

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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

Pages: 1 - 225  
Place: Washington, D.C.  
Date: Tuesday, February 27, 2018



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UNITED STATES OF AMERICA  
BEFORE THE  
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF: ) Investigation No.:  
TIN- AND CHROMIUM-COATED STEEL ) 731-TA-860  
SHEET FROM JAPAN ) (THIRD REVIEW)

Main Hearing Room (Room 101)  
U.S. International Trade  
Commission  
500 E Street, SW  
Washington, DC  
Tuesday, February 27, 2018

The meeting commenced pursuant to notice at 9:30  
a.m., before the Commissioners of the United States  
International Trade Commission, the Honorable Rhonda K.  
Schmidtlein, Chairman, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Rhonda K. Schmidtlein (presiding)

5 Vice Chairman David S. Johanson

6 Commissioner Irving A. Williamson

7 Commissioner Meredith M. Broadbent

8

9

10

11

12 Staff:

13 William R. Bishop, Supervisory Hearings and Information

14 Officer

15 Tyrell Burch, Program Support Specialist

16 Sharon Bellamy, Records Management Specialist

17

18 Robert Casanova, Investigator

19 Mark Brininstool, International Trade Analyst

20 Cindy Cohen, International Economist

21 Charles Yost, Accountant/Auditor

22 David Goldfine, Attorney/Advisor

23 Douglas Corkran, Supervisory Investigator

24

25

1 Opening Remarks:

2 In Support of Continuation (Jeffrey D. Gerrish, Skadden,  
3 Arps, Slate, Meagher & Flom LLP)

4 In Opposition to Continuation (Daniel L. Porter, Curtis,  
5 Mallet-Prevost, Colt & Mosle LLP)

6

7 In Support of the Continuation of Antidumping and  
8 Countervailing Duty Orders:

9 Kelley Drye & Warren LLP

10 Washington, DC

11 on behalf of

12 ArcelorMittal USA LLC ("AMUSA")

13 Daniel Mull, Executive Vice President for Sales and  
14 Marketing, AMUSA

15 Thomas Goedeke, Director, Tin Mill Products, Sales and  
16 Marketing, AMUSA

17 Gina E. Beck, Economic Consultant, Georgetown Economic  
18 Services

19 Paul C. Rosenthal, Kathleen W. Cannon, R. Alan Luberd  
20 and Brooke M. Ringel - Of Counsel

21

22

23

24

25

1 APPEARANCES (Continued):

2 Skadden, Arps, Slate, Meagher & Flom LLP

3 Washington, DC

4 on behalf of

5 United States Steel Corporation

6 Amy B. Smith-Yoder, Packaging General Manager, Consumer

7 Solutions, United States Steel Corporation

8 Robert Y. Kopf, General Manager, Business Support,

9 United States Steel Corporation

10 Michael P. Young, President, United Steelworkers Local

11 6103

12 Jeffrey D. Gerrish and Luke A. Meisner - Of Counsel

13

14 Interested Party in Support of Continuation:

15 USS-POCSO Industries ("UPI")

16 Pittsburg, CA

17 Lynnette Giacobazzi, Vice President, Supply Chain, UPI

18 Brent Lerno, General Manager, Sales, UPI

19 Cory S. Anderson, General Counsel, UPI

20

21

22

23

24

25

1 APPEARANCES (Continued):

2 In Opposition to the Continuation of Antidumping and

3 Countervailing Duty Orders:

4 Curtis, Mallet-Prevost, Colt & Mosle LLP

5 Washington, DC

6 on behalf of

7 JFE Steel Corporation

8 Nippon Steel & Sumitomo Metal Corporation

9 Toyo Kohan Co., Ltd.

10 Michael Arena, Vice President for Logistics and

11 Operations Support, Silgan Containers

12 Daniel L. Porter, Tung Nguyen and Kimberly Reynolds -

13 Of Counsel

14

15 Rebuttal/Closing Remarks:

16 In Support of Continuation (Paul C. Rosenthal, Kelley Drye &

17 Warren LLP; and Luke A. Meisner, Skadden, Arps, Slate,

18 Meagher & Flom LLP)

19 In Opposition to Continuation (Daniel L. Porter, Curtis,

20 Mallet-Prevost, Colt & Mosle LLP)

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9:32 a.m.

MR. BISHOP: Will the room please come to order.

CHAIRMAN SCHMIDTLEIN: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing regarding the third review of Investigation No. 731-TA-860 involving Tin and Chromium-Coated Steel Sheet from Japan

The purpose of this five-year review is to determine whether revocation of the antidumping duty order on Tin and Chromium-Coated Steel Sheet from Japan would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Schedule setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

I understand that parties are aware of the time allocations. Any questions regarding time allocations should be directed to the secretary. Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information. Please speak clearly into

1 the microphones and state your name for the record for the  
2 benefit of the court reporter.

3 If you will be submitting documents that contain  
4 information you wish classified as business confidential  
5 your request should comply with Commission rule 201.6.

6 Mr. Secretary, are there any preliminary matters?

7 MR. BISHOP: No, Madam Chairman.

8 CHAIRMAN SCHMIDTLEIN: Very well, let us begin  
9 with opening remarks.

10 MR. BISHOP: Opening remarks in support of  
11 continuation of the order will be given by Jeffrey D.  
12 Gerrish of Skadden, Arps, Slate, Meagher and Flom. Mr.  
13 Gerrish, you have five minutes.

14 OPENING REMARKS OF JEFFREY D. GERRISH

15 MR. GERRISH: Good morning, Madam Chairman and  
16 Members of the Commission. The facts before you in this  
17 Sunset Review could not be any clearer in demonstrating that  
18 injury to the Domestic Industry is likely to continue or  
19 recur if the antidumping order on tin mill products from  
20 Japan is revoked.

21 With respect to every statutory factor that you  
22 are to consider, the record compels the conclusion that the  
23 order should remain in place. In fact, the evidence  
24 supporting an affirmative determination is if anything  
25 stronger now than it was during the original investigation

1 and the prior Sunset Reviews.

2 Let's start with the volume of imports. If the  
3 order is revoked the likely volume of Subject Imports from  
4 Japan would be significant. The Japanese producers are  
5 facing a serious decline in demand for tin mill products in  
6 their home market and they have become even more export  
7 oriented since the last sunset review.

8 They exported nearly one million tons to  
9 countries around the world last year and their biggest  
10 export market was right next door in Mexico. Regardless of  
11 how you calculate it, the Japanese producers have hundreds  
12 of thousands of tons of excess capacity that can be used to  
13 ship massive volumes of tin mill products to this country  
14 without them even having to divert any shipments from their  
15 other export markets.

16 The U.S. Market is particularly attractive for  
17 the Japanese Producers because it is one of the biggest in  
18 the world and offers higher prices than those in their other  
19 export markets. In fact, Japanese Producers have maintained  
20 ties with U.S. Customers and have continued to export  
21 excluded tin mill products here. These facts all show that  
22 if the order is revoked dumped Japanese imports will once  
23 again flood into this market.

24 Now, let's look at the likely price effect. The  
25 tin mill market is noteworthy in that it has a very limited

1 customer base and is extremely price sensitive. The  
2 customers in this market have shown a willingness to use  
3 lower import prices to force U.S. Producers to reduce their  
4 prices in contract negotiations or lose the sales.

5 While it is likely the customers will seek to buy  
6 large volumes of lower-priced Japanese tin mill products  
7 without the discipline of the order, even a small volume of  
8 such imports competing for the limited number of major  
9 customer counts in this market would have a dramatic effect  
10 on pricing. In other words, the price effect of Subject  
11 Imports will be significant.

12 Next, let's consider the likely impact. The data  
13 you have collected show the Domestic Industry is in an  
14 extremely fragile state and is more vulnerable to suffering  
15 material injury from imports than at any time before.  
16 Demand for tin mill products continued to decline for the  
17 period of review falling by 6.8 percent from 2014 to 2016.  
18 At the same time non-subject imports increased and took a  
19 substantial amount of additional market share from the  
20 Domestic Industry.

21 Virtually every single indicator of the  
22 industry's performance was down during the review period  
23 with many of them at their lowest levels ever. The industry  
24 also continued to hemorrhage money, culminating in an  
25 operating loss of over 30 million dollars in just the first

1 three quarters of last year.

2 Under these circumstances Domestic Producers are  
3 highly vulnerable and the likely impact of allowing dumped,  
4 Japanese imports into this market will be severe. So what  
5 do the Respondents have to say about these facts? They  
6 would have you believe that there have been dramatic changes  
7 in the current review period that mandate the revocation of  
8 the order.

9 However the arguments they raise are refuted by  
10 the facts and largely represent a rehash of arguments that  
11 you have previously considered and rejected. They continue  
12 to claim that the Domestic Industry has built in advantages  
13 and power in the U.S. Market despite the fact that  
14 non-Subject Imports now have half the U.S. Market and the  
15 Domestic Industry's performance has been abysmal.

16 They also continue to claim that they are busy in  
17 other markets and are unlikely to ship here even though they  
18 have shown that they are desperate to ship to any market  
19 around the world including right next door in Mexico and  
20 they are facing increasing competition from China in their  
21 other export markets.

22 They even contend that the U.S. Market is no  
23 longer price sensitive, despite the fact that all 11  
24 responding purchasers in this review reported that price was  
25 very important to their purchasing decisions. I will say

1 that the Respondents are right about one thing, there have  
2 been changes in the Domestic Industry in the Sunset Review  
3 Period currently before the Commission. However those  
4 changes have resulted in the Domestic Industry being more  
5 vulnerable to suffering material injury from imports, not  
6 less.

7 As you will hear today from our witnesses, U.S.  
8 Producers are fully committed to the tin mill market and to  
9 overcoming the challenges they face and that commitment is  
10 vividly demonstrated by the massive investments they are  
11 making to improve the quality of their products, their  
12 on-time delivery performance and their product offerings.

13 If the order on Tin Mill Products from Japan is  
14 revoked at this time these efforts will all be for naught.  
15 Revocation will quickly lead to disastrous consequences for  
16 the U.S. Industry and its workers. Accordingly we urge the  
17 Commission to keep this order in place. Thank you.

18 MR. BISHOP: Opening remarks on behalf of those  
19 in opposition to continuation of the order will be given by  
20 Daniel L. Porter of Curtis, Mallet-Prevost, Colt and Mosle.  
21 Mr. Porter, you have five minutes.

22 OPENING REMARKS OF DAVID L. PORTER

23 MR. PORTER: Good morning, Madam Chair,  
24 Commissioners. The scheduled date for the Commission to  
25 vote in this case is April 13, 2018. Almost to the day the

1 Commission's scheduled vote is eighteen years since the  
2 antidumping duties were imposed, eighteen years. Eighteen  
3 years is a long time. The U.S. Tin Mill Market has changed  
4 considerably since 18 years ago.

5 The competitive dynamics in the U.S. Tin Mill  
6 Market today are very different from what they were eighteen  
7 years ago; indeed they are very different than what they  
8 were from six years ago in 2012 when you last examined the  
9 tin mill market.

10 Now, let's review these changes. First and  
11 foremost the President is likely to announce significant  
12 Section 232 import restrictions on all imported steel  
13 including tin mill steel. The Commerce Department Section  
14 232 Report makes crystal clear that import restrictions are  
15 designed specifically to make U.S. Mills stronger and more  
16 profitable. Or stated differently, whatever injury U.S.  
17 Mills are suffering now will disappear when the Section 232  
18 Restrictions are imposed.

19 The next important difference in the tin mill  
20 steel market is the balance between U.S. production and  
21 imports. Unlike before, imports are now half the market.  
22 what this means is that the volume of Japanese Imports would  
23 simply replace other import sources. The U.S. tin customers  
24 already buy whatever they can from domestic mills and turn  
25 to imports to meet the shortfall.

1           The mix of import suppliers might change with  
2           the Japanese allowed back in but any impact on Domestic  
3           Industry volume will likely be negligible. As you will hear  
4           today from the single largest tin mill customer there is no  
5           current factual basis to support any other conclusion.

