THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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

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.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:
CHAIRMAN STEPHEN KOPLAN
VICE CHAIRMAN DEANNA TANNER OKUN
COMMISSIONER JENNIFER A. HILLMAN
COMMISSIONER CHARLOTTE R. LANE
COMMISSIONER DANIEL R. PEARSON
COMMISSIONER SHARA L. ARANOFF

Heritage Reporting Corporation
(202) 628-4888
APPEARANCES: (Cont'd.)

Staff:

Marilyn R. Abbott, Secretary to the Commission
William R. Bishop, Hearings and Meetings Coordinator
Sharon Bellamy, Hearings and Meetings Assistant
Olympia Hand, Investigator
Vincent Desapio, Industry Analyst
James Fetzer, Economist
John Ascierno, Accountant/Auditor
Rhonda Hughes, Attorney
Douglas Corkran, Supervisory Investigator

Congressional Witnesses:

The Honorable George Miller, U.S. Congressman,
U.S. House of Representatives, 7th District, California
The Honorable Alan B. Mollohan, U.S. Congressman,
U.S. House of Representatives, 1st District, West Virginia
The Honorable Peter J. Visclosky, U.S. Congressman,
U.S. House of Representatives, 1st District, Indiana
The Honorable Shelley Moore Capito, U.S. Congresswoman,
U.S. House of Representatives, 2nd District, West Virginia

State Government Witnesses:

Zackary Maze, Deputy General Counsel to the Governor of West Virginia, on behalf of the Honorable Joe Manchin III, Governor of West Virginia
The Honorable Edwin J. Bowman, State Senator, 1st District, West Virginia
APPEARANCES: (Cont'd.)

In Support of the Continuation of Antidumping Duty Order:

On behalf of Mittal Steel USA, Inc. (Mittal USA):

M. THOMAS GOEDEKE III, Director, Tin Mill Products, Sales and Marketing, Mittal USA
WILLIAM STEPHANS, Division Manager, Tin Mill Products, Mittal-Weirton, Mittal USA
WILLIAM J. KLINEFELTER, Legislative and Political Director, USW
MARK GLYPTIS, President, ISU
ERIC P. SALONEN, Esquire
J. DANIEL STIRK, Esquire
PHILIP A. BUTLER, Esquire
Stewart and Stewart
Washington, D.C.

On behalf of United Steel Corporation (U.S. Steel):

JOSEPH R. SCHERRBAUM, Vice President, Sales, U.S. Steel
GERALD W. GAGLIANO, Manager, Sales and Service for Tin and Container Products, U.S. Steel
SETH T. KAPLAN, Vice President, Charles River Associates

JAMES C. HECHT, Esquire
STEPHEN P. VAUGHN, Esquire
STEPHEN J. NARKIN, Esquire
Skadden, Arps, Slate, Meagher & Flom, LLP
Washington, D.C.

On behalf of USS-POSCO Industries:

CRAIG PETERSON, Vice President, Commercial, USS-POSCO Industries
CHRIS CONKLING, General Counsel, USS-POSCO Industries

M. JEAN ANDERSON, Esquire
JOHN M. RYAN, Esquire
PETER S. KALDES, Esquire
CHRISTOPHER FARMER, Esquire
Weil, Gotshal & Manges, LLP
Washington, D.C.

Heritage Reporting Corporation
(202) 628-4888
APPEARANCES: (Cont'd.)

In Opposition to Continuation of Antidumping Duty Order:

On behalf of the Japanese Respondents:

JOHN MOORES, Vice President, Strategic Sourcing, Silgan Containers Corporation
ROBERT OWEN, Director, Procurement, Silgan Containers Corporation
DANIEL CARSON, Senior Vice President and General Counsel, Silgan Containers Corporation
MARK SPRINGFIELD, Director, Steel Purchasing, Ball Corporation
JAN RODRIGUEZ, General Attorney, Ball Corporation
DAVID GILL, Vice President and General Manager, Nippon Steel Trading
THOMAS PRUSA, Professor, Rutgers University

WILLIAM H. BARRINGER, Esquire
DANIEL L. PORTER, Esquire
ROBERT DEFRANCESCO, Esquire
MATTHEW P. MCCULLOUGH, Esquire
REBECCA GRIFFIN, Esquire
Willkie Farr & Gallagher, LLP
Washington, D.C.
# INDEX

<table>
<thead>
<tr>
<th>Testimony</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testimony of the Honorable George Miller</td>
<td>9</td>
</tr>
<tr>
<td>U.S. Congressman, U.S. House of Representatives, 7th District, California</td>
<td></td>
</tr>
<tr>
<td>Testimony of the Honorable Alan B. Mollohan</td>
<td>12</td>
</tr>
<tr>
<td>U.S. Congressman, U.S. House of Representatives, 1st District, West Virginia</td>
<td></td>
</tr>
<tr>
<td>Testimony of the Honorable Peter J. Visclosky</td>
<td>18</td>
</tr>
<tr>
<td>U.S. Congressman, U.S. House of Representatives, 1st District, Indiana</td>
<td></td>
</tr>
<tr>
<td>Testimony of the Honorable Shelley Moore Capito</td>
<td>20</td>
</tr>
<tr>
<td>U.S. Congresswoman, U.S. House of Representatives, 2nd District, West Virginia</td>
<td></td>
</tr>
<tr>
<td>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</td>
<td>26</td>
</tr>
<tr>
<td>Testimony of the Honorable Edwin J. Bowman</td>
<td>31</td>
</tr>
<tr>
<td>State Senator, 1st District, West Virginia</td>
<td></td>
</tr>
<tr>
<td>Opening Statement of James C. Hecht, Esquire, Skadden, Arps, Slate, Meagher &amp; Fлом, LLP</td>
<td>36</td>
</tr>
<tr>
<td>Opening Statement of William Barringer, Esquire, Willkie Farr &amp; Gallagher, LLP</td>
<td>40</td>
</tr>
<tr>
<td>Testimony of Joseph R. Scherrbaum, Vice President, Sales, U.S. Steel</td>
<td>51</td>
</tr>
<tr>
<td>Testimony of Gerald W. Gagliano, Manager, Sales and Service for Tin and Container Products, U.S. Steel</td>
<td>57</td>
</tr>
<tr>
<td>Testimony of Craig Peterson, Vice President, Commercial, USS-Posco Industries</td>
<td>62</td>
</tr>
<tr>
<td>Testimony of M. Thomas Goedeke III, Director, Tin Mill Products, Sales and Marketing, Mittal USA</td>
<td>67</td>
</tr>
<tr>
<td>Testimony of William Stephans, Division Manager, Tin Mill Products, Mittal-Weirton, Mittal USA</td>
<td>73</td>
</tr>
</tbody>
</table>

Heritage Reporting Corporation
(202) 628-4888
# Index

<table>
<thead>
<tr>
<th>Testimony of William J. Klinefelter, Legislative and Political Director, USW</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testimony of Mark Glyptis, President, ISU</td>
<td>80</td>
</tr>
<tr>
<td>Testimony of Seth T. Kaplan, Vice President, Charles River Associates</td>
<td>85</td>
</tr>
<tr>
<td>Testimony of James C. Hecht, Esquire, Skadden, Arps, Slate, Meagher &amp; Flom, LLP</td>
<td>88</td>
</tr>
<tr>
<td>Testimony of John M. Ryan, Esquire, Weil, Gotshal &amp; Manges, LLP</td>
<td>93</td>
</tr>
<tr>
<td>Testimony of Eric P. Salonen, Esquire, Stewart and Stewart</td>
<td>96</td>
</tr>
<tr>
<td>Testimony of Stephen J. Narkin, Esquire, Skadden, Arps, Slate, Meagher &amp; Flom, LLP</td>
<td>101</td>
</tr>
<tr>
<td>Testimony of Stephen P. Vaughn, Esquire, Skadden, Arps, Slate, Meagher &amp; Flom, LLP</td>
<td>105</td>
</tr>
<tr>
<td>Closing Statement of Eric P. Salonen, Esquire, Stewart and Stewart</td>
<td>201</td>
</tr>
<tr>
<td>Testimony of Daniel L. Porter, Esquire, Willkie Farr &amp; Gallagher, LLP</td>
<td>202</td>
</tr>
<tr>
<td>Testimony of Robert Owen, Director, Procurement, Silgan Containers Corporation</td>
<td>204</td>
</tr>
<tr>
<td>Testimony of Mark Springfield, Director, Steel Purchasing, Ball Corporation</td>
<td>214</td>
</tr>
<tr>
<td>Testimony of David Gill, Vice President and General Manager, Nippon Steel Trading</td>
<td>222</td>
</tr>
<tr>
<td>Testimony of Thomas Prusa, Professor, Rutgers University</td>
<td>230</td>
</tr>
<tr>
<td>Testimony of John Moores, Vice President, Strategic Sourcing, Silgan Containers Corporation</td>
<td>251</td>
</tr>
</tbody>
</table>
## Index

<table>
<thead>
<tr>
<th>Testimony/Statement</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testimony of Daniel Carson, Senior Vice President and General Counsel, Silgan Containers Corporation</td>
<td>270</td>
</tr>
<tr>
<td>Testimony of William H. Barringer, Esquire, Willkie Farr &amp; Gallagher, LLP</td>
<td>289</td>
</tr>
<tr>
<td>Closing Statement of John M. Ryan, Esquire, Weil, Gotshal &amp; Manges, LLP</td>
<td>370</td>
</tr>
<tr>
<td>Closing Statement of Daniel L. Porter, Esquire, Willkie Farr &amp; Gallagher</td>
<td>370</td>
</tr>
</tbody>
</table>
PROCEEDINGS

(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
exhibits directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony. Finally, if you will be submitting documents that contain information you wish classified as business confidential your requests should comply with Commission Rule 201.6.

Madam Secretary, are there any preliminary matters?

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

CHAIRMAN KOPLAN: Without objection. Will you please call the first congressional witness?

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

CHAIRMAN KOPLAN: Welcome.

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

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

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

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

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

When the ITC first investigated this issue it was determined after an exhaustive analysis that
Heritage Reporting Corporation
(202) 628-4888

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

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

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

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

I believe that the U.S. producers are capable of competing with imports from any source as
long as the trade laws preventing unfair dumping are
appropriately enforced, and I urge the Commission to
continue its support of the U.S. tin mill products
industry and not to revoke the antidumping order at
this time.

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

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

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

CHAIRMAN KOPLAN: I see there are none.

You're excused.

MR. MILLER: Thank you.

CHAIRMAN KOPLAN: Thank you very much.

Madam Secretary?

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

CHAIRMAN KOPLAN: Welcome back.

MR. MOLLOHAN: Thank you, Mr. Chairman and
members of the Commission.

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

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

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

Since 1909, the health of the Weirton plant has been critical to the overall economic strength of the northern panhandle of West Virginia. The company is one of the largest private employers in my
district, and beyond the actual employment of 1,300 people there's a multiplier effect. Many more indirect jobs depend on the plant.

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

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

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

For this plant and this community to survive, we must continue to confront and stop the
importation of dumped Japanese tin mill into our market. The Japanese shield their industry with managed economy and an overly cheap currency. These distortions enable them to easily dump manufactured product abroad.

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

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

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

This Commission then found in 2000 that these high margins injured our tin mill industry. The people of Weirton were grateful that their government tackled and blocked that unfair foreign trade, and
they understand what will happen if you decide to end this order on tin mill steel from Japan. Simply stated, our industry will be swamped by imports from a highly distorted market with significant excess capacity.

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

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

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

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

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

MR. MOLLOHAN: Thank you.

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

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

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

CHAIRMAN KOPLAN: Thank you, Mr. Mollohan.

Madam Secretary?

MS. ABBOTT: Our next witness is the Honorable Peter J. Visclosky, United States Congressman, U.S. House of Representatives, 1st
CHAIRMAN KOPLAN: Welcome back

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

CHAIRMAN KOPLAN: It will be.

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

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

The integrated facility farthest east along the southern shore of Lake Michigan used to be headquarters when your original order was entered in Bethlehem, Pennsylvania. Subsequently during this pendency it was headquartered in Cleveland, Ohio, and today in Rotterdam. To its west, a facility was headquartered in Japan that today is headquartered in Pittsburgh, Pennsylvania.
In East Chicago, Indiana, a firm was headquartered in Chicago, Illinois, today in Rotterdam, and to its west a firm was headquartered in Cleveland, subsequently purchased by a firm headquartered in Cleveland and today headquartered in Rotterdam.

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

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

Another constant is the fact that the international trading community remains very great. In 2000, the Commission found that the Japanese producers involved in this matter had dumped tin mill product and that this dumping had directly caused injury to the American manufacturing sector.
Now the Commerce Department has concluded that those same Japanese producers would once again dump in this market if the order was lifted and that they would do so at levels similar to those in 2000.

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

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

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

(No response.)

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

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

CHAIRMAN KOPLAN: Thank you for your testimony.

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

CHAIRMAN KOPLAN: Welcome.

MS. CAPITO: Thank you. Thank you for
welcoming me back.

CHAIRMAN KOPLAN: Yes.

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

CHAIRMAN KOPLAN: Yes. You may proceed.

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

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

I'm here today on behalf of the workers in the steel industry of West Virginia that is centered really in Weirton and the northern panhandle region of West Virginia. I represent the 2nd Congressional District of West Virginia, which stretches across central West Virginia, but does not include Weirton. However, it's important I think for me to be here today because the continued success of the Mittal Steel-Weirton facility is critical to the future viability of our state's manufacturing base.
In turn, continuation of the dumping order against tin mill steel producers from Japan is vital I think to the survival of the Weirton steel area and the economic livelihood of that community. The people of Weirton have been manufacturing steel since 1909. The knowledge base of steel production and manufacturing runs deep and over several generations.

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

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

President Bush's imposition of tariffs in 2002 after the Section 201 investigation gave the steel industry I think an important respite from foreign dumping and allowed the industry to retool and restructure. Increased productivity, consolidation and renewed capital investment have greatly helped.
As you well know, the dumping order that you are considering today was imposed in 2000 because tin mill steel was being egregiously dumped on our market in the late 1990s. Volumes of imports were skyrocketing, and prices were plummeting. That increase in volume of imports, coupled with crashing prices, led to an assessment of dumping margins of over 95 percent.

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

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

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

Once again the community is renewing its commitment to being a world-class producer of steel.
They will succeed in this effort as they have always prevailed when their backs are against the wall. West Virginia will remain a leader in tin mill producing for decades to come. However, if the tin mill industry instead faces a surge in dumped Japanese product, all bets are off. The continued viability of Weirton would again be called into question.

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

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

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

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

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

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

MS. CAPITO: Thank you.

CHAIRMAN KOPLAN: We very much appreciate you coming back.

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

MS. CAPITO: Thank you.

CHAIRMAN KOPLAN: You're excused.

Madam Secretary?

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

Heritage Reporting Corporation
(202) 628-4888
Virginia, on behalf of the Honorable Joe Manchin III, Governor of West Virginia.

CHAIRMAN KOPLAN: Good morning.

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

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

MR. MAZEY: Is that better?

CHAIRMAN KOPLAN: Yes.

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

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

As governor, ensuring that West Virginia has a vibrant economy that supports good jobs and strong communities is my first priority. One of my signature
Our plan focuses on building blocks of job retention and job creation, good government, quality education, accessible health care and a 21st century infrastructure.

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

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

A key driver of West Virginia's economy is manufacturing, particularly steel production. The steel industry supports thousands of good paying jobs for hard working men and women in West Virginia, and each of those jobs in turn supports additional employment in the businesses that supply the steel.
industry and provide services to steel workers and their families.

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

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

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

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

In order for us to succeed, we must address
the larger forces that impact Weirton's ability to compete. One of the factors upon which viability of the domestic tin mill industry depends is the maintenance of the current order on tin mills from Japan.

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

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

Demand for tin mill products is down, and domestic capacity, market share, operating income and employment in the tin mill industry have all declined since 2000. Revocation of the present order would lead to resumed dumping of Japanese tin mill imports,
further debilitating an already susceptible domestic industry.

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

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

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

Heritage Reporting Corporation
(202) 628-4888
hundreds of West Virginians who make their living in
making tin mill and on behalf of thousands who have
depended on the industry's health to maintain small
businesses open, to go to college, to pay their doctor
bills and to retire with dignity.

Thank you for the opportunity to present
these views.

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

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

MR. MAZEY: Thank you, Commissioner Lane.

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

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

CHAIRMAN KOPLAN: Good morning.

MR. BOWMAN: Thank you very much. My
written testimony has been submitted, but I would like
to speak to you besides the written testimony and
offer some comments.
CHAIRMAN KOPLAN: The full text will be included in the record.

MR. BOWMAN: Thank you, sir.

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

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

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

Mr. Chairman, members of the Commission, I am a lifelong resident of the City of Weirton. I am also a retired Weirton Steel employee. I was employed for 28 years in industrial relations. I've had the
privilege of serving my community, the City of
Weirton, as a councilman for four years and the mayor
for eight years. I am now in my third four-year term
as a West Virginia State Senator.

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

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

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

In Charleston I speak about this subject
often, and when I speak about the people that I
represent, and let me stop for a moment. When I say
the steelworkers, let me just remind you that those
steelworkers at the Weirton plant are not only from
the State of West Virginia.

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

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

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

Because of the antidumping activities that
occurred over the years, we have suffered the
consequence, and we continue to face those challenges.
Mittal Steel Company has given us an opportunity that we believe we can become one of the leaders in the tin mill products throughout the world if given the opportunity.

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

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

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

CHAIRMAN KOPLAN: Thank you very much for your testimony.

Commissioner Lane?

COMMISSIONER LANE: Thank you for coming, and thank you for putting a personal aspect on this
case. I think it's always important that we recognize that there are people involved in these cases that we hear, and certainly as a long-time employee and a state representative you can give us a very unique perspective, so thank you for making that long trip from Weirton to Washington. Thank you.

MR. BOWMAN: Thank you.

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

(No response.)

CHAIRMAN KOPLAN: If not, you're excused.

MR. BOWMAN: Thank you, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you.

Madam Secretary?

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

CHAIRMAN KOPLAN: Good morning.

MR. HECHT: Good morning. The antidumping order before you in this proceeding has certainly been the subject of spirited discussion since it was entered, including five plus years of vehement litigation by the Respondents in an attempt to overturn it. We are confident that this litigation will come to a final resolution on the merits and that
the Commission's original finding will be vindicated.

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

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

Respondents in another 20 pages discussing macro developments in the steel industry at large and the supposed invulnerability that has resulted from consolidation and greater efficiencies in the industry, they spin out an extended tale relating to the Herfindahl-Hirschman Index to suggest the domestic industry has pricing power, an argument that is almost 180 degrees opposite from what they said in the original investigation.
In all of this there is precious little about what the record actually shows for this industry. In other words, Respondents seem to prefer to speculate and ruminate about how changes might affect the industry rather than looking at what has actually happened.

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

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

Has this translated into the invulnerability Respondents suggest? Hardly. The staff report correctly describes the industry's financial results as lackluster, and there is no question the industry faces numerous challenges, including the growing presence of non-subject imports, significant cost pressures and, of particular note, declining demand.
In fact, U.S. consumption of tin mill products has declined by about 650,000 tons since 2000.

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

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

This order reflects a success story. The industry is taking steps it needs to and that it said it would to establish long-term competitiveness in the context of an extremely challenging market and a significantly declining demand.
While the industry continues to struggle to sustain profitability, there is a real opportunity to see a beleaguered industry regain its footing and health, establishing a dependable, long-term and vibrant source of supply for the domestic market. We urge you not to put that progress in jeopardy by allowing a return of unfair trade.

Thank you.

CHAIRMAN KOPLAN: Thank you for that.

Madam Secretary?

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

CHAIRMAN KOPLAN: Good morning, Mr. Barringer.

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

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

This of course assumes that the conditions
that prevailed in 2000 and the period investigated in
the Commission's original investigation will prevail
today. It also ignores the fact that the Commission
was divided in its original determination, was divided
in its determination on this product in the safeguards
proceeding and that the Court of International Trade
has found the Commission's initial determination to be
deficient.

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

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

Perhaps equally important, it has virtually

Heritage Reporting Corporation
(202) 628-4888
abandoned the U.S. market as is evidenced by the fact that notwithstanding significant excess capacity in cold-rolled and no antidumping duties on Japan, Japan is shipping limited quantities of high-end, non-commodity cold-rolled products to the U.S. at the lowest level in many years.

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

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

These changes are not unique to the U.S.
Indeed, the global industry has consolidated and rationalized. Prices are near record levels in all markets, and production, while at record levels, is demand driven because the biggest producers in virtually all markets are restraining production in order to maintain prices at profitable levels.

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

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

Third, the imperative to generate cashflow to survive which characterized the period covered by the initial investigation has been replaced by the imperative to generate profits and to maintain prices at levels which will sustain the industry long term.
Is the industry vulnerable? No. Its costs are down. It is now owned by global players with strong balance sheets, and much of the demand is tied up in long-term contracts.

Thank you.

CHAIRMAN KOPLAN: Thank you, Mr. Barringer.

Madam Secretary?

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

Mr. Chairman, all witnesses have been sworn.

(Witnesses sworn.)

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

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

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

In terms of the key points, first, the amount of excess capacity in Japan has actually increased while the order has been in place. This is because the Japanese producers are losing sales in all major markets, including Japan. These developments will certainly encourage Japanese producers to
increase shipments to the United States where
customers are looking for lower prices. Meanwhile,
domestic producers actually lost money during the
period of review, despite the benefits of the orders.
Thus, they are in no position to withstand another
surge of dumped imports at this time.

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

This slide puts that unused capacity in
context. The bar on the right represents U.S. imports
of subject tin mill from Japan during 1999,
approximately 330,000 net tons. The bar on the left
shows how much excess capacity Japanese producers
reported last year, over 420,000 net tons. In other
words, according to their own data, the Japanese producers could ship more dumped imports to the U.S. than they did during the last year of the original POI merely by drawing upon their excess capacity without diverting sales from any other customer.

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

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

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

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

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

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

Now, let's consider how a new surge of
dumped imports would affect U.S. prices. The Japanese producers have a history of underselling. This chart shows how Japanese underselling increased dramatically over the period of investigation, and here you see how the Commission has previously found that U.S. purchasers are very sensitive to changes in price. Because of this price sensitivity, U.S. producers cannot simply disregard low-priced imports but must often lower their own prices in order to avoid losing sales.

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

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

The Japanese producers may allege that U.S. prices are locked in by the long-term contracts that
exist between some purchasers and domestic producers, but this is simply not correct. First, the price terms in these contracts can be and are influenced by changes in market conditions. Second, customers can and do cut their volume if they receive better volume from other producers. And, finally, low-priced Japanese offers would certainly affect future contract negotiations. Thus, preexisting contracts will not prevent dumped imports from depressing or suppressing U.S. prices.

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

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

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

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

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

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

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

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

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

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

My experience has taught me that demand for these diverse steel products is driven by factors that are unique to that product. Indeed, that is perhaps
more true of tin mill products than any product that we make. Producers of tin mill products, like producers of other steel products, have been forced to compete with unfairly traded imports. But tin mill producers in the United States and Japan have, for many years, been forced to deal with one problem that is truly unique to that business.

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

You should, therefore, be highly skeptical of any suggestions that there is booming demand somewhere in the world that will create major opportunities for tin mill producers located in developed nations such as Japan. This is simply not true.
Declining demand in the United States and Japan has two important implications for our business. First, it means that the Japanese industry needs access to this market more than ever. I was really struck by the information about the Japanese industry that is contained in your prehearing report. This shows not only that the Japanese producers have large excess capacity, even after idling some plants, but also shows just how much their home and export markets have been shrinking. The prospect that an industry in that distressed condition with such a track record of injurious dumping in this market might be given the ability to dump in this market with impunity is, frankly, alarming.

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

We acquired certain tin mill facilities from the former LTV Steel and National Steel. We have made
these facilities and our existing facility at Gary, Indiana, more productive, and we have successfully integrated all of these plants. At the same time, we have closed down our relatively less-efficient facility at Fairlas, Pennsylvania, and we chose not to bring back into operation certain facilities at Aliquippa, Pennsylvania, that were closed by LTV before they were acquired by U.S. Steel.

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

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

In addition, we are facing stiff competition from nonsubject imports. While these imports have not been priced as aggressively as Japanese imports were prior to the order, they are a source of concern. Permitting the Japanese to do what they did to this market before the order would add supply
pressures to this market that would completely undo what we have been able to accomplish in terms of our financial performance.

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

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

Furthermore, I would like to emphasize to the Commission that while we do not see eye to eye with some of our customers on the need to maintain
this order, we are committed to working with all consumers of tin mill products to ensure that they get what they need when they need it and to make certain that there will be a future for this product. These are interests that we all share.

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

Finally, we are also working with our customers to stimulate demand for tin mill products to the maximum extent possible. We are a member of the Canned Food Alliance. The Canned Food Alliance is a group sponsored by the American Iron and Steel Institute, Can Manufacturers Institute, and certain end users of tin mill products. The members of the
alliance include producers of tin mill products and
major food processors and can makers. Among other
things, the alliance serves as a source of information
on the nutritional value and appeal of canned food and
promotes the advantages of canned food versus
alternatives.

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

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

MR. GAGLIANO: Good morning. I'm Gerry
Gagliano, and my position is the manager of sales and
service for tin and container products at U.S. Steel.
In this position, I regularly deal with all of our
major tin mill customers on a wide range of issues.
This morning, I would like to discuss how the market
works and why you should maintain the order on dumped imports from Japan.

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

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

Heritage Reporting Corporation
(202) 628-4888
their leverage to get a better deal.

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

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

In addition, the volume our customers take on these agreements can vary significantly based upon market conditions and other options they have in terms of supply. In most cases, we are not aware that customers have shifted business to another supplier until we see the impact in reduced order volume. If we see a resumption of unfair trade in this market, we will see the effects throughout our business in the
near term, regardless of the length of our contractual relationships.

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

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

In January of 2005, we asked for another market price adjustment of $85 per net ton, as well as an 8 percent increase in our base price. These were modest increases, much lower than what U.S. Steel has obtained for other flat-rolled products during 2004. Once again, we believe that higher raw material costs, as well as the fact that we were still trying to recover from years of operating losses on this product, required us to make this attempt. While we were ultimately able to obtain some improvement, prices generally remained much lower than were
warranted. Of course, if dumped Japanese imports had been available, it would have been impossible to obtain any increases.

Fifth, this market is highly competitive. Every customer can choose from a variety of domestic and foreign suppliers. This fierce competition explains why domestic producers have found it so difficult to pass along higher costs to our customers. And, finally, Japanese imports will widely be accepted in this market. Japanese producers are well known to U.S. purchasers, both because of their shipments during the late 1990s and because they continue to ship substantial volumes of excluded products to the United States. Their quality is excellent, and their quality would be accepted for any major specification. Their knowledge of this market and their reputation among U.S. purchasers would enable them to rapidly increase sales if the order were revoked.

For all of these reasons, revocation of the order will have an immediate and harmful effect on U.S. Steel. Information about the price and availability of Japanese imports will spread quickly. Our customers, even those with long-term contracts, will use this information to obtain lower prices.
I understand and accept that hard-fought negotiations are a critical and necessary part of our business, and I don't blame our purchasers for using whatever leverage they have, but we should not have to meet import pricing that reflects unfair trade. I urge you to keep this order in place. Thank you for the opportunity to speak to you today.

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

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

The western United States, representing
about 20 percent of the U.S. market for tin plate, has been UPI's natural and historic market for more than four decades. In fact, 90 percent of UPI's tin plate is shipped to customers within 85 miles of our facility. In 1986, the year the joint venture was formed, UPI invested over $450 million to significantly upgrade the quality and efficiency of our steel-finishing capabilities and, in particular, our ability to produce world-class, high-quality tin plate.

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

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

While UPI's geographic location may provide
a competitive edge against domestic tin plate producers in the East, we are vulnerable to foreign imports arriving from Japan. Indeed, in 1999, the year prior to the imposition of the antidumping order. Japanese imports to the West Coast of the United States reached their peak of nearly 163,000 tons, almost twice the amount that arrived in 1997. In addition, between 1997 and 1999, half of all Japanese tin plate imported into the United States arrived at West Coast ports.

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

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

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

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

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

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

Heritage Reporting Corporation
(202) 628-4888
customers, the effect of Japanese pricing would be immediate and dramatic on UPI's current sales. UPI's choice would be losing the business or meeting lower prices. Either would hurt. The current price/cost squeeze would be greatly aggravated if UPI were forced to reduce prices to meet Japanese competition.

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

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

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

Heritage Reporting Corporation
(202) 628-4888
that likely would be canceled if Japanese imports
again undercut our prices and take 30 percent or more
of the West Coast market.

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

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

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

Our prehearing brief addresses all of the
factors that the Commission must consider in a sunset
review, so I will focus my comments on issues with
which I have the most familiarity in my capacity as
director of sales and marketing. First, I'll address
the importance of price in purchasing decisions and
the interchangeability among tin mill products from
various countries, including Japan and the United
States.

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

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

There is a list price book for tin mill
products. Every year, generally in October, each
individual steel producer announces a price increase
for the next year. Negotiations then start with each
customer to set a discount rate off of the list price.
We meet with each customer and negotiate the pricing
and volume for the next year. In reality, the
discounts off the list price have been so high that
the list price has very little resemblance to the
actual pricing in the tin plate sector.

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

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

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

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

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

If the antidumping order on Japanese tin
mill products is revoked, we would expect to see our
customers going back to the Japanese with volume and
looking to get a lower price from them, just like they
were doing in the late 1990s before the trade remedy was put in place. It is a given, understood industry-wide, that the Japanese producers make a good product. I can't imagine there is any buyer out there today who would look at a Japanese supplier with a low price and say, I'm sorry. I can't buy from you right now because I have to start a qualification process. It just isn't realistic.

