability that
14 you're talking about is because of the long term
15 contracts that were signed at a time when price levels
16 in all fields were decidedly lower. And you're going
17 to see those contracts, and you'll see that a
18 substantial quantity was signed well before the 2004-
19 2005 run-up in steel prices.

20 So if you have a multiyear contract with a
21 2001 or 2002 sort of price negotiation, you're going
22 to see a lower price level until that contract
23 expires. That's why there's a little bit of a
24 disconnect. You're hearing about sort of the, for
25 lack of a better word, shortages. You're hearing

1 about diversions. You're hearing about market power,
2 but then you're looking at the profitability and
3 you're not seeing it. It's for that reason. It's
4 that this industry is predominant long term contracts,
5 and many contracts were signed before the run-up in
6 prices.

7 MR. MOORES: If I may, John Moores with
8 Silgan.

9 When I look at market power, I don't look
10 first at price. I look at some more basic things.
11 Can I get the steel when I need it and can I get the
12 quality when I need it.

13 I think a prime example is that as the
14 largest buyer of tin plate in the U.S., if I have a
15 quality problem you would assume that I would get some
16 decent response. Just like if we buy a car, we have a
17 problem, we go back to the dealer, we get a decent
18 response.

19 An example here that just happened this week
20 is that we've been having ongoing problems with one of
21 our suppliers and we requested a meeting at their
22 location to review this problem. I was told not this
23 month, we'll meet next month, in June. So I have to
24 live with an ongoing quality problem that's affecting
25 my customers and my plants for another six weeks, five

1 weeks, because they don't have time for me.

2 Market power can be described in many
3 different ways and I don't think price is necessarily
4 the best indicator all the time. There are other
5 things that we need to operate our business, like
6 security of supply, like quality. That's where
7 they're flexing their muscle because they can. I
8 think it's an indicator as we move forward that price
9 will be part of that also when they have that ability.

10 COMMISSIONER PEARSON: Earlier in your
11 presentation you raised questions about the data
12 relating to what the domestic industry had submitted
13 for the 204 report relative to what's going on now.
14 Are those data issues not so large as to affect your
15 assessment of the fundamental profitability of the
16 U.S. tin mill business now? Are both sides of this
17 investigation basically on the same page saying that
18 the U.S. tin mill industry is not currently very
19 profitable? Or is there a dispute?

20 MR. PORTER: We would not have spent 20
21 pages, Commissioner Pearson, about the discrepancies
22 if we thought it was not significant. We do believe
23 they're significant, and we're simply pointing,
24 Professor Prusa goes to the effect in the study right
25 here. Actually the chart before shows what's reported

1 now and this chart shows what's reported in the effect
2 of the study, and there's a big difference.

3 What we're saying is if we believe you get
4 the correct data which was what reported just nine
5 months ago in the effectiveness study you will see a
6 much more dramatic change since 2000 and that's what
7 we're talking about. That's why we really want the
8 Commission to investigate this issue.

9 MR. PRUSA: Let me add just a couple of
10 comments on that. The point of this data discrepancy
11 is not simply a difference between what was reported
12 in April 2006 and was reported nine months ago. The
13 difference between what's reported now and a whole
14 series of previous submissions. So if you go back and
15 look, it's not just like oh, you know what, the last
16 one we forgot something. That must mean they also
17 forgot something when you were doing your mid-term 201
18 review? It must mean they also made mistakes back
19 when you did the 201 safeguard. The data issues in
20 this case cut to the integrity of the last four times
21 you've investigated this industry. So if you take
22 what they say today that must mean that the last four
23 times they submitted data, including the previous
24 antidumping case, there was a serious data problem
25 previously if there's not a serious data problem now.

1 And let's get to this, because there's a
2 real issue about I don't see pricing power. I've
3 heard at least two Commissioners ask that and I was
4 dying to get a chance to respond.

5 In the current data, conveniently this time,
6 they reported it in a way that looks like they're
7 struggling to make a profit, yet nine months ago when
8 they didn't have a commercial interest in convincing
9 you that they're just eking along, they submitted this
10 data. If you look, the gap between their COGS and
11 their average unit value was negative in 2001,
12 slightly positive in 2002, consolidations occur.
13 Positive by \$60 in 2003. More consolidations occur.
14 Positive by \$64 in 2004. Consolidations finished, and
15 they reported \$86 in the first half 2005. I think it
16 would be the first quarter 2005, I think that's a typo
17 there.