6           The next important difference is that in this  
7           review the Commission has substantial evidence that the  
8           expected future prices of Japanese tin mill steel will not  
9           be the lowest in the market. Since the original  
10          investigation and the two prior Sunset Reviews, pricing  
11          dynamics have changed. The evidential record in this  
12          current review documents those changes.

13          Indeed, the record in this case shows that  
14          current Japanese pricing is at or above domestic steel  
15          pricing. The continuing shipments of laminated tin-free  
16          steel, a product excluded by the antidumping order, allows  
17          the Commission to adjust the price of the laminated steel to  
18          derive an estimated price for the not laminated tin-free  
19          steel that would be subject to the order.

20          That analysis has been done and it shows that the  
21          estimated Japanese pricing for Tin-free steel is higher than  
22          Domestic prices for comparable tin-free steel products.  
23          This evidence about actual current behavior by Japanese  
24          mills is more quoted than speculation based on behavior from  
25          eighteen years ago under very different market conditions.

1           Finally, the evidentiary record demonstrates that  
2           there was no likelihood that the Japanese imports will have  
3           an adverse impact on U.S. Mills whose performance is largely  
4           driven by other factors. First, as you will hear later  
5           today the U.S. Mill's own difficulties in undertaking on  
6           time delivery of quality steel to their customers are the  
7           primary reason for the mill's reduced operating performance.

8           Second, the emergence of Dofasco as an adjunct  
9           member of the U.S. Industry has also affected industry  
10          trends significantly. It's U.S. owner, Acelor-Mittal has  
11          increasingly shifted production away from its U.S. factory  
12          in Weirton, West Virginia to its other North American  
13          factory in Canada depressing the performance of the U.S.  
14          Industry.

15          This business strategy may make perfect sense but  
16          it has nothing to do with any future imports from Japan.  
17          The imports from Japan are far more likely to affect the  
18          imports from DeFASCO which can also make easy to open ends  
19          like the Japanese mills then to affect shipments from  
20          Arcelor-Mittel's Weirton facility.

21          Commissioners, these changes are new. They are  
22          different from the competitive dynamics in 2012 and they  
23          compel a conclusion that there is no likelihood that future  
24          imports from Japan will cause material injury to U.S.  
25          Producers. Thank you.

1                   CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Porter.

2                   MR. BISHOP: Would the Panel in support of the  
3 continuation of the antidumping duty order please come  
4 forward and be seated? Madam Chairman, all members of this  
5 Panel have been sworn in. This Panel has 60 minutes for  
6 their direct testimony.

7                   CHAIRMAN SCHMIDTLEIN: Mr. Gerrish or Mr.  
8 Rosenthal, whoever would like to begin?

9                   MR. GERRISH: We will start with your first  
10 witness, Amy Smith-Yoder from U.S. Steel.

11                   CHAIRMAN SCHMIDTLEIN: Thank you.

12                   STATEMENT OF AMY SMITH-YODER

13                   MS. SMITH-YODER: Good morning. My name is Amy  
14 Smith-Yoder and I am the General Manager of Packaging for  
15 the Consumer Solutions Commercial entity of the United  
16 States Steel Corporation. In this position I oversee both  
17 the commercial and operational sides of U.S. Steel's tin  
18 mill business.

19                   I would like to talk to you this morning about  
20 the market for tin mill products and why it is so important  
21 that the order on Japanese Imports remain in place. Tin  
22 mill products are high end steel sheets that have been  
23 coated with tin or chromium. Because of their purity and  
24 durability these products are used to make cans for food,  
25 aerosol cans and other items such as paint cans.

1                   Of all the common types of sheet such as  
2 hot-rolled, cold-rolled and corrosion resistant steel, tin  
3 mill products are generally the most expensive to make and  
4 they usually obtain the highest price. They also require  
5 specialized production facilities.

6                   U.S. Steel has made huge commitments to the tin  
7 mill industry over the last two decades. In 2001, we  
8 purchased a tin mill facility in East Chicago from LTV  
9 Corporation. In 2003, we obtained another tin mill facility  
10 when we bought the assets of National Steel. As a result of  
11 these acquisitions we now have six tin or chromium coating  
12 lines in Northwest Indiana. Because these facilities are  
13 devoted to tin mill products, their fate depends upon our  
14 ability to obtain a favorable rate of return on that  
15 investment.

16                   Unfortunately, the domestic Tin Mill Industry has  
17 faced strong headwinds for many years now. The market for  
18 tin mill products in the United States continues to shrink  
19 due to competition from substitute products like aluminum  
20 and plastic packaging.

21                   The availability of these substitute products  
22 puts downward pressure on the demand for our products. In  
23 fact, from 2014 to 2016 apparent domestic consumption for  
24 tin mill products in the United States shrank by almost 7  
25 percent. To make matters worse, imports of tin mill

1 products from countries other than Japan have taken a huge  
2 amount of market share away from us.

3 The last time you reviewed this order the  
4 Domestic Industry held over an 80 percent share of the U.S.  
5 Market in 2011. Today, the Domestic Industry's market share  
6 is down substantially to only 50 percent, barely half the  
7 market.

8 Non-Subject Imports now have the other half.  
9 Chinese mills have become particularly active in the United  
10 States in recent years. In 2012 Chinese Producers shipped  
11 about 63,000 tons of tin mill products to the United States.  
12 By 2017 that volume had more than doubled to 134,000 tons.  
13 Given China's enormous amounts of excess capacity to produce  
14 tin mill products they are likely to become even more active  
15 in this market.

16 The difficulties experienced by the Domestic Tin  
17 Mill Industry have taken a toll on our operational  
18 performance. According to the information collected by the  
19 Commission, the Domestic Industry's production and  
20 commercial shipments is at its lowest levels in at least two  
21 decades. In addition, the industry is only operating at a  
22 capacity utilization rate of 43 percent, a shockingly low  
23 figure.

24 Not surprisingly this poor operating performance  
25 is showing up on the financial performance of the Domestic

1 Industry. As a whole the industry has seen significant  
2 declines in net sales revenue and gross profit and it  
3 suffered an operating loss of over 57 million dollars over  
4 the last three years.

5 As you can see, we face a multitude of  
6 challenging conditions. The reentry of dumped Japanese  
7 imports would unquestionably be the straw that breaks this  
8 industry's back. Despite the challenges we are facing  
9 however we are fully and unequivocally committed to tin  
10 mill products and that commitment is reflected in the  
11 investments we are making in the product line.

12 Last year, U.S. Steel embarked on what we call  
13 the Can-Do Program to make our business a world class  
14 supplier of products to our customers. The program is part  
15 of a broader effort by U.S. Steel to revitalize its assets  
16 and meet the challenges we are facing. The overall asset  
17 revitalization program involves a total capital outlay of  
18 approximately one billion dollars from 2017 through 2020.

19 As part of the Can-Do Program, we have made and  
20 are continuing to make massive investments in our tin  
21 manufacturing facilities to improve the quality and on-time  
22 delivery of our products. The specific dollar amounts of  
23 these investments, the benefits they will provide and the  
24 implementation dates are all provided in a separate  
25 confidential handout.

1           The handout you have shows just how substantial  
2 these investments are both on an overall basis and on an  
3 individual investment level. For example, we are investing  
4 in shape systems in our Gary and Midwest Mills, levelers and  
5 induction melters on our tin coating lines and other  
6 upgraded equipment and monitoring systems to improve the  
7 quality and reliability of our products.

8           Just this month we successfully implemented  
9 upgrades in the cleaner line and on the tine lines at the  
10 Gary plant. Next month, we will implement additional  
11 substantial investments at a second tin line at the Gary  
12 plant and at the chrome line at our Midwest plant. Through  
13 a combination of these asset improvements and focused  
14 planning processes we intend to improve our on-time  
15 delivery performance to our customers.

16           Finally with Can-Do we are trying to shape our  
17 product portfolio to be strategically aligned with the needs  
18 of our customers. Later today you will hear some of our  
19 customers raise issues about quality and on-time delivery.  
20 I can tell you that we are always striving to improve our  
21 quality and delivery performance. That is one of the  
22 primary reasons that we planned and are executing the Can-Do  
23 program and we have already seen the program have a positive  
24 impact.

25           For example, we track the quality of our products

1 based on the number of claims we received from our  
2 customers. Our internal tracking shows that the quality of  
3 the tin mill products that we have shipped improved from  
4 2016 to 2017 for our top three customers and on an overall  
5 basis.

6 Many of our customers have specifically told us  
7 that they have noticed an improvement in the quality of our  
8 tin mill products. Even beyond the capital improvements we  
9 are making to our physical assets we are also improving the  
10 processes at our company. For example, we are communicating  
11 much more frequently with our customers to ensure our  
12 production, inventory and transportation is aligned with our  
13 customers' requirements.

14 We communicate with some of our largest customers  
15 on almost a daily basis so the bottom line is that our  
16 company is 100 percent committed to tin mill products and is  
17 confronting the challenges that we are facing. Looming over  
18 us however is the prospect that the antidumping order on  
19 Japanese tin mill products might be revoked.

20 In 1999 before this order was put in place  
21 Japanese producers dumped almost 330,000 tons of tin mill  
22 products into the United States. Thanks to the order  
23 however Japanese mills have not been able to dump tin mill  
24 products in this country for many years. The relief we have  
25 received from this order has been absolutely essential in

1 keeping this industry afloat.

2 Revoking the order now would have catastrophic  
3 results. The Japanese producers are more export oriented  
4 than they have ever been. Last year, they exported almost  
5 one million tons of tin mill products to over 50 countries  
6 with Mexico being the top export destination. Meanwhile,  
7 demand in the Japanese Producers home market is declining  
8 and they are facing tough competition from Chinese Tin mill  
9 products in many of their major export markets.

10 Finally, the Japanese Producers have hundreds of  
11 thousands of tons of excess capacity. Although the higher  
12 prices in the U.S. Market will incentivize them to shift  
13 exports from other markets to the United States the Japanese  
14 Producers could also simply draw on their excess capacity to  
15 ship massive volumes of tin mill products to the U.S.  
16 Market.

17 This would have a devastating impact on our  
18 industry. U.S. Steel has finally reached an overall  
19 financial position as a company to be able to make real  
20 improvements to our capital assets. Right now, however, we  
21 are only one-third of the way to completion of our Can-Do  
22 Program and many of our capital improvements are just now  
23 coming online.

24 Let me reiterate. Just last week we completed  
25 installation of a new tension leveler and induction melter

1 on our tin lines and a major upgrade to a cleaner line in  
2 our tin mill operations. We also have a new  
3 demineralization plant ready to commission as soon as we  
4 receive the necessary permitting.

5 Our confidential handout on the Can-Do Program  
6 has additional details on these projects. With the  
7 implementation of these projects our customers will soon  
8 start to see even more improvements to our quality and  
9 on-time delivery performance. Given these developments the  
10 last thing that we need now is an influx of unfairly traded  
11 imports from Japan.

12 For years, U.S. Steel has looked for an  
13 opportunity to invest in its tin mill assets. That  
14 opportunity has finally come but if the order is revoked and  
15 Japanese mills are free to ship dumped tin mill products  
16 into this market we will never see a return on these  
17 investments. The investments will have been meaningless.

18 The facts before you are clear in showing you the  
19 Domestic Industry is extremely vulnerable right now and not  
20 in any condition to deal with another surge of unfairly  
21 traded goods from Japan. Revoking the order would lead to  
22 such a surge and that would spell disaster for our industry.

23 On behalf of United States Steel Corporation, the  
24 workers employed in our mills and the communities in which  
25 we operate, we respectfully request that you keep this order

1 in place. Thank you very much.

2 STATEMENT OF DANIEL MULL

3 MR. MULL: Good morning. I am Daniel Mull, the  
4 executive vice president for sales and marketing of  
5 ArcelorMittal USA. My job responsibilities include  
6 overseeing and coordinating sales of a wide array of steel  
7 products, including tin mill products.

8 ArcelorMittal manufactures tin and  
9 chromium-coated steel sheet at our plant in Weirton, West  
10 Virginia. If you have ever been to Weirton, you know how  
11 vital our plant is to the workers that we employ. Our mill  
12 sits in the middle of and is really integral to the  
13 community of Weirton. Revocation of the order on dumped  
14 imports from Japan would severely jeopardize our mill, our  
15 employees, and the community that depend on these  
16 operations.