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

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

I would like to make one final point. There can be no doubt that the North American tin mill products industry and the steel-packaging industry is...
fragile. It's under threat from all directions. It is under threat from alternative packaging. Go to the grocery store, and you'll find the Folger's coffee can isn't a can anymore; it's now a plastic tub. Tuna is packed in pouches. Go to the Home Depot and look at Behr paints. It may look like a metal can, but look closely. The body and bottom are molded plastic.

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

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

At Mittal Steel USA, we are doing everything we can to hold the industry together. If the antidumping order is removed, and dumped imports return to the market, as they most assuredly will,
that will put the industry in an even worse position. We have a lot of people whose jobs and families are at stake. There is no doubt in my mind that the revocation of the order will substantially damage, if not destroy, the U.S. tin mill industry. Mittal Steel USA and the domestic industry need the order to be continued if we're to survive.

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

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

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

I started in the steel industry in 1970 and worked at LTV Steel for over 30 years. Most of that time, about 27 years, I worked in the tin plate business. I was the operations manager at LTV's Aliquippa plant from 1981 to 1999. Then I went to the Indiana Harbor plant and took on responsibility for both of LTV's tin mills. I went to work at ISG in
2004 at about the time that ISG acquired Weirton Steel. Under Mittal, I am now responsible for the tin mill operations at the Weirton plant.

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

Late last year, Mittal decided to take the Weirton plant back to its roots and return it to being a world-class, tin mill products specialist. This has meant idling the blast furnaces, steel-making, and hot-dipped galvanized lines. Now, rather than producing raw steel at the plant as a fully integrated operation, the Weirton facility instead sources slabs from Mittal's Sparrows Point and Cleveland facilities. We then hot roll the slabs into coils in the hot-strip mill and further cold roll, anneal, temper, and ultimately plate the steel with a tin or chromium coating.
With this configuration, Mittal seeks to maximize the efficient use of all of the facilities that have been brought together under one multinational company. With the consolidation, we now have the ability to move resources within the company between facilities that were previously owned and operated by separate owners, and it isn't just slabs that we are moving between facilities. We're also moving some equipment intra-company.

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

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

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

Heritage Reporting Corporation
(202) 628-4888
coming from a chrome line at Sparrows Point that was
shut down about a year ago. This will improve
quality, cost, efficiency, and yield. This is a
significant project, which we expect will result in a
significant improvement in our operations.

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

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

   These are major projects that require
significant capital investment, millions of dollars.
The tin plate industry, like all sectors of the steel
industry, is highly capital intensive. These trimmers
and tension levelers, as well as all of the other
equipment required to make tin plate, are expensive to
purchase and maintain.
Mittal is investing in its tin mill operations because we expect that this market will continue to be viable and can be a profitable business for the company. At the same time, however, we have seen softening demand for tin mill products, and we are seeing more and more substitute materials in the packaging industry. We would like to see the antidumping order on Japanese tin mill products remain in place because there is no room in the market for dumped material.

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

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

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

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

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

Right after the bankruptcy of Bethlehem
Steel, I went up to Sparrows Point up in Baltimore.
We had a meeting of the retirees, and it wasn't a
meeting; it was a wake and a riot. It was hundreds,
actually probably a thousand people who had worked all
of their lives at Bethlehem Steel, who expected that
they were going to receive retiree health care, and
they were there, and they were angry, and they were
upset because their retiree health care was gone. They were confused, and they didn't understand what was going to happen with their pensions, and we tried to explain that at least we had the PBGC as a backup so that they were going to receive part of their pensions.

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

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

So when we come here, and we ask for things to be continued, we are asking things to be continued
in a very uncertain world, and we're trying to make
the world less uncertain for those folks who suffered
the most during the steel crisis from 1998 until the
year 2000.

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

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

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

Mr. Chairman and Commissioners, I'm Mark
Glyptis. I'm president of the Independent
Steelworkers Union, which represents about 1,300
steelworkers at the Weirton Steel plant, now owned by
Mittal Steel USA. I've testified before you numerous times.

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

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

I worked in a steel mill for over 30 years, and I'm a third-generation steelworker. I could
testify that when I went home as I was growing up, we always ate supper together, and almost every evening my father spoke about what took place in the mill that particular day. Before my father, I remember vaguely my grandfather, who also worked in the mill, talking about how the mill ran that day, did they have a good turn, and Weirton Steel was the entire community.

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

I remember visiting the customers in my capacity as president of the Independent Steelworkers Union, and it was horrifying to see Japanese steel in our customers' plants. It made you wonder, how can they deliver a product from Japan to Weirton, and that customer can buy it cheaper than what we can make it.
for? The only way that that took place, and it's been proven, I think, beyond any doubt whatsoever, is that that product was illegally dumped.

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

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

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

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

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

Mr. Klinefelter talks about a VEBA. The
VEBA was an excellent way of providing some benefits for our retirees, but they only get back a fraction of what they lost. I applaud the USW for negotiating the VEBAs in the steel industry.

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

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

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

MR. KAPLAN: Good morning. I'm Seth Kaplan of CRA International, and I've been asked by the
Petitioners to explain the role of pricing information in the tin plate market. Let me briefly summarize the accrued knowledge, the economics, and operations research literature, and then turn to this industry. My study attached to the brief of Skadden, Arps and U.S. Steel explains this in detail.

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

In the tin plate market, tin plate makes up about 40 to 100 percent of the cost of the products in which it is used, according to the staff report. The notion that purchasers ignore pricing information from competitive suppliers just goes against 200 years of
economic theory, and it's just incredible that a single person who is in charge of 70 percent of the costs of their company is going to ignore the prices from some bidders and in negotiations with others.

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

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

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

So those are the major conclusions of the study. Please take a look. Thank you.
MR. HECHT: Thank you, Mr. Chairman, and we reserve the balance of our time.

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

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

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

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

Heritage Reporting Corporation
(202) 628-4888
contracts? Who wants to start with that? Maybe, Mr. Gagliano, do you want to take a stab at that?

Mr. Gagliano: I certainly would, Commissioner. I think the benefits are seen on both sides of the house, and that is from a supplier's standpoint, from our standpoint, we would see some consistency in a base production level, if you will, through our facilities. From a customer's standpoint, they could be replying on a base supply from a consistent supplier and a base set of specifications, if you will.

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

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

Chairman Kaplan: If you could reidentify
yourselves for the record each time you speak, it
would be helpful because of the number of witnesses.

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

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

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

COMMISSIONER ARANOFF: Okay. Mr. Peterson?

MR. PETERSON: I don't know that there has
been a trend toward more long-term contracts. The
nest of customers we have is so small that virtually
all of them have one agreement or another. But the
contracts typically give both parties some assurance
of continuing supply and some assurance future price negotiations will take place.

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

COMMISSIONER ARANOFF: Okay. I appreciate that answer, and actually, Mr. Peterson, that leads me right into the next question that I was going to ask. My understanding of the way the contracts work in the industry is that neither the price nor the quantity is fixed over the term of the contract, and so I understand you're all telling me that contracts create stability in the market, and I want to understand what the mechanism is that creates that stability. I guess I understood you, Mr. Peterson, to be saying that while quantity is not fixed, there is a range, so maybe there is a minimum that contributes to that, but I invite you all to explain to me exactly how, when price and volume are not fixed, the contract creates stability in the market.

MR. SCHERRBAUM: Joe Scherrbaum, U.S. Steel. My comment to that would be it is not full stability,
so to speak. I would call it a limited stability
where it does have a volume target that we have agreed
to supply and a customer has agreed to produce.
However, as we have said in the prior testimony, there
is the option the customer has, if market prices
change, particularly if market prices get lower, they
do have the option to potentially discuss adjusting
the prices and/or just buy less volume from us. I
would not phrase it as a firm stability but more or
less limited.

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

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

COMMISSIONER ARANOFF: Mr. Hecht?

MR. HECHT: Just to insert one comment
because I'm going to start, I'm sure, sensing a little
sensitivity from our clients because these are pretty
sensitive arrangements, as you can imagine, but given
the importance of this issue, we would certainly be
happy to discuss as much as we can confidentially in
addition to what you can get in here.
One thing to just throw out is some of these contracts do have confidentiality clauses in them, so it might make sense, if you would like to see those, for example, or the terms of them, to ask the people this afternoon or maybe even the other folks out there if they would be willing to have those provided. We certainly would be happy to analyze them in detail. I just wanted to put that as a caveat because I know my guys are going to be a little sensitive about giving great detail on it.

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

I'll ask another question.

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

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

MR. PETERSON: Craig Peterson from UPI. In answer to your question about long-term contracts,
those long-term contracts that we have do not have fixed prices for the term of the contract. At best, within a multiyear contract, fixed pricing lasts for really no more than one year of whatever number of years are attached to that contract.

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

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

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

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

MR. RYAN: We would be happy to do that.

Thank you.

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

COMMISSIONER ARANOFF: That may be part of the explanation. Thank you very much, and thank you,
Mr. Chairman. I'm sorry. Mr. Gagliano?

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

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

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

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

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

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

MR. KLINEFELTER: Thank you.

CHAIRMAN KOPLAN: My situation is a bit different from Commissioner Aranoff's. I participated
in the original investigation, and I made a negative
determination. However, I approach this review with
an open mind. What that means is I'm not beyond
redemption.

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

Beginning with Mr. Goedeke and Mr. Stephans,
in the original investigation, I found that the record
indicated Weirton had difficulty sourcing imported
slab, which adversely affected its on-time delivery
performance. For example, one purchaser, whose
identity was bracketed, indicated that it did not
purchase the full amount of tin plate from Weirton in
1999 because of Weirton's very poor on-time
performance. I found that this problem led to some of
the 1999 price declines. Tell me, what has been the
situation with regard to on-time performance during
this current review period?
MR. STEPHANS: Bill Stephans, Mittal Steel, Weirton. Our on-time performance over the last couple of years, which is really the only period that I could answer to, up until the end of last year had been continually improving with the steel-making situation at Weirton, even with the slab purchases, or I should say slab transfers, from the Sparrows Point and Cleveland plants had been continuing to improve over that period through 2005.

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

CHAIRMAN KOPLAN: Thank you for that.

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

CHAIRMAN KOPLAN: Would you do that and submit it post-hearing? I would appreciate that, Mr. Salonen.
MR. SALONEN: Absolutely. Certainly.

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

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

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

CHAIRMAN KOPLAN: Thank you. Mr. Peterson?

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

CHAIRMAN KOPLAN: But in 2005?

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

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

My question is, since Japan has left the
U.S. market at the beginning of this review period, has the domestic industry regained the share of sales it alleged was lost then to subject imports, or has that business simply shifted to nonsubject imports? Mr. Hecht, do you want to begin with that?

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

CHAIRMAN KOPLAN: You said subject. What about --

MR. HECHT: Nonsubject. I'm sorry.

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

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

CHAIRMAN KOPLAN: Yes, Mr. Narkin.

MR. NARKIN: If I could just add to Mr.
Hecht's answer.

CHAIRMAN KOPLAN: Sure.

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

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

CHAIRMAN KOPLAN: I understand that.

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

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

MR. NARKIN: Yes.

CHAIRMAN KOPLAN: Mr. Kaplan?

MR. KAPLAN: I would like to add one further
point. The performance of the industry improved with the presence of the nonsubject imports despite declining demand. So you can distinguish between the effects of the imports between the period of investigation and the period of review on that basis alone.

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

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

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

My question for the industry witnesses,
while counsel is looking that up, is, where do you
estimate the geographics of the Japanese reentry would
be, and what is your basis for that, if we lift the
orders?

MR. PETERSON: Craig Peterson, UPI.

Certainly, our expectations would be that Japan, if
the order were revoked, would continue to ship large
amounts of tin plate into their logical port of entry
to the United States, which is the West Coast. They
have a long history of having done that in the years
leading up to 1999, so it would be natural to expect
that were the order to be revoked, that that would
quickly start again.

CHAIRMAN KOPLAN: Mr. Scherrbaum?

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

CHAIRMAN KOPLAN: Mr. Goedeke or Mr.
Stephans?
MR. GOEDEKE: Tom Goedeke, Mittal Steel. I concur with what the gentleman said from U.S. Steel. I think the imports would go where the customers' plants are, where their consuming locations are, and that would be West Coast, Midwest, and the East Coast.

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

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

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

CHAIRMAN KOPLAN: Thank you all very much.

MR. RYAN: With regard to the table -- this
is John Ryan -- this is based on Commission questionnaire data. I don't have any current reason to question it, but we would like to compare the customs data and get back to you on that in the post-hearing brief.

CHAIRMAN KOPLAN: I would appreciate that.

Thank you very much.

Vice Chairman Okun?

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

Let me start there. I know, in response to Commissioner Aranoff, you'll be providing information with regard to the bid data confidentially, which I
understand, and I think that's important in understanding whether there have been any changes since the original investigation and how the bids work and how the pricing works.

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

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

MR. RYAN: If I could add to that.

VICE CHAIRMAN OKUN: Yes, Mr. Ryan.

MR. RYAN: We have the situation that we don't have any subject imports. They disappeared during the period of review. So it seems the
Commission, as is normally the case, you have to look back to what the data showed when the imports were in the market, and that bid data from the original investigation, therefore, I think, is the most probative data that you have with regard to what the pricing of imports is likely to be were the order revoked.

VICE CHAIRMAN OKUN: Yes.

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

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

MR. VAUGHN: Stephen Vaughn for U.S. Steel.

One of the things that you did in this investigation is you do have a pretty significant amount of pricing product data as well as the AUV data, and in this case, I think that both those sources of data show fairly consistent patterns, namely that you had relatively mild price increases, which is consistent with the testimony that you're hearing from our witnesses.

So I think that whether you look at AUV data or the pricing product data, I think you'll see a pretty consistent pattern there in terms of what's been happening in the market in recent years.
VICE CHAIRMAN OKUN: I appreciate those comments. Again, I think it points out the importance of understanding whether there have been changes in the contract process since the original investigation in helping us evaluate potential pricing pressure going forward, so I look forward to that further post-hearing information.

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

MR. HECHT: That's where I thought you were going in your last question, but I may have misinterpreted it. You know, I think it's limited because of product-mix issues, but I do think, if you look at the larger patterns, it can be probative. In part, it certainly shows, I think, over the period a situation where U.S. prices tended to be higher throughout most of the period. You saw a little bit of a shift of that in 2005, although, again, it's hard to know how much of that might be due to product mix, and I'm referring now to some of the Japanese export AUV data.
A couple of points that are interesting: In their brief, they try to argue that these export markets are more attractive right now because of pricing. We certainly don't think that that is justified on the record. When you look at the entire period, and certainly a reasonably foreseeable period of time, U.S. pricing has tended to be higher, and even with their own data, if you look at sort of a principal export market like Mexico, which, I think, is actually their highest export market, their own data show lower AUV data in Mexico than in the U.S. in terms of the prices here.

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

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

VICE CHAIRMAN OKUN: Yes.

MR. NARKIN: If I could just add to that briefly, this argument that the Japanese producers have made that 2005 prices in other markets are higher than the U.S., that that is more attractive to them, and that's where they are increasingly focusing their export efforts, if you look at the Japanese producers' data for 2005, you don't see that. You see that in
all of the major markets, their shipments are
declining at the same time that supposedly you see
this change where prices in other markets are going
up.

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

Help me understand why you think that is.
Does it have to do with the restructuring of the
domestic industry where you have less producers? Does
it have to do with the purchasers? What's your best
take? And again, I want to hear from the industry
witnesses on this, on the importance of price in the
market now vis-a-vis during the original investigation. Mr. Peterson?

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

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

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

VICE CHAIRMAN OKUN: Do any other witnesses want to comment on that? Mr. Kaplan, would you like
to comment on pricing now and then?

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

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

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

Then if I could turn to another change in conditions of competition since the original investigation with regard to the structure of the domestic industry, you've had an opportunity to talk about that, and I see my yellow light has come on, but my question is if there is anything else you wanted to add to address Respondents' argument that the change
in the nature of the domestic industry here means that
you're better positioned.

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

MR. NARKIN: Vice Chairman Okun?
VICE CHAIRMAN OKUN: Yes.
MR. NARKIN: This is Steve Narkin.
VICE CHAIRMAN OKUN: Yes, Mr. Narkin.
MR. NARKIN: In general, they have made this
argument that because of more concentration in terms
of domestic suppliers, the domestic industry has
pricing power. Now, they downplay, to the point of
virtually ignoring it, the fact that the availability
of imports from other countries is obviously a
consideration in terms of whether domestic suppliers
have purchasing power.

That's not the way the Department of Justice
looks at it. The Department of Justice looks at
import competition. Moreover, that's not just
theoretically looked at. They have looked at it twice
in the context of this industry. They looked at it very carefully when U.S. Steel acquired National Steel, and they decided not to challenge the merger. They did make what's called a second request for information at that time, which means they explored this whole issue thoroughly. Later, when ISG acquired Weirton, they didn't even issue a second request.

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

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

That's a long-winded answer, but I wanted to clarify that.
VICE CHAIRMAN OKUN: That's okay. I know you can't see that my red light is on, but I do appreciate hearing the rest of that answer, so I appreciate the indulgence of my colleagues in letting you finish. Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Hillman?

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

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

It strikes me, in reading the record for this investigation, that you have a very different
posture in terms of the data presented on the process itself of setting prices. In the original investigation, there was a fair amount of testimony that negotiations with domestic producers were completely segregated from negotiations with import sources, particularly Japanese sources, and that the prices from one, in essence, never bled into the other and that the negotiations with the domestic industry were conducted and completed, and then there were negotiations with import sources, particularly the Japanese.

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

Is this change simply a change in the way it's described, or has there been an actual change in the pricing negotiations and practices in terms of how
much you know about import competition prices in this
review than you knew at the time of the original
investigation? Do any industry folks want to comment?
Go ahead.

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

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

MR. GAGLIANO: Yes, I would.

COMMISSIONER HILLMAN: Okay. Mr. Peterson,
would you have a view on this?

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

COMMISSIONER HILLMAN: Okay. Other comments?

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

COMMISSIONER HILLMAN: Then if I can go to
the issue of the contracts and the various meet-or-release provisions, changes in either price or volume -- again, I'm just trying to understand -- would you describe the meet-or-release clauses or other price or volume escalators, deescalators, as having been actually invoked as opposed to they are in the contract, but they don't actually get realized? Have there been actual changes in the price or volume of what you're shipping compared to what was in the original contract as negotiated? Has that happened more often in the last five years or less often? Again, I'm trying to compare the period of the original investigation with now in terms of how often your customers have said, I want to invoke this clause in the contract and actually make a price change or make a volume change that was permitted under the terms of the contract.

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

COMMISSIONER HILLMAN: I appreciate that,

Heritage Reporting Corporation
(202) 628-4888
and if there are specifics on this issue of the meet-or-release clauses, whether they are specific only to domestic competition or whether they reference any competition, and, again, how often they have actually in practice been invoked that could be put in the post-hearing, that would be helpful.

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

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

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

Help me understand whether once you get to
certain level of price gap between the alternatives, whether that's what moves it or whether there is something inherently more desirable about either the aluminum or the plastic products that means that once that demand has shifted, it's not coming back, no matter what the price gap might be between the alternative packaging products.

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

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

MR. GAGLIANO: Gerry Gagliano, U.S. Steel. To answer the question on the ease of transition back to steel, I truly couldn't answer that, but what I can say is that we are aware of certain sectors of the business that had moved to plastic a few years ago which had made the decision, just recently because of
the hurricane activity and the increase in resin prices, to move back into steel just within the last few months. So the cost of those companies to transition their raw materials from plastics back to steel, I couldn't tell you, but I do know, in fact, it can happen, and it has very recently.

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

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

So it's the convenience aspect. It's something new, it's product differentiation, and
that's what the packagers of food products are looking for. So you will see this differentiation in the marketplace.

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

MR. GAGLIANO: Gerry Gagliano, U.S. Steel. Once again, we do see the trend of declining demand over the last five years. We're looking at perhaps a flattening out of that in the near future. I think Mr. Scherrbaum mentioned in his opening testimony about our activity in the Canned Food Alliance, the Steel Packaging Council, which is a part of the AISI. We're actively involved in promoting the use of canned food throughout the country, and there are a lot of venues that we're involved in with articles and distribution networks and chefs. We are going to colleges and universities to promote actual studies involving steel cans that do not exist today. The plastics industry is there, the steel industry has not been, and we are promoting that. So we're actively working on a lot of things to change that demand.
COMMISSIONER HILLMAN: Mr. Hecht, the red light has come on, so if you have a very quick comment, but other than that, I'll wait until the next round.

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

COMMISSIONER HILLMAN: Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Lane?

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

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

MR. SALONEN: Commissioner Lane, if I may intercede here, I believe Mr. Stephans might consider that to be getting into some confidential information. We would be happy to address that in the post-hearing.
CHAIRMAN KOPLAN: You need to keep reidentifying.

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

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

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

COMMISSIONER LANE: Okay. Thank you.

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

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

COMMISSIONER LANE: Okay. I'm sure that this next question fits in the same category. When the transfers are priced, what is the basis for the pricing, and, specifically, I would like to know if the cost that is used for any cost-based-transfer accounting includes fully distributed costs at the Sparrows Point plant, including capital-related costs.
MR. SALONEN: Eric Salonen for Mittal Steel. I think we have a trifecta. We would be happy to address that in the post-hearing.

COMMISSIONER LANE: Okay. Thank you.

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

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

COMMISSIONER LANE: Okay. Thank you.

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

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

COMMISSIONER LANE: Do you shop around for the best-priced steel, and where do your supplies come
MR. PETERSON: I'll answer your second question first. Our supplies come to us from both of our parent companies, U.S. Steel and POSCO.

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

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

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

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

COMMISSIONER LANE: Good answer. Thank you.

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

MR. PETERSON: Craig Peterson, UPI. The
planned improvement in tin mill operations will not increase capacity at all. It is simply to replace old equipment, in some cases equipment that has been in place since 1949, and to streamline other processing features in the tin mill process to help reduce costs.

COMMISSIONER LANE: Okay. Thank you.

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

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

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

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

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

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

Heritage Reporting Corporation
(202) 628-4888
Mr. Hecht, would you care to explain those discrepancies?

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

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

MR. SALONEN: Yes, Commissioner Lane. Eric Salonen, Mittal Steel. I just would echo Mr. Hecht's statements and also point out, of course, that to the extent the Commission is concerned about the data it has received, it always has, at least as far as the
domestic industry is concerned, the opportunity to verify that data, something that foreign producers typically are beyond the reach of since they are not here, and we are.

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

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

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

CHAIRMAN KOPLAN:  Thank you.

Commissioner Pearson?

COMMISSIONER PEARSON:  Thank you, Mr.
Chairman. Good afternoon to the morning panel. Good
to have you here. Nice to see some familiar faces and
some who I have only just seen today.

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

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

MR. HECHT: I guess, just to kick it off, I
think that that tells you two things in terms of your
statutory analysis. One, it goes to the effectiveness
of the orders, which is while the industry's
performance was, I think, lackluster through the
period, as the staff characterized it, it was
significantly better than it was when the Japanese
subject imports were in the market, and I think that
is strong evidence that these orders were effective
and allowed the industry to perform better even in a period of declining demand.

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

MR. RYAN: Commissioner Pearson, John Ryan.

I would add to that, I think, in Mr. Peterson's opening statement, he, in particular, talked about the West Coast market and declining demand there and the challenges they would face in a declining market were Japanese imports to come back in. In other words, to echo Mr. Hecht's comments, it's a particular vulnerability in a declining market.

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

Heritage Reporting Corporation
(202) 628-4888
effect that returns in this business would have to compare favorably to returns in other businesses if there were going to be capital injections into tin mill, something like that.

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

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

COMMISSIONER PEARSON: Other comments? Mr. Kaplan, perhaps you could comment on the economics behind this decision. When you've got an
industry with a large fixed capital stock with not a lot of good alternate uses, at least as I understand it, and you've got declining consumption, one would anticipate perhaps an extended period of subpar returns for such an industry, wouldn't one?

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

COMMISSIONER PEARSON: An industry to do what?

MR. KAPLAN: Contract.

COMMISSIONER PEARSON: Contract.

MR. KAPLAN: That's correct. And I think if you look at the capacity situations and the statements by U.S. Steel in terms of what they opened and didn't open, that reflects a situation where the industry isn't returning its cost of capital. But you do reach an equilibrium situation, at which point the industry is not growing or not shrinking, and the fact that at levels of high demand during the original investigation the industry performed more poorly than in the periods of declining demand now where they are shedding some capacity is indicative of the benefits of the order because you're doing better in a place where demand is lower.
Now, it also points to the challenges of the
domestic industry in facing both declining demand and
higher material costs now and goes to the
vulnerability of removing the order and allowing in
imports that injured the market in periods of better
times.

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

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

COMMISSIONER PEARSON: Mr. Vaughn?

MR. VAUGHN: Stephen Vaughn. Commissioner
Pearson, I think one strong piece of evidence in
support of what Mr. Kaplan is saying is look at what
happened early in the period of review before a lot of these changes in the marketplace had taken place. We saw an immediate improvement in the operating performance of the industry from 1999 to 2000, even before a lot of the other factors took place. So that provides further support to the conclusion that it is the order that's having a big part of this effect.

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

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

Here, I think there is an overcapacity issue still, if I'm reading the numbers correctly. You've
got four firms all represented here. I really don't
envy a lot the situation that you're in because you
look around the room, and unless consumption
stabilizes quickly or some additional capacity is put
to another use, there may be a continued period of
relatively low returns. The industries that I'm more
familiar with didn't require any import competition to
achieve wide variations in results in response to
overcapacity and then working off that capacity. It
was all done by decisions made by the domestic
industry. If anyone would want to comment on that,
that's fine, otherwise -- Mr. Vaughn?

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

Apparently, the types of problems that
you're describing for this industry appear to exist in
Japan as well. We're seeing enormous amounts of
excess capacity over there. They have an option,
which is, if the order is revoked, to dump in this
market and try to avoid some of those market-based
consequences that you're talking about.
I think one of the purposes of the trade laws is to make sure that when these types of conditions occur, they are solved through market-based practices, not through unfair trade.

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

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

CHAIRMAN KOPLAN: Thank you, Commissioner.
Commissioner Aranoff?
COMMISSIONER ARANOFF: Thank you, Mr. Chairman.

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

When you look at contracts that you've
entered into over the period of review there is some
indication in our information that to the extent there
have been price adjustments made under price
adjustment mechanisms and contracts those have perhaps
been more likely to be adjustments in favor of the
domestic producer in terms of like a raw material
surcharge than they necessarily have been to be an
adjustment in favor of the purchaser because of market
conditions.

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

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

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

My question to you is given that we have
these contracts of a year or more does that mean that
we should be looking at a longer period as the
reasonable period of time under which we might see the
impact of revoking the order or are there are other
reasons why we might see the affects of re-entry of
Japanese imports into the market quite quickly so that
we don't even need to consider a longer period?

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

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

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

Also even during that one year between here
and the end of the calendar year there is all of the
flexibility in quantities within those contracts. So
there's quite a bit of changes that would be immediate
and much sooner imminent. Much sooner than imminent
reasonably foreseeable period of time that would take
place.

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

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

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

On the other hand I'm also hearing you say
well, the Japanese producers, they're already really
qualified with your customers, there wouldn't be any
delay for qualification, so as soon as they could
enter the market they could start having a price
impact. Are both those things true?

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

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

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

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

COMMISSIONER ARANOFF: Appreciate that
Mr. Gagliano, did you want to add something?

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

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

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

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

COMMISSIONER ARANOFF: Thank you very much.
I'm going to actually ask a question for Mr. Glyptis who is almost completely obscured by Mr. Salonen back there. Knowing how busy Mr. Klinefelter is I didn't want to dare delay him for the question, but I'll ask you since you are still here with us.

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

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

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

Maybe a slight increase. Many less people
overall, and the sacrifice is coming primarily on the
benefits side of our contract.

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

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

Thanks, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you.

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

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

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

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

CHAIRMAN KOPLAN: Okay.

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

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

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

CHAIRMAN KOPLAN: Anybody else? Mr. Gagliano?

MR. GAGLIANO: Gerry Gagliano, U.S. Steel.

I guess I would say that frankly it takes that long of a period of time or it can take that long because we have not come to terms on the pricing and we've not met what the customer is demanding nor what we're looking for in terms of return to our products. I hope it's more that than pointing to my negotiating skills.

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

Yes?

MR. GOEDEKE: Tom Goedeke, Mittal Steel.

Contract negotiations, they vary significantly from company to company or buyer to buyer let's say. Some buyers have very specific goals as to the kind of pricing they want. They have gathered what they feel are the steel pricing availabilities from domestic and various foreign suppliers, so the negotiations can maybe last a month or two.

Others want to continue to negotiate because they think they can get lower pricing as they continue to drag it out. That may be three or four months.
Then you have the other extreme where some buyers just think the market is changing all the time and they don't want in their own mind to be disadvantaged to their competitors.

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

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

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

Start with you, Mr. Scherrbaum.

MR. SCHERRBAUM: Joe Scherrbaum, U.S. Steel. My opinion is since the consolidation I would say that
there is not a significant domestic price leader. I think that we all are trying to do the best thing we can for our companies and I think it's just about a level field between the domestic mills on pricing and foreign and nonsubject imports as to price leadership in this market. I think it's leveled out.

CHAIRMAN KOPLAN: Thanks.

Mr. Goedeke?

MR. GOEDEKE: I concur with those comments.

CHAIRMAN KOPLAN: Mr. Peterson?

MR. PETERSON: I do as well.