18 So this issue, I think it fundamentally does
19 change because Commissioner Okun and Commissioner
20 Hillman are struggling with the fact that they don't
21 see an industry able to exert prices, and I agree with
22 John Moores, that it can take a number of forms. But
23 had you had this same question nine months ago you'd
24 have said wow, this consolidated tin mill industry is
25 really extracting bigger and bigger margins. Boy,

1 they look pretty good. And now today, for no
2 explained reason, this is just one example of that
3 they paint an entirely different picture of their
4 performance.

5 You have to solve the data problem, you must
6 solve the data problem in order to get an accurate
7 picture of the industry. If you presume what they
8 present today is true, perhaps it is, then you must
9 ask the question, what did we just do in our last four
10 studies of this industry? What does it mean to sign,
11 to swear and certify that I've submitted correct data
12 when now the data completely rejects the previous
13 submission? So I think this is a serious problem. It
14 really does change the entire picture of how well this
15 industry is doing.

16 COMMISSIONER PEARSON: I also asked some
17 data questions to the previous panel. I'll let that
18 sit now rather than go back and revisit it.

19 What I'm trying to understand is, I think I
20 hear two things from your panel that are, they're
21 probably not actually in conflict, but I'm figuring
22 out how to balance them. One message is that the long
23 term contracts indeed may be constraining the
24 profitability of the domestic tin mill industry.

25 The other message is, because of the data

1 problems we're not sure how much it's constraining.

2 MR. PRUSA: No, but in the effectiveness
3 study they're making even bigger profits than the
4 other flat-rolled segments. So the fact that they're
5 choosing not to send their substrate to tin was also
6 present in that earlier study. They were showing that
7 they were making larger profits in other segments than
8 they were in tin, even though they were showing very
9 nice profits in their tin sector. They were making
10 even better profits in their other sector.

11 So this issue about gee, I've got a limited
12 amount of raw materials, where should I send it. The
13 fact that they were choosing not to send it into tin,
14 which is what we're arguing, that exact explanation is
15 still here. I'm just pointing out in this chart that
16 they were reporting profits.

17 COMMISSIONER PEARSON: Mr. Chairman, will
18 you allow Mr. Porter --

19 MR. PORTER: Very quickly, Mr. Chairman.

20 CHAIRMAN KOPLAN: Certainly.

21 MR. PORTER: Thank you, Mr. Chairman.

22 Commissioner Pearson, I think a little bit
23 of the confusion is when some answers were given we
24 were talking about sort of different data.
25 Commissioner Hillman asked a very direct question, why

1 am I not seeing higher prices. And the prices that
2 are up there, actually we don't dispute the accuracy
3 of the data of the price. We think the product
4 specific pricing, the AUVs, we're not really saying
5 there's anything wrong there.

6 What we're asking the Commission to look
7 into is really the cost data that as different now
8 than before, and that gets at the profitability. But
9 when we were saying about the long term contracts,
10 that was getting to the issue of why the price level
11 may not seem as high now as it should be if in fact
12 the mills had all this market power. So depending on
13 what data we're talking about is whether we have an
14 issue about the accuracy or whether the contract's
15 coming in.

16 COMMISSIONER PEARSON: Thank you very much.

17 CHAIRMAN KOPLAN: Thank you, Commissioner
18 Pearson.

19 I have a question and then a request.

20 In Chapter IV, pages 15 and 16 of our Staff
21 Report, there are a number of estimates available
22 regarding Japanese capacity, production, and/or
23 shipments of tin mill products including tin- and
24 chromium-coated steel sheet.

25 For purposes of the post-hearing I would

1 like you to if you would address the differences
2 between the various sources that are listed on those
3 two pages.

4 MR. PORTER: We will do so, Mr. Chairman.

5 CHAIRMAN KOPLAN: I appreciate that, and I'd
6 like to have the domestics look at that as well.
7 Thank you.

8 The other thing I have is simply to go back
9 to the request I made this morning and remind you all
10 that by May 2nd, and I know you nodded that you would
11 do this but I'm just putting it on the record again,
12 that you provide comments to staff regarding the
13 alternate tables in OIMV memo, IMVDD-046 dated April
14 10, 2006. That's in our public EDIS file. So for the
15 record, if you could just --

16 MR. PORTER: Yes, we will definitely do
17 that, Mr. Chairman.

18 CHAIRMAN KOPLAN: Thank you very much. With
19 that I want to thank you all for our answers to my
20 questions and others this afternoon and I'll turn to
21 Vice Chairman Okun.