17 As your database shows, our operations in the  
18 industry overall are in a tenuous position. Demand for tin  
19 mill products has declined significantly over the past 20  
20 years since the order was imposed. Purchasers are  
21 increasingly substituting other materials for tin mill  
22 products, causing overall demand to fall.

23 At the same time, we are seeing increases in  
24 imports from other countries that are capturing the  
25 remaining demand at our expense. The combination of reduced

1 demand and increased imports from other countries has  
2 wreaked havoc on our Weirton operations over the past few  
3 years.

4 We have suffered declines in production, sales,  
5 and employment. Our financial results have been abysmal. A  
6 return of long priced imports from Japan at significant  
7 volumes will have a devastating effect on our already  
8 weakened operations.

9 The domestic tin mill market remains a price  
10 sensitive market. The market continues to be highly  
11 concentrated in sales to a relatively small number of  
12 purchasers.

13 Those purchasers have significant buying power  
14 and can dictate terms of sale. Even without Japan in the  
15 market, we have suffered a cost price squeeze and have not  
16 been able to fully pass on our increased costs.

17 Part of that pricing pressure has come from  
18 other import sources. Increased imports from other sources  
19 have created an oversupply situation in the United States,  
20 saturating our market and causing downward pressure on U.S.  
21 prices. Over this review period, we have lost sales and  
22 market share to imports from other countries that have sold  
23 at prices below our prices.

24 Purchasers in the U.S. market use foreign price  
25 offers against us in negotiations to force us to cut our

1 price to compete. We face that pricing pressure now from  
2 other import sources and will most certainly face that  
3 pricing pressure to an even greater degree from Japan if the  
4 order is revoked.

5 Japanese producers use low price offers to take  
6 business from us before the order was imposed and  
7 undoubtedly will repeat that behavior as they know that  
8 lower prices drive the sales in our market.

9 ArcelorMittal is not in a position to withstand  
10 further downward pricing pressure given our current  
11 financial conditions. I have no doubt that Japan will  
12 quickly resume tin mill into the United States if the order  
13 is removed.

14 The Japanese producers are already selling tin  
15 mill products that are excluded from this order to U.S.  
16 purchasers. That tells me that they remain interested in  
17 this market, retain ties to our customers, and only stop  
18 selling tin mill product because of the order.

19 These sales or excluded products also mean that  
20 domestic purchasers are familiar with the Japanese producers  
21 and product. The customers will not take long to qualify  
22 the Japanese producers to supply subject tin mill products  
23 if the order was revoked.

24 The U.S. market is also attractive to Japan  
25 because prices in the United States for tin mill are higher

1 than prices in most other markets. Those higher prices will  
2 provide further incentive for Japanese producers to target  
3 the United States by exporting idle capacity or shifting  
4 exports from other markets.

5 I understand that the Japanese producers have  
6 argued that we are causing our own problems by shifting  
7 production to Canada or that our Weirton mill is reducing  
8 its production because of imports from our Canada affiliate  
9 ArcelorMittal Dofasco. The Japanese producers made exactly  
10 the same argument in the last sunset review of this order.

11 They were wrong then, and they remain wrong  
12 today. Dofasco is not increasing exports at the expense of  
13 Weirton. As you know, the Justice Department required us to  
14 divest our operations at Sparrows Point, which was our only  
15 U.S. facility producing drawn-in-iron or DNI tin mill  
16 products.

17 We do not make the DNI product at Weirton, so we  
18 could not supply DNI to our customers from Weirton. Our  
19 customers therefore purchase the DNI tin mill product from  
20 AM Dofasco instead.

21 To the extent we supply U.S. customers with  
22 non-DNI tin mill products from AM Dofasco, that is also at  
23 the request of the purchaser. Many of these U.S. purchasers  
24 were previously producing in Canada. They had been sourcing  
25 tin mill products from AM Dofasco before and wanted to

1 continue to source from AM Dofasco when they closed their  
2 Canadian operations and shifted production to their United  
3 States facilities. And Dofasco is not selling tin mill  
4 products into this country at below market prices. As was  
5 true of Japan before the order was imposed.

6 Respondents have also claimed that purchasers  
7 cannot obtain an adequate supply of product from domestic  
8 industry. In terms of supply, both our company and the  
9 industry as a whole have plenty of idle capacity to produce  
10 tin mill products.

11 In fact, if anything, there is oversupply now  
12 with the non-subject import increases. Any supply issues we  
13 suffered were temporary and have been addressed.

14 ArcelorMittal is committed to producing a  
15 quality product and is continuing to invest to supply the  
16 U.S. market. We invested almost \$3 million in new equipment  
17 in late 2017 that will improve quality. We also have  
18 additional capital expenditure plans for the future, but we  
19 must be able to make these investments in a market where we  
20 can get a fair price.

21 Removal of the order on dumped Japanese imports  
22 now, just as our investments are being made, would undermine  
23 all that we are hoping to achieve and improve sales of tin  
24 mill products at Weirton.

25 In conclusion, let me emphasize that this

1 dumping order against Japan has helped keep our Weirton mill  
2 in business. Unfairly traded imports from Japan basically  
3 ceased when the order was imposed, allowing Weirton to  
4 continue to operate. The U.S. market for tin mill products  
5 has been very challenging and we have struggled even with  
6 the order in place, but it would have been much worse absent  
7 the order.

8 As we're now increasing investments at Weirton  
9 to improve our production operations, it would be  
10 particularly devastating to allow dumped imports from Japan  
11 to resume selling into the market and jeopardize those new  
12 and future investments. So on behalf of my company and the  
13 workers and the community of Weirton that depend on the  
14 continued operation of our facility, I urge the Commission  
15 to maintain the dumping order against Japan. Thank you.

16 STATEMENT OF LYNETTE GIACOBAZZI

17 MS. GIACOBAZZI: Good morning. My name is  
18 Lynette Giacobazzi. I am vice -- the vice president of  
19 supply chain for USS POSCO Industries and have served in  
20 that role since January of 2014.

21 I oversee all of UPI supply chain activities,  
22 including business planning, sourcing and procurement,  
23 customer service, inventory management, and logistics. I  
24 have also held a number of other management positions during  
25 my 22 years at UPI, including that of division manager of

1 tin finishing.

2 By way of background, UPI is a joint venture  
3 between U.S. Steel and POSCO. We operate a steel finishing  
4 plant in Pittsburgh, California, where we produce a variety  
5 of flat rolled products, included tinplate and tin free  
6 steel.

7 Throughout our 32 year history, we have been the  
8 only domestic producer of tin mill products west of the  
9 Mississippi. We operate two high speed electrolytic tin  
10 lines that are capable of producing up to 590,000 tons of  
11 tin mill products per year and we have continued to invest  
12 in those facilities in order to improve our performance and  
13 meet the needs of our customers.

14 Nearly all of UPI's tin mill products are used  
15 for food packaging and particularly for canning of various  
16 fruits and vegetables that are grown in California. We  
17 supply tin mill products to a very small number of  
18 customers, all of whom are located within about 100 miles of  
19 our plant.

20 But despite UPI's proximity to these customers,  
21 and despite our proven ability to meet their delivery and  
22 quality requirements, our tin mill business remains in a  
23 vulnerable state.

24 We continue to face significant and growing  
25 obstacles in the west coast tin mill market, where demand is

1 declining, the customer base is shrinking, and imports are  
2 climbing. Those conditions, combined with increasing raw  
3 material and production costs, have caused UPI to experience  
4 significant operating losses over most of the five-year  
5 review period.

6 Prices for hot rolled steel, which is UPI's  
7 primary raw material, have been volatile during the review  
8 period, but on the whole, they have increased significantly.  
9 And for the most part, our selling price for tin mill  
10 products have not been able to keep pace.

11 UPI has also been hurt by declining capacity  
12 utilization. Due to the reduced demand for tin mill  
13 products, we have not had the necessary volume to  
14 consistently operate our equipment and machinery at  
15 efficient rates of production, thus leading to higher unit  
16 -- per unit costs.

17 When UPI last appeared before the Commission, we  
18 testified that if unfairly priced Japanese tin mill products  
19 were to re-enter the U.S. market, it would potentially  
20 devastate UPI's tin mill business. Little has changed since  
21 then.

22 In fact, we believe that UPI is now at even  
23 greater risk of harm because of the increasingly fragile  
24 state of the West Coast tin mill market. UPI is  
25 particularly susceptible to injury due to our location on

1 the West Coast, where imports of the Japanese tin mill  
2 products are likely to hit the hardest.

3 Back in 1999, before this anti-dumping order was  
4 imposed, Japanese imports in the Western United States  
5 reached a peak of nearly 163,000 tons. If UPI were to face  
6 that same level of imports from Japan today, the impact  
7 would be far more damaging than it was in 1999.

8 At that time, the West Coast tin mill market was  
9 comparatively robust as it consisted of about 20 different  
10 buyers, who consumed over 700,000 tons of tin mill products.  
11 Today, West Coast demand has fallen below 400,000 tons and  
12 the customer base has essentially been reduced to just three  
13 major buyers and a handful of small players.

14 We believe that Japanese producers are eager and  
15 ready to pursue this remaining West Coast business,  
16 particularly given the current attractive pricing from U.S.  
17 tin mill products.

18 In the Commission's last review of this  
19 anti-dumping order, it determined that Japanese producers of  
20 tin mill products had sufficient capacity, product quality,  
21 market knowledge, and commercial relationships to quickly  
22 and significantly increase shipments to the United States.

23 The facts show that those conditions have not  
24 changed. And since the Japanese producers have managed to  
25 maintain a significant presence in the U.S. market through

1 the sales of laminated tin free steel and other excluded  
2 products, they're already well known to West Coast consumers  
3 and well positioned to quality as suppliers.

4 If Japanese producers are allowed to re-enter  
5 the U.S. tin mill market, they will almost certainly find  
6 success just as they did before by implementing an  
7 aggressive campaign of underselling. Since Japanese tin  
8 mill products are largely interchangeable with the  
9 domestic-like product, we believe that pricing may be a  
10 critical factor in the buying decision of domestic  
11 customers.

12 And in UPI's case, where we have a track record  
13 of dependable, high quality performance, the Japanese  
14 producers' lower price would likely be the only reason that  
15 West Coast would choose Japanese products over our own.

16 In summary, if the current anti-dumping order  
17 were to be lifted, UPI would expect to see in very short  
18 order a surge of Japanese tin mill products into the Western  
19 United States at volume levels even greater than those  
20 predating the anti-dumping order.

21 During this review period, Japanese producers  
22 reported having on average more than 400,000 tons of excess  
23 tin mill capacity, which is 100,000 tons more excess  
24 capacity than they reported having in the prior review  
25 period.

1                   That is a daunting fact for UPI and other  
2                   domestic tin mill producers, particularly in light of the  
3                   DOC's recent determination that Japanese producers are  
4                   likely to resume their prior dumping practices if the  
5                   anti-dumping orders revoked.

6                   We therefore urge the Commission to keep this  
7                   order in place. Without it, Japanese producers will have  
8                   the unrestrained ability to supplant UPI's entire tin mill  
9                   business, which would in turn pose a grave risk to UPI's  
10                  overall viability and to the jobs of our 640 employees.  
11                  Thank you for your time and for your careful attention to  
12                  this matter.

13                                   STATEMENT OF MICHAEL P. YOUNG

14                   MR. YOUNG: Good morning. My name is Michael  
15                   Young, and I am the president of the United Steelworkers  
16                   Local 6103. I'm currently employed at U.S. Steel's Midwest  
17                   plant in Portage, Indiana as a maintenance technician for  
18                   tin finishing and galvanized.

19                   I've worked at Midwest plant for over 23 years.  
20                   I first started working at the Midwest plant as summer help  
21                   when I graduated from high school. After that, I joined the  
22                   Navy and served my country for four years before returning  
23                   to work at the same plant.

24                   I'm here today to testify about what this review  
25                   means for the steelworkers employed at all the domestic

1 producers and urge you to maintain the dumping order on tin  
2 mill products from Japan.