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

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

CHAIRMAN KOPLAN: Anyone else on that?

MR. PETERSON: Yes. Craig Peterson, UPI.
There has even I think as late as this year been additional consolidation among can makers, but they have always represented a very consolidated industry with whom to deal.

CHAIRMAN KOPLAN: Thank you.

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

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

In your prehearing brief at page 15 USS-POSCO reports that global demand is also declining and you note as did our staff that part of this decline is attributable to shifting consumer preferences in advancements in substitute packaging materials with
displacing the like product.

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

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

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

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

You argue that Japanese producers of the subject product continue to be dependent on export markets for much of their output and that they have seen exports to our market's decline during the period
of review, but according to the data in our staff report in Table 4-8 based on responses to our questionnaires home market consumption in Japan increased to 65.5 percent in 2005.

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

Yes, Mr. Vaughn?

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

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

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

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

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

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

CHAIRMAN KOPLAN: Thank you for that.

Vice Chairman Okun?

VICE CHAIRMAN OKUN: Thank you.

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

I guess my question would be and maybe for producers, but if you have any other additional information which is Mexico, do you agree that there's
increasing demand there? We talked about the
statistics show a declining global demand, but for
Mexico itself is demand increasing? Do you know?

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

VICE CHAIRMAN OKUN: Yes, Mr. Vaughn?

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

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

VICE CHAIRMAN OKUN: That's helpful.

Anything else that you could provide post-
hearing, Mr. Scherrbaum, what you had just mentioned
with regard to what might be going on Mexico would be
helpful to hear and then with regard to their other
markets including the Philippines and Iran.
I haven't heard anything mentioned. I know you have talked about China and what you see with those increasing home market shipments I guess there. So I appreciate those and anything further that you can put on the record would be great.

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

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

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

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

VICE CHAIRMAN OKUN: Well, I guess it's
looking for in other words in looking at the role of nonsubjects one could argue and I think Respondents have argued that if you're looking at this market as Japan and you come in at all that they may simply replace nonsubject imports because nonsubjects have increased both their market share and their shipments to the United States even as demand to the United States has declined.

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

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

VICE CHAIRMAN OKUN: Other producers?

Yes, Mr. Gagliano?

MR. GAGLIANO: My sense of that would be that we would just add another competitive supplier to the marketplace. I don't see that there would be displacing the non-subject imports, but it would just
be adding another level and another area of competition for our domestic mills.

MR. NARKIN: Vice Chairman Okun?

VICE CHAIRMAN OKUN: Yes.

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

VICE CHAIRMAN OKUN: Not what the Japanese --

MR. NARKIN: Yes.

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

Are there quality differences? Any acceptability differences? You've talked about the Japanese being able to enter readily both because they've been selling what's been excluded and also their quality was regarded as high during the original
MR. KAPLAN: Well, I'd make two points.

VICE CHAIRMAN OKUN: Yes, Mr. Kaplan.

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

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

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

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

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

Mr. Hecht?

MR. HECHT: Jim Hecht. Just to supplement a little bit what Seth said, too, I think to keep in mind not only the volumes and what they did before when they were here, but even if you look at some of the purchaser comments here you hear talk about that they could serve some of the big runners and the commodity-type projects that are associated with large volumes.
Obviously they're here with excluded which might be more specialty products. You have record testimony about a variety of specialized applications they can serve. I don't see any gap anywhere in terms of what they could serve. They obviously have a strong incentive to come back here volume-wise and I think there's no reason to believe they could not compete across the board.

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

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

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

VICE CHAIRMAN OKUN: Okay. Great. I
appreciate that. With that I believe I've covered all
my questions. Thank you very much for all your
answers. I appreciated it very much.

CHAIRMAN KOPLAN: Thank you.

Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you.

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

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

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

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

Mr. Gagliano?
MR. GAGLIANO: Gerry Gagliano, U.S. Steel.

I guess a couple of comments along that line is we have seen some demand decrease relative to tin free steel. Two things that we're aware of. One is there's ongoing environmental concerns about chromium on the coating. Although nothing has been done at this point there are studies being done.

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

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

COMMISSIONER HILLMAN: Okay. I appreciate that answer.

Mr. Goedeke?

MR. GOEDEKE: Tom Goedeke, Mittal Steel.

There are a couple of things going on with TFS. Also as more and more cans are made by the two piece process, D&I, where you would have two ends one on the top and one on the bottom you've eliminated one of
those ends, so therefore many times the ends would
both have been chrome so that has been a reduction in
the amount of TFS that's out there.

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

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

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

COMMISSIONER HILLMAN: That's very helpful.
Do you have a sense of what portion of the cans now
are the two piece DNI process as opposed to the old fashioned two separate ends?

Mr. Peterson?

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

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

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

In this circumstance I'm wanting you to brief how the Commission should comply with its obligation to consider its prior injury determination when the current prior injury determination is a negative one. I don't know if there's anything you want to comment on now, but I would ask for that to be
addressed in your post-hearing brief.

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

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

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

     Mr. Vaughn?

     MR. HECHT:  Jim Hecht.

     COMMISSIONER HILLMAN:  I'm sorry.

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

     COMMISSIONER HILLMAN:  I'm sorry. The 204
review investigation. Excuse me. The 204 report that
was done. The 18 month mid-term report. Well, no. The 204 report.

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

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

MR. VAUGHN: The monitoring report.

COMMISSIONER HILLMAN: The monitoring report.

MR. VAUGHN: Okay.

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

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

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

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

MR. HECHT: Absolutely. As I mentioned
before I think our data is consistent.

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

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

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

I wondered if you could comment on both
issues. One, is there a big difference in the specs
of products that are provided by the domestic industry
versus those that typically tend to be imported?

Mr. Gagliano? Go ahead.

MR. GAGLIANO: Gerry Gagliano, U.S. Steel.

Your first point is it's our belief that if anything
the Japanese tin plate producers have expanded
capabilities over the domestic tin plate producers and
can essentially produce essentially every
specification as consumed here in the United States.
That's our view.

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

MR. GAGLIANO: Yes, there are currently.

COMMISSIONER HILLMAN: Okay.

MR. GAGLIANO: Yes, there are currently.

COMMISSIONER HILLMAN: How significant would
that volume be?

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

COMMISSIONER HILLMAN: Fair enough.

MR. GAGLIANO: To answer your second point
and that was lead time issues all of the tin mill
producers face that lead time issue in one way or
another whether it's from the west coast to the east
coast or from China to Los Angeles. There are ways around that that all tin plate producers can certainly find and one of them is warehousing.

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

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

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

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

CHAIRMAN KOPLAN: Go ahead.
COMMISSIONER HILLMAN: My colleagues are being indulgent this afternoon. Thank you. Go ahead, Mr. Peterson.

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

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

COMMISSIONER HILLMAN: I appreciate those responses. Thank you.

CHAIRMAN KOPLAN: Thank you. Commissioner Lane?

(No response.)

CHAIRMAN KOPLAN: I can call you again.

COMMISSIONER LANE: I'm sorry. I was distracted. The first question I have relates to the Office of Investigation Memo DD046 in which the
Commission published alternate tables for the volume of nonsubject imports and consumption based on nonsubject shipments of imports based on data from questionnaire responses rather than official statistics of the Department of Commerce.

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

Mr. Hecht, let's start with you.

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

COMMISSIONER LANE: Mr. Salonen?

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

COMMISSIONER LANE: Okay. Thank you. Does anybody else have a response? (No response.)

COMMISSIONER LANE: Okay. Thank you. I'd
like to turn to the subject of energy costs. I understand that energy costs are a significant portion of your costs and we have been experiencing volatile and high prices in some energy markets.

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

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

COMMISSIONER LANE: Mr. Vaughn?

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

MR. RYAN: Similarly -- this is John Ryan -- for UPI as well. We did get that question from the staff yesterday, but we'd like to submit that as part of our post-hearing brief because it's a large part of costs and therefore company confidential information.
COMMISSIONER LANE: I understand that. Depending upon your answers if you find out that you do not use long-term supply contracts could you tell me if you hedge any or all of your spot needs using futures or any other hedging mechanisms?

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

MR. SALONEN: Us as well.

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

Mr. Hecht?

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

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

MR. HECHT: First of all I think one easy answer is look at the data. This has happened in the market. You can see how well the industry is doing and ask yourself does that look like an industry that
has market power? When you hear them making the
argument that the substitute products have gone up in
price much more than our product has does that, again,
sound consistent with that story?

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

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

In fact you have numerous suppliers and only
a few large customers and that's the difference here.
So it's completely inconsistent to come in here and
argue that you ignore the foreign sources of supply.
I guess one other point I'd make in the context of
this whole litigation and this to our mind difficult
to understand question did Japanese imports affect
price, look at what they were arguing here.

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

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

Mr. Peterson?

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

COMMISSIONER LANE: Mr. Kaplan?

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

To give you an idea of what they do during a second request is they subpoena emails, they call up every customer. They're preparing for litigation and
their sole concern is whether the merged entity could 
make an anti-competitive price increase that's 
profitable.

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

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

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

So I guess that's the major point with
respect to those investigations. I'd also further like to add that when the Department of Justice looks at these mergers they explicitly look at foreign supply and potentials of foreign supply in determining whether there could be market power.

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

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

COMMISSIONER LANE: Okay. Thank you.

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

COMMISSIONER LANE: Yes.

MR. RYAN: This is John Ryan. With regard to market power you'd expect to see in a concentrated industry that's exercising market power some profits. You'd expect to see good return on investments, you'd expect to see something like an exercise in market
power in the condition of the industry. You certainly
don't see that here.

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

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

Thank you.

CHAIRMAN KOPLAN: Sure.

Commissioner Pearson?

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

It's not apparent to me why would be seeing
the types of disparities that we're seeing. If you
were to look on page 3-23 the second category in the
table where it's looking at raw material cost that I
think is perfectly understandable. You have some
difference noted between integrated firms and
nonintegrated firms.
It seems to me that makes perfect sense. The next category of direct labor also seems to me to make pretty good sense. Then we get to other factory costs and frankly I don't understand at all what's going on there. Earlier in my career I had the opportunity to do a fair amount of data compilation. I'm occasionally possessed of normal human clumsiness, so I've made my share of errors in data and I'm wondering if there might possibly be a data error that's showing up in other factory costs or is there something going on that's driven by special charges or other factors relating to restructuring of firms? I understand you probably can't say much in public, but I think you probably see what I'm getting at. Then if you flip over the next page, 3-24, those same disparities from the previous page come through to cost of goods sold, okay? Would anyone care to comment on this? This is a convoluted way of asking a question, but is the question clear? See, Mr. Kaplan had the good sense to leave when I was asking that, so we can't turn to him. Mr. Hecht?

MR. HECHT: Jim Hecht. Just to lead it off
I don't know that it's going to be particularly instructive there have been as I mentioned before one issue raised with respect to our costs which I think probably do not go to answer what you're talking about, but I think we can fully explain and we'd be happy to address any issues with our own data but it's really difficult to comment on other parties' data but also both for confidential reasons and just practical reasons as well.

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

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

I would guess that's probably not what's
happening, but a creative mind could infer that.

Shifting then to my --

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

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

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

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

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

As has been mentioned your industry hasn't
been overwhelmingly profitable during the period of
review despite the presence of the order and the
cconcomitant absence of subject imports from Japan, and
so obviously there must be factors other than subject
imports that have influenced the industry's
performance.

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

Mr. Hecht?

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

Those have all been significant factors. I
think those factors likely will continue to be things
you look at. On the other hand the industry as we've
talked about has made major strides I think as well in
terms of restructuring and becoming more cost
competitive, more productive. Exactly what they said they would do in the course of the 201 proceeding.

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

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

COMMISSIONER PEARSON: Mr. Scherrbaum?

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

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

MR. RYAN: If I could add just one point on that.
COMMISSIONER PEARSON: Mr. Ryan. Yes.

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

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

Any other thoughts? Mr. Vaughn?

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

There's been an earlier discussion of energy costs which is obviously very significantly over the
end of the period review. As you've heard the
domestic industry is making real efforts to do what it
can to promote demand for this product, and to work
with the purchasers and to encourage demand for this
product.

So there are reasons to believe that going
forward the industry's performance could continue to
improve. Certainly it takes time to recover
especially when you face these other difficult
environments, but there's also I think you've heard
from the witnesses here a lot of reasons for optimism.

COMMISSIONER PEARSON: Mr. Salonen?

MR. SALONEN: Yes, Commissioner Pearson.

Thank you. To echo the sentiments of my colleagues at
the risk of repeating testimony you've already heard,
but just to reiterate as Mr. Stephans testified at
Weirton they're making investments to improve the
quality of the product, to improve their costs,
 improve their yields and to improve their efficiency.

As Mr. Glyptis has testified the workers
there have made enormous sacrifices in order to
restore Weirton to being a world-class tin mill
specialist which is what it started out as.

So I think that as you're looking forward
and you're looking at the consolidation that Mittal's

Heritage Reporting Corporation
(202) 628-4888
tin mill facilities have gone through over the last three years you can expect to see a -- synergy is an overused word very often, but I do think that you will begin to see the synergies coming out of that in terms of improved performance and improved competitiveness.

COMMISSIONER PEARSON: Mr. Peterson?

MR. PETERSON: Craig Peterson, UPI. I'll be very quick. At UPI the major issue limiting some of our profitability has been the volatility of our raw material, hot bands. We were not able to pass along to our tin mill customers the big increases in hot band prices we incurred beginning in mid-2004.

COMMISSIONER PEARSON: Thank you.

Thank you all very much.

Mr. Chairman, I have no further questions.

CHAIRMAN KOPLAN: Thank you. Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Just a few short questions I hope.

I'm going to display my ignorance here by following up on some of the demand questions that my colleagues were asking. One thing I haven't yet understood on this record is why does the trend towards two-piece cans reduce consumption?

MR. PETERSON: Craig Peterson, UPI. I
think, and I'm certainly no expert on this and the can
makers can give you, I'm sure, a very detailed answer,
but by and large, it takes less steel to produce a
two-piece can than it does a three-piece can.

And again, they clearly are the experts, but
in a three-piece can, the ends have to have some
overlap so that they can be seamed to the body, which
although a tiny amount of steel, given the number of
cans that are produced annually, some 30 billion food
cans each year, those small differences can result in
significant changes in the tonnage required to produce
those cans.

COMMISSIONER ARANOFF: Okay. Thanks. That
actually is very helpful.

One last question. In a recent sunset
review, the Commission looked at steel beams and voted
to revoke that order. And one of the things that was
very much in the background in that case was that the
original determination in the period of investigation
had overlapped very significantly with the Asian
financial crisis.

And there were some events that took place
there in terms of the incentives of Asian producers to
send product to the United States in very large
quantities all of a sudden that were very much in the

Heritage Reporting Corporation
(202) 628-4888
background of the Commission's looking at would those conditions recur in the reasonably foreseeable future. And I'd like to ask you either here or in your posthearing brief if you could compare the situation here, since the original period of investigation also kind of tracks the Asian financial crisis. Are there those same kind of one-time events that aren't likely to recur? Were they at work in the original period of investigation here? Just a general compare and contrast. Mr. Vaughn, you wanted to start?

MR. VAUGHN: Yes. Just to make a couple of points, and we'll certainly look at this more in the posthearing brief. A couple of points to make, though.

As I understand it, one of the arguments involving the Asian crisis was that was kind of a temporary, one-term thing where there was a downturn of demand in the other markets that the Japanese producers normally supply, and because of that downturn in demand in those other markets, Japanese producers were more likely to come into the United States.

Here, on this record with this product, you've seen continuing decline in demand for the
Japanese producers. Obviously the conditions in Asia may not be comparable to what's going on with the Asian crisis, but in terms of this product, Japanese producers are finding it difficult to sell this product in their home market. They're finding it difficult to sell this product in export markets.

So in that sense, the situation that you have is very similar to the situations that you saw in a number of industries say in the 1998 period but which you're still seeing in this industry today. So that's just one point that we'd like to get on the record.

COMMISSIONER ARANOFF: Okay. Mr. Kaplan, did you want to say something?

MR. KAPLAN: Yes. And I would also look at what the various producers were doing in their export markets and how many export markets there were and whether they were increasing or decreasing.

I think a comparison between the financial performance of the industries with respect to their vulnerability of increased imports is also something that would be worthwhile to put the effects of any potential surge in context.

I think the size of the surge in the previous investigation, any injury it did compared to
the size in this one is something to look at, and the fact that the Commission found injury with such a small increase in imports in this original investigation and compare that to the other investigation as well.

So there's a whole series of distinctions between these two cases, and I think many of them are apposite in terms of finding vulnerability and recurrence of injury.

COMMISSIONER ARANOFF: Okay. Thank you very much. I certainly invite all of you to brief that more if you'd like to. And with that, I have no further questions. I just would like to thank the morning panel very much for spending this much time answering our questions. Thanks, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you, Commissioner. I don't have any additional questions. However, I do have a request, and this is for the parties. Regarding your comments on the issue of alternate tables in OINV Memo Inv. 046, DD-046, given the release date of April 10, 2006 on our public EDIS file, I understand from staff that we need to have written comments from you all by May 2 of 2006.

I also understand that our investigator actually called around about this the week of the
17th. So I'm making the request that you get those
comments in by then in order for the staff to
integrate that in time.

Mr. Hecht?

MR. HECHT: We will definitely do so.

CHAIRMAN KOPLAN: Okay. Mr. Salonen?

MR. SALONEN: Yes, sir, we will.

CHAIRMAN KOPLAN: I think I left out Mr. Narkin.

MR. RYAN: No, we'll do that as well. This

is John Ryan for UPI.

CHAIRMAN KOPLAN: Okay.

MR. RYAN: We'll take care of that.

CHAIRMAN KOPLAN: And this request is for

Respondent's counsel as well. And I see that

Respondent's counsel is nodding in the affirmative

that they will get those comments in by then.

Thank you very much. I'll turn to

Commissioner Lane. No, I won't. I'll turn to Vice

Chairman Okun.

VICE CHAIRMAN OKUN: Actually I don't have

any questions, but thank you.

CHAIRMAN KOPLAN: I guess I knew that.

VICE CHAIRMAN OKUN: Yes.

CHAIRMAN KOPLAN: Are there additional
questions from the dais? Go ahead.

COMMISSIONER HILLMAN: I do have just I hope a couple quick followups with respect to the issue of excluded products, and obviously some of this goes to how comparable our data from the original is to that obtained in this review.

After the order was issued, there were three specific tin mill products that were excluded from the scope of the order. I'm trying to get a sense if you have it of the magnitude of those products. How significant are they? Would they affect the comparability of our data between the original investigation and the sunset review?

Obviously we have collected data on all excluded products, but it doesn't help me ferret out the difference between the three that were excluded after the order was issued.

MR. HECHT: Jim Hecht. I'll confess I don't have that at my fingertips. We could try to see if we could do that. Obviously, as you said, you do have the total volume of excluded, but you'd like a breakout.

COMMISSIONER HILLMAN: Okay. Well, just some way to understand how significant they are so that when we try to do this comparison of, you know,
the original period to what data we have now, I have
some way of understanding how important were those
particular exclusions.

MR. HECHT: Yes. Right. We can try to find
that out.

COMMISSIONER HILLMAN: Okay. And then a
second question somewhat related to this issue of the
excluded product. In U.S. Steel's brief and in
Mittal's brief, the argument was made that the
Commission should consider the Japanese producers'
capacity to produce both the subject and the excluded
product in terms of looking at how readily how much
product could come in from Japan.

I just want to make sure I understand it.
Are you arguing that the Japanese producers are likely
to switch from making the excluded products to making
the subject product if the order should be revoked?

Mr. Vaughn.

MR. VAUGHN: Commissioner Hillman, what we
were really trying to get at, I mean, we would assume
that they're selling about as much of the excluded
products in this market as they can. But what we were
saying is is that what they've done in terms of
answering the questionnaire is they have allocated
capacity to the excluded products versus the subject
products.

And what we're saying is it's our understanding that all of that capacity can be used to make the subject product, and therefore, to the extent that some of the capacity that's currently allocated to the excluded product is not being used at all, that that is available excess capacity that can be used to make the subject product in increased shipments to the United States. That was the main focus of our --

COMMISSIONER HILLMAN: All right. Just to make sure I understand it. So what you're saying is that there is idle excess capacity that has been allocated specifically to the excluded products.

MR. VAUGHN: Yes.

COMMISSIONER HILLMAN: Okay. Which is different to me than an argument that they're going to stop making the excluded products and start making subject product if we were to revoke the order.

MR. VAUGHN: That's correct. The argument that we are making here is not so much an argument based on product shifting. It's an argument based on how do you make determinations about total available capacity.

COMMISSIONER HILLMAN: Okay. And, Mr. Salonen, would you agree that you're not suggesting
that there is a reason that we should assume the
Japanese would move out of production of the excluded
products in order to move into subject product?

MR. SALONEN: That is the argument we made.
That said, I wouldn't foreclose that depending upon
what kind of prices they could get for subject
products, how it affects their costs of production,
the efficiencies on their runs and so forth,
information we obviously don't have. But you're
correct. That is the argument we made in the
prehearing brief. We made the same argument as U.S.
Steel.

COMMISSIONER HILLMAN: Okay. Mr. Vaughn?

MR. VAUGHN: Yes. Just to clarify, I mean,
I want to agree with what Eric said. I mean, to the
extent -- and I'm not sure there's any way we could
know this -- but obviously, to the extent it would
make more sense for them to shift, we don't want to
foreclose that possibility. But the focus of our
argument was on how much actual capacity do they have
that could be used to make the subject product.

COMMISSIONER HILLMAN: Okay. All right.
I'm not sure exactly where that leaves me, but I
appreciate that answer.

Then last question is with respect to hot
band versus tin mill. As I understand that, the argument is made that there's always a gap between hot band and tin mill but that that gap has been narrowing over time.

Have we reached the point at which there is a preference to go ahead and sell product as hot band and not move it on downstream in terms of the gap between the two products? I mean, Mr. Peterson, you're not really in the hot band business, so for either Mr. Scherrbaum or on the middle side.

MR. SCHERRBAUM: Joe Scherrbaum with U.S. Steel. Our preference is to make all products, I mean, both hot- and cold-rolled, galvanized and tin mill product.

COMMISSIONER HILLMAN: All right. But to the extent that there is demand and good prices on the hot side, are you selling more in that market rather than moving it downstream for tin?

MR. SCHERRBAUM: Right. We are on the tin side meeting all the commitments that we have made. So no, we are not excluding making tin product that will enable us to sell more hot-rolled product, if that's your question.

COMMISSIONER HILLMAN: Okay. Okay. Mr. Goedeke, you're in a little bit of a different
situation, but any comment on this issue of the
relative attractiveness of the hot band market, hot-
rolled market?

MR. GOEDEKE: I can't comment on the
attractiveness of it. I can only say that we are not
shorting out any customers or any demand out there in
tin mill products to sell any other products.

COMMISSIONER HILLMAN: All right. All
right. I appreciate those responses. And I too would
like to join my colleagues in thanking you all for
your perseverance throughout this hearing and into
this afternoon. Very much appreciate it.

CHAIRMAN KOPLAN: Thank you, Commissioner.
  Commissioner Lane.

COMMISSIONER LANE: I just have one
question, and it's for Mr. Glyptis. I understand from
your original testimony that Weirton has returned to
its roots of making tin plate. What are the
possibilities of restarting any of your idle
facilities at Weirton?

MR. GLYPTIS: The blast furnaces were taken
down in a fashion that they can be restarted.

COMMISSIONER LANE: They can or can't?

MR. GLYPTIS: They can. Okay? They can be
restarted. The possibility does exist. It's a
strategic decision that Mittal would make based on demand. At the time of the indefinite idling of two blast furnaces at Weirton, we were improving our costs. It was a decision made strategically to limit the amount of hot metal capacity that could be made within the corporation.

As far as our galvanized lines, that possibility does exist as well. So to put a percentage, I would not give either one a high percentage, but I would say the possibility does exist on both the blast furnaces as well as our galvanized lines.

COMMISSIONER LANE: And have you been given any benchmarks or goals that if the workers at Weirton reached that the possibility is better that more of the facilities would be reopened?

MR. GLYPTIS: We have not been given any guarantees. There is benchmarking that goes on within the corporation, and quite frankly, there's comparisons made between each of the facilities, not only on costs but logistics, logistically as well. So there's quite a bit of detail and analysis that goes on as to which units run and which units do not run. But I could definitively say that as recently as a couple weeks ago, in a discussion with
the senior management of Mittal out of Chicago, that I was told there was a discussion on the fashion in which the furnaces were taken down and that assets were preserved.

MR. SALONEN: I don't want to interrupt, Mr. Glyptis, but I'm going to intervene here because I don't know how much we may be intruding into internal discussions.

COMMISSIONER LANE: Okay. So if there's something more that can be added in posthearing, that would be fine.

MR. SALONEN: I'd be happy to do that.

COMMISSIONER LANE: I would appreciate it.

Okay. Thank you, Mr. Glyptis.

MR. GLYPTIS: You're welcome.

COMMISSIONER LANE: And thank you for coming today.

MR. GLYPTIS: Thank you.

COMMISSIONER LANE: Mr. Chairman, that's all I have.

CHAIRMAN KOPLAN: Thank you, Commissioner. Commissioner Pearson.

(No response.)

CHAIRMAN KOPLAN: Commissioner Aranoff?

(No response.)
CHAIRMAN KOPLAN: At this time, I see that there are no additional questions from the dais.

Mr. Corkran, do staff have questions of this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Chairman Koplan. Staff has no additional questions.

CHAIRMAN KOPLAN: Okay. Thank you.

Mr. Barringer, do you all have questions of this panel before they're released?

MR. PORTER: Mr. Chairman, we have no more questions for the panel.

CHAIRMAN KOPLAN: All right. Well, with that, this concludes the morning and part of the afternoon session of today's hearing. I want to thank all of you for coming, for your testimony, for your answers to our questions. I look forward as well to your posthearing submissions. I thank you for that very much.

We will take a break for lunch of one hour. And I'm getting some smiles up here. I would note that this room is not secure, so any business proprietary information that you have with you if you would take from the room during the break, and I'll see you back here in an hour.
(Whereupon, at 1:37 p.m., the hearing in the above-entitled matter was adjourned to reconvene this same day, Thursday, April 27, 2006.)
AFTERNOON SESSION

(2:37 p.m.)

CHAIRMAN KOPLAN: Good afternoon. We can begin.

MR. PORTER: Mr. Chairman, this is Dan Porter of Willkie Farr. With your permission, we are just going to jump right in. Bob, are you ready?

CHAIRMAN KOPLAN: What's that, Mr. Bishop?

MR. BISHOP: Yes, Mr. Chairman. Those in opposition to continuation of the anti-dumping duty order have been seated and all witnesses have been sworn.

CHAIRMAN KOPLAN: Thank you very much. Now, you may jump in.

MR. BISHOP: Thank you, Mr. Chairman.

MR. OWEN: Good morning, my name is Robert Owen, and I am Director of Procurement for Silgan Containers Corporation. It is a pleasure to appear again before you. I have been with Silgan for over nine years, most of that time has been spent purchasing tin-mill steel. Silgan is the largest producer of food cans in the United States, and, as such, the largest purchaser of tin-mill steel in the U. S.

We purchase nearly one million tons of tin-
mill steel a year, which I believe is about one-half
of the total tin mill consumed in the production of
food cans. I have to tell you that although I love
coming to Washington in the spring, I feel somewhat
awkward sitting here today. It is never pleasant for
a customer to be caught in the middle of a
disagreement between its suppliers.

However, I came here today because I
believe it is critical that the Commission have a
complete understanding of the true competitive
dynamics that exist in the buying and selling of tin-
mill steel in the United States. And, frankly, I
believe that you can only obtain such an understanding
by talking with the largest customers. That is why I
am here today.

We should probably start this discussion by
highlighting the dramatic changes that have taken
place since I first addressed you in 2000, shortly
before the anti-dumping order was imposed. At that
time, I had multiple U. S. mills from which to buy
and, yes, I admit I encouraged them to compete for my
business. We could choose from U. S. Steel, National
Steel, Bethlehem, LTV and Weirton. Each one of them
was a large integrated mill with plenty of production
capacity to supply substantial portions of our tin-
mill steel requirements.

Today, the situation is very, very different. There are just two integrated mills in the U. S., both with comparable tin-mill capacity. Any leverage that I may have had before is now long gone. There is absolutely no question that today is truly a seller's market for tin-mill steel. This can be verified by looking at the mills' behavior during the past two years as consolidations, acquisitions, and mergers took place. Once those consolidations were concluded, long-standing historic practices were unilaterally changed by U. S. Steel and Mittal, the only remaining integrated mills.

Among those changes were: freight equalization and the one-quarter-inch width surplus. These practices had been part of the price of steel for well over fifty years. The elimination of freight equalization by these two giants increased the price of tin-mill products to purchasers by millions of dollars overnight. Similarly, the elimination of the quarter-inch width surplus, which had been included in the price ever since tin products were first sold, was an unanticipated price hike imposed at their will without negotiations or discussions with their tin-mill steel customers because they now had the power to
unilaterally do so.

However, the biggest demonstration of the domestic mills' new power was their flagrant disregard for existing contracts that were in effect at the time when they unilaterally imposed surcharges on tin-mill steel purchases. In all my years of buying steel, I had never seen such a demonstration of raw leveraging of market power. Over the past two years, these surcharges, combined with raises in the base price, have caused tin-mill steel prices to increase at a greater magnitude and a faster rate than any time in the last twenty years. Members of the Commission, the steel-supplier element of this marketplace is very different than it was in 2000.