22 VICE CHAIRMAN OKUN: Thank you.

23 I believe most of my questions have been now
24 covered by my colleagues with one exception I wanted
25 to ask.

1 Have you all had a chance to comment on the
2 reasonably foreseeable future? I know you did in the
3 briefs. I guess my question for you if you haven't
4 responded to one of my colleagues on it is when we're
5 talking about the presence of long term contracts in
6 this market whether in your view that means we should
7 be looking at a longer reasonably foreseeable future
8 to determine when the impact would be to the domestic
9 industry and whether it's affected by whether the
10 restructuring is complete or not. So I guess this is
11 a legal question for counsel, if there's anything else
12 to what you have already briefed.

13 MR. PORTER: We want to look at that again.
14 We do think that's an important question but I'd like
15 to wait and sort of give you a more full answer in the
16 post-hearing brief if that's okay.

17 VICE CHAIRMAN OKUN: That's fine.

18 Obviously there's a lot of information with
19 regard to the data question that Commissioner Pearson
20 raised and you've responded to that I'll have to look
21 to the post-hearing to evaluate the arguments on that.

22 With that I do want to thank all of you for
23 all the comments you've given this afternoon. It's
24 been very helpful. I appreciate your willingness to
25 be here.

1 Mr. Chairman, that's all my questions.

2 CHAIRMAN KOPLAN: Thank you.

3 Commissioner Hillman?

4 COMMISSIONER HILLMAN: I hope just a couple
5 for the post-hearing brief as well.

6 I think you heard me ask this morning, in
7 light of the fact that we are supposed to be focusing
8 on the determination in the original investigation to
9 base our review, given that the most recent final
10 determination in this investigation was a negative
11 one, I would ask you to brief sort of what do we make
12 of a case that sits in this posture in terms of having
13 issued now a number of determinations based on the
14 original record, the most recent which is the negative
15 and whether that should have any impact on how we look
16 at this sunset.

17 MR. PORTER: Commissioner Hillman, actually
18 I have to admit we had not thought about that. That's
19 a very interesting question and I promise we'll have a
20 team looking --

21 COMMISSIONER HILLMAN: We're not in the
22 habit of doing sunset reviews of negative
23 determinations.

24 (Laughter).

25 MR. PORTER: My guess, Commissioner Hillman,

1 is when the provisional statute says you must look at
2 your original determination they didn't think about
3 the tin mill case.

4 COMMISSIONER HILLMAN: This will be a first,
5 that we are conducting a sunset review of a negative
6 determination.

7 MR. PORTER: But I promise we'll have a team
8 all weekend looking at that. Thank you.

9 COMMISSIONER HILLMAN: I'm not sure it's
10 worth that, but whether it should in any way change
11 the way in which we approach this case, I'd appreciate
12 it.

13 Secondly, to the extent, on this issue of
14 looking at cold-rolled and the excluded tin products
15 as proxies, if you will, for what would happen if we
16 were to revoke this order. I would only ask you to
17 take a look at a couple of other things to help me
18 understand how you put this in context.

19 One is the role of non-subject imports, in
20 other words, other products. I think what the record
21 clearly reflects in this product, in tin, not the
22 excluded tin but the covered tin, okay, the Japanese
23 came out of the market but the non-subjects came into
24 the market. That's not the case for either cold or
25 the excluded products where you don't have orders on

1 them. And yet if I look at what's happened with non-
2 subject, non-Japanese imports, non-Japanese imports in
3 cold-rolled I don't see any surge at all. So I'm
4 questioning whether there just isn't a big demand out
5 there that's pulling in a lot of imports from anywhere
6 on cold.

7 And on the excluded products, pretty much as
8 I see it, the Japanese are the sole suppliers of the
9 product. It's excluded because the domestics don't
10 make it. It's not a big product for the non-subjects.
11 So why isn't the level of Japanese imports simply a
12 function of demand? Why should it say anything to us
13 about what would happen on the products that are
14 covered?

15 Again, the Japanese are sole suppliers, so
16 fine, however much they sell in the U.S. market is
17 totally derivative of demand for the excluded products
18 and really doesn't say anything to us about what would
19 happen in either tin or cold-rolled which have very
20 different demand drivers than what you're seeing in
21 the covered tin products.