3 I first want to emphasize how important these  
4 tin mills are in our communities. My grandfather was a  
5 boilermaker and he helped build U.S. Steel's Midwest plant.  
6 My father worked in the Midwest plant in the same department  
7 where I work today until the day he retired in 2013. So I  
8 am the third generation in my family who has worked on or in  
9 the Midwest plant. And there are a lot of families just  
10 like mine in our community that depend on the success of the  
11 mill for their livelihood.

12 I was working at the Midwest plant in the time  
13 leading up to when the order that you are reviewing was  
14 first put in place. I saw for myself how unfairly traded  
15 imports from Japan were attacking this market and taking  
16 sales away from our mill.

17 The flood of Japanese imports definitely had a  
18 terrible impact on employment at the mill. The number of  
19 workers employed at our mill dropped and those of use who  
20 were left were all working reduced hours with two crews  
21 instead of four.

22 Then this order came into effect in August of  
23 2000. It was instrumental in getting relief from dumped  
24 Japanese imports and making sure that we did not have to  
25 shut down our mill completely.

1                   And the effects of the order were almost  
2                   immediate. It raised morale on the factory floor, and as a  
3                   result, our efficiencies. It made us feel like we were  
4                   finally being listened to.

5                   Unfortunately, we have been confronted with  
6                   serious challenges in the years since the order was issued.  
7                   As you know, demand for tin mill products has been declining  
8                   for years. Plus, imports of tin mill products from  
9                   countries other than Japan have skyrocketed and had a  
10                  significant negative effect on the U.S. industry.

11                  In 1995, when I first started working at Midwest  
12                  plant, we had 1400 workers. I've watched that number  
13                  decline over the years until now, we have about 800 workers  
14                  at our mill. Because we have been coping with tough  
15                  conditions, including imports from other countries, U.S.  
16                  Steel has not been in a position to invest in upgrading its  
17                  tin mill facilities.

18                  Over the past year, however, U.S. steel has been  
19                  making real investments to revitalize its assets, including  
20                  its tin mill facilities.

21                  From my perspective on the factory floor, these  
22                  investments are already starting to have a positive impact.  
23                  Since the last half of 2017, I have seen improvements in the  
24                  efficiencies of our manufacturing process and the overall  
25                  quality of our products.

1                   We are also able to make more of the wider tin  
2 mill products that many of our customers are now demanding.  
3 We are proud of the quality of our tin mill products that we  
4 make and we believe they are just as good, if not better  
5 than any imports.

6                   There are plans to make additional capital  
7 improvements by the end of this year, but if we lose this  
8 order, there's a good chance those capital improvements  
9 won't be made and the improvements that have already been  
10 made will go to waste.

11                   On the other hand, if this order stays in place,  
12 and U.S. Steel can complete its revitalization process, I am  
13 hopeful that the company can hire additional workers.

14                   In my opinion, our mill is starting to run short  
15 of skill tradesmen, and as a result, is starting to  
16 experience a loss of knowledge. To remain competitive, we  
17 have to hire and train more workers before it's too late.

18                   However, the only way this is going to happen is  
19 if the anti-dumping order on tin mill products from Japan is  
20 continued. There's a real sense of hope among the workers  
21 that our company is finally in a position to take action to  
22 address the challenges we have faced for so many years.

23                   But if the anti-dumping order is revoked here,  
24 unfairly traded imports of Japanese tin mill products will  
25 quickly pour into this market and wreak havoc on the U.S.

1 industry just as they did before the order was revoked.

2 The Japanese producers are chasing smaller  
3 export markets all over the world. Their largest export  
4 market is just across the border in Mexico.

5 In addition, as you know, the Japanese are  
6 already here in the United States selling a lot of laminated  
7 products and other tin mill products that are not covered by  
8 the order. They would jump at the chance to sell the tin  
9 mill products that are covered by the order in this market.

10 We make a great product at Midwest plant and the  
11 other tin mills around the country. These mills have  
12 sustained generations of families and communities in the  
13 cities and states where they are located. That is why we  
14 want to keep the mills open. In fact, that is why our local  
15 union and its workers have made real sacrifices in our  
16 collective bargaining agreements to ensure that U.S. steel  
17 stays competitive and can keep the mills open.

18 If the order is revoked, I'm afraid that I may  
19 be the last member of the Young family to be employed as a  
20 steel worker at Midwest plant. And the mill that my  
21 grandfather helped build with his own two hands could be  
22 closed for good.

23 On behalf of myself, my fellow workers at the  
24 Midwest plant, and all the workers in the tin mill plants  
25 across the United States, I respectfully ask that you please

1 keep this order in place. Thank you.

2 STATEMENT OF ROBERT KOPF

3 MR. KOPF: Good morning. I am Robert Kopf,  
4 and I am the General Manager, Business Support, for United  
5 States Steel Corporation. I have been actively involved in  
6 all aspects of our efforts to sell tin mill products for  
7 several years, from contract negotiations with key customers  
8 to analyzing market conditions here at the abroad.

9 I would like to talk to you about the  
10 potential impact of the revocation of the anti-dumping order  
11 on tin mill products from Japan. Over the last two decades,  
12 the U.S. tin mill industry has faced a series of severe  
13 challenges, beginning with the crisis in the late 90's  
14 caused by the flood of unfairly traded imports from Japan.

15 The anti-dumping order at issue today has been  
16 extremely effective in eliminating that unfair trade.  
17 Nevertheless, a number of developments since that time have  
18 affected the domestic industry's performance and  
19 profitability. These include a significant contraction in  
20 overall demand and more recently a large increase in  
21 non-subject imports.

22 Despite all of these challenges, the domestic  
23 industry has remained fully committed to this product line,  
24 and is doing everything it can to achieve profitability and  
25 to serve as a world class industry for years to come. All

1 that being said, I can tell the Commission with confidence  
2 that were it not for the anti-dumping order on Japanese tin  
3 mill products, this industry would not exist today in any  
4 recognizable form.

5 In addition, if the order is revoked, I am  
6 certain that the effect on this industry will be absolutely  
7 devastating. It is simply that important. All you have to  
8 do is look at the facts before you. I think it is fair to  
9 say that those facts conclusively demonstrate that the  
10 Japanese producers will immediately and aggressively attack  
11 this market if the order is revoked.

12 Back in 1999, Japanese mills shipped over  
13 320,000 tons of tin mill products to the United States.  
14 They have remained active in this market by selling  
15 laminated products and other products that are not covered  
16 by the order. You may hear from our customers that they  
17 prefer domestic producers over foreign suppliers because of  
18 our proximity and the availability of our supply.

19 To the extent that this was ever the case, it  
20 certainly is not true anymore. Last year, domestic mills  
21 held only a 50 percent share of the market for tin mill  
22 products. If trends from the last five years continue,  
23 imports will hold more than half the market in 2018. The  
24 fact is that customers are buying more imports and fewer  
25 domestic tin mill products, and there should be no question

1 that Japanese producers have huge incentives to ship tin  
2 mill products here if the order is revoked.

3 We know that they have become more  
4 export-oriented than ever. They are also facing a decline  
5 in demand for tin mill products in their own home market,  
6 and stiff competition in their export markets from Chinese  
7 producers. At the same time, the United States is one of  
8 the largest tin mill markets in the world, and has prices  
9 that are higher than the prices for tin mill products in the  
10 Japanese producers' other export markets.

11 In particular, our southern neighbor Mexico is  
12 the Japanese producers' largest export market. The prices  
13 for tin mill products in Mexico are far lower than they are  
14 here in the United States. It is ludicrous to suggest that  
15 if the order was revoked, the Japanese producers would not  
16 take advantage of the opportunity to return to the U.S.  
17 market.

18 The Commerce Department has already found as  
19 part of this review that the Japanese producers would resume  
20 dumping here at extremely high rates if the relief was  
21 lifted. While we welcome competition, it is impossible for  
22 us to compete with unfairly traded imports from Japan. It  
23 seems the height of unfairness to me that the Japanese  
24 producers could resume dumping in the United States, while  
25 they enjoy the advantage of a protected market in Japan.

1                   And that brings me to my second major point,  
2                   which is that you should reject any notion that our  
3                   contractual relationships with our customers insulate us  
4                   from being injured by unfairly traded imports from Japan. I  
5                   can assure you that despite our contracts, revocation of  
6                   this order would start hurting us almost immediately. The  
7                   details of our contracts are confidential. I can tell you,  
8                   however, that typical annual contracts do not mandate  
9                   customers to meet the quantities specified in the contract.

10                   As a result, even customers that we have  
11                   contractual relationships with can obtain tin mill products  
12                   at lower prices from any location around the world. If a  
13                   customer is quoted lower prices by other suppliers,  
14                   including lower prices from foreign suppliers offering  
15                   dumped tin mill products, the customer can purchase those  
16                   lower-priced products instead of the products sold by U.S.  
17                   Steel. That's just as true on the first day of the  
18                   contract period as it is on the last day.

19                   In addition, there are contractual  
20                   arrangements with provisions where prices can be adjusted  
21                   based on changes in the market throughout the contract  
22                   period. As a result of these provisions, low-priced imports  
23                   that drive down the market price in the United States also  
24                   drive down the prices under our contracts.

25                   Over the last five years, imports of tin mill

1 products from other countries have increased significantly  
2 and taken over 30 percentage points of market share away  
3 from us. As a result, they now have half the U.S. market.  
4 We would have liked to make these sales, but we lost them to  
5 imports because the prices were too low for us to meet. The  
6 contracts we have with our customers certainly did not  
7 insulate us from those imports. There is no reason to  
8 believe that they would shield us from injury caused by  
9 Japanese imports either.

10 Later this year, we will begin the process of  
11 negotiating new contracts with our customers, and every ton  
12 that we will ship in 2019 will be influenced by the outcome  
13 of this review and the ensuing negotiations. Price will be  
14 a critical part of those negotiations. For almost all end  
15 uses, tin mill products account for a large percentage of  
16 the cost of the finished good.

17 As a result, our customers are always doing  
18 everything they can to get the lowest possible price for tin  
19 mill products that meet their quality specifications. And  
20 because there are only a small number of customers for our  
21 tin mill products, they have a significant amount of  
22 leverage in our contract negotiations with them.

23 Customers are always citing the prices of  
24 imports from other countries as part of our contract  
25 negotiations, to obtain lower prices from U.S. Steel. Over

1 the last two years, low-priced imports from other countries  
2 have prevented us from raising our prices to offset  
3 increases in the cost of raw materials used to make carbon  
4 steel and the tin coating material that we apply. I have no  
5 doubt that this situation will become substantially worse if  
6 Japanese imports are allowed back into the market.

7 There is no question that our customers will  
8 solicit and obtain offers from Japanese mills that will  
9 undercut our prices. As my final point this morning, I  
10 would like to address the issues raised by some of our  
11 customers relating to the quality of our products and our  
12 delivery performance.

13 I am here to tell you that we are rising to  
14 this challenge through the Can Do Program. As my colleague  
15 Amy discussed, a major driving factor behind the Can Do  
16 Program is addressing our customers' concerns. For example,  
17 we have invested in new shape systems to address their  
18 concerns about shape anomalies, and we have invested in  
19 other major equipment upgrades to address surface quality  
20 issues.

21 But these are not improvements that can be  
22 accomplished overnight. We began planning the Can Do  
23 Program in 2016, began making investments in the last half  
24 of 2017, and will not complete the program until 2020. By  
25 that time, we intend to win back the business that we have

1 lost in recent years to imports of tin mill products.

2 Revocation of the order, however, would mean  
3 that all of our efforts would be for nothing. We believe in  
4 this product, and we are fighting every day to make this a  
5 sustainable American business for our workers and our  
6 shareholders. We are facing tough market situations, yet we  
7 are going to meet these challenges. It will be extremely  
8 difficult, however, to complete the Can Do Program  
9 successfully if we are faced with a new wave of unfairly  
10 traded imports from Japan.

11 We know that the Japanese products are waiting  
12 in the wings and ready to take advantage of any opportunity  
13 to return. Given the significant capital improvements that  
14 we have just started to make, now would be the absolute  
15 worse time to revoke the order. Thank you for the  
16 opportunity to testify.