Another significant change in the tin-mill market since 2000 is the prominence of multi-year supply contracts. In 2000, supply agreements were generally based on annual contracts, as Mr. Goedeke described to you earlier. These contracts were negotiated at the end of every year for the following calendar year. Today, multi-year supply agreements are common. In fact, they are the norm. These multi-year contracts last from three to more years in length. I can tell you that at Silgan nearly all of our steel purchases today are based on multi-year
contracts.

As a result, much of our tin-mill steel requirements are locked in by these multi-year contracts, so that even if the order on Japanese tin-mill steel were lifted tomorrow, Silgan would have little ability to shift purchases from current suppliers in the reasonably foreseeable future.

Next, I want to address an argument you heard this morning that domestic and foreign tin-mill steel are perfect substitutes for each other. Members of the Commission, this claim is simply not true. To Silgan anyway, there is a very big difference between a domestic supplier and a foreign off-shore supplier with respect to the types of tin-mill steel that can be purchased and the services we require.

I think you know that we make a large variety of tin cans. This requires us to purchase many different tin-mill specifications. In fact, we buy more than 500 different steel specs every year. Of these, however, we will buy only a few, less than ten from off-shore suppliers. Longer lead times and the inability to modify or cancel orders limits the specs we can purchase from off-shore suppliers. This is particularly true for certain types of tin-mill steel for food cans.
In our business, as can maker, we must have the flexibility to call steel suppliers and say, for example: The harvest is different than we expected and we need to double one spec but cut another one by one-third, for instance. Such flexibility is just not available with any off-shore supplier.

With off-shore suppliers, by the time we would make this sort of a call, the steel would already be on a boat headed for the U. S. and we would be forced to take delivery of material we no longer need. We simply cannot take this risk, and therefore choose carefully any specifications that we will purchase from off-shore suppliers.

This is why the claims you heard this morning are wrong. Off-shore supply is not a perfect substitute for domestic supply. In addition, I want to tell you the reverse is also not true. Domestic supply is not a perfect substitute for off-shore supply. For example, of the half dozen specs we currently purchase from off-shore mills none are available from domestic mills in the United States.

For example, we purchase extra-wide tin-mill steel from foreign suppliers. For some of our equipment, we require specifications of 42 to 48 inches wide. One of the products made with wide steel
is what we refer to as 603 ends. These are the tops and bottoms of institutional or restaurant-sized food cans. Our equipment to produce these ends is designed to run the extra-wide steel providing increased output efficiency without which we would not be able to satisfy our customers' volume requirements.

    Domestic mills can produce tin-mill steel at only 38 to 39 inches wide; and while, theoretically, we could purchase narrow steel and adjust our machines to handle it, the business reality prevents us from doing this. If we were to use U. S.-produced narrow coils, we would lose 16% of our output, increase our costs, and constrain our capacity to a point that we would be unable to meet our customers' demands for those ends without installing more equipment.

    Thus, when considering the production of 603 ends, domestic and foreign tin-mill steel are not functionally equivalent. On a big-picture level, you should also know that we are very concerned about alternative packages that were referred to by several of the earlier panelists. Mr. Goedeke, in particular, mentioned this. He talked about the Folgers' coffee cans and tuna pouches and things like that. We, at Silgon, are trying to promote the development and the expansion of tin-food cans by new changes in shaped
cans and easy-open ends, and some other things you may have already seen in the marketplace. But many of these developments require special steel, which the domestics do not produce, or, until recently, they have shown very little interest.

Such products include the extra-wide material that I already discussed. Polymer coated or laminated steel and high-formability steel. The high-formability steel is the easy open-ends. As a major can maker, we are seeing an increased demand for packages from our customers like that and we are promoting that to try to help sustain or grow the tin-can market.

Up until two years ago, we made salmon cans from standard tin-mill steel. Now, 100% of our salmon cans are produced from a polymer-coated steel that is not available from any U. S. producer. It is available from three producers in Europe as well as two in Japan. Our customers prefer this and if it were available from a U. S. producer, we would certainly buy it from them. Until the U. S. producers can produce this product and others like it, we are compelled to buy them off-shore.

The very real differences between domestic supply and off-shore supply that I have described can
be seen in Silgan's recent purchasing history. I can confirm to you that in the year 2005 and currently, 100% of our purchases from off-shore suppliers were products that cannot be produced by the domestic mills.

I next want to talk to you about a topic you heard earlier this morning, and one which Commissioner Hillman asked questions about, and that is I think you referred to it as: meet or release, Commissioner Hillman. That is what we would call a meet comp, which is short for meet competition. Some of our contracts are long-term contracts that have that provision, but just to be clear, not all of the contracts contain that. Some certainly do, others do not.

I also want to clarify that, from our standpoint, there is a big difference between a meet-comp provision and what is called a favored-nation's, which although I didn't hear it mentioned, I think was in some of the briefs you received earlier. And just for clarification, a favored-nation's clause is essentially a provision which simply states that if a steel supplier is going to offer a lower price to others than Silgan, as the largest purchaser in the market, will get that price. That is all it says.
A meet-comp provision is different.

A meet-comp provision is very specific. It provides us, the buyer, an opportunity, if we choose to, to tell a supplier that he must match a competing bid or we will be released from our obligation to purchase a specific quantity under the contract.

It is important to note that the meet-comp provisions in those Silgan contracts which do have them require that the competing bid match the identical specification, the same quantity, and the same delivery location, they relate only to specific items and they are not applied to across-the-board purchases or prices.

This morning you heard an allegation that termination of the anti-dumping duty will allow can companies to use the Japanese to lower domestic prices through such a meet-comp provision in contracts. Members of the Commission, this claim is a distortion. Market realities severely limit the opportunity to use these provisions.

Let me state some factual history. Silgan has never used an off-shore import price to trigger a meet-comp provision with a domestic mill. We know we can't and the domestic know we can't. They know full well that we are not able to purchase the vast
majority of our needs from off-shore suppliers, and so
utilizing the meet-comp provision to affect an across-
the-board price reduction is not a realistic
possibility.

Members of the Commission, at the end of the
day, terminating the anti-dumping order will not have
much real-world effect on my friends at the domestic
mills. Our multi-year contracts prevent us from
sourcing significant quantities from Japanese
suppliers until those contracts end. As I have
already mentioned, there will always be a limited
number of specifications for which Japanese or any
other off-shore tin-mill supply is applicable. For
those specifications which we would consider buying
outside the U. S., Japanese suppliers will be
competing with other off-shore suppliers, not the
domestic mills.

Thank you for your time and attention. I
would be happy to answer any questions you may have.

CHAIRMAN KOPLAN: Thank you, Bob. Mark?

MR. SPRINGFIELD: Good afternoon, my name is
Mark Springfield. I am the Director of Steel
Purchasing & Packaging Operations for Ball Packaging
Company. You may be familiar with the Ball name from
the canning jars that many of us grew up with.
Although Ball no longer owns the company that produces the famous jars, we still try to play a helpful role in your lives.

My company provides the steel cans and ends that contain the canned fruits, vegetables, infant formulas, soups, seafood and pet foods that provide value to you and your families. In March 2006, Ball Corporation bought U. S. Can Corporation's American operations which became our new aerosol and special packaging division. It is American's largest manufacturer of aerosol containers. Our world-wide employment now is approximately 15,600 employees with approximately 11,000 employed in the United States and about 3,000 employed in domestic steel can manufacturing across ten states.

We also currently purchase tin plate on behalf of another company that manufactures steel ends. Ball is one of the largest purchasers of tin plate in the U. S. I have been Ball's Director of Purchasing for two years. My appearance here is an attempt to provide a purchaser's point of view. I hope the Commission will understand that Ball has long and healthy relationships with many of the parties on both sides of this issue.

Two of our plants are sited on Mittal
Steel's Weirton property and some of our others are located in the same states as the mills which produce tin plate. For instance, in addition to the two plants in West Virginia utilizing tin plate, we have two in California, three on Ohio and one in Maryland. I personally have worked in the steel industry for twenty-five years, ten of it involving tin-plate marketing and sales. The last two of which in the commercial organization was as general manager of container appliance sales for National Steel Corporation.

I still value the friendships acquired over that time. The health and prosperity of the U. S. tin-mill producers is important to Ball. I am here today only because Ball strongly believes that the lifting of the anti-dumping order on Japanese tin-mill products cannot have a negative impact on our key domestic suppliers, while at the same time, it will promote steel availability to can producers.

I would therefore like to make the following comment: As the Commission is aware, at the time of the original finding, there were seven producers of tin-mill products in the United States. Now there are four with the two largest controlling the proponent portion of the domestic-productive capacity.
Disruptions in either of the two large producers can cause and has caused limitations, or inadequate on-time delivery performance.

It should also be kept in mind that since U. S. Steel supplies substrate to UPI, production problems at U. S. Steel, in part, can have secondary consequences elsewhere. Presently, both U. S. Steel and Mittal are working through production disruptions caused by the delayed spurt of the furnace and the flooding of the timber mill. This has caused Ball considerable difficulty covering our needs during the summer months of this year as they are two of our largest suppliers.

We are trying to use steel service centers, which stocks some basic tin-mill products to overcome our short-term needs. During the frequent periods in which the mills experience production problems, there is simply not enough timely U. S. production to fill in. It is hard to imagine how the can industry could preserve during these situations without a number of previously qualified foreign sources capable in total of providing the ample amounts available at the required times.

Consolidation of the tin-plate capacity has marginalized tin-mill buyers. For example, despite
the fact that Ball is one of the largest tin-mill
customers, we do not receive consistent, adequate
delivery performance from our suppliers. An
additional concern for all of us, as tin-mill product
customers, is the potential lowering of tin plates' 
importance within the spectrum of products offered by
the new steel industry giants.

In the context of Mittal's operation, tin-
plate production was key for Weirton Steel, and it is
only a small component of Mittal's product offering.
Ball Packaging Corporation, in an attempt to create
some market presence, has affected mergers and formed
purchasing alliance to help protect itself by creating
a bigger footprint to producers during periods of
tight steel availability or unexpected seasonal
customers' surges. Having some other choices for tin
plate helps supplement our domestic supply while
trying to maintain our timely obligations to our
customers and ultimately you, the consumers.

Secondly, while Ball does buy some foreign
steel, almost nothing for its U.S. plants is from
Japan. In fact, very little was bought from Japanese
producers prior to the initial trade action.
Generally, since the start-up of our second two piece
drawn and iron food can plant in Milwaukee, the
dominant share, 65% to 85% of the steel, following imports has been for our DNI applications. Successful manufacture of this can requires steel possessing very low levels of internal inclusions, tight dimensional aspects and consistency coil-to-coil.

In this regard, the domestic producers have been unable, despite numerous attempts since 2000, to qualify their material for this application. Additionally, Ball's goal is to use wider and wider substrates so as to maximize our DNI's plants sufficiencies. Currently, our largest volume runner is over 43 inches wide. Again, because no domestic producer can manufacturer this product, our present sourcing for this application is entirely foreign. One domestic steel company has indicated that they may be able to consistently produce it. Our required width and quality levels, we are currently attempting to qualify them.

Additionally, the cornerstone of Ball's relationship with its steel-supplier community rests on the vendor's superiority in the areas of quality, timely product availability, as well as the supplier's commercial offering over time. For Ball, if the supplier, domestic or foreign, cannot provide material that meets our qualification criteria -- in other

Heritage Reporting Corporation
(202) 628-4888
words, capable of meeting our seasonal surges and day-
to-day business delivery requirements, price becomes
less relevant.

Ball believes that it is to our advantage if we can find local sources of supply since production
lead times are shorter, and, therefore, add greater
flexibility in meeting changes in our customers'
demands. Please consider that this can change, but
when the crops come due, the cans must be ready.

In fact, Ball typically purchases roughly
between 75% and 85% of its requirements domestically
despite having suppliers from every country, other
than Japan, available to it. In 2005, Ball Food
Packaging purchased approximately 270 specifications
and less than 20 were placed with foreign suppliers, and even fewer were sourced from both foreign and U.
S. suppliers. However, we recognize that all mills
from time to time have upset conditions.

For instance, the Weirton Coal Mill fire of 1994, the UPI Coal Mill fire of 2001, U. S. Steel's
delayed furnace start up in 2005, or Mittal Steel's
present problems from a flooded temper mill. Ball
must have access to the entire global tin-plate supply
community as an economically viable alternative so as
to minimize the disruptive effects when those
instances do occur.

I would remind the Commission if ever Ball wanted to change its domestic sourcing policy, it would have been in the 2004-2005 time period, during which the domestic steel industry asserted its new economic mite by reallocating substrates, supplied other products, raising prices to crippling levels, unilaterally imposing surcharges while at the same time eliminating advantageous fire programs that had long been part of the fabric of the U. S. market.

Finally, since we recognize that the Commission's interest in the potential effects of lifting the order on the domestic steel industry, Ball would offer the following observations. Given the Asian region's startling economic growth, the Japanese may not be interested in entering the U. S. tin-plate market in the first instance. However, noting Ball's lengthy and stringent qualification process, and assuming the Japanese producers would be successful, their value to Ball would be several quarters to a year or more away and would possibility support our DNI application.

They could also serve as a back-up role, providing options and situations in which the domestic production would fall short of Ball's requirements
from a quality or supply standpoint and within the
framework of our supply arrangements already in place.
This is presently the role of the other foreign
suppliers, historically and currently, that have been
served by Ball.

Thank you for your kind attention. If you happen to have any questions which I can answer.
CHAIRMAN KOPLAN: Thank you, Mark. Dave?
MR. GILL: Good afternoon. Mr. Chairman, I would like to follow up, in part, a thing from this morning and, in particular, I would like to introduce myself to Ms. Lane, as I am a former resident of Weirton and a graduate of West Virginia University, and a mountaineer forever by the way.

My name is Dave Gill and I am vice president and general manager of Nippon Steel Trading America, located at the Pittsburgh, Pennsylvania office. In that capacity, I am responsible for timber product sales in the United States. I have over 32 years of experience in this industry, both as an employee of the domestic industry and presently as an executive in the steel-trading enterprise, handling both domestic and imported tin-mill products.

Please excuse my nervousness today as this is a somewhat uncomfortable situation for me. Nearly
six years ago, I was on the other side of this issue, supporting a position of the anti-dumping order on behalf of Weirton Steel and actually testified in this room. It is for this reason that I think the perspective that I can offer the Commission today is unique. I was part of the domestic industry that saw anti-dumping duties and now I am part of an industry that handles both domestic and imported products in a vastly different market than existed over the 1997-1999 period.

Between 1989 and 2000, I was general manager of timber products steel sales for Weirton Steel, which is now a part of Mittal Steel Group. Therefore, I am very familiar with Weirton's operations at the time of the original investigation. Since September 2001, I have worked as an executive for Nippon Steel Trading America, servicing both domestic and imported product accounts, including non-subject sources outside of Japan. The largest percentage of our sales is in fact domestic product. With respect to tin-mill products, our company acts as a distributor for Ohio Coatings Company located in Yorkville, Ohio. Therefore, I am also very familiar with the current market for tin-mill products, including the rolling characteristics of imports supply and domestic supply.
Let me start off with a few observations based on my experience as a long-time employee of the original petitioner in this case, Weirton Steel. Specifically, I want to address the restructuring that has occurred within the domestic industry since the time of the original investigation. You have already heard a great deal from this panel about the consolidation that took place in the industry since the anti-dumping order was imposed, including the market power on the more concentrated tin-mill steel industry as in the current market.

These observations are accurate. Market power has shifted, and in the market the four operating domestic mills have a much greater advantage than they did in 1997 and 1999. But I want to talk to you about another aspect of restructuring, and, specifically the industry's dramatically reduced cost structure. The reduced costs are not just about consolidation of assets. They are also about the rationalization of assets. The implementation of new progressive labor agreements and finally, the elimination of enormous legacy costs.

To a certain extent when I listened to this morning's testimony, it was as if very little had
changed in the domestic industry. What I heard was that the domestic industry has made progress but it is still vulnerable absent the continued protection of the anti-dumping order. I find that characterization extremely difficult to believe. I find it difficult to believe because I was at Weirton when the mill was struggling. At Weirton, I worked within the limitations of a small 85-year-old blast furnace, the oldest continuous caster in the business, and flexible work rules, and a mountain of legacy costs built over years of unrealistic labor agreements. Anyone paying attention at Weirton knew the score. It was very difficult to compete under any circumstances whether domestic mills or imports.

So, when Weirton fought the anti-dumping petition in 1999, I fully supported the position of my company. We needed the help. But that was yesterday's domestic steel industry and yesterday's steel market. It is not today's industry or market. Since the imposition of the anti-dumping order, consolidation and asset rationalization has allowed the domestic steel industry to free up hundreds of millions of dollars in wasted resources, created perhaps as much as a billion dollars worth of new operational synergies, new labor agreements and the
elimination of legacy cost obligations further slashed costs.

These traumatic changes were not isolated events. They have occurred across the industry, including the tin-mill segment, and including Weirton Steel. The market in which the domestic tin-mill steel industry operates is also very different from the one I saw in 1999. Less volume is being moved by fewer producers at substantially higher prices with a trend toward greater specialization.

The market is stable largely because of the reduced number of domestic producers and the fact that the cost disparities among the domestic producers were not nearly as pronounced as they once were. For the domestic tin-mill steel industry, these changes have moved the industry towards an entirely different posture vis-a-vis their customers and their competition.

When I was general manager of sales at Weirton Steel, the sales team worked under the constant knowledge that the mill was cash strapped and the tin operation was the mill's strongest cash-earning asset. Quite frankly this made us very sensitive in sales negotiations in an environment with seven domestic players in the market as well as
imports. The intra-industry competition was brutal
given Weirton's disadvantages. Weirton was higher
costs and the other domestic mills knew it. The
competition manifested itself in many different ways.

From a personal perspective, I can't help
but wonder why U., S. Steel and the other big
integrated mills where they were six years ago.
Perhaps the strategy was to sink Weirton. I need to
remind the Commission that Weirton was the sole
petitioner in the original investigation. In fact, I
believe during the original investigation, Senator
Rockefeller and former Weirton CEO Dick Reader (ph)
described to the Commission nothing short of a
conspiracy on the part of the larger integrated tin-
mill producers to deny Weirton every relief given
their absence at the hearing. I think that speaks
volumes about the nature of the competition in the
market at that time.

Well, times have changed. Weirton isn't
Weirton any more. It is part of a larger vertically
integrated operation, Mittal Steel, that operates on a
global basis. Weirton's old hot end has been shut
down and it now receives far more cost competitive
slabs from other Mittal facilities. Weirton's labor
force is far more lean and productive. There is
absolutely no comparison between the Weirton assets 
running at the time of the original investigation and 
the assets now being operated by Mittal.

I am certain similar changes and dramatic 
improvements have occurred at other domestic mills as 
well. I see the difference in today's domestic tin-
mill steel industry. I don't deal with Weirton's 
tin-mill products any more but I see Weirton in the 
market. They are extremely competitive. As I stated 
earlier, I also distribute product for a domestic 
producer. That product is extremely high quality, 
better quality than what I saw in the market in 1997 
and 1999.

In short, the domestic industry is in a far 
better position now than it was back then. The 
domestic mills manage their costs much better and have 
the ability to cover those costs. There is also not 
the same sense of urgency to chase volume. The mills 
will walk away from the volume if the price is not 
where they want it to be.

In terms of imports, I thought I would also 
offer you my trading-company perspective in this case, 
and specifically my experience handling Japanese steel 
in this market, whether non-subject tin-mill products 
or other steel products. In this regard, I found it
curious that this morning's testimony suggested that a
surge in Japanese tin-mill products would follow any
revocation of the order. I doubt that. The Japanese
mills are the most disciplined suppliers we deal with
in the global market today.

From our perspective worldwide, Japanese
steel is more difficult to obtain than any other
sources of supply. Indeed, there have been times in
this market where Nippon Steel, our own parent
company, has been unwilling to provide the steel we
need so they can service other markets, particularly
in Asia. As I speak, I have ten inquiries with Nippon
Steel for light-gauge, coil-rolled steel in which the
mill has been unwilling to offer a price or offered
uncompetitive prices, even though I knew the current
market is supporting very attractive and profitable
pricing.

I see no reason to believe that this would
be any different with tin-mill products when prices
outside the United States are so much higher. If the
Japanese mills are unwilling to ship coil-rolled to
this market, one of the highest price markets in the
world, why would they ship tin-rolled products to this
market which is one of the lowest priced? The U. S.
market is not attractive.
Finally, whatever the import breakdown, I think the last five years has resolved whether imports serve more than a relatively fixed portion of the market. Imports and domestic material are not true substitutes. High volume, long-term contracts are the demand of the domestic mills. Imports tend to serve a market for spot purchases and specifications not typically produced by the domestics and in smaller quantities.

There is in fact very limited opportunities for imports to compete with domestic supply given the presence of these long-term agreements. Therefore, you will continue to see a largely distinct market for imported tin-mill products in which imports compete against each other and not with domestic product.

I appreciate this opportunity to speak to you today, thank you.

MR. PRUSA: Good afternoon. My name is Tom Prusa. I am a professor at Rutgers University. As my presentation, I am going to make three points. First, the global steel market is very different today than it was in 2000. A large number of mergers and acquisitions, both in the United States and abroad, have brought new-found pricing and volume discipline and better balance between supply and demand. Second,
the domestic tin-mill industry is not vulnerable to injury. Today's tin-mill industry bears little resemblance to the industry that requested protection in 2000.

Third, it is very unlikely that once the anti-dumping order is revoked that imports of tin from Japan will increase in the foreseeable future. The domestic industry's claims of excess capacity in Japan will lead to increased shipments to the United States. However, a look at Japanese behavior, using actual trade data, reveals that this assertion is flat-out wrong.

Let me begin by remarking on how different global steel markets are today than in 2000. That is true both here in the U. S. and also abroad. First of all, overall steel demand is up, way up. Given the integrated nature of most tin production, we must acknowledge that overall demand for flat-rolled steel changes the outlook for tin. Strong demand for other products may limit the ability of mills to provide feed stock for their tin-mill operations. As reported by the ITC in its Steel Effectiveness Study, steel demand has grown by 6% to 7% in each year since the original investigation.

With such strong demand, producers are
finding an increasingly diverse set of buyers to market their products. Secondly, steel consolidation has not been limited to just U. S. steel makers. Steel mergers have occurred around the world: in Japan, in Europe, in Brazil, just to name a few. The Iron and Steel statistics Bureau finds a sharp increase in concentration in recent years.

Concentration will only increase if the Mittal-Arcelor merger goes through. The ITC's Steel Effectiveness Study also finds an increase in concentration. In addition to all the synergies made possible by consolidation, the mergers have helped create a better balance between supply and demand. This, in turn, has led to better price discipline. The steel industry consolidation helps keep new capacity in check as fewer steel companies mean less risk of making duplicate investments.

The consolidations here and abroad have been good for pricing. As steel makers get larger, they better understand that their individual actions can influence the market as a whole. By contrast, back in 2000, individual producers in the diffuse steel industry neither believed nor appreciated how they affected the market.

Mittal Steel certainly understands the idea.
Consider what Mittal said at a recent presentation to investors: "Consolidation is contributing to increased discipline by producers." Does Mittal think this is important? It must. It took time to stress the point when talking with the investment community, the precise people that it needs on board if Mittal is going to make the Arcelor merger happen.

Japanese steel makers also understand how the industry has changed. Consider this statement by Nippon Steel's president Okio Mimura: "Our strategy is to concentrate more on price than production, which is why we have reduced output for export by one million tons." The message being conveyed is clear: Mills are not about to chase volume at the expense of price.

The changes in the steel industry are particularly relevant to the tin sector. As the Commission acknowledged in its 2001 safeguard determination, tin is different from other flat-rolled products. It is a unique product. There are fewer firms making tin than making other flat-rolled products. That was true in 2000 and it is especially true today. The cost of making tin discourages firms from opening new tin mills. Over the last fifteen years, there has been a dizzying amount of new hot-rolled, cold-rolled, and corrosion-resistant capacity.
installed. By contrast, tin is a stable market.

Let's now look at the impact of consolidation in the United States. The restructuring and consolidation that has occurred since 2000 has fundamentally changed the operating efficiency, cost structure, and buying power of the U.S. tin-mill industry. There is no real dispute over these facts. On their Web site, the United Steel Workers call it "the most significant restructuring in over one hundred years."

At ITC hearings in 2003 and 2004, steel executives such as Wilbur Ross, Thomas Usher and Roy Tourance (ph) touted the remarkable improvements in the industry's productive efficiency. I found it interesting that in the domestic industry's pre-hearing briefs they ignored the consolidation issue. However, not talking about it doesn't make it go away. The reality is: the impact of consolidation is far reaching and measured in the hundreds of millions of dollars annually.

But let me emphasize. I am not talking about the entire flat-rolled industry. The hundreds of millions of dollars in annual cost savings is the benefit accruing just to tin-mill operations. As a result of four major mergers, today's tin-mill
industry bears little resemblance to the industry in 2000. The consolidations have reduced domestic tin capacity by 25%. Less capacity means the highest cost, the least efficient facilities have been eliminated. This makes today's domestic industry stronger.

Less capacity also promotes pricing discipline. Again, this makes today's domestic industry stronger. Overall the industry's restructuring has resulted in both significantly lower costs and also sufficiently increased pricing power. In fact, as I will discuss in a few minutes, the Bureau of Labor Statistics reports that no other U. S. industry has similar levels of concentration in pricing power.

I note that the tin-mill industry's dramatic increase in pricing power is found using both the four firm-concentration ratio and also the HHI measure, the two most commonly used measures of pricing power.

Let's take a closer look at cost savings. Since 2000, new labor agreements have significantly lowered labor costs. One measure of efficiency, labor productivity, highlights the change in the industry's fortunes. In 2000, the domestic industry produced 216 tons of steel per 1,000 work hours. Today, the
industry reports that 357 tons of steel are produced per 1,000 work hours. This is a mind boggling 65% improvement.

For comparison, the Bureau of Labor Statistics reports that the average U. S. manufacturing industry's productivity improved 27% over the same time period. Does this productivity change matter? You bet it does. Simply put, it transforms a struggling industry into a money-making industry. For instance, think back to the industry's operating profit during the original investigation. The industry reported that over 1997 and 1999, it lost over $200 million.

Now, let's ask the question: What would have the industry's performance been with current productivity numbers, but if nothing else changed? That is, suppose wages do not change, all of our costs do not change, prices do not change, legacy costs remain in tact, and so on and so forth? Can we isolate and identify the impact of the improvement in labor productivity?

Actually, given the way the ITC reports financial data, this is a straight-forward exercise. We simply plug current productivity into the industry's reported financial statements to calculate
wage costs. Doing so reveals that the industry would have made over $300 million more dollars than it did. In other words, the industry would have reported a positive operating profit. This is pretty impressive. A $300-million turn around, even though subject imports remained at their 1997 to 1999 level. The point: Even if nothing else about the tin-mill industry had changed, the extraordinary improvement in labor productivity alone means the domestic tin-mill industry would have been profitable. It's important to note that the cost saving changes are still in effect and will continue to be in effect for the long term.

Now, in fact, it is likely that as impressive as this improvement is, our calculations, nonetheless, represent a serious understatement to the industry's transformation. Here's why. As the Commission is well aware, there are numerous areas where the industry's current reporting significantly differs from its four previously certified sworn submissions. As recently as the September 2005 steel effectiveness report, the domestic industry certified that its labor productivity was actually 427 tons per 1,000 work hours. If this prior report is correct, the industry's improvement is significantly better
than the current record suggests. We are confident the Commission will get to the bottom of this reporting issue. We simply note here that the discrepancies are found throughout the domestic industry's data: from early years to more recent years, from labor productivity to cogs, from SG&A to operating income. The deviations are huge and seriously distort the current record.

Setting the domestic industry's disturbing reporting practices aside, let me return to the industry's improvements. Labor productivity is not the only way the industry has strengthened its position. Over $15 billion of legacy costs were dumped by domestic mills with 10 facilities. Reading the domestic industry's briefs, none would never know this happened. In 2000, the domestic industry had $15 billion in legacy debt. Today, that huge debt is gone. Obviously eliminating such a huge debt helps the bottom line.

The challenge is figuring how much benefit accrues to tin operations. According to the data reported to the ITC effectiveness study, tin operations account for about six percent of all flat-rolled employments. With this six percent figure in mind, I show that the dumped legacy costs result in at
least $100 million of annual cost savings to tin
operations. As discussed in the brief, actual cost
savings are likely quite a bit more. But even with my
conservative $100 million estimate, in conjunction
with the labor productivity improvements discussed a
few minutes ago, the fact is today's tin industry's
annual costs are at least, at least $200 million less
than they were in 2000.

Cost saving synergies are more difficult to
quantify, but also effect the industry's health. For
instance, according to a Mittal spokesman, the Weirton
facility is Mittal's highest cost producer. In an
earlier era, Weirton's shortcomings would have meant
ongoing losses. But, because it is now part of a far
larger operation, the Weirton facility can remain
profitable by taking advantage of the efficiencies of
other Mittal facilities. Specifically, in late 2005,
Mittal announced it would permanently idle Weirton's
hot end. According to Mittal, the decisions to shut
down Weirton's hot end should not be taken as a sign
of weakness, but rather as evidence of Mittal's
overall efficiencies, efficiencies that are only
possible because of Mittal's greater scope.

Mittal may claim implementing the shutdown
raises a short-term cost. However, the Commission
must focus on the long run benefits of this decision. Mittal's decision optimizes its overall operations. Moreover, the decision to shut down Weirton's hot end has nothing to do with the tin mill antidumping order. The fact that Weirton's hot end is inefficient has nothing to do with Japanese imports.