22 MR. PORTER: Commissioner Hillman, I
23 understand your question and we will do that.

24 My only comment is that at the end of the
25 day you're going to have a variety of difference

1 pieces of evidence and then you just need to sort of
2 evaluate which piece of evidence is more probative. I
3 agree that the performance of non-subject imports in
4 both the tin mill market and the cold-rolled market
5 are other pieces of evidence of perhaps how the
6 Japanese will act absent an order. I think what we
7 will try to do in the post-hearing brief is to go
8 through each piece of evidence and sort of discuss the
9 relative probative value of that piece of evidence
10 vis-a-vis the evidence that's being offered on the
11 other side.

12 COMMISSIONER HILLMAN: Part of it is, again,
13 I'm really wanting you to focus on demand and how we
14 factor that into these.

15 And secondly, again, I've been listening all
16 day to this argument but you're describing the tin
17 market as a market with a very concentrated number of
18 producers and a concentrated number of fires. That is
19 not cold-rolled to me, where you have a very wide
20 variety of fires and a much larger number of
21 suppliers, both domestic and import. There's more
22 import sources and there's a lot more domestic
23 producers.

24 Then you go to the excluded tin mill
25 products and you have the complete opposite where the

1 Japanese are the sole suppliers pretty much to the
2 U.S. market and the purchasers, again, are a very
3 concentrated market.

4 So I'm only saying I think you need to look
5 at some of these other things if what you're really
6 telling me is look at cold-rolled and look at the
7 excluded tin products as a proxy for what would happen
8 for this case in the absence of an order. I'm just
9 raising some skepticism about whether those are
10 particularly analogous markets.

11 MR. PORTER: Understood, we will look at
12 that.

13 One final thing, with respect to demand,
14 fully agree that that is a key component and that what
15 we need to do is do sort of a better job of going
16 through the data on demand, relative demand in the
17 United States compared to other markets. We know
18 that's on our "to do" list.

19 The only thing I would say about the cold-
20 rolled, I don't need to overstate it, but we are
21 talking at the core of Japanese behavior in a
22 particular situation. So it's just one piece of
23 evidence of Japanese behavior in a particular
24 situation because here's what they've done in at least
25 some aspects of a similar situation.

1 You've raised a good point that perhaps it's
2 not as identical a comparison as we may have made out
3 originally, but we think that it's all part of the
4 evidentiary record that needs to be examined and we'll
5 do that.

6 MR. PRUSA: May I add one more thought on
7 that?

8 It would seem that cold-rolled as compared
9 to tin, I agree they are different because there's a
10 lot more potentially commodity cold and not less
11 contract sold cold. So you actually think that would
12 be a market that would be way easier if the Japanese
13 had a desire to reenter quickly because there's not a
14 length recertification, it's not a lengthy convincing
15 them that you need my product as opposed to a German
16 product. That's a product that they could find buyers
17 for, but yet they don't have them there.

18 So actually I would think the cold-rolled
19 market is even more convincing because it's a market
20 that would be much easier to have a big increase in
21 imports. The characteristics you just described is a
22 market for them to penetrate than the tin market. To
23 me at least.

24 COMMISSIONER HILLMAN: But there's never
25 been an order on cold-rolled. That's my point. And

1 imports from the world have not shown some huge
2 increase in cold-rolled. So it isn't as though
3 there's's this big demand flow into our market and the
4 Japanese have said oh, I'm not going to join in the
5 party, I'm going to stay out for some reason.

6 MR. PRUSA: The domestic industry has tried
7 at least twice to get cold-rolled and they would have
8 argued that there had been those increases.

9 COMMISSIONER HILLMAN: We're not going to
10 revisit cold-rolled. I'm just saying they've never
11 been excluded from the market and it doesn't appear
12 that there is this huge surge in imports from
13 anywhere.

14 So it's hard for me to understand why we
15 should look at the Japanese and say oh look what good
16 guys they've been, they've stayed out of our cold-
17 rolled market. So has everybody else. So it's not
18 clear to me what exactly, anyway, you can look at this
19 for the post-hearing. I won't belabor the point.

20 Thank you very much. I really appreciate
21 all the answers to the questions and appreciate
22 particularly the industry witnesses, the purchasers
23 for being with us this afternoon. We very much
24 appreciate your perspective on how this market works.
25 Thank you.

1 CHAIRMAN KOPLAN: Thank you, Commissioner.
2 Commissioner Lane?

3 COMMISSIONER LANE: I have one question of
4 Mr. Porter.

5 In response to a question from Commissioner
6 Pearson you said that the tin plate industry was
7 making low profits because of the long term contracts
8 that were entered into in 2001 at lower prices, yet we
9 heard earlier today that the domestic industry has
10 unilaterally ignored that and has raised prices and
11 put surcharges on and all of that. So could you
12 perhaps unconfuse me on this issue?