17 STATEMENT OF PAUL C. ROSENTHAL

18 MR. ROSENTHAL: Good morning Madam Chairman  
19 and members of the Commission. I am Paul Rosenthal of  
20 Kelley, Drye and Warren. I'm joined by my colleagues Kathy  
21 Cannon, Alan Luberdia and Brooke Ringel, as well as Gina Beck  
22 of Georgetown Economic Services. In the time remaining, I  
23 will summarize the data on the record and highlight some of  
24 the key arguments on behalf of the domestic producers.

25 First, I think it's worth reminding everyone

1 of the findings made by the Commission in the previous  
2 sunset reviews of order. Many of the facts found previously  
3 are true in the current Period of Review. In the first  
4 review, the Commission found the industry to be vulnerable,  
5 among other reasons because of flat or declining trends in  
6 demand, the price sensitive nature of the market, the  
7 cost-price squeeze facing the industry and the poor  
8 financial performance over the period.

9 In the second review, you reached similar  
10 conclusions about the price sensitive nature of the market  
11 and downward trends in demand. Shipments, capacity  
12 utilization, indeed all the trade and financial indicators  
13 have also declined. Of course you found the industry to be  
14 vulnerable and you rejected every argument made by the  
15 Respondents, many of which they repeat in this review.

16 As you have heard, to the extent things have  
17 changed is that the industry's condition has gotten worse.  
18 Slide 4 enumerates some of the industry declines, which have  
19 continued not just from the original investigation, but from  
20 the original review as well, the previous review as well.  
21 Demand has continued to shrink, and imports have taken an  
22 even greater share of the domestic market in this review.

23 Slide 5 summarizes the continuing decline in  
24 all the key trade indicators. The market clearly is down.  
25 The domestic industry has reduced its capacity even further,

1 and non-subject imports have now taken almost half of the  
2 market. Not surprising, net sales have dropped dramatically  
3 just since the last review.

4 Slide 6 drills down deeper on the trade data.  
5 As you see from this slide, despite reducing capacity, the  
6 domestic industry's capacity utilization has dropped  
7 dramatically as well, from almost 75 percent to an  
8 unsustainable 45 percent. That is a dramatic drop in just  
9 the past few years. The number of production workers had  
10 declined, along with production and capacity utilization.  
11 There are 600 fewer workers in this industry than there were  
12 just a few years ago.

13 The next slide focuses on the changes between  
14 just the previous review and the current one. Every factor  
15 that matters, production, shipment quantity and value,  
16 number of workers, hours worked and wages paid has declined.

17 Slide 8 is both dense, for which I apologize,  
18 and bleak, which should give us all pause. It summarizes  
19 the financial data which have continued to decline since the  
20 Commission found the industry vulnerable in the previous  
21 review. While Respondents spend part of their brief  
22 focusing on one producer, it is worth noting that by the end  
23 of the current period, even more U.S. producers were  
24 suffering losses.

25 Indeed, the industry as a whole has declined

1 and is losing money, whether one focuses on operating or net  
2 sales or absolute losses or ratios. Any way you look at it,  
3 this industry is in bad shape, and in statutory terms in a  
4 highly vulnerable condition.

5 So what about the Japanese? Respondents say  
6 the domestic industry has nothing to worry about if the  
7 dumping order is revoked. They say things have changed  
8 since imports from Japan surged into the market in the  
9 original investigation, as shown in Slide 9. Well, no one  
10 can deny the Asian financial crisis of the late 1990s is  
11 over, but that's been over since the first review.

12 While emphasizing the end of the Asian  
13 financial crisis, the Respondents fail to note other more  
14 relevant changes for this Commission's determination, that  
15 have taken place since that time. Slide 10 shows the level  
16 of imports prior to the imposition of the anti-dumping order  
17 on subject imports.

18 It also shows just the idle capacity of the  
19 Japanese industry exceeds the level of imports that the  
20 Commission found was sufficient to injury the domestic  
21 industry in the original investigation. As the next slide  
22 shows, the amount of idle capacity is enough to allow the  
23 Japanese producers to capture a higher share of the U.S.  
24 market than it did pre-order.

25 Remember, these imports from Japan will be

1 entering a U.S. market in which demand is far smaller than  
2 it was in 1999. While Respondents contest the exact figure,  
3 it appears that the Japanese capacity utilization provides  
4 the room to increase production that will be targeted at the  
5 U.S. market.

6 It is worth noting, Commissioners, that on the  
7 eve of this hearing, the Respondents submitted substantially  
8 revised data on capacity, which you simply cannot accept at  
9 face value. Indeed, these new data contradict Respondents'  
10 own arguments in key respects. We can discuss this in  
11 greater detail in our post-hearing brief.

12 While we think the new data from Respondents  
13 is suspect, even if they were true capacity utilization  
14 interim 2017 is lower than it was in the original  
15 investigation. Respondents contend that of course they have  
16 no need to increase imports into the U.S. market. The Asian  
17 financial crisis is over, they have high capacity  
18 utilization, everything is just dandy to hear them tell it.  
19 As they portray the situation, there's no reason to ship  
20 large quantities in the U.S. from Japan.

21 They seem to have overlooked a few very  
22 important factors, however. First, there is the problem of  
23 declining demand in the Japanese home market. That  
24 declining demand is reflected in reduced home market  
25 shipments for the Japanese industry, as shown in

1 Confidential Slide 14. Moreover, Slide 15 reiterates a fact  
2 found by the Commission in the previous review.

3 The Japanese industry is export-oriented, and  
4 in order to maintain capacity utilization has needed to  
5 increase its exports, which it has done so far. As Slide 16  
6 points out though, there's simply too much production  
7 chasing too little demand around the world. That is a  
8 problem for all producers of tin mill, but most especially  
9 the Japanese, and a big problem for the Japanese producers  
10 that their neighbor China also has excess tin plate  
11 capacity and low capacity utilization. The Chinese tin  
12 plate producers are competing with the Japanese all around  
13 the world.

14 So should the domestic industry have concerns?  
15 You bet. Look at Slide 17, which shows how much the idle  
16 capacity the Japanese have compared to U.S. shipments. If  
17 just a portion of that unused capacity were directed to the  
18 U.S., it would displace a significant amount of U.S.  
19 production.

20 As you have heard already though, the domestic  
21 industry simply cannot afford to have its shipments reduced  
22 any further. The Japanese respondents deny they will  
23 substantially increase shipments to the U.S. of course.  
24 They say they have no capacity to devote and they're tied to  
25 joint ventures. They claim to have little incentive to

1       increase sales to the domestic market.

2                       But look at Slide 18, which summarizes the  
3       Japanese exports of tin plate to Mexico. Those imports to a  
4       geographically proximate neighbor of the U.S. are  
5       significant to the Japanese industry and they're growing.  
6       Mexico is a much less attractive market compared to the U.S.  
7       in terms of size of demand and prevailing prices, and yet  
8       the Respondents expect the Commission to believe that the  
9       Japanese are not interested in expanding shipments to the  
10      U.S. market.

11                      As the next confidential slide shows, the U.S.  
12      market is very attractive compared to the other Japanese  
13      export destinations. The average unit values or AUVs from  
14      this slide are taken from the Respondents' own questionnaire  
15      data. The Commission knows that the argument by the  
16      Japanese about lack of interest in the U.S. market is  
17      specious.

18                      In the previous review, you noted that the  
19      Japanese producers were already supplying a substantial  
20      amount of excluded tin mill products to purchasers in the  
21      United States. Slide 20 shows that the sales of excluded  
22      tin mill products from Japan increased over the Period of  
23      Review. That shows continued interest in the U.S. market by  
24      the Japanese.

25                      And, as the Commission knows too, based on

1 your earlier reviews, that the Japanese producers maintain  
2 distribution networks in the United States. They have the  
3 ability to increase imports readily, which is what they will  
4 do if the order is revoked.

5 Confidential Slides 21 and 22 provide  
6 corroboration of this conclusion, which the Commission  
7 reached in the previous review. Despite the long-standing  
8 and unabated interest in the U.S. market, Respondents argue  
9 that increased subject imports will not adversely affect the  
10 domestic industry.

11 First, they claim that unlike in the previous  
12 reviews, price is not so important. Really? Please read  
13 Confidential Slide 23. As indicated, purchasers continue to  
14 think price is very important. Therefore, it's not  
15 surprising that price continues to be the reason why  
16 purchasers switch from one tin mill supplier to another.  
17 They tell you that in their questionnaire responses.

18 Respondents claim that if the order is  
19 revoked, the Japanese will only take sales from non-subject  
20 imports, not the domestic industry. But that claim has  
21 absolutely zero factual support. As long as the Japanese  
22 producers can supply a lower-priced quality product, which  
23 we all concede they can, the domestic producers will be at  
24 risk.

25 The only way the Japanese producers can

1       displace non-subject imports is by offering lower prices.  
2       This slide indicates that lower-priced offerings matter to  
3       purchasers, and will drive overall market prices lower.  
4       That is the last thing the domestic industry needs, as it  
5       struggles with declining demand, low capacity utilization, a  
6       cost-price squeeze and an overall bleak financial situation.

7                       This concludes my testimony. The panel is  
8       available to answer questions now. Thank you very much.

9                       CHAIRMAN SCHMIDTLEIN:    Alright, thank you.  
10      Thank you all very much for your testimony and for appearing  
11      here today to help us understand this Sunset Review.

12                      We will begin the Commissioners' questions with  
13      Commissioner Broadbent.

14                      COMMISSIONER BROADBENT:    Thank you, Chairman  
15      Schmidtlein.

16                      This question I guess is for Ms. Smith-Yoder and  
17      Mr. Kopf. Thank you. I'm trying to figure out, I mean how  
18      has the domestic industry been able to remain in business,  
19      when I look at the operating margins over the last 20 years  
20      as reported in our C Tables. I understand you've closed  
21      some plants, but it's really a record of very low  
22      performance over many, many years. And I--do you subsidize  
23      it from other parts of your business? Or how do you stay  
24      afloat?

25                      MR. KOPF:    Rob Kopf with U.S. Steel. I think

1       there are several things to consider when trying to look at  
2       our financial position.

3               First of all, you're correct. There has been a  
4       great deal of capacity that's been closed in this country  
5       over time that did not survive. We believe firmly that the  
6       remaining capacity that we're operating, and I'm sure my  
7       competitors feel the same way, that they have assets that  
8       are certainly capable of delivering quality product to  
9       customers here that demand quality product.

10              I would say that when we sat here, I was actually  
11       participating in the last Sunset Review here, and we had  
12       tremendous optimism at that last session about a little over  
13       five years ago now that we were on the precipice of kind of  
14       turning the corner as an industry. And we were very  
15       confident that our industry was ready to kind of have a  
16       breakthrough period of years.

17              The 2015 financial crisis certainly was not kind  
18       to us as a company. And I would just say that it put us in  
19       a financial position where we struggled to make investments  
20       across all of our facilities, which would include Tin-mill  
21       products.

22              We do look at our operating facilities as--for  
23       tin-mill products, as stand-alone units. So we do not get  
24       into, you know, how much money do we make on hot-rolled or  
25       cold-rolled and sort of allocate some of those profits to

1 tin. We have high hopes that the product line is going to  
2 deliver tremendous opportunity and financial benefit to us  
3 in the future if things are traded on a level playing field  
4 here. We need to make the investments in our facilities,  
5 which is why we have embarked on the Can-Do Program. So  
6 perhaps a long-winded answer to your question. We thought  
7 that recently, up until the financial crisis of '15, we were  
8 on the verge of great things as an industry.

9 We needed to invest money. We had to stop  
10 investing money because of that crisis. But now we've  
11 recommitted ourselves to it. And that's how we're still in  
12 business today.

13 COMMISSIONER BROADBENT: Financial crisis in  
14 2015? Was there--

15 MR. KOPF: I'm sorry, the steel crisis in 2015.  
16 I said--it was a financial crisis for those of us in the  
17 steel industry, for sure. So my apologies for not being  
18 more clear on that.