The consolidations have also had a significant impact on the domestic industry's pricing power. The two most common measures of pricing power are the four firm concentration ratio and the HHI. Given that there are only four domestic firms, the four firm concentration ratio is obviously 100 percent. According to the BOS, no other U.S. manufacturing industry has such a high concentration ratio.

The HHI is more complicated to calculate. In an exhibit to the pre-hearing brief, the calculation is detailed. For today, I note at the time of the original investigation, the tin industry's HHI was about 1,500, or what the Department of Justice calls moderately concentrated. According to the Department of Justice guidelines, firms are presumed to have market power and are said to be highly concentrated when the HHI is greater than 1,800. Today, domestic tin mill industry's HHI stands at over
3,500. Is this a big change? You bet it is.
According to the BOS, no other U.S. manufacturing
industry has such a high HHI measure.

The domestic industry's position is at the
buyer side, is also concentrated, and, as a result,
supplier side concentration does not matter. Well,
let take a look at the can makers. And contrast with
the picture just seen, the supplier side's
concentration has been stable throughout the POR. In
fact, even with the Ball-U.S. Can merger, there's only
a modest increase in the buyer side HHI.

So what does this all mean? The relative
pricing power of the domestic producers has doubled.
The domestic mills are no longer the little kids on
the block. Six years ago, major can makers held a
bigger share of the tin market than the domestic mills
did. Today, it is the domestic mills, who dominate.
Let me emphasize, that the pricing power associated
with supplier concentration is widely acknowledged by
all academic and government economists. Mary White,
the former chief justice -- chief economist at the DOJ
simply and amply states, "seller concentration
matters."

There are a couple of major can makers here
today that can talk about the new terms of negotiation
with the higher concentrated -- highly consolidated
directed concentrated tin mill industry. Long standing
practices, such as freight equalization and quarter-
inch surplus, are distant memories. The imposition of
raw material and energy surcharges are now common.

Overall, the combination of cost reductions
and improved buying power has put the domestic tin
mill industry in a very strong position. For example,
look at the price-cost gap, which I define as a
difference between the average sales value per ton
less cogs per ton. In 2000, the industry reported
that it lost eight dollars per ton. Today, the
industry reports a price-cost gap of plus $35 a ton.
This is quite a turnaround. But once again, I note
that this understates the industry's true price-cost
gap. In the chart here, I depict the price-cost gap
as sworn and certified by this very same industry
within the last year. As seen, the currently reported
gap is about half what this same domestic industry
reported to the Commission just a few months ago.

The ITC traditionally views capacity
utilization as an important component for
understanding the industry under review. It must be
recognized, however, that in a tin mill industry,
capacity utilization tells little about profitability.
Tin is a downstream steel product, the end of a long chain of production. All along the chain, domestic mills have the option of selling steel. There is no compelling reason to push the product all the way down the line.

As the Commission is well aware, domestic steel producers have been constrained by the lack of raw materials for much of the past 18 months. There are many, many press reports of buyers being put on allocation. Some of those effected are here today. But, there are literally hundreds of others, from re-rollers, to pipe manufacturers, to service centers. In fact, even the domestic industry's briefs acknowledge the shortages. In spite of these shortages, the staff report indicates that "the domestic industry's capacity utilization was greatest for anneal and tin coating, and that there was excess capacity available for every stag of production."

Thus, the domestic tin mill capacity utilization is higher than hot rolls, higher than cold rolls, and higher than corrosion resistance. This is impressive, but still it doesn't tell us much about the industry's health.

The lack of probative value associated with capacity utilization is found in the Commission's
steel effectiveness report. During the period of time
when the other flat-rolled products had relatively low
capacity utilization, the industry reported that it
made 13 to 16 percent profits. I, also, note that the
tin mill industry reported in that same steel
effectiveness report that it was making very large
profits with high capacity utilization. Moreover, in
three of the five year-to-year comparisons during this
POR, tin capacity utilization and operating income
move in opposite directions. Said different, more
likely than not when capacity utilization goes up,
operating income goes down.

As discussed above, industry officials
acknowledge that the consolidations have had a
profound effect on the steel industry's operation.
One reality of the new tin steel industry is that
capacity utilization is a somewhat dated and
irrelevant metric for profitability.

Summing up, the message is quite clear.
Between the hundreds of millions of dollars in cost
savings stemming from the new labor contracts, the
hundreds of millions of dollars in cost savings
stemming from dumped legacy costs and the millions in
dollars of increased revenue stemming from its
strengthened bargaining power, the domestic industry
is not vulnerable.

My next major point is that once the order is revoked, it is very unlikely that there will be a significant increase of imports of tin from Japan. The domestic industry assumes that excess capacity in Japan will lead to an increase in Japanese shipments to the U.S. market. This is baseless speculation. The tin mill market, in general, and the Japanese, in particular, do not operate like the domestic industry alleges. A look at the data rejects their assertion. Let's look at two examples of actual Japanese behavior.

First, let's look at the cold-rolled steel market. Cold-rolled is a great comparison product. It is the one flat-rolled product where the United States has not had any antidumping duties. This would seemingly be the perfect test case of the domestic industry's conjecture; yet, despite the fact that there is no antidumping duty on Japan and despite the fact that cold-rolled is selling for very high prices, Japanese exports to the U.S. are very low. Let me preface my comments by noting that the Japanese report that their capacity utilization for cold-rolled is lower than for tin mill. Let me just say that if the domestic industry's view were correct, it, therefore,
follows that the Japanese incentive to export cold-rolled to the United States would be even greater than their incentive to ship tin mill. So, if we so evidence of their conjecture for cold-rolled, surely it must also be faults for tin.

Let me, also, point out that cold-rolled prices are very high. In this chart, I plot the annual average U.S. cold-rolled price for each year of this review. As shown, the U.S. price for cold-rolled was much higher in 2004 and 2005 than any other time in the past five years, about $250 a ton higher. If the domestic industry's allegation were true, low capacity utilization in Japan, plus high cold-rolled prices in the United States would give rise to an import surge. Yet, there's been no increase in imports from Japan. That's right, no increase. In the chart, I present the quantity of cold-rolled imports from Japan during each year during the POR. As shown, once one takes into account the two-year period when 201 relief was imposed, we see that U.S. imports of cold-rolled from Japan in 2004 and 2005 were at very low levels; in fact, their lowest level in years.

Let's ponder for a moment what we just demonstrated. The domestic industry's theory that
excess capacity in Japan will inevitably lead to increased U.S. imports is false. They have allegations. We have actual data. The fact is this, Japanese imports that are not subject to antidumping duties do not surge, even in the face of record high U.S. prices.

The second example involves tin mill price. The Skadden brief emphasizes the purported dangers of unrestrained Japanese tin mill producers. Rather than simply speculate about the issue, why don't we look at the data. Not all Japanese tin is subject to the antidumping order. Let's see what we can learn by looking at the excluded tin price. Here, I plot the quantity of excluded tin imports from Japan. Let me reassure you I've not redisplayed the cold-rolled example. I must admit, however, the parallels are striking and there's good reason. The same pricing and sales discipline is at work in both markets. Once again, you can see that excess capacity in Japan has not led to an increase in imports. Only one conclusion can follow, there's no reasonable basis that Japanese tin imports will surge.

The final message I want to convey is the reduced incentives for Japan to supply the U.S. market. Demand for tin is much stronger in other
markets. Domestic mills acknowledge this in their briefs. Purchasers confirm this in their questionnaires. As discussed in the brief, tin plate demand in China is expected to double by 2010. The difference in packaging consumption patterns between developing countries and developed countries highlights the growth issue. In China, for example, about eight containers are consumed per person per year. By contrast, in the United States, about 375 containers are consumed per person per year. Said another way, the developing countries have a lot of catching up to do.

While Chinese tin capacity is also increasing, it's not keeping up with demand. But even with this additional tinning capacity, China will need more black plate. So whether China imports tin or black plate, the result is the same. The Japanese have a significantly reduced incentive to ship tin and black plate outside Asia.

Prices in the market confirm what industry experts are saying, namely, demand for tin is stronger in other markets. The table displayed give prices. The first item listed is the U.S. producer's AUV over all sales, which is $747 a ton. Below that, is a list of AUVs Japan receives in its biggest markets. At
home, Japanese mills received $900 a ton. On sales to Iran, Japanese mills receive $902 a ton. On sales to China, Japanese mills receive $793 a ton. In fact, out of Japan's top 20 markets, all but two have higher export values than the current U.S. domestic AUV. And these differences are not trivial. The Japanese are receiving upward of 20 percent more in other markets than the U.S. AUV.

This pricing differential will come to no surprise to U.S. producers. Mittal shipped 120,000 of tin to China. Overall, U.S. producers' export AUV in 2005 was $775 per ton, about $28 more per ton than they received at home. The data show high demand and high prices in other markets. As a result, it simply does not make economic sense for the Japanese to divert shipments from other buyers to the U.S. market. I thank you for your time.

MR. PORTER: Mr. Chairman, that concludes our affirmative presentation.

CHAIRMAN KOPLAN: Yes, thank you, very much. I appreciate, very much, your testimony and for all of you being here this afternoon and I will begin the questioning. Could we put your slides back up on the screen for a moment?

MR. PRUSA: Sure. Which one would you like?
CHAIRMAN KOPLAN: The one that preceded this one. It's up there now. That's it, prices in other markets higher than in the U.S., page 45. In several places in your brief, Dr. Prusa, you referred to the Japanese industry being smaller today before -- smaller today and "remains focused on its large domestic market and nearby markets in Asia." That's at page two. Later state, "that over the past five years, Japanese producers have reduced their capacity, expanded their relationships with Asian customers, and continue to focus on more specialized products." And that's at page 67. You go on to say that "Japanese producers ship primarily to supply their own home market needs and export their remaining production to other export markets where demand is strong and prices have been increasing." But despite all of this, I noted on page 74 of your brief and 76 and, again, in Exhibit 20, that your top export market is not in Asia, but rather Mexico. Am I correct?

MR. PRUSA: Yes.

CHAIRMAN KOPLAN: Okay, where your export shipments AUVs have increased over the past three years by 70 percent. I've looked at your Exhibit 20 in the brief. Now, even though Mexican AUVs are lower than other export markets, the fact that they are
priced at $30 below U.S. AUVs in 2005, I fail to understand why you wouldn't want to -- why the Japanese would not want to shift exports from the Mexican market to the U.S., if these orders come off, and they can get a higher price right across the board. I'm at a bit of a loss on that. I'd like to hear from the industry --

MR. PRUSA: I was going to say, I think the can makers would probably give you that answer.

CHAIRMAN KOPLAN: Yes. I'd like to hear from them on that.

MR. PRUSA: Exactly.

CHAIRMAN KOPLAN: That's a bit of a problem for me, because, by far, Mexico is the biggest customer. Could I hear from the purchasers?

MR. MOORES: John Moores with Silgan Containers. I can just take a shot at answering it --

CHAIRMAN KOPLAN: I appreciate it.

MR. MOORES: -- being somewhat familiar with the Mexican market. There's really one -- as my recollection is, there's only one major tin plate supplier in Mexico, which can only supply about 50 percent of the requirements within Mexico. What I would see happening, if the Japanese tried to shift away from the Mexican market, I think you would see
the market reacting by pricing it at a point where it would just continue to draw into the market the Japanese shipments. That's where the majority of, at least of that 50 percent that's not supplied by the domestic tin plate supplier, the majority of that supply comes from Japan. They rely on that within the market. I just do not see Japan shifting away from that. That's been a long-term supply point for Japan. And so, my belief is that they would continue to focus that market, since that's been a focus for so long -- or supply that market since it's been a focus for so long.

CHAIRMAN KOPLAN: But, as I am looking at the two markets now, Mexico and the U.S., you get a higher price in the U.S. today; correct?

MR. MOORES: Based on those numbers that appear?

CHAIRMAN KOPLAN: Well, the numbers you've got up there. In red, you've got $30 lower than U.S. price; right?

MR. MOORES: Yes.

CHAIRMAN KOPLAN: I'm afraid I just -- I'm not there. I don't quite get your reasoning on that.

MR. SPRINGFIELD: I think in the case of fall --
CHAIRMAN KOPLAN: Mr. Springfield, yes? I'm sorry --

MR. SPRINGFIELD: I'm sorry.

CHAIRMAN KOPLAN: -- if you all --

MR. SPRINGFIELD: -- Mark Springfield, Ball Corporation.

CHAIRMAN KOPLAN: Right. Thank you.

MR. SPRINGFIELD: In the case of Ball, shifting suddenly like that becomes very difficult, given our internal qualification requirements. We haven't had Japanese qualified previously. We would have to bring them on and do so. For us, the qualification process is fairly lengthy and fairly stringent. The activity that you're demonstrating here would have to exist over a considerable amount of time to be of any benefit for us, if it was a benefit at all.

CHAIRMAN KOPLAN: I'm glad you brought that up, because I wanted to get into the qualification requirements.

MR. SPRINGFIELD: Great.

CHAIRMAN KOPLAN: So, let me do this. This morning what I heard from the domestics is that qualifying Japanese product does not take an inordinate amount of time in this country and that
they basically wouldn't miss a beat. Is there some way you could document to me what, in your estimation, it would take to qualify for Japanese imports to come back in with the qualification process? Exactly what has been your own experience with that?

MR. SPRINGFIELD: My experience, in general, is it takes from six months to a year for a supplier to qualify. My personal experience with the Japanese, in terms of some of the material that we buy from them for a Canadian operation that we have, is you can probably add six months or more to that process. There are just cultural hurdles that need to be overcome, in terms of working through that qualification process. There's not only -- there's the language. There's the difference, in terms of the analytical pace to the process. There's an exchange of samples. There's a review of the specifications. There's a specifications review meeting typically. There's follow-up, in terms of capability. There's sample exchanges. There's comparisons, in terms of results on those samples. Then there's, perhaps, the first trial. Then there's the follow-up from the first trial, in terms of comparison of results. If that's all satisfactory, then it's laying out the time of production for the second trial, getting the
technical people together for that second trial;
scheduling it on the line, running the material for
the second trial, if it's successful. And then, you
go through that same process for the third phase.

We have three phases in our qualification
process successively greater, in terms of the
requirements that we specify from our qualifying
supplier. Each one, of course, is integral to the
whole process. So, if you fail any one phase, then
you're, in essence, back at the beginning. And it's
not unusual through that qualification process to
discover surprises, in terms of what you thought might
work as a material and what could work as a material.
So, there's a certain closed loop to it until you're
ultimately successful. Some never get from phase one
to phase three. The material and the supply is not
consistent enough to stand --

CHAIRMAN KOPLAN: Can you provide
documentation for me post-hearing on what you're
saying?

MR. SPRINGFIELD: I think we have -- someone
will take a shot at getting you better information.

CHAIRMAN KOPLAN: Thank you. I would, also,
like to hear from Silgan on this.

MR. MOORES: I think we would basically
concur with everything that Mark said. And we would
be able to provide our qualification procedure. It is
a document procedure that outlines what the phases are
and we could provide that.

CHAIRMAN KOPLAN: I appreciate that. Mr.
Gill, can you add anything to this discussion? You've
been on both sides you said.

MR. GILL: Yes. I would agree with what Mr.
Springfield said. My experience with the Japanese,
that they're extremely -- they have an extremely
methodical approach to everything. So, it's not just
a typical qualification of entering an order and then
running it through their plant and then determining
the outcome. They have to make sure that they
understand everything before they offer any product.
And from a legal standpoint, this is just my
experience with them, everything, they want to make
sure that they're not doing anything improperly and
they want to make sure that the specification is
exactly what they understand it to be. And as Mark
said, you send samples to Japan and that just requires
more questions from them. And I would agree that,
sometimes, it takes -- we're in the process now of
trying to qualify a laminated product and it's taken
over a year, just because of the exchange of ideas and
questions that we have with them. So, I find that what he says is factual.

I wanted to make a comment, too, about Mexico, if I could?

CHAIRMAN KOPLAN: Absolutely.

MR. GILL: I think what that shows is I think the Japanese loyalty, that when they have a strategy, that they stick to it. They've been in the Mexican market for decades. When I was at Weirton Steel, we shipped a Weirton Steel product to Mexico, as well, and they were one of the largest suppliers down there. And to follow up with what Mr. Moore said, the Mexicans cannot take care of their own requirements, so they have to have imports. And so, they've been in that market forever and I think that that's the reason behind it. And so, they wouldn't arbitrarily move that product from Mexico to the United States, in my opinion. And the last comment is that I think if you looked at the pricing, in June of 2006, you'll see it's much higher than $717. We're not there yet, but prices have increased significantly in Mexico.

CHAIRMAN KOPLAN: I appreciate your response. I will say, I'm hearing two different versions of how difficult it would be for reentering
into the U.S. market. So, I guess I would appreciate further detail from both sides for purposes of the post-hearing on this issue. I will also say, I appreciate your response with regard to the facilities coming back in from Mexico, where there is currently a higher U.S. price. And if that could be expanded on, counsel, post-hearing, I think this issue is fairly significant, at least for me.

MR. PORTER: We will definitely do so, Mr. Chairman.

CHAIRMAN KOPLAN: I appreciate that. Thank you, very much, and I will turn to Vice Chairman Okun.

VICE CHAIRMAN OKUN: Thank you, Mr. Chairman, and I join in welcoming this panel this afternoon. I appreciate your willingness to be here and answer our questions and for the information you've provided thus far.

In your testimony and in the briefs, there's been a discussion about changes since the original investigation and I wanted to follow-up on a number of those things. But, let me start first with the existence of the multi-year contracts and the description that was given about the meet comp provisions versus the favored nations and what that means, in terms of this market. I wanted to see if
there is anything further you could provide in post-hearing. I understand this is confidential with regard to how often those have been invoked. Well, let me start with that.

MR. OWEN: Robert Owen from Silgan Containers. As I've mentioned, we've never, recollect in history --

VICE CHAIRMAN OKUN: On both? I mean, I know you said -- was that the meet comp you had never --

MR. OWEN: Yes.

VICE CHAIRMAN OKUN: And then the second one, I'm just blanking right now on the name of it.

MR. OWEN: Favored nations.

VICE CHAIRMAN OKUN: Right, yes, your favored nations.

MR. OWEN: Yes.

VICE CHAIRMAN OKUN: Favored nation routinely done? Or --

MR. OWEN: Well, we check -- from time to time, we check. We have audit rights, what we call third-party audit rights and I think we've only done that once. We'll provide that in details later.

VICE CHAIRMAN OKUN: If you could provide that post-hearing, that would be great.
MR. OWEN: Okay.

VICE CHAIRMAN OKUN: What about, Mr. Springfield, is that -- if you could turn on your microphone, please?

MR. SPRINGFIELD: Mark Springfield, Ball Corporation. Arrangements are like flowers in the field. They're all different and some of the ones that we have structured are different than, apparently, what Bobby structured. We would be happy to provide. We can post-hearing.

VICE CHAIRMAN OKUN: Okay. That would be very helpful. Can you say, in this setting, whether you have a meet comp provision, as well, or is that confidential, the type of structure?

MR. OWEN: I would prefer not to.

VICE CHAIRMAN OKUN: What's that?

MR. OWEN: I would prefer not to.

VICE CHAIRMAN OKUN: Okay. I appreciate that. That's fine. Okay, well, if you can provide additional information post-hearing on that, that would be extremely helpful. Mr. Springfield, let me, also, follow-up with you. You have done, in talking about what role you would expect the Japanese suppliers to play in the market, if the order were lifted, you had talked about some of the supply
problems that you have with the domestic industry and
that you would see them, I think you used the word
"backup role" and a couple of other things. I just
wanted you to expand on that a little bit and help me
understand whether that would -- how they would -- how
the Japanese role -- how you see the Japanese role
vis-a-vis other non-subject imports right now. In
other words, is what you're saying, in the current
market, what you deal a lot with the domestic industry
and your purchasing a lot of the product; but you have
other suppliers, at this time, as well as backups,
and, therefore, you see the Japanese as just another
one of those non-domestic suppliers?

MR. SPRINGFIELD: Again, Mark Springfield,
Ball Corporation. I guess what I would like to call
to the attention of the Commission is the fact that we
have other foreign opportunities available to us now.
But because of the way we do business, the kind of
market that we're here, the flexibility we require, in
terms of changing our specifications on the fly, we
prefer not to engage in a lot of foreign support,
other than in our two-piece operations or specialized
products that lend themselves to that or can't be
satisfied domestically.

The small piece of foreign that we buy for
three-piece applications is pretty much what I just suggested, that it's backup. If we have something blow up at a particular supplier, we know we have an option that way. We like to maintain some relationship with some foreign suppliers, just so that if you do get into trouble, you have a communication channel and a means of getting back and forth to one another quickly, so you can bring in material to help mitigate an upset condition, and we would see the Japanese serving in that same role.

VICE CHAIRMAN OKUN: Okay. And then just in terms of during the original investigation, the role that the Japanese played, in terms of supplying your company's needs, has there -- if I were to look at the contracts you have now versus what you had prior to the order being imposed, will I see much of a change in how much is being sourced from a non-domestic source?

MR. SPRINGFIELD: Well, it depends. Again, the primary application we're bringing in for is our DNI application. That is entirely foreign. So, that's what I think you would see from the original submittal is the increase in foreign purchases, because our volumes of DNI production have increased since the original submittal back in 2000. We opened
up a second DNI plant in 2002 that is continuing to
reach our higher production levels. And as they do
that, we'll be drawing in higher and higher steel to
satisfy that requirement.

VICE CHAIRMAN OKUN: Okay, that's helpful.

MR. PORTER: Commission Okun, can I make
just one quick point on --

VICE CHAIRMAN OKUN: Yes.

MR. PORTER: -- when you -- this is Dan
Porter for the record. When you do that examination,
I do urge that you put Canada in a little different
category, because all the industry guys today have
been very careful of distinguishing offshore supply
and they didn't say import, because they view the sole
Canadian tin mill supplier, DeFasco, in a different
category than they would with, you know, the Asians or
the Europeans, because of the proximity of the DeFasco
mill. So, when you're looking at numbers, I just want
you to take that into account.

VICE CHAIRMAN OKUN: Okay. I appreciate
that. Do you think that has changed at all since the
original investigation? I asked the Petitioners this
morning, because there was some information in the
original investigation with regard to non-subjects and
looking -- actually, very comparable for not just
Canada, but the others. Do you think that there's
been a change or you think that's still --

MR. PORTER: Excuse me. I think the biggest
change is the -- you know, I can say, at last, a
fairly dramatic increase in the U.S. market by
DeFasco. I believe the numbers, I believe these are
public numbers, are in the staff report or you can do
it from basically ITC data, that show the Canadian
share about five percent of the U.S. market today,
which is quite higher than it was during the original
investigation, again, just using the straight import
statistics. And, of course, the reason for that is
that you had a two-year period, in which all imports
were kicked out of the market, because of 201, except
for Canada. Canada used that time to establish
relationships, work with their customers on what they
wanted, and because of proximity, the customers, I
believe, and we have them right here, treat DeFasco
more like a domestic mill than an offshore supplier.

VICE CHAIRMAN OKUN: Okay. And then could I
have someone from Silgan, Mr. Owens or others, comment
on the question that I was asking Mr. Springfield,
about the role you would see Japanese -- if the order
were to be lifted, the role the Japanese would play
and whether that would be a different role than they
played during the original investigation for your
company's purchases.

MR. MOORES: John Moores with Silgan
Containers. If I would just start off by answering
that question by touching on DeFasco quickly. We have
increased our buy with DeFasco, as well as, if you
look at 2002 to 2005, our foreign purchasers across
the board have risen, both offshore and what we would
call non-domestic. But, as we look at the role that
the Japanese could play, as some of the things that
Mr. Springfield highlighted, because of the
flexibility that we require, there's only a very
narrow niche and DNI is one of those niches that
foreign mills fit well into. So, really, what we view
the Japanese as is more or less another alternative
against what is currently being supplied by foreign
mills. They are not a good fit into the bulk of our
specifications, because of the fact that they're not
flexible. You've got this long logistic train that
you have to build into the process. They really fit
into that very narrow range that's currently filled
with foreign mills.

VICE CHAIRMAN OKUN: Okay. Yes, Mr. Owen?

MR. OWEN: Yes, Robert Owen from Silgan.

I'd like to just make one more point about DeFasco
mill, if I may. We actually buy some material from DeFasco for one of our plants in the U.S. by necessity when one of the largest domestic mills refused to ship to that plant.

VICE CHAIRMAN OKUN: Okay. Okay, I appreciate those comments. And in light of my yellow light coming on, I will wait to ask the next question until the next round. Thank you.

CHAIRMAN KOPLAN: Thank you. Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you. And, too, will thank this panel for your time and for staying with us through the day. Maybe, I can follow-up with just a couple of quick questions in response to the questions that the Chairman was raising, in terms of the qualifications, just so I understand it. Mr. Springfield, when you're doing a qualification, is it by company? By plant? By specific rolling facility? By spec? I mean, when you say somebody is qualified, who is the somebody?

MR. SPRINGFIELD: Well, to try and recall those examples, Commissioner, it would be by company. It would be by producing mill. It could be by plant, depending on the application, because equipment functions differently in different plants.

Heritage Reporting Corporation
(202) 628-4888
COMMISSIONER HILLMAN: Okay. And the fact that, as I understand it, at least as I recall from the original record, the Japanese, during the original investigation, were fully qualified, as I understand it, at all major U.S. purchasers for all plants and all products, as I recall. I can check. But would that hold over? In other words, once you're qualified, how long do you stay qualified?

MR. SPRINGFIELD: The information I have is that they weren't qualified with Ball. They were in the process of trying to qualify --

COMMISSIONER HILLMAN: Okay.

MR. SPRINGFIELD: -- among applications --

COMMISSIONER HILLMAN: That's after -- while I'm refreshing my recollection. For those for whom the Japanese were qualified, can anybody say anything here about whether that qualification would still be applicable today. If the order were to be revoked and the Japanese would come back in the market, would the fact that they were once qualified, as recently as 2000, carry over to imports from Japan now?

MR. MOORES: John Moores with Silgan Containers. First off, they were not qualified across all entire aspects.

COMMISSIONER HILLMAN: Okay.
MR. MOORES: Where they supplied, they were qualified, obviously --

COMMISSIONER HILLMAN: Okay.

MR. MOORES: -- but not across the whole supply chain. And, yes, they would have to requalify.

COMMISSIONER HILLMAN: Completely requalify, start from scratch?

MR. MOORES: Requalify. And there are several reasons for that. As our customer base mix changes and the supply base changes, where they supplied in 1999 would not necessarily be the same place they would supply today, if we did bring them back in. And consequently, also, the customer base at that location supplied is likely not the same. So, it would trigger other qualifications.

COMMISSIONER HILLMAN: Okay. And for both of us, once someone is qualified, for how long does that qualification typically last?

MR. MOORES: Of course, for the length of time that they supply. And then, it's almost a case-by-case basis. If supply is interrupted, you have to look at the circumstances around that interruption. Of course, if it's a quality-driven interruption, where because of a quality issue, they are withdrawn, that entails a whole different qualification --
COMMISSIONER HILLMAN: Got it.

MR. MOORES: -- than if it's just a supply interruption.

COMMISSIONER HILLMAN: Okay. Mr.

Springfield, anything different in your end?

MR. SPRINGFIELD: Yes. Mark Springfield, Ball. I would agree with that, that we would --

COMMISSIONER HILLMAN: Okay.

MR. SPRINGFIELD: -- treat it similarly.

COMMISSIONER HILLMAN: Okay. And then on the contracting issue -- oh, I'm sorry, go ahead, Mr.

Owen.

MR. OWEN: Commissioner, if I may, just one more -- I'm sorry, one more thing about qualification. I think it's important to note, and I think John said this, but I want to make sure that you realize, they have to qualify for each spec at each plant. And right now, as I said earlier in my testimony, we buy over 500 specs. They're qualified for none, as of now. So, they would have to start for each individual spec. And as Mark Springfield mentioned, in some cases, that can take as long as a year.

COMMISSIONER HILLMAN: Okay. That is what I was trying to understand, whether it was corporately, individual plants, individual production lines --
MR. OWEN: Spec by spec.

COMMISSIONER HILLMAN: -- and by spec.

Okay. I appreciate that. Then, if I can go to the questions the Vice Chairman was asking on the pricing contracts, themselves. I very much appreciate the testimony in terms of how these contracts function. If, in the course of responding on these details, if you could help us with a sense of what portion of your contracts have these meet comp, as you're describing it, provisions; what portions would have these favored nations provisions in them; and help me understand a little bit of, if you will, the burden of proof. I mean, do you just go to somebody and say, gee, I got this quote out there, you've got to meet it? Or how does that process work?

MR. CARSON: Dan Carson, Silgan Containers. First of all, let me say, and I'm constrained by confidentiality provisions in our supply contracts, in getting into too specific information, but I believe I can address your question somewhat generally. We have some contracts with meet comp provisions. We have some with favored nations provisions. We have some with both. The meet comp provisions are specific as to a specification, as to a time, as to a volume, and as to a price. If they were to be invoked -- as Mr.
Owen said earlier, he's not done that or we've not done that as a company -- but where we to do that, there are, also, provisions that permit the current supplier to audit that statement that we might make, to verify all of the information that we have given to them, so that they can have certainty that we're not simply picking up a telephone and saying, here's something I've got, you have to meet it. That's not the way it works at all.

COMMISSIONER HILLMAN: Okay. And, again, if there is something that can be added in the post-hearing on specifics of the portions of the contracts and how these clauses work. Mr. Porter?

MR. PORTER: Commissioner, I would like to just raise a procedural issue and at least get it out there on the table. I believe, as Dan said, they're constrained because there are these confidentiality provisions in the contracts that they have with the mills. My understanding today, and maybe we can ask -- the Chair ask this, my understanding today is domestic mills have waived their confidentiality, which would permit the customers to give you the actual contracts. And if that's the case, Silgan is willing to waive its side of confidentiality and then, therefore, you can have the actual document to look at
the actual language.