13 MR. PORTER: With respect to profitability,
14 profitability is price minus cost. With respect to
15 profitability our point is two issues. First, we have
16 a whole data discrepancy issue on the cost so we think
17 that is part of the reason you're seeing lower
18 profitability than you otherwise would, or better
19 stated, than you did in your 2005 effectiveness study.

20 With respect to price, the surcharges, we
21 were talking about the attempt and the ability of the
22 domestics to impose surcharges. The magnitude of the
23 surcharges is at issue, and it's perhaps that the
24 level wasn't quite as high. But still the contract
25 price over this period has been lower because it was

1 set in a previous time when steel prices weren't that
2 high.

3 I understand your question and we will try
4 to get a better explanation in the post-hearing brief.

5 COMMISSIONER LANE: I'm just trying to
6 reconcile the big deal that you made about the
7 domestic industry unilaterally ignoring the contracts
8 and raising the prices. And now I hear that maybe
9 it's not such a big deal. I'm just trying to
10 reconcile what you have said.

11 MR. PORTER: Again, Commissioner Lane, I'm
12 struggling here because a question is presented to us
13 in what I call a bipolar sort of world, comparing high
14 price versus low price.

15 My understanding of the discussion, tin mill
16 sort of profitability was vis-a-vis other steel
17 products. The fact that they were able to impose a
18 surcharge and raise the lower tin mill price to a
19 higher level than it otherwise would have been because
20 of the contract, you can still have that and that
21 price still can be sort of lower relative to other
22 steel products.

23 I think what the discussion was was tin
24 relative to other steel products. The point was the
25 prevalence of long term contracts in the tin industry

1 tend to make prices lower, make the ability of prices
2 to go up quickly less than other steel products.

3 COMMISSIONER LANE: Thank you.

4 CHAIRMAN KOPLAN: Thank you, Commissioner.
5 Commissioner Pearson?

6 COMMISSIONER PEARSON: Thank you, Mr.
7 Chairman.

8 There's one last issue that I'd like to
9 touch on because I've been curious here for several
10 hours about it. It's a customer relations question.

11 Your panel, those of you who are purchasers
12 of tin mill products, are very much in the marketplace
13 on an ongoing basis with this morning's panel. You
14 deal with them all the time. I'm sure you've got
15 contact with them in various forms.

16 If a tin plate producer has agreed to
17 deliver a product in eight weeks and then isn't able
18 to do that quite at that time, how does that work?
19 Did they call you up and let you know there's a
20 problem? Or do they just hope no one notices and
21 wait for you to call them?

22 MR. SPRINGFIELD: Mark Springfield, Ball.

23 They send us statuses and as part of the
24 status report you have to spend some time tracking
25 exactly where they think they're going to produce your

1 product in line with your expectations when you
2 originally place the order.

3 Sometimes that's fairly straightforward,
4 sometimes you have to actually do some investigation
5 yourself to see which orders are running behind.

6 COMMISSIONER PEARSON: Is this a weekly
7 update?

8 MR. SPRINGFIELD: We track it weekly if not
9 more frequently.

10 MR. MOORES: John Moores.

11 Similar, we would see a similar thing on our
12 side. They do notify us whether it be through status
13 reports, phone calls. It's not typical this would be
14 a surprise. Somewhere in those eight weeks we would
15 become aware of it, that it's late.

16 Recently with some of our suppliers we were
17 having two to three times a week conference calls and
18 getting everybody together just to talk about the fact
19 that they were late and what they were doing.

20 And I don't want to portray that they don't
21 work on this. I know there was a lot of effort put on
22 the supplier side to try to improve the on-time
23 performance, so it's not like they're not trying to do
24 anything. It's just frustrating from our point of
25 view because even with all that effort it's still, we

1 still have lines go down and we still have to juggle
2 things around to try to keep our plants running.

3 COMMISSIONER PEARSON: Do the suppliers do
4 anything to compensate when that situation occurs? Do
5 they offer an additional price discount? Do you get
6 in more good golf games, anything like that?

7 (Laughter).

8 MR. MOORES: That's a good idea. I'm going
9 to have to write that down.

10 We work through every issue as it comes up.
11 In the industry for a long time there's been things
12 that are claimable, things that are not claimable.
13 And here's another area, it's a great example, of
14 where market, where the market leverage has shifted.