19 COMMISSIONER BROADBENT: Okay. Ms. Smith-Yoder?

20 MS. SMITH-YODER: Amy Smith-Yoder, U.S. Steel.  
21 So let me speak specifically about the packaging business.

22 So we're the first to recognize and admit that  
23 our financial performance is not where we want it to be and  
24 where we expect it to be. Therefore we embarked, as the  
25 testimonies showed, on the Can-Do Program back in 2016 and

1 put an extensive business case together to say this is what  
2 we need to do in our tin-mill operations in order to become  
3 profitable.

4 Benefits of that include the improved quality,  
5 the improved delivery performance, the improved reliability  
6 of our operations. Without the Can-Do investments and the  
7 focus on the tin revitalization process, and without the  
8 necessary--the necessary decision to be made to keep any  
9 more product from being dumped into the tin-mill business,  
10 we have publicly stated that we will not succeed.

11 So the business case is there. We want to be in  
12 this business. We would not be investing in our tin-mill  
13 operations to the extent that we are, and what you can see  
14 on the two confidential slides that we have given to you, if  
15 we did not believe that this is a viable business for us to  
16 be in.

17 COMMISSIONER BROADBENT: Okay. Let's see.  
18 We've got this data in our staff report: 5 of the 11  
19 purchasers indicated that they had supply issues with  
20 domestic producers over the Period of Review, including  
21 inability to meet contractual obligations, suppliers  
22 limiting the quantities they're willing to supply,  
23 purchasers being placed on controlled order entry, and other  
24 supply disruptions. And these were relatively significant  
25 purchasers.

1           All 11 responding purchasers reported delivery  
2           delays with suppliers. This has been a theme in every  
3           review I think that we've had. Is this information--you  
4           sort of started your Can-Do Program just a year or two  
5           before this third review. Is this information that you're  
6           agreeing with or disagreeing with? It seems like you're  
7           trying to respond to it, but then at other times I hear that  
8           you don't really believe what's in the staff report. And I  
9           just wanted you to react.

10           MS. SMITH-YODER: This is Amy Smith-Yoder from  
11           U.S. Steel. So we measure ourselves by the strictest of  
12           standards when it comes to order performance. There's no  
13           partial credit that we give ourselves and that we report to  
14           our customers. It is all coils into the warehouse on time  
15           for an order. Otherwise, it is no credit whatsoever.

16           So we hold ourselves, again, to the highest of  
17           standards. Order performance can be--and deliver  
18           performance, interchangeably, can be a similar negotiation  
19           with our customers in that we will work to, to promise the  
20           material to be delivered to the best of our abilities within  
21           the constraints that we have of our operations.

22           There are times when, just due to the simple  
23           processing path that material needs to take, the time that  
24           it needs to take to make it, that we cannot--that we cannot  
25           meet the customer's request. We explain that. And we then

1 negotiate with the customers as to when we can get it to  
2 them as quickly as possible.

3 Can-Do is the single largest contributing factor  
4 that will improve our quality performance, our reliability  
5 performance, and hence our order performance. But that  
6 doesn't mean that, while we wait for Can-Do to be  
7 implemented that we're not working every day to improve our  
8 systems and to improve our processes, and to improve our  
9 communications with our customers around order performance.

10 And lastly, we do build inventory into our  
11 process in order to keep it into the warehouse to have. And  
12 in fact we historically have about a month's worth of  
13 inventory in the process for our customers so that we can  
14 meet their requirements as they state.

15 COMMISSIONER BROADBENT: Okay, so is this a  
16 problem that is going to be fixed in the future? And how  
17 seriously do you take all the concerns that the purchasers  
18 were registering with us?

19 MS. SMITH-YODER: Yes, it will be fixed. We are  
20 working every day to fix it. And I guess if you ask me how  
21 seriously did I take it, I probably spend most of my day  
22 working on this.

23 COMMISSIONER BROADBENT: Understood. Okay, Mr.  
24 Kopf, did you have a comment on that?

25 MR. KOPF: Yeah, Rob Kopf with U.S. Steel. I

1       guess I'd just like to add this comment: I understand what  
2       the Respondents have said in terms of asking for volume from  
3       us that we've not delivered. There have been plenty of  
4       times where we have asked our customers, the Respondents--or  
5       I mean the U.S. customers for volumes and they have not  
6       given us volumes, as well. So I think there is a--there are  
7       two sides to this story. We have--

8                 COMMISSIONER BROADBENT:     You've asked your  
9       customers for--say that again?

10                MR. KOPF:     We have asked our customers for  
11       volumes at times before and they have not been willing to  
12       give us more volume. So I think that there are probably  
13       some specific instances that they're referring to, and I'll  
14       just refer to other instances where we've gone in and asked  
15       people for more volume and they've been unwilling to provide  
16       it to us.

17                So I think that needs to be made clear, that we  
18       have hundreds of thousands of tons of idled capacity--of  
19       unused capacity in this market, and we have every intention  
20       to sell it. We would love to sell it. Our customers aren't  
21       willing to buy it from us right now.

22                MR. GERRISH:    Commissioner Broadbent, Jeff  
23       Gerrish for U.S. Steel. If I could just add, to see how  
24       seriously the industry takes this, and certainly U.S. Steel  
25       takes this, all you have to do is look at those confidential

1 slides on the Can-Do Program and the magnitude of the  
2 investments that they're making.

3 This industry has been battered over the years by  
4 declining demand and an increase in nonsubject imports, and  
5 they just haven't been able to make the investments. Now as  
6 a company they've finally started to make some money, and  
7 they are able to make those investments in the Can-Do  
8 Program and they're making them in a very significant way.  
9 And I think those confidential exhibits show just how  
10 significant it is.

11 COMMISSIONER BROADBENT: Okay. Thank you very  
12 much.

13 CHAIRMAN SCHMIDTLEIN: Okay. I'd like to start  
14 with something that Mr. Porter mentioned very early on in  
15 his opening statement. And that is the recent 232 report  
16 from the Commerce Department.

17 And the Respondents are arguing that we should  
18 take this into account because it's likely that the  
19 President is going to impose restrictions on steel. And  
20 that that would protect the U.S. steel industry and  
21 therefore this Order--revoking this Order would no longer  
22 have the effect of recurring injury.

23 Can you respond to that? And what should we do  
24 if the President does indeed take action before the vote  
25 date, which is April 13th right now?

1                   MR. ROSENTHAL:   Paul Rosenthal, Kelley Drye. We  
2                   don't agree with Mr. Porter's analysis. He is inviting you  
3                   to speculate on what the President might do on this  
4                   particular industry, and what the effects of whatever the  
5                   President's action might be.

6                   For example, we don't know the scope of the  
7                   product coverage that the President might include in any  
8                   decision, or the duration, the exceptions process to the  
9                   question of what if the President decides before you have to  
10                  decide, or even after.

11                  I think that even then the effect on this  
12                  industry is quite unknown and unknowable. At least the  
13                  Commerce Department recommendation included a suggestion  
14                  that there should be a process for exclusions. So even if  
15                  the President were to announce an across-the-board tariff,  
16                  for example, there is a process where companies can go in  
17                  and get exclusions and be exempt from those remedies.

18                  In other words, it is impossible for you sitting  
19                  here today, or in two months or, I would argue, in four  
20                  months to know whether whatever action is taken by the  
21                  President will have a beneficial effect on the industry such  
22                  that it no longer needs the relief of the Order from Japan.

23                  CHAIRMAN SCHMIDTLEIN:   So will we know what the  
24                  process for exclusions is, at that time?

25                  MR. ROSENTHAL: You are asking a question I will

1 tell you I do not know the answer to this, of course. I'm  
2 not sure anybody sitting in this room could or does, or I  
3 might argue can predict what this Administration will do  
4 with respect to this particular issue.

5 They were going to make a decision on this issue  
6 last June, as I recall, and that did not take place. I  
7 don't know if and when they will make a decision, and what  
8 an exclusion process will look like, what the types of  
9 remedies might be and, frankly, how long the relief if any  
10 might last.

11 You may recall in the last 201 case relief lasted  
12 for 18 months.

13 CHAIRMAN SCHMIDTLEIN: Right. But if he does  
14 decide in the near future--I think there is some  
15 speculation, at least in the press, that he may decide in  
16 the next two weeks or so--if he does decide, and there is a  
17 significant tariff imposed, what should we do then? Is it  
18 your all's position--I guess my two questions: What do you  
19 think we should do? And what are we legally permitted to  
20 do?

21 So I don't know if you want to take--my guess is  
22 you're going to say I think you should ignore the whole  
23 thing. Are you saying that we are not allowed to take that  
24 into account before we vote on April 13th? Or is it just  
25 that we shouldn't because there are too many unknowns?

1                   MR. ROSENTHAL:    I think that because there are  
2                   too many unknowns it is too speculative that you cannot, as  
3                   a matter of law, rely on that.  And secondly, as a matter of  
4                   analysis I don't know how you would analyze whatever is  
5                   issued, given all the uncertainties surrounding it.

6                   CHAIRMAN SCHMIDTLEIN:    Did you want to add  
7                   something, Mr. Gerrish?

8                   MR. GERRISH:       Jeff Gerrish for U.S. Steel.  I  
9                   would just agree with Mr. Rosenthal that we don't think  
10                  legally you can consider it because it is too speculative.  
11                  It is completely unclear what, if any, action the President  
12                  is going to take.  And even at the time that--if any action  
13                  is taken, what the exclusions will be, the product  
14                  exclusions and potential country exemptions will be.  There  
15                  will be a whole process for that, and that will be  
16                  completely unclear at that time.  And so it's too  
17                  speculative for the Commission to attribute any weight to  
18                  it.

19                  COMMISSIONER BROADBENT:    Can I just interject?  
20                  The President has said he's going to determine by April  
21                  11th, 2018, and our vote is April 13th.  So it won't be  
22                  speculative by the time we vote.

23                  MR. GERRISH:        Jeff Gerrish for U.S. Steel.  But  
24                  at that time there will have to be a process that will have  
25                  to be undertaken to determine potential product exclusions

1 from the relief. And if you look at what happened in the  
2 Section 201 case on steel, that exclusion process took place  
3 after any action was taken with respect to the relief. So  
4 there will be a whole process associated with that. So even  
5 at the time an action is taken, if any, there will have to  
6 be a process undertaken to determine product exclusions at  
7 that time.

8 COMMISSIONER BROADBENT: So you are arguing no  
9 coordination between the two measures?

10 MR. GERRISH: It's--yeah, at this--we think that  
11 really you can give no weight to what if any action is going  
12 to be taken under Section 232.

13 CHAIRMAN SCHMIDTLEIN: Okay, alright, I think  
14 your position is clear on that. Alright, let's shift gears  
15 a little bit.

16 MR. ROSENTHAL: At least you don't have to  
17 speculate about our position.

18 (Laughter.)

19 CHAIRMAN SCHMIDTLEIN: Right. Do we ever?

20 (Laughter.)

21 MR. MEISNER: This is Luke Meisner on behalf of  
22 U.S. Steel from Skadden Arps. Luke Meisner from Skadden  
23 Arps. One thing I might add is that the Commerce Department  
24 has explicitly stated that any action that's taken under  
25 232, if any action is taken, is intended to apply in

1 addition to any existing AD or CVD duties applicable to any  
2 imported steel. And so as a result, to revoke the Order  
3 based on any outcome of any 232 action would undermine the  
4 intent of Commerce in taking any 232 action, and the  
5 President in taking any 232 action.

6 CHAIRMAN SCHMIDTLEIN: Okay. Alright, so thank  
7 you for that addition there. Again, shifting gears a little  
8 bit, I want to follow up on the line of questions that  
9 Commissioner Broadbent started with regard to the quality  
10 issues and reliability of supply and so forth.

11 And my take on this argument I think was maybe  
12 slightly different. I'm not sure if the Respondents exactly  
13 argued it this way, but can you respond to an argument that  
14 because of these quality issues which you see reflected in  
15 some of the staff report for the purchaser questionnaires,  
16 and specifically I'm looking at pages 216 and 217, right,  
17 where they talk about whether prices--well, how the U.S. and  
18 other countries compare with regard to a list of 15 factors.  
19 And when you look at that, product consistency and  
20 reliability of supply clearly show that they, the purchasers  
21 consider the U.S. to be inferior.