COMMISSIONER HILLMAN: I appreciate it. I heard it, at least this morning, I don't know whether it was Mr. Hecht or Mr. Vaughn, who suggested that the confidential was, in essence, on your side of the table. But, obviously, if it's on both sides, again, clearly, we understand these would continue to be subject to our BPI provisions, protective order. We're not talking about releasing any of this publicly. But, obviously, I think it would help if we could actually see some of these provisions. You can hear us all struggling to try to understand exactly how these meet comp, favored nation, et cetera, given how much of the litigation and everything else connected to this has focused on price and price competition and when and where and how it occurs and how we measure it. Whatever both sides can do to try to help us understand this, I think, really would be extremely useful. So, I don't know whether, at some point, counsel and our staff can get together to work out this notion of whether both sides can allow us to see, I'm not even saying all, but some way to look at some of these clauses, so that we can make sure that we are correctly understanding how they function, would be very helpful.
MR. PORTER: Commissioner Hillman, we fully agree with you and we are going to interpret your comment as a direct request that customers supply these agreements to you. And, again, we will try to work this out with counsel, but at least I believe I heard that counsel say that it was not a concern to them. They were only concerned, because they thought that Silgan was concerned. And we're telling you, Silgan doesn't have concerns, so I think we might can give you these contracts.

COMMISSIONER HILLMAN: I'm sort of putting - - I see Mr. Vaughn in the back. I'm not sure I see Mr. Hecht. But, in any event, you've heard this discussion. I assume that if there is some reason on the domestic mill side, that there is an objection to this, we need to hear about it sooner rather than later, and it needs to be clearly communicated to all counsel, so that everybody is under a mutual understanding about what we're doing with these contracts.

CHAIRMAN KOPLAN: I agree with Commissioner Hillman and I ask that the process that's been described be followed post-hearing.

MR. PORTER: We'll do so, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you.
COMMISSIONER HILLMAN: I see some nodding heads in the back, I think. Okay, thank you, very much.

CHAIRMAN KOPLAN: It appears that those in support of continuation are nodding in the affirmative on that.

COMMISSIONER HILLMAN: If I could then go to another issue and that was this issue of alternative packaging. I know that Silgan's 10K was excerpted in some of Mittal's brief, referring to Silgan's plastic container business. To the extent that Silgan is in both ends of this, can you help us understand the plastic container business vis-a-vis the tin can business? And for me, I'm trying to make sure I understand whether -- how much of it is price driven, as opposed to how much of it is a complete shift in consumer taste going to plastic, aluminum, or other products. I mean, do you shift when the price relative to one or the other goes or is it purely once it's shifted over, it's never coming back?

MR. MOORES: Mr. John Moores, Silgan Containers. Unfortunately, the answer is, it's a mix. There's obviously some that is driven just by consumer preference or more of the product manager's preference to maybe put a new look on the package and, then,
there's also some driven because of cost. As Silgan looks at it, though, as opportunity and why the large investment that we've made in the quick top end technology, because we feel that we can affect actually a swing, definitely stop any swing going in the other direction because of convenience, but more so change that swing and redirect it back to cans. Because, one of the drivers is convenience. We've done numerous market studies to show that in all the packaging, cans with quick top ends are one of the preferred packages. So, it is a preferred package by the consumer. It's a convenient package. So, there's actually, in our opinion, some optimism to at least change that maybe slightly downward trend of canned foods to obviously flat and hopefully growing that market.

And we concur with some of the statements that were made earlier about the investment of time and resources into the marketing of the food can. Of course, the steel companies are doing it and also the can companies. So, hopefully, that answers your question, but --

COMMISSIONER HILLMAN: I may have a little follow-up, but given that the red light has come on, I'll save that for the next round. Thank you.
CHAIRMAN KOPLAN: Thank you. Commissioner Lane?

COMMISSIONER LANE: Good afternoon and welcome to the afternoon panel, or almost evening panel, I might say. Mr. Gill, I might like to start with you. I have a question as to what the nature is of Nippon trading, as opposed to Nippon Steel.

MR. GILL: Nippon Steel Trading America is exactly that. It's a trading company. So, we buy and sell metal products, mostly steel, and almost all steel products, some aluminum. So, we're in the business of buying products and then selling them to someone else. In our particular case, our company is primarily owned by Nippon Steel. There is some ownership involved with another trading company. In our particular case, we sell, for the most part, domestic-made product. So, we have arrangements with certain companies in the United States. I mentioned Ohio Coatings during my testimony, where that particular company will make a product and they sell it to us and then we're responsible for the distribution. So, I would sell to Ball, I would sell to Silgan and to the rest of the can makers in the industry.

COMMISSIONER LANE: Okay. Thank you. And
you made reference to when you were at Weirton, you were aware that Mexico was the biggest export market for the Japanese product. Could you tell me how long that relationship had been in existence? Was it in existence at the time of the 2000 investigation and order?

MR. GILL: Yes. I began my career with actually National Steel in the mid-1970s in California. And we, at that time, National Steel, was shipping some product to Mexico. And even at that time in the mid-1970s, the Japanese were shipping tin mill products to Mexico. So, it's been over 30 years, as far as I'm concerned.

COMMISSIONER LANE: Okay. But, do you think that even prior to the order that we're talking about now, Mexico was the biggest market for the Japanese product?

MR. GILL: Outside of Japan?

COMMISSIONER LANE: Yes.

MR. GILL: I don't have the numbers in front of me. I would think during that time, the United States probably was a significant area that they shipped to and Mexico had to be close.

COMMISSIONER LANE: Okay. Thank you. We'll stick with you.
MR. GILL: All right.

COMMISSIONER LANE: In your opening remarks, you said that there is no comparison between Weirton's assets during the original investigation and Weirton's or Mittal's assets today. Were you referring to their tin production assets or their total assets?

MR. GILL: Total.

COMMISSIONER LANE: Okay. Mr. Prusa, you presented an exhibit, which shows that leaving all factors unchanged, except labor productivity, the 1997 to 1999 losses of the industry became a profit. Isn't normal in the industry that productivity gains are achieved by spending money, either with new, more efficient equipment, or a higher paid, better trained workforce, or some combination of such changes? If so, what does your productivity adjustment standing alone really tell us?

MR. PRUSA: I think you might say, typically, what you just said, but we're talking about the steel industry and we're talking about a steel industry that went through four massive consolidations. And so, that productivity number is a direct result, not of the investments, but of basically Bankruptcy Court breaking the USW contracts and USW going to LTV, then ISG, and adopting a very
progressive new labor contract that allowed much more
labor flexibility, far fewer job categories, and a
significant elimination of thousands of jobs with a
very minor -- in fact, there's been an increase in
total steel production. This is not about
investments. This is about changing union contracts
that handicapped the mills' ability to produce
effectively. It's all about the new contracts. It's
not about a measure of new investments and all of a
sudden, I've got a computerized mind. This is
overnight. ISG had new contracts that forced everyone
else -- and, in fact, we submit in the brief, in post-
hearing, Weirton states in its bankruptcy that the new
contracts that everyone else signed put its labor
contract on competitive terms.

COMMISSIONER LANE: Under what?

MR. PRUSA: That Weirton states in its
bankruptcy documents that the contracts that the other
mills got coming out of bankruptcy were now putting
Weirton in an uncompetitive position and they were
telling the Bankruptcy Court, we need our contracts
broken with the workers, so we can get a contract
that's like the other guys, that allows us to have the
same kind of labor flexibility and productivity.
That's also in the exhibit. This is not about new
investments. This is about new contracts.

MR. PORTER: Commissioner Lane, if I may just take a stab at answering your question?

COMMISSIONER LANE: Yes, you certainly --

Mr. Porter, right?

MR. PORTER: Yes. Sorry, Dan Porter for the record, Commissioner Lane. The chart that Professor Prusa presented was really just a visual demonstration of the savings that occur when you have increased productivity. We're not really suggesting that the financials would look like that had the productivity been in place. It was simply really to show that they would have had 300 extra million dollars to do whatever they wanted to do. They could have taken it to the bottom line. They could have invested it in new machinery. They could have done anything. It was just the idea to show the magnitude of the savings and not really show what the earnings would have been.

COMMISSIONER LANE: Okay. Thank you. Now, I'd like to turn to page 36 of your pre-hearing brief. And what you state, "the spectacular improvement of the tin industries' operations has not excluded the steelworkers." I would like to explore some of the impacts on the steelworkers that are reflected in the data in this case. On page 30 of your pre-hearing
brief, you point out that four firms have shed 44 percent of their workforce. That number is based on your Table 8 on page 31 of your brief, which shows the employment levels going from 33,800 jobs to 18,210 jobs. This is a loss of 15,590 jobs in the industry. Are you suggesting that the loss of 18,210 jobs in the industry is spectacular improvement for the steel workers?

MR. PRUSA: I'm sorry, I don't have a copy of the brief. I believe the numbers are quoting the total employment figures for these companies. That's not tin industry changes, I believe. Right, those are the -- thank you, Dan. Tom Prusa, by the way. That's total employment. So, yes, do I believe that there are hundreds of steel workers, who have lost their pension plans and healthcare cost? I agree with you completely. The point there, in the brief, is that wages have gone up significantly since 2000, all right. The unions understood that to get their LTV, get National, get Weirton out of bankruptcy, Bethlehem out of bankruptcy, it was required that they change from being a very low productivity and try to become more like, let's say, Nucor, whose output per worker was significantly higher than these other mills. All right, so this is a result of the competition among
domestic mills. The workers, who remain at these
mills, have done very well.

COMMISSIONER LANE: Okay. Could you look at
Figure 2, at page 36 of your pre-hearing brief, and
briefly describe what that table is based on and how
it effects our analysis in this case?

MR. PRUSA: Sure. Figure 2 plots using the
public data collected by the ITC on wages reported by
the steel mills. And it, also, for comparison, plots
inflation. And I normalized, that it basically shows
you how rapidly the wage rate, that's the black line,
is growing and how rapidly inflation has been going up
since 2000. And according to numbers submitted by the
domestic industry, wages have gone up by 40 percent
since 2000 in the tin industry and by contrast,
inflation, since 2000, has gone up 13 percent.

COMMISSIONER LANE: Okay. I would like for
you to look at that same table and you, also, have in
that same table the wage rates, 1997 through 1999, and
--

MR. PRUSA: I'm sorry, can you -- what
table, I'm sorry, Commissioner?

COMMISSIONER LANE: Okay. The hourly wage
rate data that you used from Table 3-7 of the staff
report. It's also shown on page 1-1 of the staff
MR. PRUSA: Oh, staff report, I'm sorry.

COMMISSIONER LANE: Yes. That table shows that wage rates for 1997 through 1999 were higher than in 2000. Do you know how the increase in the hourly wage rate from 1997 through 2005 compares to the consumer price index? And, maybe, I would just ask you to prepare a chart for that and submit it post-hearing.

MR. PRUSA: Yes, I'd be happy to. And I'm not sure --

COMMISSIONER LANE: What I would like you to do is take your table --

MR. PRUSA: Do I go --

COMMISSIONER LANE: -- and go back to 1997.

MR. PRUSA: 1997, fine. Yes. It's a little bit hard -- I mean, it's obviously doable, but given the massive differences in how the industry keeps reporting wages, it's difficult, as you know, across these five different submissions. They keep reporting significantly different. What --

COMMISSIONER LANE: Well, I would like for you to just use the hourly wages that you used on Table 3-7.

MR. PRUSA: Sure; okay.
COMMISSIONER LANE: Okay. Thank you.
Sorry, Mr. Chairman.
CHAIRMAN KOPLAN: Thank you, Commissioner.
Commissioner Pearson?
COMMISSIONER PEARSON: Thank you, Mr. Chairman. Permit me to extent my welcome to the afternoon panel, very good to have you here and interesting to have such a diverse cross section of experience in the tin mill industry and the downstream products industry.

So far from the record, I've gotten the impression that in a market with declining apparent consumption, the U.S. tin mill industry still is dealing with excess capacity relating to investments made years ago. But, based on some things I've heard now, I'm not completely sure that that's correct. So, is this correct or should we have a different view of the capacity of the tin mill industry?

MR. MOORES: John Moores with Silgan Containers. You know, sitting here this morning listening to the talk about the capacity and so on and so forth -- now, obviously, I'm not an economist. I'm not a can maker. So, how I look at it is very differently. When I pick up the phone and I need plate, I cannot get it all the time. Today, as we sit
here today, I have a line down, because one of my suppliers could not get me plate that I needed. So, simplistically put, every year, since I've been involved in this portion of the business, we have struggled to get plate. And it's not a monthly occurrence, it's not a weekly occurrence, it's a daily occurrence. Considerable amount of our resources are directed at just trying to fight fires, because we do not have the plate that we have requested on time when we requested it. So, just, again, very simplistically put, when we need plate, it's not always there. So, the capacity may be out there, but it's clearly not being directed to fulfill Silgan Container's needs, which is, as stated earlier, we're the largest purchaser of tin plate in North America, in the U.S., and the mills are not satisfying our needs on a timely basis.

COMMISSIONER PEARSON: And when you indicate that they're not doing it on a timely basis, what type of lead time are they requiring to meet your needs?

MR. MOORES: Well, the typical lead time is, for the domestic mills, around eight weeks. And the problem that we run into is not that they don't accept our orders, because, for the most part, they do. There is some give and take, as we place orders that
are usually eight to 12 weeks out, they book them. For the most part, they accept them. What happens though is after they accept them and we have a promise date, the promise date doesn't line up to when we get the plate. When it comes to that date, we're sitting there waiting for the plate and it doesn't come. Now, that's not true for all of our suppliers, I will admit. But for the Midwest, particularly, that is definitely the case.

COMMISSIONER PEARSON: Any other thoughts on that?

MR. SPRINGFIELD: Yes. This is Mark Springfield, Ball Corporation. I'd like to echo those thoughts. We've had consistent on-time delivery problems since the entire time I've been at Ball. Again, some suppliers are better than others and when you have situations like we're dealing with now, it just exacerbates the whole delivery performance issue, because there's some major production upsets that we're working through. But even prior to the production upsets, we would find that even though we could place our material within the standard lead times, delivery performance against those lead times was spotty. And even today, as I speak, the availability that we're looking for in the summer
months is not available and we had to look for help elsewhere.

COMMISSIONER PEARSON: Mr. Porter?

MR. PORTER: Excuse me, Commissioner, actually I have one sort of thought on what we've just heard. And Commissioner Pearson, I think you've hit it on the head, because the issue that I think you're struggling with is what does excess capacity mean. And really, what does it mean on the U.S. side; what does it mean on the Japan side. And what we're hearing today is that excess capacity doesn't necessarily mean what the domestics are making out. What their position is, I have excess capacity, it means, I can definitely supply all of my customer's needs. Well, what you've just heard today was, despite the reported low capacity utilization rate or certainly substantial excess capacity of U.S. mills, Silgan has a line down because they can't get material.

Well, something is a bit off here. I think what's off is the argument you've heard from the domestics. Something else is going on. Total excess capacity doesn't mean that supply can be delivered on a timely basis.

COMMISSIONER PEARSON: Professor Prusa?
MR. PRUSA: Sorry. Tom Prusa. In fact, I believe that the man from UPI today said this morning that he couldn't get hot-rolled, so he could make tin plate. That's an example where he's going to show, therefore, that he did not produce tin plate at full capacity. If you can't get hot-rolled or even if you're an integrated mill, if you're not sending hot to your tin operations, you're going to show excess capacity. So, he has a joint venture with USX; yet, USX was not sending UPI hot-rolled. He's going to have excess capacity in his tin lines. But, that tells you little about the desire for people to buy the tin from UPI. He can't get his joint venture partner to give him hot-rolled steel. He said it this morning. So, excess capacity really is a questionable concept when you've got so many reported shortages and allocations in an industry.

COMMISSIONER PEARSON: So, you are suggesting -- well, you're not disputing that capacity figures for tin mill production that are in the staff report?

MR. PRUSA: Well, I would say --

MR. PORTER: Let me take that. We're not disputing the accuracy, except as we laid out in the first part of our brief. But barring that, we're not
disputing that domestics sort of did their best in trying to say, here's my practical capacity and here's my production. And I think all around the table, both sides, they did their best with that question.

What we're saying is what is the significance of the excess that you see. That's what we're sort of challenging, their interpretation of the significance of the excess. They're saying automatically that that means we can supply all demand. And what you're hearing from the real world is that interpretation is not true.

COMMISSIONER PEARSON: And further to that, are you making the case that the installed tin mill capacity well may be there, but that the domestic industry has either found it difficult or unprofitable to obtain steel to put into the front end of tin mill or so they can run it?

MR. BARRINGER: Can I just try this? Bill Barringer, Wilkie Farr and Gallagher.

COMMISSIONER PEARSON: Certainly, Mr. Barringer.

MR. BARRINGER: I think there are two different circumstances that one has to look at. Most steel mills have greater rolling capacity than they have raw steel capacity. It's not matched one for
one. So, you may have a million tons of raw steel capacity and 1.2 million tons of rolling capacity, which may be hot-rolled, cold-rolled, galvanized, tin mill, whatever, okay. So, the first problem you have in dealing with the capacity figure is, okay, how do you deal with that. And if you decide that you're going to put all of your raw steel into hot-rolled and cold-rolled and galvanized and none of it into tin mill, you're going to have a low utilization rate for your tin mill line, okay. So, one is sort of the global constraint.

The second is, and I think it's important in this context, if you look at 2004, 2005, as a general matter, you will see that prices of other flat-rolled products went up much more dramatically than tin mill products. So, if I'm maximizing my profits, I'm going to give priority to those products, which I make the most profit on, okay. And that, the fact that I'm pushing it into cold-rolled is what is hurting my capacity utilization for tin mill. It has nothing to do with the tin mill demand, because you're not supplying the tin mill demand, except when you've supplied everything else. I hope that --

COMMISSIONER PEARSON: Mr. Moores?

MR. MOORES: May I have one other quick

Heritage Reporting Corporation
(202) 628-4888
item? All capacity is not the same. We have certain bottlenecks in our industry, because of the change of our specifications away from the old SR to DR. So, now there are bottlenecks. And so when I hear these capacity numbers, I do not believe that they're specific to our truly where our requirements are today. They're just general capacity. Because, I know that, and I am sure that my colleague at Ball would agree, that there are specific specs that we cannot get. And we repeatedly go to the mills, ask for those specs, and we're told no capacity, no line time. There may be line time for things we don't need; but for what we need, this does not exist.

COMMISSIONER PEARSON: Okay. Thank you, very much. It's a helpful discussion. The light has turned red, so, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you. Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. I want to join my colleagues in welcoming the afternoon panel. We appreciate the time you're spending with us today and probably will continue to spend with us for a little while yet.

I want to begin with questions. Mr. Owen, in your testimony you had mentioned, and this was in the
brief as well, the elimination of the freight
equalization and the quarter inch width surplus as
being unilaterally imposed price increases by the
domestic industry. You also talked about surcharges
that were imposed. The question I have for you is
this.

In the past six-plus months we've considered
a number of review cases involving orders on steel
products and in every single case we have been told
that the second half of 2004 and the beginning of 2005
were just wildly anomalous periods of time for the
steel industry starting from the most basic products
and going multiple products downstream, that demand
was very large worldwide, that prices were going up
everywhere, that domestic producers were imposing
surcharges, so I ask you, does it have anything to do
with concentration in this industry? Is there really
anything unusual about what was going on in tin mill
as opposed to what was going on in every other steel
product?

MR. OWEN: I think the question that I would
ask when you give the other examples is how many of
those buyers are spot buyers without contracts?

When I said they unilaterally imposed using
their muscle to impose things, what I guess I implied
in that statement was we had long term contracts that
had no provisions for those sorts of things. So I
guess our question to them is why would one enter into
a long term contract if the other party could come in
at any point in time and say well, things have changed
now so I'm going to have to raise your price. What's
the point of a contract?

COMMISSIONER ARANOFF: That actually was
going to be my next question to you.

We had Petitioners testify this morning that
the purchasers really want the certainty of these
contracts, and we're having you testify and saying
they have all the power and they're beating up on you.
Why are contracts so prevalent in this part of the
market when they're less so for other steel products?

MR. CARSON: Dan Carson, Silgan Containers.
If I may respond to that.

Silgan has built its business based upon
long term supply contracts for containers to some of
the most significant food packing companies in this
country. Those contracts by and large are
requirements contracts. Thus, we're required to be
there with a can, as Mark so eloquently stated
earlier, when the crop comes in.

We back that up then with contracts with our
primary suppliers. Long term contracts. These are contracts, again I can't get into specifics on any one of them, but generally I can say that they all have a term, they all have a pricing provisions. Contrary to what you heard this morning there is no annual renegotiation of pricing. They all have a quantity specification in it.

Now that can vary by contract. It might be a requirements provision, a percentage of our requirements. It might be a minimum purchase requirement on our part. It might be a range stating a minimum to a maximum. But nevertheless it has a purchase obligation in it.

These are firm contracts, they're formal contracts. There's no question about it, you'll see them assuming that we get past the lawyers agreement that we spoke of earlier. So you'll have the opportunity to see that.

Mr. Owen earlier spoke about the fact that we had unilateral price increases imposed upon us despite the fact that we have formal contracts, and that that was a result of the market power of the particular suppliers involved.

Now there seems to be a contradiction here. You've got a formal contract on the one hand, yet
there is somebody who is acting presumably contrary to what some of the provisions would be. In a perfect world we would like to think that every party to a contract would live up to every requirement of that contract and every specification within that contract. But as Mark said earlier, when the crop arrives, the cans need to be there.

We have other requirements we have to be concerned about and sometimes those requirements require us to not be as specific in enforcing some provisions of a contract as we might others. And it's clear that the availability of the material is absolutely critical. If we don't have the material, we can't make the cans. If we don't make the cans, the customer doesn't have anything to pack his product. We've got a serious problem all around.

We had to deal with that issue back in the timeframe that you're referencing.

COMMISSIONER ARANOFF: Okay. I appreciate all those answers and I know, or at least hope, that we are going to in fact get to see some of these contracts so that we'll be able to think about this for ourselves. But I will be interested in seeing in particular, all the testimony this morning was yes, we have these contracts but they're targets, neither
volume nor price is fixed. That doesn't sound like
what you're telling me. It sounds like you think they
are fixed.

MR. CARSON: Dan Carson again. We will rest
on the printed words in the contract. I think they
will support your latter comment.

COMMISSIONER ARANOFF: Okay. I appreciate
that.

I guess my final request with requested
contracts and the information that my colleagues have
requested is when we see these contracts I'd like to
know how much volume each different kind of term
applies to so we can get a sense, if we see a contract
that has a certain kind of clause into it, does that
apply to one ton or 100,000 tons. That will be --

MR. CARSON: I think you'll find that the
contracts themselves are clear on that. we could also
provide historical supply information if that was
desirable to you.

COMMISSIONER ARANOFF: Actually that would
be. It would be interesting to see what the contracts
say now, but it will be interesting to know how things
have evolved, so I appreciate that offer. Thank you.

There was some testimony earlier as well
about the percentage that both Ball and Silgan

Heritage Reporting Corporation
(202) 628-4888
products that they purchased off-shore. One of them was about the DNI steel that's used in the two-piece can production. At least I think that's what I heard, so I wanted to clarify on that. Is that a product that is not made by any domestic producer?

MR. SPRINGFIELD: Mark Springfield, Ball. Speaking on behalf of our company, the lines that we manufacture that product on require some very sophisticated and high grade steel. There are certain companies in the domestic marketplace that manufacture a version of that but it's not to the standards that our lines can consume. You have to have a concept that these machines are built for speed and they're thoroughbreds and they're very finicky, so they need consistency coil after coil.

They also need a type of product that is light enough to satisfy the maximum productivity of the unit given the can size that we're running. We've been widening out using wider and wider substrate in order to manufacture more and more efficiency and get more throughput through our facilities. As we do both of those, as we require more consistent product and as we require wider product, those in the domestic industry haven't been able to satisfy our qualification criteria.
I did mention that we have one domestic company that wants to take a shot at it and we're very willing to do that because we're interested in domestic supply.

COMMISSIONER ARANOFF: Just following up on that, let me ask you. My understanding is that demand for this product to make the two-part cans is perhaps the only area where U.S. demand is actually growing, at least relative to other tin mill product. So to my mind it doesn't make any sense for the domestic industry to have no interest in serving this product.

Do you see this as an issue that's going to resolve itself quickly, or is there some reason why they just are not going to get into this product in the reasonably foreseeable future?

MR. SPRINGFIELD: I think they can probably answer this better than I can, but given the age of their equipment and how they've got it matched in terms of widths, it's probably difficult for them to widen out their DNI product without considerable capital expenditure.

COMMISSIONER ARANOFF: Okay, I appreciate that answer, and I do direct that question also to the domestic producers. If you could in post-hearing indicate what you're doing in order to produce this
product and whether any of the planned capital expenditures that you reported to us might go to this issue.

Mr. Owen, did you want to add something quick?

MR. OWEN: Yes, if I may I'd like to add, there are two parts to your question, really. DNI quality steel means a very clean inclusion-free type clean steel that will go through this very high speed equipment and it may be wide or narrow. The domestics have the capability to make DNI quality in the narrow steel, but not the wide steel.

COMMISSIONER ARANOFF: I appreciate your clarifying that. So the issue here is width and not quality.

MR. OWEN: Yes, and no. Part of the method of making that high quality steel is not every drop out of their caster can be used for slabs to make that steel. It's kind of like the first can't and the last can't but the ones in the middle can. So there are still capacity constraints on their ability to make that steel and we do run into that capacity constraint just for the clean steel itself.

COMMISSIONER ARANOFF: Thank you very much.

Mr. Chairman, I see my red light is on.
CHAIRMAN KOPLAN: Thank you.

MR. SPRINGFIELD: Just one follow up comment, please. It really requires both, the quality and the width in order to make sufficient DNI material.

Thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner.

This morning I asked a question of the domestic industry about price leadership in this market and the general consensus, as I recall, was that there isn't a price leader as such now. But during the break I went back to our staff report and I found what I'm about to quote, and then I'd like to ask you a question. This is in chapter five and it's on page seven, the first full paragraph. It says this.

"Fourteen responding purchasers indicated that there are price leaders in the U.S. market for TCCSS. US Steel was named by 12 purchasers, USS-POSCO was named by three purchasers; Mittal was named by five purchasers; Ohio Coatings by two purchasers; and Rasselstein was named by one purchaser as price leaders."

It goes on to say, "Purchaser responses sometimes varied by time period and region. One
purchaser," whose identity is bracketed, "indicated that while US Steel has typically been a price leader, the leadership role now appears to be shared with Mittal after Mittal's purchaser of ISG."

I'd like to hear from Silgan and Ball, if you could both give me your perspective on whether there is a price leader in this market and how prices are set.

MR. MOORES: John Moores with Silgan Containers.

From our perspective, how we look at it, we've always believed and thought it was freely communicated out in at least our end of the business that US Steel was the price leader. We all use US Steel's price list. Everybody waits for US Steel to announce first. I guess maybe it's the definition of price leader. When I look at price leader it's just kind of who drives the market, not referencing who has the higher or lower price. But it seems the market is paralyzed until US Steel makes their announcement and then everybody follows in some fashion.

So from Silgan Containers' perspective, we believe US Steel is the price leader.

CHAIRMAN KOPLAN: Discounts come off a price list, is that what you're referring to?
MR. MOORES: Yes. There's a published price list and then there's negotiated discounts off of the published price list.

MR. SPRINGFIELD: Mark Springfield, Ball Corporation.

We would agree with those comments. US Steel is traditionally the price announcement leader. My sense is that other companies defer to that position. I think if you go back to 2005 and the type of announcement that came out with respect to the quarter inch and the freight equalization, the announcement that US Steel made in those areas set the tone for the rest of the market and you saw a certain amount of following in line with that leadership.

We use the US Steel price book in our negotiations and I think just from a traditional standpoint they've served that role.

CHAIRMAN KOPLAN: Thank you.

MR. CARSON: Mr. Chairman if I may just add to what Mr. Moores said earlier.

CHAIRMAN KOPLAN: Yes.

MR. CARSON: While he described a process that takes place on an annual basis, the long term contracts that we have in terms of pricing, that process does not impact the pricing under those
contracts and that covers the vast majority of the tin
mill products that we purchase.

CHAIRMAN KOPLAN: Thank you.

For purpose of the post-hearing I'd like to
hear further from counsel for the domestics on this
particular issue.

Thank you.

USS-POSCO asserts that the Japanese have
excess capacity utilization and that their production
capacity amounts to no more than the idling of
production facilities awaiting the opportune time to
resume production, and if the order is lifted
producers would easily resume operating their idle
lines. That's at page 14 of their brief, and we've
heard this argument today.

I do note that at Table 4-8 of the staff
report in Chapter 4 at page 10, it indicates that over
the period of review capacity utilization in Japan
dropped from 87.1 to 78.3. I'd like you to respond to
what they say in their brief.

MR. PORTER: Commissioner Koplan, if I could
start things off.

CHAIRMAN KOPLAN: Yes. Would you reidentify
yourself?

MR. PORTER: I apologize, Mr. Porter, Dan
Porter, Willkie Farr for the record.

I'd just like to start off by noting that the Commission in the original investigations, both the Commission and the court have routinely stated that excess capacity itself does not prove a threat of injury. And what the Commission and courts have said, what is needed is the domestic industry needs to provide evidence of the propensity to use the excess capacity to shift to the United States.

We submit that the only thing the domestic industry has done is to show there's excess capacity in Japan, but that's not the end of the story. The question is will that capacity be used?