15 A great example would be like holes in the
16 plate. You would think that's a bad thing. We think
17 it's a bad thing. It's not something we want our
18 customers to get.

19 Yet in the past that would be something that
20 we would object to and of course would be addressed.

21 Today we're told well, seven or eight of
22 those in a coil is okay, don't worry about it.

23 You scratch your head and say how can a
24 business shift overnight like this? But it has.

25 COMMISSIONER PEARSON: Mr. Springfield, do

1 you have something to add?

2 MR. SPRINGFIELD: Yes, I would say that the
3 compensation is woefully little --

4 CHAIRMAN KOPLAN: Mr. Springfield, could you
5 move your microphone closer?

6 MR. SPRINGFIELD: I'm sorry.

7 I would say that the compensation is
8 woefully little for the aggravation that you go
9 through.

10 COMMISSIONER PEARSON: Okay, I think that's
11 fairly clear.

12 Any other comments?

13 (No audible response).

14 COMMISSIONER PEARSON: I would just say that
15 I've found the entire day's proceedings to be very
16 interesting and given there are so many nuances to
17 this investigation, I'm a little bit surprised that my
18 questions seem to stay pretty much on some fairly
19 basic stuff to try to get an understanding of what's
20 going on in the marketplace. I thank both sides for
21 helping with that. I'm not sure everything is
22 entirely clear to me, but no doubt it will be in the
23 post-hearing briefs.

24 Thank you very much.

25 CHAIRMAN KOPLAN: Thank you, Commissioner

1 Pearson.

2 I understand there are no other questions
3 from the dias.

4 Mr. Corcoran, does staff have questions of
5 this panel before they're released?

6 MR. CORCORAN: Douglas Corcoran, Office of
7 Investigations.

8 Thank you, Chairman Koplan.

9 Staff has no additional questions.

10 CHAIRMAN KOPLAN: Thank you.

11 Before the panel is released, Mr. Ryan, you
12 have two minutes remaining from your direct
13 presentation. Do you have any questions of this panel
14 before they're released?

15 MR. RYAN: We'd like to use our two minutes
16 for rebuttal but we have no questions for this panel.
17 Thank you.

18 CHAIRMAN KOPLAN: Okay, thank you.

19 With that I want to thank the witnesses for
20 their testimony this afternoon.

21 Now I think we're actually into the evening.
22 Your presentations have been very much appreciated. I
23 look forward to your post-hearing submissions as well,
24 and this panel is released.

25 We will go to rebuttal and closing.

1 (Pause).

2 CHAIRMAN KOPLAN: Mr. Ryan, as soon as they
3 have stepped back --

4 MR. RYAN: Just to be clear, Mr. Chairman,
5 we'll first do rebuttal and then Respondent's
6 rebuttal, our closing and then their closing?

7 CHAIRMAN KOPLAN: Thank you for mentioning
8 that. They have no time remaining.

9 MR. RYAN: So we've got a two minute
10 rebuttal and then we go immediately to our closing
11 statement.

12 CHAIRMAN KOPLAN: And then they go.

13 MR. RYAN: If we could time our timing for
14 first a short rebuttal statement and then our five
15 minutes remaining for our closing statement.

16 CHAIRMAN KOPLAN: Right.

17 MR. RYAN: Thank you, Mr. Chairman.

18 (Pause).

19 CHAIRMAN KOPLAN: Are you going to do both
20 rebuttal and the closing?

21 MR. RYAN: Just to confirm, I guess I'm
22 doing both rebuttal and closing and I've got seven
23 minutes which I will try to --

24 CHAIRMAN KOPLAN: Did you expect to have
25 somebody else --

1 MR. RYAN: I thought there might be some
2 competition. The legal business is tough.

3 (Laughter).

4 MR. RYAN: I'm John Ryan, counsel for USS-
5 POSCO Industries and I'll be doing the rebuttal and
6 closing on behalf of those in support of continuation
7 of the order.

8 It pleases me as a former alumnus of the
9 Commission to see the Commission so engaged for so
10 long and have such intelligent questions for both
11 parties.

12 Particularly this afternoon I found
13 questions from all of the Commissioners, that they
14 really went to, particularly for the last panel, the
15 discrepancies, inconsistencies between both the data
16 and two positions they were taking that just didn't
17 fit together. I'll tick off a few of those that each
18 of the Commissioners in various ways hit on.