22 So couldn't you use that information to argue  
23 that Japan will not have to come in and price lower than  
24 U.S. product because the U.S. is experiencing these types of  
25 problems?

1           If I understand their argument--and we can talk  
2           about this in the afternoon with them--but I thought they  
3           were sort of arguing, well, this shows that subject will  
4           replace nonsubject. But for me, the argument should really  
5           be doesn't this mean that Japan is not going to have to come  
6           in and undersell because the U.S. is experiencing these  
7           quality issues, or supply issues, whatever you want to call  
8           them, nonprice issues?

9           MR. ANDERSON:    If I could speak on that--Cory  
10          Anderson from USS-POSCO. Our story is a bit unique because  
11          we are on the West Coast where I think we can expect, if  
12          this were to be lifted, to see a big surge of imports. We  
13          saw it before in 1999.

14          The reason I'd liked to talk on this is because I  
15          think our performance has been good throughout our history.  
16          And that's on quality as well as on-time delivery. And so I  
17          don't--as far as I know, we have not received complaints  
18          over those years. In fact, we've been kind of at the top  
19          when it comes to that type of performance. And yet we are  
20          very concerned because we know the volumes that can come in.

21          And you asked about underselling. That is  
22          precisely what could do us in. We are--it wouldn't be on  
23          quality. It wouldn't be on deliveries. It would be on  
24          price. And that's an area where we would struggle if  
25          Commerce is right on this.

1                   MR. MULL:    Dan Mull with ArcelorMittal.    I  
2                   think if you look at the large percentage of the imports  
3                   that currently are controlling the market share, it is an  
4                   example of exactly what the buyers would leverage against  
5                   Japan.    And they would come in and need to be competitive at  
6                   those kinds of price levels, and it would just be additional  
7                   volume at a lower price that would be used to leverage our  
8                   pricing down.    And once again, not allow us to make a  
9                   adequate return to justify the investments we're trying to  
10                  make in our facility in order to keep it in the community.

11                  MR. KOPF:    Rob Kopf, U.S. Steel.    One final  
12                  comment, quickly.    I guess if you just look at the behavior  
13                  in Mexico, I think that tells the story.    We would love to  
14                  sell product into Mexico.    We can't because the Japanese  
15                  come in and undercut our prices.    So they obviously are not  
16                  behaving in a way that you were suggesting, being able to  
17                  charge higher prices because their quality is better.    They  
18                  undercut us.    We can't win business down there for that very  
19                  reason.

20                  CHAIRMAN SCHMIDTLEIN:    Okay.

21                  MS. CANNON:    Kathy Cannon.    Let me just add one  
22                  more thing, Chairman Schmidtlein, if I might.    The table  
23                  that you cited in the staff report, as the staff pointed  
24                  out, there was very limited response from purchasers because  
25                  there's not a lot of Japanese product in the market.    So

1 those citations were representative of a very few number of  
2 purchasers.

3           Conversely, there were other tables in the staff  
4 report in which most of the purchasers were talking about a  
5 high degree of interchangeability of the Japanese and U.S.  
6 product and, more importantly, the importance of price to  
7 their decisions as they're looking across the board,  
8 whatever type of product sourcing, which would include the  
9 U.S. product nonsubject imports and Japanese imports,  
10 suggesting very strongly that price is driving decisions to  
11 buy this product across the board for them still.

12           CHAIRMAN SCHMIDTLEIN: So where does that come  
13 from, then? And I think I did not cite page 219 where--at  
14 Table 2-8 where it's a comparison of U.S. versus other  
15 countries. Why do we see such a strong number, such a high  
16 number in the inferior category for product consistency and  
17 reliability of supply? Quality exceeds industry standards,  
18 you know, 10 purchasers ranked the U.S. as inferior out of  
19 11. Reliability of supply, 7 out of 11 ranked U.S. as  
20 inferior. Product consistency, 10 out of 11 ranked the U.S.  
21 as inferior.

22           I mean that's -- I know there's not a lot of  
23 Japanese product, but this is all countries, right -- other  
24 countries?

25           MS. CANNON: Right. But I'm just saying in

1 terms of the Japanese product you were saying what was Japan  
2 going to do in terms of pricing in the market. That the  
3 Japanese were going to be competing across the board with  
4 everybody and price is what's driving overall decisions in  
5 the market, which suggest that they're going to have to come  
6 in at low prices irrespective of somebody complaining about  
7 some quality problems with the United States' product  
8 specifically.

9 CHAIRMAN SCHMIDTLEIN: Okay. Okay, well, my  
10 time is up. We'll continue on the next round.  
11 Vice-Chairman Johanson.

12 VICE CHAIRMAN JOHANSON: Thank you, Chairman  
13 Schmidtlein. And I would like to thank all of you for  
14 appearing here today.

15 I became a member of the Commission in December  
16 of 2011 and January of 2012 I visited the RG Steel Plant at  
17 Spiros Point in Baltimore and so some of my first  
18 recollections of being here at the Commission involved the  
19 same products, tin plate. I also on that same day visited a  
20 Crown Cork and Seal can plant in Baltimore, so this all is  
21 coming back to me.

22 My first question involves Spiros Point. Did  
23 the elimination of the capacity represented by Spiros Point  
24 have any beneficial affect on the remaining U.S. industry?  
25 It was, after all, a fairly large producer, I believe.

1                   MR. KOPF: I would say that the Spiros Point  
2 facility not running any longer that facility, to me, was  
3 geographically displaced from a great deal of the can  
4 production in this country. I think they had their own  
5 operational challenges and after several ownership changes  
6 just couldn't make a go of it. Did we benefit as the rest  
7 of the industry from the closure of that plant? I would  
8 just say that hard to say because we've seen imports come  
9 into this country right at around the time that that  
10 facility closed and begin to take market share from us.

11                   Specifically, from U.S. Steel's perspective, we  
12 see great things for the industry moving forward. We  
13 thought we had a glimmer of hope in terms of the  
14 supply/demand balance, but then the imports that came in  
15 here really kind of paused us --and in terms of our  
16 financial benefit from that.

17                   MR. GERRISH: I think the fact that the  
18 industry's capacity utilization has declined so much over  
19 the period of review since the closure of the RG facility.  
20 It just shows that the industry, unfortunately, has not  
21 gotten benefit from the closure of that facility. They  
22 continue to have significant additional capacity to supply  
23 product to the market and yet, unfortunately, there have  
24 been non-subject imports that have come into the market and  
25 increased their share of the market and taken share away

1 from the U.S. industry. So I think that indicates the  
2 benefit -- there hasn't really been any benefit from that to  
3 the industry.

4 VICE CHAIRMAN JOHANSON: Thank you all. And  
5 this is another question that is probably best answered by  
6 U.S. Steel. I noted in Table 1-3 of our staff report that  
7 U.S. Steel has three facilities in Northern Indiana, in  
8 Gary, in East Chicago and Portage. How are those related in  
9 terms of production flow? Do all these plants product tin  
10 mill products or is there a sequence to how the product  
11 moves through all of them?

12 MS. SMITH-YODER: Yes, all three of those  
13 facilities do make tin mill products.

14 VICE CHAIRMAN JOHANSON: Is that redundant?

15 MS. SMITH-YODER: No. Some of them make some  
16 products that others are not currently equipped to make with  
17 the Can-Do implementation. At the end of Can-Do  
18 implementation all three of the facilities will be able to  
19 make the majority of the products, with the exception of  
20 Gary Tin, which will not be able to make the wide DNI  
21 product, but in Chicago and Midwest Tin will.

22 VICE CHAIRMAN JOHANSON: I'm sorry; the what  
23 product?

24 MS. SMITH-YODER: Wide DNI product or A6 wide.

25 VICE CHAIRMAN JOHANSON: Okay. Yeah, I saw

1 those plants. I was in Gary about two summers ago. I went  
2 swimming at Indiana Dunes National Seashore. They're very  
3 big plants.

4 MS. SMITH-YODER: Yes, they are.

5 VICE CHAIRMAN JOHANSON: It's very impressive.

6 I was wondering how have the U.S. trade remedies  
7 issued on imports of hot-rolled and cold-rolled steel over  
8 the past years impacted the domestic industry. In  
9 particular, I point you to the comments of purchasers  
10 reprinted on page 2-4 of our staff report.

11 MR. ANDERSON: I don't have that page in front  
12 of me, but I can tell you a little bit about our experience  
13 with the changes in the hot-rolled supply.

14 We were receiving hot-rolled steel that was  
15 being from Korea. It was being dedicated to our tin supply,  
16 so there was an adjustment and a pretty significant  
17 adjustment that we had to go through into 2017, but it was  
18 temporary. And it is something where we are very encouraged  
19 by -- obviously, there were some transitional things and  
20 some glitches, but we can see month-to-month significant  
21 improvements. We expect to continue going in that direction  
22 and in the end our 2017 performance was good and so it did  
23 impact us, but we view it as something that we are solving  
24 and making good progress on.

25 MR. KOPF: I see there's commentary, maybe, from

1 one of the other producers who's not represented here today  
2 that they could've been impacted. I can just assure you  
3 that U.S. Steel has quoted that facility volume or black  
4 plate off of our facility for them to go ahead and produce  
5 and they have not been willing to purchase from us.

6 VICE CHAIRMAN JOHANSON: Okay, thank you for  
7 your responses.

8 The staff report at page 2-12 indicates that  
9 domestic producers reported lead times are longer than were  
10 reported in the second review. Given that the domestic  
11 industry is operating at a relatively low level of capacity  
12 utilization, why do we see longer lead times now?

13 MR. MULL: Lead times are longer as a result of  
14 the operational configuration that we're operating under due  
15 to the limited amount of capacity based upon the business  
16 that we've been able to obtain and as a result of that in  
17 order for us to shorten just the lead time we would have to  
18 incur a substantial amount of fixed cost to add to the  
19 operation just to shorten lead times and we can't justify it  
20 from a financial standpoint.

21 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.  
22 Mull and Mr. Kops.

23 MR. KOPF: You know lead times are a function of  
24 us with our customers trying to provide an honest assessment  
25 of when we believe we're going to be able to get product

1 delivered to them. I believe that our lead times are  
2 significantly shorter still today than they are from buying  
3 product from overseas and I guess, you know, lead times  
4 fluctuate in the industry, no doubt about it, but -- and  
5 that's on all products, not just tin mill products. But I  
6 don't believe -- I've never heard a customer tell us that  
7 our lead times have created a problem for them to be able to  
8 order steel from us and get steel to run their facility.

9 MR. MULL: I would like to add certainly almost  
10 all of the business in the tin plate products we carry the  
11 inventory for the end use customer, so even though our lead  
12 times may be longer we're putting the inventory in that they  
13 can draw from it, so in some ways it's not impacting  
14 operations of our customers though.

15 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.  
16 Mull.

17 MS. GIACOBAZZI: May I add something, please?

18 VICE CHAIRMAN JOHANSON: Yeah, sure.

19 MS. GIACOBAZZI: USS-POSCO industry as well we  
20 work in lock step with our customers. We are not an  
21 integrated mill, but we bring in hot band as a raw material  
22 source and we have several months supply usually -- at least  
23 a 45-day supply for them on the ground in hot band form, so  
24 the lead times are not, on our side, I would say are not an  
25 issue or nothing that they're not used to because we produce

1 for them and we lock in certain days out so that they can  
2 make changes on what they need and I think that we're very  
3 flexible and provide for them what they need. And on  
4 average of the review period, we've been over 90 percent  
5 promised performance to our customer.

6 VICE CHAIRMAN JOHANSON: Is your company  
7 different -- perhaps differently placed than other folks  
8 here in the room since it seems like you have more dedicated  
9 customers because you're supplying a specific market of  
10 agricultural producers in the region?

11 MS. GIACOBAZZI: Being on the West Coast, we  
12 have very, very few, so we work much closer, maybe. I'm not  
13 exactly sure about the other domestic suppliers, but we are  
14 very close with ours and we constantly are meeting and  
15 discussing and making sure that we have what they need on  
16 hand.