CHAIRMAN KOPLAN: Excuse me, but wasn't the propensity demonstrated according to the Commission in the original investigation? The propensity to shift to the United States was part of that finding wasn't it?

I realize they exited the market because there's an order in place, but I'm saying when the order went in place with 95 percent margins, that was based on, in part, what my colleagues found, the majority of my colleagues found was a propensity to shift to the United States.

MR. BARRINGER: If I can just address that.
CHAIRMAN KOPLAN: I'd appreciate it.

MR. BARRINGER: One of the issues which I think the Commission needs to deal with is is anything that happened between 1997 and 1999 representative of anything that is going to happen if and when this order is taken off.

The circumstances of the Japanese industry, the global industry, the U.S. industry, the economies in Asia, I can go on factor after factor, are totally different today. So for the Commission to say that we find a propensity by the Japanese to use their capacity to flood the U.S. market because they did it in 1997 and 1999 to me would be the height of absurdity.

I think you have to look at what are the conditions today, and under these conditions would the Japanese do that? You may be able to draw some conclusions from what has happened previously, but it's like fitting a round object in a square hole. It's an entirely different situation today.

MR. PORTER: Mr. Chairman, if I can add one thing.

Following on what Mr. Barringer said is what we have presented is actual evidence of this propensity in today's market today. I agree with, Mr.
Chairman, what the evidence looked like in '97 and '99. But what we have demonstrated and Professor Prusa's slide --

CHAIRMAN KOPLAN: You mean I was wrong then?

MR. PORTER: You're always right, Mr. Chairman.

CHAIRMAN KOPLAN: No, I'd like to know. Are you saying that for the record?

MR. PORTER: You were of course very correct in your decision back then, Mr. Chairman.

But what we have presented today is evidence of Japanese behavior with two critical things. Excess capacity and high prices. What's seen is actually a reduction in cold-rolled shipments to the United States. I would submit that that evidence speaks more to the propensity of shipments in the future in tin mill than the evidence in '97 and '99.

CHAIRMAN KOPLAN: Thank you for that.

I'll turn to Vice Chairman Okun.

VICE CHAIRMAN OKUN: Thank you, Mr. Chairman.

Let me follow up, Mr. Barringer, on the comments you were just making about whether the conditions we saw, those who voted in the affirmative saw in '97 to '99 are likely to repeat themselves
where those conditions remain the same.

For me, and again we're in the process of doing lots of reviews and in a number of reviews I've differed with my colleagues on what I thought would happen with regard to a number of these steel cases. But I've got to say, I look at this record and I actually see a lot of distinctions from those cases where I've said no, this order ought to be lifted, including on the demand side.

I'm reading your brief saying they've got lots of places to go, demand in Asia. But I don't think the numbers really support that. Again, the Chairman had raised the Mexico issue.

Help me out on that because, again, if I saw a market where tin is being used, going up and China didn't have a developing capacity to provide their, I hear your argument on China. I still think that the numbers are not, again, quite as significant as I've seen in other steel cases. I guess I'm going to ask you a little bit more on that, whether this really looks like a case where the Japanese have great markets out there to go to and there's no way they'd ever come back here.

MR. BARRINGER: Let me try that one.

The capacity utilization for cold-rolled is
around 70 percent, so it's nine percentage points below the capacity utilization for tin mill products.

The Japanese are not flooding the U.S. market with cold rolled. I think a fundamental thing which was in Professor Prusa's presentation but perhaps we need to emphasize, the major Japanese mills are very very profitable. One of the reasons they're very very profitable is that they're disciplined. They are not looking to shove product out the door for the sake of shoving product out the door. As a result, if they find a profitable market here for tin mill products they may increase their shipments here. However, if they don't find a profitable market here for tin mill products they are not going to ship here. If you look at overall what they're shipping is their highest margin product where they're at near full capacity utilization which is corrosion resistant steel.

So they are focused on profit maximizing strategies, and one of the changes since the original investigation is the consolidation of the industry. That consolidation has led to greater discipline in the industry as evidenced by Mittal Steel's statement.

As you get into higher and higher quality products, more and more sophisticated products such as
tin mill products, what you will see is those products are dominated by the mills that have consolidated and are among the most disciplined in the world.

So what is driving steel, the big good steel companies today is not getting volume out the door, it is maximizing profits.

VICE CHAIRMAN OKUN: Let's turn to the argument with regard to the concentration in the domestic industry, both for you and Mr. Prusa as well, which is the response that the Petitioners made this morning was that if you're just looking at HHI index, in fact you're not taking into account the fact that there are foreign suppliers and I wanted to get your response to that, and what they cite for support of that is the fact that DOJ did not object to the consolidation that went on.

MR. PRUSA: Let me get the first question. I can leave it to the lawyers to discuss DOJ anti-trust policy and procedures.

They are incorrect. The table that's in the main brief does not include imports because that is in fact how BLS does its calculations.

If you look in the exhibit, I include HHI for all the import suppliers to the U.S. market. They misstated or they didn't read the exhibit.
In the exhibit I go back and calculate HHI, back since 2000, with imports in every year, and in fact you get still a doubling of --

The basic reality is imports have the same market share about now that they had in 2000.

VICE CHAIRMAN OKUN: Then let me ask this, and I will look at that and I will obviously look at what the Petitioners said, but if that were the case, if it's as concentrated as your charts show, why nothing from the Department of Justice? And they're jumping up and down in the back row.

MR. PORTER: Thank you Commissioner Okun. I'll address it from a legal standpoint and then Mr. Owen's going to address it from the industry standpoint.

First, Mr. Narkin today tried to argue that the failure of the DOJ to take formal action to block the mergers and acquisition somehow proved that the domestic industry does not have market power.

I would submit that this is a fundamental misunderstanding of the Hart-Scott-Rodino process. The particular reason why the DOJ does not take formal action to oppose a merger acquisition are not made public. Unlike this process, unlike trade proceedings, the Hart-Scott-Rodino process is not
transparent. No one knows why the DOJ decided not to formally take action. It could have been lack of resources. It could have been a belief about evidence in court. It could have been a change in enforcement policy. No one knows.

More importantly, the lack of DOJ action to oppose the mergers occurred two years, the fact that they occurred two years ago says nothing about whether they have market power today. And in fact I note that the failure to take DOJ action occurred prior to the imposition of the surcharges that occurred in 2004. So I just wanted to state that from a legal standpoint and ask Mr. Owen to add some other comments.

VICE CHAIRMAN OKUN: Okay, Mr. Owen?

MR. OWEN: I'd just like to add that we are aware of some very important factual information about the DOJ's lack of action in that case. It would be inappropriate to discuss it here, but we'd like to give it to you in a post-hearing brief.

VICE CHAIRMAN OKUN: Okay, I will take a look at that in a post-hearing brief.

Then let me set aside the index and whether what we should or shouldn't take out of lack of action by Department of Justice and just say let's look at the record and see what these producers are doing, and
do they look like a highly concentrated industry?

Petitioners raised a couple of points on that regard that I'd like you to respond to too, which is one, if we look at other industries or even these same companies in other lines of their product, they may be highly profitable, they may control a much larger share of the domestic market, and may or may not have more market power. Whereas here, and again this isn't compared to other cases we looked at, I don't see a hugely profitable industry even over the period where we've seen steel prices on other products that we've looked at and reviewed out the roof. We have seen prices go up.

They don't control as much of the market as in some other cases. So help me out there. Where do I see the market power in this case when in other markets where these guys sell or produce product for at least integrated producers, I would think they look more like that.

MR. PORTER: Commissioner Okun, let me make one point and perhaps Professor Prusa wants to add.

My response to that is that the purpose of the exercise we're in now, it's less about comparison, the market power let's say in tin mill versus market power in cold-rolled or hot-rolled than the change
that has taken place since 2000. That's what were really talking about there. So it's relative to the market power in 2000 that's what's important, less than a sort of direct comparison in other products, and we submit that they are more concentrated, have more market power. I think no one disputes that. They have more market power today than they did in 2000. Then the question is, is there enough there to allow the lifting of the order?

So it is quite possible I think, conceptually, for them to have less market power than they do in other products and still lift the order because they're much different than they were in 2000.

VICE CHAIRMAN OKUN: I understand your argument and again, I think that does go to whether it's helpful to look at the cold-rolled example when cold-rolled didn't have an order.

My yellow light's going to go on.

But I guess my point is this, or not my point but I guess a question for you to brief more post-hearing.

To the extent that you're making that argument about do they have more market power since 2000, I guess help me in understanding how I see that with regard to what the impact would be and whether
they're vulnerable when, again, this isn't an industry
that since 2000 has all of a sudden gone into the
great profitability that they're going to withstand --

MR. PORTER: We try to do that, Commissioner
Okun. What we said was okay, how do you show a change
in market power? So we did it from sort of the
standard economic approach and we used tools that the
Justice Department uses to measure market power. The
HHI is a standard tool that is used. So we tried
that, and then we went to the customers and said tell
us, do you think there's been a change and give us
real-world examples. We kind of presented both those
and we think the combination of those is evidence that
the market power is higher now than it was before.

VICE CHAIRMAN OKUN: I'll continue to look
at your arguments.

My red light is on. I may have a chance to
come back. Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Hillman?

COMMISSIONER HILLMAN: Let me follow right
along there with a little bit of questioning on this
issue of market power. The bottom line I'm looking at
is the chart you all put up there on the relative U.S.
price vis-a-vis every place else in the world. So I'm
struggling with if these guys have all this market
power and they can control all the prices, why aren't
they pushing prices up above every place else in the
world? Why are we the low price market if we've got
these producers that have such control over prices
that they can push you all wherever they want to push
you? They haven't pushed you very far very fast or
you wouldn't be the low-price market.

MR. PORTER: Commissioner Hillman, very
simple answer. Long term contracts. These contracts,
and you're going to get them now, and you're going to
see. You're going to see how long they are, when they
were signed, and at what price.

So if you have a contract, multi-year
contract signed in the prevailing conditions in 2002,
you're not going to see the high prices because it's a
long term contract that was set way before everything
sky-rocketed. I submit when you see these contracts
and see when they were signed, how big they are and at
what price, that will answer your question right now.

COMMISSIONER HILLMAN: All right. If
there's anything further, and again, take into account
here spot prices. I mean I understand contracts are
big in this industry. They are not all of the
industry. Again, it still begs the question of again,
if everybody's got so much power, I'm not seeing spot
prices in the U.S.. Again, we're still at these low
levels. So if you can try to help me lay out this
issue of why it is that the U.S. on both the contract
side and the spot side, remains so low if in fact the
U.S. industry has such great control over their
pricing.

And if I could go back to this issue, I am
sharing a lot of the questioning that Commissioner
Pearson was engaging in in terms of this issue of
availability or lack of availability, over long lead
times, et cetera. So if I could come back to that
issue first to try to make sure I understand it. As
we heard from the domestic industry this morning,
clearly US Steel is indicating yes, we agree that we
had these problems connected around this blase furnace
number 14. But other than that, you did not hear the
industry suggesting that they think there was some
particular period of time or any significant change in
terms of what was happening, in terms of lead times
and availability.

So if I could go back and just ask you to
help me compare if you can what your experience has
been in the most recent years versus what it was in
the original investigation in terms of lead times and
then particularly to compare the lead times that you're seeing from the domestic industry versus if you purchased imports. How did the two compare in terms of their lead times for delivery to your facilities for production.

Mr. Springfield?

MR. SPRINGFIELD: This is going to have to be somewhat anecdotal given my recollection of the 1999-2000 time period. But as I recall it there was so much excess capacity in '99 and 2000 the mills would have the opportunity to expedite orders in less than standard lead time. So if the lead times were seven to eight weeks back then and somebody came in and said hey, I have an unexpected change in demand, the mills might be able to get it out in five.

Now what you see is I think because of a combination of the upset conditions they've been fighting through, somewhat how they are allocating their metal, that the lead times are at least at the standard production lead times or greater market lead times or in excess of standard production lead times.

Then it's performance against those lead times. You may place your order within whatever criteria they have you place it in, but then they're not able to produce to those criteria that they in
COMMISSIONER HILLMAN: Would you describe that, the lack of performance, they agree that they'll deliver in eight weeks but they in fact deliver in nine or ten. Is that different than what you saw in '99 or 2000? In other words they might have agreed in the '99 time period to a faster lead time. Has the percentage that's actually been delivered at the scheduled lead time, has that increased?

MR. SPRINGFIELD: My observation is yes, and I would say that the performance was probably better back then because the mills were more interested in this type of business than it is now.

COMMISSIONER HILLMAN: Mr. Moores, would you have a view on this?

MR. MOORES: Yes, I would.

Generally speaking my recollection is that it probably isn't much worse but it's highlighted more today because in the past when we would go to place an order and it was going to be late we had other options. There was National, LTV, so on and so forth, Bethlehem. So we would just shift and go to another mill and say hey, we're having trouble, can you fill this gap? Today when that happens we have no other options. We just are late.
COMMISSIONER HILLMAN: But clearly you do have import options. There are clearly non-subject imports in the market.

MR. MOORES: Absolutely.

COMMISSIONER HILLMAN: How do non-subject imports, imports from anywhere other than Japan, how do those timeframes compare to domestic lead time?

MR. MOORES: I think it was described well in some testimony this morning. Because you have to plan a much longer lead time because of the logistics train, so you plan ahead. You bring coils in, they're warehoused, they're made available.

So when we look at on-time performance of the foreign mills, it's 100 percent. They do not miss deliveries. So we actually place critical operations under foreign mills with the flexibility of the specifications, because we have the confidence to know they're going to deliver all the time. We don't have to worry. We cannot say that with the domestic mills.

One of the other shifts, maybe to answer the question, and I touched on it earlier, was that what we buy today is different than what we bought in 2000. So we've highlighted some bottlenecks within the mills' capability, specifically DR Mittal and Clean Steel. Both of those are bottlenecks that exist today.
that I don't necessarily existed back in 2000 because we weren't buying as much of those specific specs that we are today. So there are clearly shortages in the market today and capacity shortages today for those specifications.

Without foreign mills we could not exist. We could not fulfill our requirements within those specific specifications. That's why some of these delays in on-time performances may have gotten worse. As we focus more on those specific specs, if there's any hiccups in the system, and it appears at least in my time involved in this there's been a hiccup every year, it just highlights in those specific areas.

COMMISSIONER HILLMAN:  Mr. Springfield, in your original testimony you commented on that as a general matter you favor purchasing from a local supplier as close as possible to your facility. Help me understand in light of these issues about delivery times not meeting what you contracted for, et cetera, again, why that is. Do you pay a premium to purchase domestic local supply? How much of a premium? How much does that price gap have to be before you're willing to look to imports, or is it purely a function of when the domestic production is not there when you need it, that's when you go to imports?
MR. SPRINGFIELD: I think there are a couple of things I would ask you to consider when you look at those situations. One is that all foreign material is not distant material. For instance, we have a relationship with DeFasco in Canada and they're able to deliver material in line with the U.S. production lead times and we do rely on them in emergency situations to bring in material.

I think we would probably echo Silgan's comments with respect to our use of foreign off-shore imports because of the longer lead times and the difficulty to change a spec once it's in production, you have to try to anticipate how long an upset condition will exist within the domestic marketplace and lay in supplemental orders somewhere down the road in hopes that if the problem still lingers that you're covered. You can't take advantage of that on a dime, but you can try and plan ahead and protect yourself. That's how we approach it.

COMMISSIONER HILLMAN: Do you pay a premium for domestic production because in theory you can get it faster?

MR. SPRINGFIELD: I think we favor that type of business with more tonnage. We favor local producers --
COMMISSIONER HILLMAN: Again, would you have a view on whether you're willing to pay a premium for purchasing from domestic producers because in theory the lead times are shorter?

Mr. Owen? Mr. Porter?

MR. PORTER: If I could try to clarify why there's some confusion on the panel.

Your question, Commissioner Hillman, is premised on something that I believe we heard today may not be true, and that is that a can company is willing to buy the same specs from off-shore as domestic mills because you're comparing sort of, are you willing to pay a premium which is I'll buy from you or I'll buy from you and I'll buy from you because you're closer.

What we heard today, that the vagaries of the harvest and the requirements they have on their end, on their own customers' end, simply make the difficulty of off-shore and the inability to cancel an order, and it's not so much lead time as it's flexibility. As Mr. Owen said, I want to at the last minute have this order and double this one. It's the flexibility that they want, and that flexibility simply requires that 500 out of 520 specs be done domestically.
So when you talk about premium you're confused, because they think that they're buying very different steel from off-shore to domestics.

COMMISSIONER HILLMAN: I appreciate those responses.

Thank you.

CHAIRMAN KOPLAN: Thank you.

We'll now go to Commissioner Aranoff.

COMMISSIONER ARANOFF: Thank you, Mr. Chairman, and I want to thank my colleagues for their indulgence.

It seemed to me in listening to your basic presentation this afternoon and in reading your brief that you had two theories for why the volume of Japanese imports wouldn't be significant if the orders were evoked. One was a volume-based argument that we've explored, this sort of natural feeling on imports argument. Then there was the price argument. I'll sort of start with a little entre' of how I'm thinking about this, but I understood your argument to be back during the original period of investigation both the domestic industry, and to some extent the Japanese producers because of the Asian financial situation, sometimes had an incentive to sell a product at a price that wouldn't make a profit.
because they needed the volume to generate cash to operate with. I think that's what I was hearing. Your statement was that's not true any more, so the Japanese don't have that same incentive to sell at any price just to use capacity that they happen to have. So I take that point, but I just wanted to take it to its logical extreme.

If you do have capacity and if you can make a small profit, enough money to contribute to lowering your per unit fixed costs and make some on top of that, it would still, I assume, be economically rational to do that. So what I'm asking you is doesn't your price argument depend not just on our accepting that prices may be higher in other markets, but also on our finding that any additional sales to the United States from the excess capacity that you admit that the Japanese producers have can't possibly help their bottom line in any way. Long question, but maybe there's a short answer.

MR. PORTER: Commissioner, I'll take one attempt and then pass it along to others. I think it's a little different. You're sort of doing what I call a bifurcated, making money or not making money. What Mr. Barringer was talking
about was making more money on other products. So it is entirely possible that the Japanese would say yeah, maybe I can make money selling tin mill at some price in the United States, whatever price level that is, but I actually can make a lot more money shipping cold-rolled next door to China, and I'm going to do that. If I do that I don't have the feed stock to make the tin mill. That's the, I think, thought process that we're trying to explain that the Japanese are going to.

I'm sure someone can show you the data that there is a price level in the U.S. market that is lower than the price level now and the Japanese still can make money. Probably that can happen. But it's this dynamic with the other products and the profitability of those other products that we're trying to explain.

COMMISSIONER ARANOFF: Mr. Porter, I understand that and I take your argument, but I think that argument, if I'm not wrong, calls for me to have concluded that assuming the Japanese go to all those better opportunities before they even look at the U.S. market, they still have excess capacity. At least that's what our data show and that's what I thought I heard you all testify to earlier.
MR. PORTER: I agree. That is what the data show. But then what you're getting at, Commissioner Aranoff, what we're really getting at is getting into the mind of the Japanese mill, if you will. What are they going to do in a certain situation? We're struggling with that.

I submit what your task is is to look at evidence, to test the evidence versus speculation, the guesswork.

I know perhaps Commissioner Okun may have a little difference of opinion, but we believe the cold-rolled example is direct evidence of what they do in the very situation that you're talking about. And in cold-rolled there was excess capacity. The prices were good, and they didn't ship. So I say that's direct evidence.

Now what evidence is being offered on the other side that some other behavior is going to happen? All they do is point to '97-'99, which we say different time, different place.

MR. BARRINGER: Can I opine a little more on this?

COMMISSIONER ARANOFF: Go ahead, Mr. Barringer.

MR. BARRINGER: Thank you.
If you look at it logically, what a steel mill wants to do is to be able to meet demand in the peak market situation. Therefore, I think if you go back years and years and years when mills were being profitable they weren't necessarily running flat out.

What the dynamic is now, in the beginning of 2004 mills were essentially running flat out globally. When the over-inventory situation occurred what you saw in Japan, what you saw in the United States, what you saw in Europe was a very logical behavior which you would not have seen before consolidation. That was they cut back production, lowered capacity utilization, to stop the drop in prices. And in fact that's what happened.

Then prices either leveled out, some went back up, but you didn't see what we've seen so many times in the steel industry which is this crash because everyone continues to produce flat out despite declining demand and the prices go down with it.

So I think one of the things that you kind of need to get your arms around is the concept of what makes a successful mill today versus what made a lot of unsuccessful mills five years ago, six years ago, eight years ago. I think the behavior of the Japanese is such that it demonstrates that they're not going to
produce for the sake of producing, and frankly, I think the behavior of the U.S. mills has also demonstrated that. That's a big, big change.

Prices are staying high despite the fact that demand is somewhat weaker or flat. It's an enormous change.

COMMISSIONER ARANOFF: I appreciate those answers, and anything that you can add in your post-hearing is -- I understand your argument that you don't need to operate at full capacity to be profitable in any given year. My question still is okay, but tell me the story about why it would be economically rational not to use capacity that you have lying around if you can make a profitable sale?

I'm expecting that the answer is maybe you can't make a sale that looks good from the terms of the Japanese producers, or maybe there's another explanation. But whatever you can provide. That's kind of where I'm going in taking your argument to its logical extreme.

MR. GILL: If I could I'd like to follow up. I've been chomping at the bit to answer some of the questions.

COMMISSIONER ARANOFF: Go ahead, Mr. Gill.

MR. GILL: I was at Weirton and I want to,
if you don't mind, just follow up for a second on Chairman Hillman's question about delivery.

The issue back then was not about price, it was about volume and shipments. We had weekly meetings to meet certain shipment goals because we needed to do that to stay viable. We could offer the industry at the time three to four week lead times, we called them shot lead time orders, and we took pride in it as a sales group and operating group that we could take care of shipping material in three to four weeks time.

But the illustration I want to make is that it's so different today. This isn't just about Japan, this is worldwide. What I see domestically, the domestic mills are doing the same things. They're idling capacity, cutting it back. The sole reason is that if you offer less capacity you can keep the price elevated. It's as simple as that.

I said previously that I sell for Ohio Coatings, a tin mill in Yorkdale, Ohio. I can tell you that they're operating at 60 percent of capacity right now and the reason that they are is that their primary black plate supplier is Wheeling Pittsburgh. Wheeling Pittsburgh has them on allocation. So I can sell less now because Wheeling Pittsburgh has decided
they want to sell cold-roll, they don't want to sell black plate, so a facility that they own 50 percent of.

When the market dropped in 2005 in the United States I believe Mittal cut back three to four blast furnaces, and I think we have to check the record but I'm pretty sure that's accurate. I know one was at Weirton when the market got soft. So it's all the same reason that if you cut back this capacity you can prop the price up until the market gets healthy again. That isn't isolated to Japanese business, that's worldwide. POSCO did the same thing after the U.S. market started to shrink.

I think that's the whole point of this argument. Things are different, very different. We ran for volume when I was at Weirton. We had to to cover our fixed costs. But they can't do it any more, nobody can do that any more. People are going to run their facilities as businesses now and they're going to run them to make a profit.

COMMISSIONER ARANOFF: I appreciate that answer, I thank all the witnesses for your answers. Thank you very much, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Lane?
COMMISSIONER LANE: Thank you. I want to start with Professor Prusa.

My first round I was intimidated by the red light so I rushed through my questions and I'm not sure that I was really clear as to what I wanted. So I want to clarify the question that I was asking you. The wage rates you used for your Figure 2 reflect the data in staff's report Table 3-1. Staff has the same wage rates on Table 1-1 of its report and includes wage rates for 1997, 1998, and 1999.

I was asking you to use that wage rate data from Table 1-1 in the staff report to produce a chart similar to your Figure 2, but running from 1997 through 2005.

MR. PRUSA: That was very clear. Your follow-up right there.

COMMISSIONER LANE: Thank you.

Mr. Owen, I have a few questions for you. If the domestic industry unilaterally changes terms of its contract which I am hearing should not be done because of the sanctity of a contract, what then keeps you from walking away from your end of the bargain, and especially if the orders come off, just going out and buying the product from the Japanese producers?
MR. CARSON: Dan Carson, Silgan Containers.

If I may --

COMMISSIONER LANE: Okay.

MR. CARSON: Contracts are binding on both parties and we live up to our end of the contracts.

COMMISSIONER LANE: So you're saying that the domestic industry breaks their contracts but you won't do that?

MR. CARSON: We have a need for the material that is covered by those contracts and we expect to enforce our rights under those contracts at the same time we live up to our obligations under them.

COMMISSIONER LANE: Thank you.

Professor Prusa, going back to you, I think. On pages 39 through 42 of the pre-hearing brief you describe annual cost savings to the domestic industry due to the elimination of legacy costs which are primarily pension obligations and OPEDS. Please explain to me what point you are making in that discussion, and are you arguing that these cost savings should somehow be disregarded in our evaluation of the domestic industry's financial results?

MR. PRUSA: The point of that discussion in the brief was that by the domestic industry's own

Heritage Reporting Corporation
(202) 628-4888
reporting to the ITC, most of that data I actually pulled from previous ITC reports, that they had this rather mind-boggling amount of debt, and that debt was something they were going to have to pay off had they not left it, had they not shed it through the bankruptcy process.

The calculation that I gave there was to attribute what fraction of the annual cost savings of not owing $15 billion, what fraction of that cost savings each year accrues to the tin industry?

So that effectively would be costs that they would have to be setting aside to meet their pensions and health care benefits that they had promised retirees and workers that now today those costs are no longer on their back, and that directly benefits them, in my estimate, at least $100 million per year. So I don't think you can disregard it. I'm saying that their costs today would be higher, something that's different from 2000, in that they no longer have this huge debt obligation that actually was imposing upon the tin industry about $100 million of extra cost per year.

COMMISSIONER LANE: Thank you.

At the time of the original investigation shipments of tin and chromium coated steel sheets to
the western United States were largely of United States and Japanese origin. Since the imposition of the subject orders there does not appear to have been any marked shift in U.S. shipments to the western United States based on the staff reports at pages 4, 9 through 11. Who now supplies this region? Would it be non-subject imports?

MR. OWEN: Robert Owen from Silgan.

We have several facilities on the west coast and buy a large quantity, a large percentage of our total purchases on the west coast. We now buy nearly all of that material from UPI. We buy some from a non-subject off-shore supplier.

COMMISSIONER LANE: Are any of those non-subject from Japan?

MR. OWEN: We also have, up in the northwest we have a salmon can plant and that's an excluded product from Japan. A very small quantity.

COMMISSIONER LANE: Okay.

I was curious about the operation of your facility. How many shifts do you run and how many days a week do you run?

MR. OWEN: We have several plants there. I think we have eight plants on the west coast and they vary. They vary sometimes within a plant, the
different lines.

We have a DNI plant out there and typically a DNI plant runs 24x7.

COMMISSIONER LANE: Do any of your other facilities run 24x7?

MR. OWEN: Certainly during the pack they do.

COMMISSIONER LANE: Thank you.

COMMISSIONER LANE: At page 14 of its brief USS-POSCO Industries asserts that two Japanese producers shut down tin mill production lines that could be easily restarted. Do you agree that such facilities could be easily restarted? And could you comment how difficult it would be in terms of time, labor, equipment upgrades, or expense for the producers to restart these lines?

MR. PORTER: Dave, can you take a stab at that or do you want to ask that back at the mill?

MR. GILL: Mark can help me, too.

Generally when you shut down a tin line or a TFS line it does not take that long to start them back up. It's not like shutting down a blast furnace or idling a blast furnace. I would say really it could be done in a matter of days, maybe weeks at most.

COMMISSIONER LANE: Thank you.
MR. GILL: But I think you asked the question would they start them back up. There's no reason to start them back up. Is that the concern, that they would install more capacity?

COMMISSIONER LANE: I think the concern would be that if the orders came off how easy would it be if they wanted to to start the facilities back up?

MR. GILL: I don't think it would take that long to start them back up, but the question is would they do it, and the answer to that is no.

COMMISSIONER LANE: Mr. Owen?

MR. OWEN: If I may, just to bring up a point that I tried to make earlier and maybe didn't do it well.

At least at Silgan there is a very limited number of specifications that we will buy off-shore. So just by virtue of if the Japanese were to decide they wanted to divert from some of the other more profitable markets and for whatever reason come back into the United States, as I tried to point out, they would really be competing for that limited number of specs that we buy from off-shore with other off-shore suppliers. Not domestics.

COMMISSIONER LANE: Thank you.

MR. SPRINGFIELD: Commissioner Lane, just to
Comment on Dave's answer. I'm going to waffle on it a little bit.

You can bring a unit back up, depending on how you took it down, but there is also the matter of the crewing. Typically when a mill shuts a unit down the crews go off in 100 different directions and the biggest problem is getting the correct crews back to run the facility adequately.

COMMISSIONER LANE: Thank you.

Mr. Chairman, that's all I have.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

Mr. Gill, I'm interested in allocation decisions regarding steel at an integrated mill. I think you have some experience with that from your time at Weirton.

Are the long term contracts for tin mill products at low enough prices so that the domestic industry currently is allocating as little steel as possible to their tin mills and as much as possible to more profitable products?

MR. GILL: In our case, in the case of Ohio Coatings, yes. They have chosen to produce other
products rather than tin mill products.

COMMISSIONER PEARSON: Mr. Springfield, do you have an experience that would lend itself to that issue?

MR. SPRINGFIELD: My experience in part is trying to buy from Dave.

(Laughter).

We do agree that the mills are redirecting their capacity to more profitable product.

The way tin mill products has typically been looked at by the mills is that it's been a fairly good product, it's fairly stable over time, and that some of the other flat rolled product will cycle around that trend line, if you will.