19 For example, we heard some complaints about
20 U.S. lead times. U.S. lead times are too long and
21 that aggravates the purchasers, but yet at the same
22 time the Japanese have longer lead times and therefore
23 prices need to be lower. They don't prefer Japanese
24 product because they have even longer lead times or
25 delivery problems.

1 U.S. producers, as another example, exercise
2 market power and are able to extract super normal
3 prices from these very large purchasers, but at the
4 same time U.S. prices are lower than anywhere else in
5 the world and the Japanese would not want to compete
6 in this so-called sellers market.

7 We heard stories of shortages in
8 allocations. One wonders what industry we're talking
9 about. We've got shortages and allocations in an
10 industry with worldwide excess capacity and extreme
11 excess capacity in Japan and in the United States.
12 How can that be a market in which there are shortages
13 and allocations?

14 Finally, we've heard in response to
15 questions that the reason we're losing money is
16 because we have these old contracts from 2001, but at
17 the same time prices were not fixed at those contracts
18 because U.S. producers unilaterally raised prices to
19 extract higher prices from these large purchasers.

20 Their story, it just doesn't fit together.
21 So we would urge the Commission, as it has, to look
22 carefully at the data before it.

23 With regard to the data before the
24 Commission, what we've seen is that our opposing
25 counsel would rather not look at the data. The first

1 thing they do throughout their brief is to say all of
2 that data is no good.

3 CHAIRMAN KOPLAN: I think the two minutes
4 are gone.

5 MR. RYAN: I better jump right into closing.

6 CHAIRMAN KOPLAN: You better jump right into
7 closing.

8 MR. RYAN: Those were my rebuttal points
9 anyway, so that's good.

10 With regard to the data before the
11 Commission we would urge the Commission, contrary to
12 what our opposing counsel has said, to look at the
13 data from the original investigation and indeed the
14 data in the staff report. We would rely on the
15 staff's own analysis of the data that it collected in
16 the questionnaires and responses, and if there are
17 verifications we're confident that the data that has
18 been submitted in our questionnaire responses will be
19 verified and be firm.

20 The data from the original investigation and
21 the reasons that our opposing counsel would say well,
22 '97 to '99, that was a whole different world, a whole
23 different time. Of course they're going to say that
24 because during that time period they doubled the
25 volume of imports and they did that by seriously

1 undercutting prices, with every larger margins. That
2 affect on U.S. producers was a \$132 million loss.
3 That's another time and another place, but it's still
4 the same place, it's the U.S. market and it's still
5 the same U.S. industry.

6 But as the Commission has noted there have
7 been a few changes, but those changes haven't led to
8 an industry that's insulated or somehow impermeable to
9 the effect of imports.

10 We've had the order, and then you had
11 imports exit the market. What happened immediately
12 after that? The industry improved. We had some
13 consolidation in the industry but there's still
14 capacity in excess of U.S. demand. And we've also had
15 consolidation among the can manufacturers so that they
16 are able to negotiate on an equal basis with the U.S.
17 producers.

18 An interesting argument and an important one
19 for the Commission is when imports come into the
20 market, as they will, as they did prior to the order
21 and on the magnitude of 320,000 tons, will those
22 imports be substitutable with the domestic product or
23 is it just going to be imports shifting for other
24 imports?

25 And 320,000 tons is not a wide band issue.

1 That's a small piece of the market when we're talking
2 about wide band or some particular specifications.
3 These are very narrow tonnages. The core of the
4 market where U.S. producers and the Japanese competed
5 and will compete again is in the products that the
6 U.S. producers make in delivering to the food can
7 manufacturers.

8 So the key issue before the Commission is
9 what's going to happen in the reasonably foreseeable
10 future. The reasonably foreseeable future is what
11 happens when, say June 15th, you all vote negative and
12 by July 10th the order is revoked. I can guarantee you
13 and U.S. producers are certain, as the Japanese
14 producers will, but if you vote negative on June 10th,
15 by June 20th, and certainly before July 1st every one
16 of the U.S. food can manufacturers will be visited by
17 every one of the Japanese tin plate manufacturers to
18 try to line up orders for the tonnages that are
19 flexible within the contracts, the current
20 negotiations that will be going on for annual
21 contracts that are fixed by January 1, so there will
22 be a big volume effect as well as a price effect
23 immediately in the market. That's going to be
24 important to the U.S. industry which, as everyone
25 agrees, is in a weakened position.