What the mills seem to be doing, at least in this environment, is not protecting the market but moving capacity where the spot market is the strongest.

MR. MOORES: If I may add, John Moores with Silgan Containers.

I was told directly by two of my suppliers that that's exactly what was happening. As an example of kind of explaining why they felt that the current price level was not sustainable, that was basically their argument, that they're competing internally, and
part of my supply problem is that they're competing internally for the substrate. So it was made clear to me that that was going on.

COMMISSIONER PEARSON: Does this issue explain what otherwise appeaser to be an anomaly in our data in which the profitability of the tin mill industry seems to be not strong in the United States right now, despite the fact that from what you've indicated they are running the mills judiciously and not over-supplying the market?

MR. PORTER: Again Commissioner Pearson, Dan Porter for the record.

I think the reduced profitability that you're talking about is because of the long term contracts that were signed at a time when price levels in all fields were decidedly lower. And you're going to see those contracts, and you'll see that a substantial quantity was signed well before the 2004-2005 run-up in steel prices.

So if you have a multiyear contract with a 2001 or 2002 sort of price negotiation, you're going to see a lower price level until that contract expires. That's why there's a little bit of a disconnect. You're hearing about sort of the, for lack of a better word, shortages. You're hearing
about diversions. You're hearing about market power, but then you're looking at the profitability and you're not seeing it. It's for that reason. It's that this industry is predominant long term contracts, and many contracts were signed before the run-up in prices.

MR. MOORES: If I may, John Moores with Silgan.

When I look at market power, I don't look first at price. I look at some more basic things. Can I get the steel when I need it and can I get the quality when I need it.

I think a prime example is that as the largest buyer of tin plate in the U.S., if I have a quality problem you would assume that I would get some decent response. Just like if we buy a car, we have a problem, we go back to the dealer, we get a decent response.

An example here that just happened this week is that we've been having ongoing problems with one of our suppliers and we requested a meeting at their location to review this problem. I was told not this month, we'll meet next month, in June. So I have to live with an ongoing quality problem that's affecting my customers and my plants for another six weeks, five
weeks, because they don't have time for me.

Market power can be described in many different ways and I don't think price is necessarily the best indicator all the time. There are other things that we need to operate our business, like security of supply, like quality. That's where they're flexing their muscle because they can. I think it's an indicator as we move forward that price will be part of that also when they have that ability.

COMMISSIONER PEARSON: Earlier in your presentation you raised questions about the data relating to what the domestic industry had submitted for the 204 report relative to what's going on now. Are those data issues not so large as to affect your assessment of the fundamental profitability of the U.S. tin mill business now? Are both sides of this investigation basically on the same page saying that the U.S. tin mill industry is not currently very profitable? Or is there a dispute?

MR. PORTER: We would not have spent 20 pages, Commissioner Pearson, about the discrepancies if we thought it was not significant. We do believe they're significant, and we're simply pointing, Professor Prusa goes to the effect in the study right here. Actually the chart before shows what's reported
now and this chart shows what's reported in the effect
of the study, and there's a big difference.

What we're saying is if we believe you get
the correct data which was what reported just nine
months ago in the effectiveness study you will see a
much more dramatic change since 2000 and that's what
we're talking about. That's why we really want the
Commission to investigate this issue.

MR. PRUSA: Let me add just a couple of
comments on that. The point of this data discrepancy
is not simply a difference between what was reported
in April 2006 and was reported nine months ago. The
difference between what's reported now and a whole
series of previous submissions. So if you go back and
look, it's not just like oh, you know what, the last
one we forgot something. That must mean they also
forgot something when you were doing your mid-term 201
review? It must mean they also made mistakes back
when you did the 201 safeguard. The data issues in
this case cut to the integrity of the last four times
you've investigated this industry. So if you take
what they say today that must mean that the last four
times they submitted data, including the previous
antidumping case, there was a serious data problem
previously if there's not a serious data problem now.
And let's get to this, because there's a real issue about I don't see pricing power. I've heard at least two Commissioners ask that and I was dying to get a chance to respond.

In the current data, conveniently this time, they reported it in a way that looks like they're struggling to make a profit, yet nine months ago when they didn't have a commercial interest in convincing you that they're just eking along, they submitted this data. If you look, the gap between their COGS and their average unit value was negative in 2001, slightly positive in 2002, consolidations occur. Positive by $60 in 2003. More consolidations occur. Positive by $64 in 2004. Consolidations finished, and they reported $86 in the first half 2005. I think it would be the first quarter 2005, I think that's a typo there.

So this issue, I think it fundamentally does change because Commissioner Okun and Commissioner Hillman are struggling with the fact that they don't see an industry able to exert prices, and I agree with John Moores, that it can take a number of forms. But had you had this same question nine months ago you'd have said wow, this consolidated tin mill industry is really extracting bigger and bigger margins. Boy,
they look pretty good. And now today, for no explained reason, this is just one example of that they paint an entirely different picture of their performance.

You have to solve the data problem, you must solve the data problem in order to get an accurate picture of the industry. If you presume what they present today is true, perhaps it is, then you must ask the question, what did we just do in our last four studies of this industry? What does it mean to sign, to swear and certify that I've submitted correct data when now the data completely rejects the previous submission? So I think this is a serious problem. It really does change the entire picture of how well this industry is doing.

COMMISSIONER PEARSON: I also asked some data questions to the previous panel. I'll let that sit now rather than go back and revisit it.

What I'm trying to understand is, I think I hear two things from your panel that are, they're probably not actually in conflict, but I'm figuring out how to balance them. One message is that the long term contracts indeed may be constraining the profitability of the domestic tin mill industry.

The other message is, because of the data

Heritage Reporting Corporation
(202) 628-4888
problems we're not sure how much it's constraining.

MR. PRUSA: No, but in the effectiveness study they're making even bigger profits than the other flat-rolled segments. So the fact that they're choosing not to send their substrate to tin was also present in that earlier study. They were showing that they were making larger profits in other segments than they were in tin, even though they were showing very nice profits in their tin sector. They were making even better profits in their other sector.

So this issue about gee, I've got a limited amount of raw materials, where should I send it. The fact that they were choosing not to send it into tin, which is what we're arguing, that exact explanation is still here. I'm just pointing out in this chart that they were reporting profits.

COMMISSIONER PEARSON: Mr. Chairman, will you allow Mr. Porter --

MR. PORTER: Very quickly, Mr. Chairman.

CHAIRMAN KOPLAN: Certainly.

MR. PORTER: Thank you, Mr. Chairman.

Commissioner Pearson, I think a little bit of the confusion is when some answers were given we were talking about sort of different data. Commissioner Hillman asked a very direct question, why
am I not seeing higher prices. And the prices that
are up there, actually we don't dispute the accuracy
of the data of the price. We think the product
specific pricing, the AUVs, we're not really saying
there's anything wrong there.

What we're asking the Commission to look
into is really the cost data that as different now
than before, and that gets at the profitability. But
when we were saying about the long term contracts,
that was getting to the issue of why the price level
may not seem as high now as it should be if in fact
the mills had all this market power. So depending on
what data we're talking about is whether we have an
issue about the accuracy or whether the contract's
coming in.

COMMISSIONER PEARSON: Thank you very much.
CHAIRMAN KOPLAN: Thank you, Commissioner
Pearson.

I have a question and then a request.
In Chapter IV, pages 15 and 16 of our Staff
Report, there are a number of estimates available
regarding Japanese capacity, production, and/or
shipments of tin mill products including tin- and
cromium-coated steel sheet.

For purposes of the post-hearing I would
like you to if you would address the differences
between the various sources that are listed on those
two pages.

        MR. PORTER: We will do so, Mr. Chairman.

        CHAIRMAN KOPLAN: I appreciate that, and I'd
like to have the domestics look at that as well.
Thank you.

The other thing I have is simply to go back
to the request I made this morning and remind you all
that by May 2nd, and I know you nodded that you would
do this but I'm just putting it on the record again,
that you provide comments to staff regarding the
alternate tables in OIMV memo, IMVDD-046 dated April
10, 2006. That's in our public EDIS file. So for the
record, if you could just --

        MR. PORTER: Yes, we will definitely do
that, Mr. Chairman.

        CHAIRMAN KOPLAN: Thank you very much. With
that I want to thank you all for our answers to my
questions and others this afternoon and I'll turn to
Vice Chairman Okun.

        VICE CHAIRMAN OKUN: Thank you.

        I believe most of my questions have been now
covered by my colleagues with one exception I wanted
to ask.
Have you all had a chance to comment on the reasonably foreseeable future? I know you did in the briefs. I guess my question for you if you haven't responded to one of my colleagues on it is when we're talking about the presence of long term contracts in this market whether in your view that means we should be looking at a longer reasonably foreseeable future to determine when the impact would be to the domestic industry and whether it's affected by whether the restructuring is complete or not. So I guess this is a legal question for counsel, if there's anything else to what you have already briefed.

MR. PORTER: We want to look at that again. We do think that's an important question but I'd like to wait and sort of give you a more full answer in the post-hearing brief if that's okay.

VICE CHAIRMAN OKUN: That's fine. Obviously there's a lot of information with regard to the data question that Commissioner Pearson raised and you've responded to that I'll have to look to the post-hearing to evaluate the arguments on that.

With that I do want to thank all of you for all the comments you've given this afternoon. It's been very helpful. I appreciate your willingness to be here.
Mr. Chairman, that's all my questions.

CHAIRMAN KOPLAN: Thank you.

Commissioner Hillman?

COMMISSIONER HILLMAN: I hope just a couple

for the post-hearing brief as well.

I think you heard me ask this morning, in

light of the fact that we are supposed to be focusing

on the determination in the original investigation to

base our review, given that the most recent final
determination in this investigation was a negative

one, I would ask you to brief sort of what do we make

of a case that sits in this posture in terms of having

issued now a number of determinations based on the

original record, the most recent which is the negative

and whether that should have any impact on how we look

at this sunset.

MR. PORTER: Commissioner Hillman, actually

I have to admit we had not thought about that. That's

a very interesting question and I promise we'll have a

team looking --

COMMISSIONER HILLMAN: We're not in the

habit of doing sunset reviews of negative
determinations.

(Laughter).

MR. PORTER: My guess, Commissioner Hillman,
is when the provisional statute says you must look at
your original determination they didn't think about
the tin mill case.

COMMISSIONER HILLMAN: This will be a first,
that we are conducting a sunset review of a negative
determination.

MR. PORTER: But I promise we'll have a team
all weekend looking at that. Thank you.

COMMISSIONER HILLMAN: I'm not sure it's
worth that, but whether it should in any way change
the way in which we approach this case, I'd appreciate
it.

Secondly, to the extent, on this issue of
looking at cold-rolled and the excluded tin products
as proxies, if you will, for what would happen if we
were to revoke this order. I would only ask you to
take a look at a couple of other things to help me
understand how you put this in context.

One is the role of non-subject imports, in
other words, other products. I think what the record
clearly reflects in this product, in tin, not the
excluded tin but the covered tin, okay, the Japanese
came out of the market but the non-subjects came into
the market. That's not the case for either cold or
the excluded products where you don't have orders on
them. And yet if I look at what's happened with non-subject, non-Japanese imports, non-Japanese imports in cold-rolled I don't see any surge at all. So I'm questioning whether there just isn't a big demand out there that's pulling in a lot of imports from anywhere on cold.

And on the excluded products, pretty much as I see it, the Japanese are the sole suppliers of the product. It's excluded because the domestics don't make it. It's not a big product for the non-subjects. So why isn't the level of Japanese imports simply a function of demand? Why should it say anything to us about what would happen on the products that are covered?

Again, the Japanese are sole suppliers, so fine, however much they sell in the U.S. market is totally derivative of demand for the excluded products and really doesn't say anything to us about what would happen in either tin or cold-rolled which have very different demand drivers than what you're seeing in the covered tin products.

MR. PORTER: Commissioner Hillman, I understand your question and we will do that. My only comment is that at the end of the day you're going to have a variety of difference
pieces of evidence and then you just need to sort of evaluate which piece of evidence is more probative. I agree that the performance of non-subject imports in both the tin mill market and the cold-rolled market are other pieces of evidence of perhaps how the Japanese will act absent an order. I think what we will try to do in the post-hearing brief is to go through each piece of evidence and sort of discuss the relative probative value of that piece of evidence vis-a-vis the evidence that's being offered on the other side.

COMMISSIONER HILLMAN: Part of it is, again, I'm really wanting you to focus on demand and how we factor that into these.

And secondly, again, I've been listening all day to this argument but you're describing the tin market as a market with a very concentrated number of producers and a concentrated number of fires. That is not cold-rolled to me, where you have a very wide variety of fires and a much larger number of suppliers, both domestic and import. There's more import sources and there's a lot more domestic producers.

Then you go to the excluded tin mill products and you have the complete opposite where the
Japanese are the sole suppliers pretty much to the U.S. market and the purchasers, again, are a very concentrated market.

So I'm only saying I think you need to look at some of these other things if what you're really telling me is look at cold-rolled and look at the excluded tin products as a proxy for what would happen for this case in the absence of an order. I'm just raising some skepticism about whether those are particularly analogous markets.

MR. PORTER: Understood, we will look at that.

One final thing, with respect to demand, fully agree that that is a key component and that what we need to do is do sort of a better job of going through the data on demand, relative demand in the United States compared to other markets. We know that's on our "to do" list.

The only thing I would say about the cold-rolled, I don't need to overstate it, but we are talking at the core of Japanese behavior in a particular situation. So it's just one piece of evidence of Japanese behavior in a particular situation because here's what they've done in at least some aspects of a similar situation.
You've raised a good point that perhaps it's not as identical a comparison as we may have made out originally, but we think that it's all part of the evidentiary record that needs to be examined and we'll do that.

MR. PRUSA: May I add one more thought on that?

It would seem that cold-rolled as compared to tin, I agree they are different because there's a lot more potentially commodity cold and not less contract sold cold. So you actually think that would be a market that would be way easier if the Japanese had a desire to reenter quickly because there's not a length recertification, it's not a lengthy convincing them that you need my product as opposed to a German product. That's a product that they could find buyers for, but yet they don't have them there.

So actually I would think the cold-rolled market is even more convincing because it's a market that would be much easier to have a big increase in imports. The characteristics you just described is a market for them to penetrate than the tin market. To me at least.

COMMISSIONER HILLMAN: But there's never been an order on cold-rolled. That's my point. And
imports from the world have not shown some huge increase in cold-rolled. So it isn't as though there's this big demand flow into our market and the Japanese have said oh, I'm not going to join in the party, I'm going to stay out for some reason.

MR. PRUSA: The domestic industry has tried at least twice to get cold-rolled and they would have argued that there had been those increases.

COMMISSIONER HILLMAN: We're not going to revisit cold-rolled. I'm just saying they've never been excluded from the market and it doesn't appear that there is this huge surge in imports from anywhere.

So it's hard for me to understand why we should look at the Japanese and say oh look what good guys they've been, they've stayed out of our cold-rolled market. So has everybody else. So it's not clear to me what exactly, anyway, you can look at this for the post-hearing. I won't belabor the point.

Thank you very much. I really appreciate all the answers to the questions and appreciate particularly the industry witnesses, the purchasers for being with us this afternoon. We very much appreciate your perspective on how this market works.

Thank you.
CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Lane?

COMMISSIONER LANE: I have one question of Mr. Porter.

In response to a question from Commissioner Pearson you said that the tin plate industry was making low profits because of the long term contracts that were entered into in 2001 at lower prices, yet we heard earlier today that the domestic industry has unilaterally ignored that and has raised prices and put surcharges on and all of that. So could you perhaps unconfuse me on this issue?

MR. PORTER: With respect to profitability, profitability is price minus cost. With respect to profitability our point is two issues. First, we have a whole data discrepancy issue on the cost so we think that is part of the reason you're seeing lower profitability than you otherwise would, or better stated, than you did in your 2005 effectiveness study.

With respect to price, the surcharges, we were talking about the attempt and the ability of the domestics to impose surcharges. The magnitude of the surcharges is at issue, and it's perhaps that the level wasn't quite as high. But still the contract price over this period has been lower because it was
set in a previous time when steel prices weren't that high.

I understand your question and we will try to get a better explanation in the post-hearing brief.

COMMISSIONER LANE: I'm just trying to reconcile the big deal that you made about the domestic industry unilaterally ignoring the contracts and raising the prices. And now I hear that maybe it's not such a big deal. I'm just trying to reconcile what you have said.

MR. PORTER: Again, Commissioner Lane, I'm struggling here because a question is presented to us in what I call a bipolar sort of world, comparing high price versus low price.

My understanding of the discussion, tin mill sort of profitability was vis-a-vis other steel products. The fact that they were able to impose a surcharge and raise the lower tin mill price to a higher level than it otherwise would have been because of the contract, you can still have that and that price still can be sort of lower relative to other steel products.

I think what the discussion was was tin relative to other steel products. The point was the prevalence of long term contracts in the tin industry...
tend to make prices lower, make the ability of prices
to go up quickly less than other steel products.

COMMISSIONER LANE: Thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

There's one last issue that I'd like to
touch on because I've been curious here for several
hours about it. It's a customer relations question.

Your panel, those of you who are purchasers
of tin mill products, are very much in the marketplace
on an ongoing basis with this morning's panel. You
deal with them all the time. I'm sure you've got
contact with them in various forms.

If a tin plate producer has agreed to
deliver a product in eight weeks and then isn't able
to do that quite at that time, how does that work?
Did they call you up and let you know there's a
problem? Or do they just hope no one notices and
wait for you to call them?

MR. SPRINGFIELD: Mark Springfield, Ball.

They send us statuses and as part of the
status report you have to spend some time tracking
exactly where they think they're going to produce your
product in line with your expectations when you originally place the order.

Sometimes that's fairly straightforward, sometimes you have to actually do some investigation yourself to see which orders are running behind.

COMMISSIONER PEARSON: Is this a weekly update?

MR. SPRINGFIELD: We track it weekly if not more frequently.

MR. MOORES: John Moores.

Similar, we would see a similar thing on our side. They do notify us whether it be through status reports, phone calls. It's not typical this would be a surprise. Somewhere in those eight weeks we would become aware of it, that it's late.

Recently with some of our suppliers we were having two to three times a week conference calls and getting everybody together just to talk about the fact that they were late and what they were doing.

And I don't want to portray that they don't work on this. I know there was a lot of effort put on the supplier side to try to improve the on-time performance, so it's not like they're not trying to do anything. It's just frustrating from our point of view because even with all that effort it's still, we
still have lines go down and we still have to juggle things around to try to keep our plants running.

COMMISSIONER PEARSON: Do the suppliers do anything to compensate when that situation occurs? Do they offer an additional price discount? Do you get in more good golf games, anything like that?

(Laughter).

MR. MOORES: That's a good idea. I'm going to have to write that down.

We work through every issue as it comes up. In the industry for a long time there's been things that are claimable, things that are not claimable. And here's another area, it's a great example, of where market, where the market leverage has shifted. A great example would be like holes in the plate. You would think that's a bad thing. We think it's a bad thing. It's not something we want our customers to get.

Yet in the past that would be something that we would object to and of course would be addressed. Today we're told well, seven or eight of those in a coil is okay, don't worry about it. You scratch your head and say how can a business shift overnight like this? But it has.

COMMISSIONER PEARSON: Mr. Springfield, do
you have something to add?

MR. SPRINGFIELD: Yes, I would say that the compensation is woefully little --

CHAIRMAN KOPLAN: Mr. Springfield, could you move your microphone closer?

MR. SPRINGFIELD: I'm sorry.

I would say that the compensation is woefully little for the aggravation that you go through.

COMMISSIONER PEARSON: Okay, I think that's fairly clear.

Any other comments?

(No audible response).

COMMISSIONER PEARSON: I would just say that I've found the entire day's proceedings to be very interesting and given there are so many nuances to this investigation, I'm a little bit surprised that my questions seem to stay pretty much on some fairly basic stuff to try to get an understanding of what's going on in the marketplace. I thank both sides for helping with that. I'm not sure everything is entirely clear to me, but no doubt it will be in the post-hearing briefs.

Thank you very much.

CHAIRMAN KOPLAN: Thank you, Commissioner

Heritage Reporting Corporation
(202) 628-4888
Pearson.

I understand there are no other questions from the dias.

Mr. Corcoran, does staff have questions of this panel before they're released?

MR. CORCORAN: Douglas Corcoran, Office of Investigations.

Thank you, Chairman Koplan.

Staff has no additional questions.

CHAIRMAN KOPLAN: Thank you.

Before the panel is released, Mr. Ryan, you have two minutes remaining from your direct presentation. Do you have any questions of this panel before they're released?

MR. RYAN: We'd like to use our two minutes for rebuttal but we have no questions for this panel. Thank you.

CHAIRMAN KOPLAN: Okay, thank you.

With that I want to thank the witnesses for their testimony this afternoon.

Now I think we're actually into the evening. Your presentations have been very much appreciated. I look forward to your post-hearing submissions as well, and this panel is released.

We will go to rebuttal and closing.
(Pause).

CHAIRMAN KOPLAN: Mr. Ryan, as soon as they have stepped back --

MR. RYAN: Just to be clear, Mr. Chairman, we'll first do rebuttal and then Respondent's rebuttal, our closing and then their closing?

CHAIRMAN KOPLAN: Thank you for mentioning that. They have no time remaining.

MR. RYAN: So we've got a two minute rebuttal and then we go immediately to our closing statement.

CHAIRMAN KOPLAN: And then they go.

MR. RYAN: If we could time our timing for first a short rebuttal statement and then our five minutes remaining for our closing statement.

CHAIRMAN KOPLAN: Right.

MR. RYAN: Thank you, Mr. Chairman.

(Pause).

CHAIRMAN KOPLAN: Are you going to do both rebuttal and the closing?

MR. RYAN: Just to confirm, I guess I'm doing both rebuttal and closing and I've got seven minutes which I will try to --

CHAIRMAN KOPLAN: Did you expect to have somebody else --
MR. RYAN: I thought there might be some competition. The legal business is tough.

(Laughter).

MR. RYAN: I'm John Ryan, counsel for USS-POSCO Industries and I'll be doing the rebuttal and closing on behalf of those in support of continuation of the order.

It pleases me as a former alumnus of the Commission to see the Commission so engaged for so long and have such intelligent questions for both parties.

Particularly this afternoon I found questions from all of the Commissioners, that they really went to, particularly for the last panel, the discrepancies, inconsistencies between both the data and two positions they were taking that just didn't fit together. I'll tick off a few of those that each of the Commissioners in various ways hit on.

For example, we heard some complaints about U.S. lead times. U.S. lead times are too long and that aggravates the purchasers, but yet at the same time the Japanese have longer lead times and therefore prices need to be lower. They don't prefer Japanese product because they have even longer lead times or delivery problems.
U.S. producers, as another example, exercise market power and are able to extract super normal prices from these very large purchasers, but at the same time U.S. prices are lower than anywhere else in the world and the Japanese would not want to compete in this so-called sellers market.

We heard stories of shortages in allocations. One wonders what industry we're talking about. We've got shortages and allocations in an industry with worldwide excess capacity and extreme excess capacity in Japan and in the United States. How can that be a market in which there are shortages and allocations?

Finally, we've heard in response to questions that the reason we're losing money is because we have these old contracts from 2001, but at the same time prices were not fixed at those contracts because U.S. producers unilaterally raised prices to extract higher prices from these large purchasers.

Their story, it just doesn't fit together. So we would urge the Commission, as it has, to look carefully at the data before it.

With regard to the data before the Commission, what we've seen is that our opposing counsel would rather not look at the data. The first
thing they do throughout their brief is to say all of
that data is no good.

CHAIRMAN KOPLAN: I think the two minutes
are gone.

MR. RYAN: I better jump right into closing.
CHAIRMAN KOPLAN: You better jump right into
closing.

MR. RYAN: Those were my rebuttal points
anyway, so that's good.

With regard to the data before the
Commission we would urge the Commission, contrary to
what our opposing counsel has said, to look at the
data from the original investigation and indeed the
data in the staff report. We would rely on the
staff's own analysis of the data that it collected in
the questionnaires and responses, and if there are
verifications we're confident that the data that has
been submitted in our questionnaire responses will be
verified and be firm.

The data from the original investigation and
the reasons that our opposing counsel would say well,
'97 to '99, that was a whole different world, a whole
different time. Of course they're going to say that
because during that time period they doubled the
volume of imports and they did that by seriously
undercutting prices, with every larger margins. That affect on U.S. producers was a $132 million loss. That's another time and another place, but it's still the same place, it's the U.S. market and it's still the same U.S. industry.

But as the Commission has noted there have been a few changes, but those changes haven't led to an industry that's insulated or somehow impermeable to the effect of imports.

We've had the order, and then you had imports exit the market. What happened immediately after that? The industry improved. We had some consolidation in the industry but there's still capacity in excess of U.S. demand. And we've also had consolidation among the can manufacturers so that they are able to negotiate on an equal basis with the U.S. producers.

An interesting argument and an important one for the Commission is when imports come into the market, as they will, as they did prior to the order and on the magnitude of 320,000 tons, will those imports be substitutable with the domestic product or is it just going to be imports shifting for other imports?

And 320,000 tons is not a wide band issue.
That's a small piece of the market when we're talking about wide band or some particular specifications. These are very narrow tonnages. The core of the market where U.S. producers and the Japanese competed and will compete again is in the products that the U.S. producers make in delivering to the food can manufacturers.

So the key issue before the Commission is what's going to happen in the reasonably foreseeable future. The reasonably foreseeable future is what happens when, say June 15th, you all vote negative and by July 10th the order is revoked. I can guarantee you and U.S. producers are certain, as the Japanese producers will, but if you vote negative on June 10th, by June 20th, and certainly before July 1st every one of the U.S. food can manufacturers will be visited by every one of the Japanese tin plate manufacturers to try to line up orders for the tonnages that are flexible within the contracts, the current negotiations that will be going on for annual contracts that are fixed by January 1, so there will be a big volume effect as well as a price effect immediately in the market. That's going to be important to the U.S. industry which, as everyone agrees, is in a weakened position.
So there is price competition and the effect on prices will be immediate.

In closing I'd like to go back to where we started today and that was with a lot of attention paid to Commissioner Lane. I think that is because the effect of this order, as Commissioner Aranoff also pointed out, is real to real people. There are employees that work at these plants and this was the reason the Congressmen showed up, is that real people produce tin plate. The unions are here today, and it has a real effect when production shifts to off-shore, necessarily there's an effect on the producers, the people that were testifying today, but also their employees who are laid off, and it has a real effect on communities.

So yes, the Commission should seriously consider the effect on employment as well as profits in the rest of the industry, and I appreciate the Commission's indulgence for letting me use my whole seven minutes this afternoon.

CHAIRMAN KOPLAN: Certainly. Thank you very much.

MR. RYAN: Thank you.

CHAIRMAN KOPLAN: Mr. Porter, you're up.

MR. PORTER: Mr. Chairman, if you don't mind
I'm going to sit way back here. I got used to this chair. I kind of like it now.

CHAIRMAN KOPLAN: It's yours.

MR. PORTER: Thank you.

The hour's very late, Mr. Chairman, and I'm going to try to be very brief.

I just want to start out and address the testimony of Mr. Kaplan who talked on the domestic panel.

It appears that Mr. Kaplan's testimony was offered to address the issue of whether termination of the antidumping duty order will cause purchasers to use Japanese prices to reduce prices of domestic mills.

Mr. Kaplan's testimony, however, just discussed a red herring. Mr. Kaplan's entire testimony was premised on the assumption that we had somehow argued that purchasers would ignore Japanese prices. This is not and has never been our argument. We never argued that the buyers, Silgan and Ball or anyone else, ignore prices. Rather the evidence that we have presented is that purchasers are not able to use the Japanese prices to disrupt existing contracts because of the very different specifications purchased from domestic and off-shore supply.
Indeed, Mr. Chairman, Mr. Kaplan's testimony highlights the difference in evidence being offered by the two sides in this case.

On the issue of whether Japanese prices are going to be used to lower domestic prices of existing contracts, the U.S. side offers general academic literature on the so-called invisible hand. In contrast, the evidence that we offer is that the largest purchasers of the very product at issue is telling you under oath that because of the great difference in specifications he has never used an off-shore import price to trigger a meet comp provision in a contract with a domestic mill.

Mr. Chairman, the difference is evident and striking.

I want to end our presentation today with something that may be a bit of a surprise. I actually agree with something that Mr. Hecht said. This morning Mr. Hecht commented that during the original investigation we argued that the customers had the leverage in negotiations, but now in this proceeding we have adopted a position that's 180 degrees different. That today the U.S. mills have the upper hand.

I agree with Mr. Hecht. Our argument has
changed. Indeed, this is our principal point. The
tin mill industry has changed over the last six years.
What was true back then is no longer true today. The
dramatic, dramatic changes that have taken place in
the tin mill industry require new analysis and new
conclusions about market dynamics.

I submit that when the Commission undertakes
this new analysis you will agree the evidence compels
the conclusion that the antidumping duty order must be
terminated.

Thank you, Mr. Chairman, for your patience.

CHAIRMAN KOPLAN: Thank you, Mr. Porter.
Thank you to everyone who participated in
today's proceeding. I also want to thank the staff
for assisting us in getting ready for this proceeding.

Post-hearing briefs, statements responsive
to questions and requests for the Commission and
corrections to the transcript must be filed by May 10,
2006. Closing of the record and final release of data
to parties by June 6, 2006. And final comments are
due June 8, 2006.

With that, this hearing is adjourned.

(Whereupon, at 6:15 p.m. the hearing was
adjourned.)

//
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
Signature of Proofreader

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

Heritage Reporting Corporation
(202) 628-4888