1 So there is price competition and the effect
2 on prices will be immediate.

3 In closing I'd like to go back to where we
4 started today and that was with a lot of attention
5 paid to Commissioner Lane. I think that is because
6 the effect of this order, as Commissioner Aranoff also
7 pointed out, is real to real people. There are
8 employees that work at these plants and this was the
9 reason the Congressmen showed up, is that real people
10 produce tin plate. The unions are here today, and it
11 has a real effect when production shifts to off-shore,
12 necessarily there's an effect on the producers, the
13 people that were testifying today, but also their
14 employees who are laid off, and it has a real effect
15 on communities.

16 So yes, the Commission should seriously
17 consider the effect on employment as well as profits
18 in the rest of the industry, and I appreciate the
19 Commission's indulgence for letting me use my whole
20 seven minutes this afternoon.

21 CHAIRMAN KOPLAN: Certainly. Thank you very
22 much.

23 MR. RYAN: Thank you.

24 CHAIRMAN KOPLAN: Mr. Porter, you're up.

25 MR. PORTER: Mr. Chairman, if you don't mind

1 I'm going to sit way back here. I got used to this
2 chair. I kind of like it now.

3 CHAIRMAN KOPLAN: It's yours.

4 MR. PORTER: Thank you.

5 The hour's very late, Mr. Chairman, and I'm
6 going to try to be very brief.

7 I just want to start out and address the
8 testimony of Mr. Kaplan who talked on the domestic
9 panel.

10 It appears that Mr. Kaplan's testimony was
11 offered to address the issue of whether termination of
12 the antidumping duty order will cause purchasers to
13 use Japanese prices to reduce prices of domestic
14 mills.

15 Mr. Kaplan's testimony, however, just
16 discussed a red herring. Mr. Kaplan's entire
17 testimony was premised on the assumption that we had
18 somehow argued that purchasers would ignore Japanese
19 prices. This is not and has never been our argument.
20 We never argued that the buyers, Silgan and Ball or
21 anyone else, ignore prices. Rather the evidence that
22 we have presented is that purchasers are not able to
23 use the Japanese prices to disrupt existing contracts
24 because of the very different specifications purchased
25 from domestic and off-shore supply.

1 Indeed, Mr. Chairman, Mr. Kaplan's testimony
2 highlights the difference in evidence being offered by
3 the two sides in this case.

4 On the issue of whether Japanese prices are
5 going to be used to lower domestic prices of existing
6 contracts, the U.S. side offers general academic
7 literature on the so-called invisible hand. In
8 contrast, the evidence that we offer is that the
9 largest purchasers of the very product at issue is
10 telling you under oath that because of the great
11 difference in specifications he has never used an off-
12 shore import price to trigger a meet comp provision in
13 a contract with a domestic mill.

14 Mr. Chairman, the difference is evident and
15 striking.

16 I want to end our presentation today with
17 something that may be a bit of a surprise. I actually
18 agree with something that Mr. Hecht said. This
19 morning Mr. Hecht commented that during the original
20 investigation we argued that the customers had the
21 leverage in negotiations, but now in this proceeding
22 we have adopted a position that's 180 degrees
23 different. That today the U.S. mills have the upper
24 hand.

25 I agree with Mr. Hecht. Our argument has

1 changed. Indeed, this is our principal point. The
2 tin mill industry has changed over the last six years.
3 What was true back then is no longer true today. The
4 dramatic, dramatic changes that have taken place in
5 the tin mill industry require new analysis and new
6 conclusions about market dynamics.

7 I submit that when the Commission undertakes
8 this new analysis you will agree the evidence compels
9 the conclusion that the antidumping duty order must be
10 terminated.

11 Thank you, Mr. Chairman, for your patience.

12 CHAIRMAN KOPLAN: Thank you, Mr. Porter.

13 Thank you to everyone who participated in
14 today's proceeding. I also want to thank the staff
15 for assisting us in getting ready for this proceeding.

16 Post-hearing briefs, statements responsive
17 to questions and requests for the Commission and
18 corrections to the transcript must be filed by May 10,
19 2006. Closing of the record and final release of data
20 to parties by June 6, 2006. And final comments are
21 due June 8, 2006.

22 With that, this hearing is adjourned.

23 (Whereupon, at 6:15 p.m. the hearing was
24 adjourned.)

25 //

CERTIFICATION OF TRANSCRIPTION

TITLE: Tin- and Chromium-Coated Steel Sheet
INVESTIGATION NO.: 731-TA-860 (Review)
HEARING DATE: April 27, 2006
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 4/27/06

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
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I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Christina Chesley
Signature of Court Reporter