17 VICE CHAIRMAN JOHANSON: Okay, thanks for your  
18 responses. The red light is on, so I'm going to stop here.

19 COMMISSIONER WILLIAMSON: I want to thank all of  
20 the witnesses for giving their testimony today.

21 So I was wondering what explains the U.S. market  
22 share decline during the period of review. I mean there's  
23 been a lot of talk about it, but I don't think you really  
24 addressed that and I was wondering is it because the U.S.  
25 manufacturers have turned -- the U.S. can manufacturers have

1       turned to non-subject imports because of the higher quality  
2       of domestic industry supply constraints or it is something  
3       else?

4                   MR. KOPF: I firmly believe that the buyers of  
5       tin plate here have turned to non-subject imports for really  
6       one reason and one reason only and that's price. I don't  
7       see that with the capacity utilizations below 50 percent in  
8       this country we have every opportunity to sell more tin mill  
9       products to our customers here. I think every single plant  
10      in this -- everybody sitting here in this room has ample  
11      capacity to do so. I think this is simply a function of  
12      being able to purchase low prices from other places rather  
13      than from us.

14                   COMMISSIONER WILLIAMSON: Okay.

15                   MR. MULL: I certainly would echo that because  
16      every year we enter into contract season and we're told what  
17      the price is and where they're going to buy the steel during  
18      the negotiations and then we try to hold onto the small  
19      amount that we're still getting. We could offer more  
20      product if we could justify ramping up capacity, which we  
21      can't do under today's extreme business conditions. Any  
22      additional supply of material that would be available to  
23      come in from Japan or any other country at subsidized,  
24      lower pricing would only impact us that much more  
25      negatively.

1                   MR. ROSENTHAL: I just want to come back a  
2 little then and provide some context here as you've seen the  
3 market shares of the domestic industry decline and so has  
4 domestic demand. If you listen to the Respondents and read  
5 their briefs, they'll tell you that they're competing  
6 constantly against alternative materials for packaging,  
7 whether it's aluminum or plastic or anything else. So  
8 they're facing very, very severe price pressures in order to  
9 get their packaging sold in competition with others.

10                   The notion that price is not important or not as  
11 important as ever is, in that context, really ludicrous,  
12 number one. Number two, the notion that the occasional  
13 supply constraints or later deliveries or occasional quality  
14 problems that are cited by the Respondents is the main  
15 driver, with respect, I don't believe the record supports  
16 that. These companies, while they may have had some of  
17 those issues from time-to-time and they're addressing those,  
18 it's not like how they forgot how to make the seal and  
19 forgot how to deliver it. They still do it. They still  
20 have happy customers using that material to produce the cans  
21 and other tin products from that, so there is plenty of  
22 supply of high quality product that customers are accepting  
23 every day.

24                   But what you've heard from the witnesses today  
25 is that ultimately the -- while the quality may be good for

1 the customer it doesn't matter unless the price is lower  
2 because they're competing against others. And that has to  
3 be understood in the context of looking at purchasers'  
4 responses about how do you compare with others. We compare  
5 very, very well because they're buying and using that  
6 product, but unless your price is lower you're not going to  
7 get the sale.

8 COMMISSIONER WILLIAMSON: Thank you.

9 Every since you all started talking this morning  
10 there's one question that's been bugging me and I know the  
11 trade lawyers in town have been very busy lately, but I'm  
12 almost wondering why haven't we seen any cases on this  
13 product, given the growth of non-subjects? And you may not  
14 want to say anything for understandable reasons, but I'm  
15 just curious.

16 MR. MULL: That's a very good question. I think  
17 part of that is resources. All of you have seen me here a  
18 lot. We only have so many resources to be working on this  
19 type of action and I would just leave it at that.

20 COMMISSIONER WILLIAMSON: Okay.

21 MR. MULL: Tin products may be just wasn't quite  
22 our first priority.

23 COMMISSIONER WILLIAMSON: Understood, okay.

24 MR. MULL: Okay.

25 COMMISSIONER WILLIAMSON: But I had to ask the

1 question.

2 MR. MULL: But it doesn't mean it's not a  
3 priority and you may see me more often.

4 COMMISSIONER WILLIAMSON: Okay, thank you.

5 MR. KOPF: May I add something, please?

6 In the opening, the Respondents talked about the  
7 fact that they really only want to use imports to fill in --  
8 they actually used the word "shortfalls" as if this was sort  
9 of a onsie/twosie, one-off kind of acquisition that they  
10 made from overseas. I mean the imports there is global  
11 overcapacity of tin. You've got people from other  
12 non-subject countries that are bringing product in here  
13 because there are places like China that are going and  
14 attacking their volumes into those markets as well.

15 The global flow of steel is being very, very  
16 disrupted and I've no doubt in my mind that the imports  
17 coming in here are being offered at low prices to try and  
18 attract business, so this is nothing but a price play. This  
19 is not small little buying. They have half of our market  
20 share right now and there's no reason for it to be that much  
21 unless it was strictly due to price.

22 MR. GERRISH: Just to add to that, there is  
23 significant overcapacity in this product area. The Chinese  
24 alone have over three million tons of overcapacity in tin  
25 mill products and they are not only coming into this market

1 in significant volumes, they've more than doubled their  
2 volume over the period of review into this market, but  
3 they're also attacking other markets around the world,  
4 including the big export markets of the Japanese. Of  
5 course, the Japanese have become export oriented over the  
6 period of review, but the Chinese are targeting the markets  
7 where the Japanese are shipping, including into Mexico. So  
8 that's very likely to lead to the Japanese significantly  
9 increasing their shipments here to this market if this  
10 relief is lifted.

11 COMMISSIONER WILLIAMSON: Thank you.

12 MS. BECK: Just to add to the importance of  
13 price, I can direct you to Slide 22 of our confidential  
14 presentation, which are specific quotes and information from  
15 purchaser questionnaires.

16 COMMISSIONER WILLIAMSON: Okay. Alright, thank  
17 you for those answers.

18 Just briefly, going back to this question of 232  
19 relief, post-hearing could you take a look at footnote 19 on  
20 page 16 of Respondents' brief about the precedent there and  
21 in post-hearing address the point they raise there.

22 MR. ROSENTHAL: I'm going to have to look at my  
23 papers. I know which one you're talking about and we will  
24 address that. Thank you.

25 COMMISSIONER WILLIAMSON: Okay, thank you.

1                   The other question, talking about speculation,  
2                   do you remember what you told us about the state of the  
3                   industry and the non-subject imports. I know there's a lot  
4                   of speculation about what would happen in 232, but is there  
5                   any reason to think that this product would be excluded?  
6                   That's probably the least speculative, based on what I've  
7                   heard this morning, but it's kind of a rhetorical question.

8                   MR. KOPF: All I can say is that I know that the  
9                   can customers and the can manufacturing institute have been  
10                  extremely vocal with letter writing campaigns requesting  
11                  things like this get excluded, so they're aggressively  
12                  searching for those exclusions.

13                  COMMISSIONER WILLIAMSON: Okay, good. Thank  
14                  you.

15                  Mr. Young, you talked about the potential skill  
16                  trade shortages at your company. I'm always interested when  
17                  we talk about companies who are trying to make reforms and  
18                  about the role of the workers, and you've already talked  
19                  about the willingness of the Unions to participate in those,  
20                  but I was wondering if you might elaborate on that and what  
21                  else needs to be done to ensure that we don't have that  
22                  skill trade shortage?

23                  MR. YOUNG: One thing that we've actually  
24                  started with U.S. Steel is we've restarted our  
25                  apprenticeship program. They call the Learner Program.

1 We've recently just in the last half of 2017 began filling  
2 some vacancies that were left by long-term employees through  
3 retirement. The union has been very involved in that  
4 process. The problem has always been the lack of capital  
5 when it comes to reinvestment in employees just as it is  
6 revitalizing our assets in the mills. That always has been  
7 a problem and it's just beginning to -- we're just beginning  
8 to move forward with those things now.

9 I will say that the companies -- I can't speak  
10 for ArcelorMittal, but U.S. Steel is where I work and the  
11 union is very involved in every aspect of what's going on  
12 with this Can-Do Project. Many of the projects that are  
13 coming out of this Can-Do have come from the employees on  
14 the floor. They're a very integral part. Their knowledge,  
15 as I stated in my testimony, that knowledge loss is what  
16 worried me, but we are on our way to rectifying that  
17 situation.

18 COMMISSIONER WILLIAMSON: Oh, good. And they  
19 are the young workers who are interested or young people who  
20 are interested in going --

21 MR. YOUNG: Very interested.

22 COMMISSIONER WILLIAMSON: Good, okay. Thank  
23 you. Thank you for those answers.

24 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

25 COMMISSIONER BROADBENT: Thank you. I wanted to

1 talk about demand just a little bit more, make sure I  
2 understand it. It seems like there's long term declines in  
3 demand for this product and can you just review -- I think  
4 you answered this before, but maybe just review it for me.  
5 What's going on in terms of the competing of other products  
6 to this product?

7 MR. KOPF: I guess I'll start. You know it's  
8 really impossible for me to go out and buy a coffee can any  
9 more to use the coffee and then keep the spare nuts and  
10 bolts in my garage like I used to love to do. There are  
11 things like coffee cans that are now largely into other  
12 materials.

13 We're obviously in a market that does not make  
14 any beverage cans to any large extent any more out of tin  
15 mill products, but you see other items like paint cans,  
16 whether they're the cans themselves or the plugs, the rings,  
17 alternate materials, whether they be plastics, aluminums or  
18 other kinds of composite materials are aggressively going  
19 after things in the packaging world and our customers  
20 certainly feel it and you see it as a consumer when you're  
21 out buying products that used to be made out of tin cans.

22 COMMISSIONER BROADBENT: So how much has demand  
23 declined over the period of investigation?

24 MR. KOPF: I've looked at it the last couple of  
25 years. I've actually not seen a significant decline in the

1 last couple of years. I think the numbers that I've seen in  
2 the last three years--I'm doing this from memory--I think  
3 it's around 100,000 tons of estimated demand loss in this  
4 market. It's not nearly as significant as it was several  
5 years ago.

6 COMMISSIONER BROADBENT: Okay.

7 MR. GOEDEKE: Tom Goedeke from ArcelorMittal.

8 COMMISSIONER BROADBENT: Yes.

9 MR. GOEDEKE: We're seeing a decline in apparent  
10 consumption. That's how we look at it. About 1% to 2% a  
11 year. And it's just a slowly declining market. And like  
12 Rob was saying, just walk in a grocery store and you just  
13 look at the fruit section. It's the declining area. That  
14 is alternative packaging, plus more and more fruits coming  
15 in fresh from South America.

16 It is not a growth market, let's put it that  
17 way. You never see products that had been in other kind of  
18 packaging now going into steel. It's always the reverse.  
19 It was massive in the beginning and now it's just a little  
20 nibbling each year.

21 COMMISSIONER BROADBENT: So when the order first  
22 went into effect in 2000 or so, was that a bigger demand  
23 falloff going on then, as opposed to now?

24 MR. GOEDEKE: The big drop-off was when we got  
25 out of beer and beverage for steel cans. That left --

1                   COMMISSIONER BROADBENT: When was that?

2                   MR. GOEDEKE: That was back in the 80s, I would  
3 say the mid-80s, hailing off into the late 80s when the  
4 final nail was in the coffin. We're seeing that in Europe  
5 now. Used to be 50% steel and aluminum in beer and  
6 beverage. Steel is now less than 10% in Europe.

7                   Since then, the other big markets have been  
8 paint, coffee, and then you're seeing more -- pet food going  
9 to aluminum and also going to pouches. You're seeing more  
10 soups going into tetra packs. You're seeing vegetables  
11 going into cups. So there are various little nibbling now  
12 going on in the marketplace.

13                  COMMISSIONER BROADBENT: Okay, thank you. This  
14 is for ArcelorMittal. You guys had discussed the  
15 relationship between ArcelorMittal and Dofasco in Canada  
16 earlier. How would you describe production trends by  
17 ArcelorMittal and import trends between 2014 and 2017?

18                  There's a table -- I guess I'm not supposed to  
19 refer to it -- but it's in Table 3 and just wanted to know  
20 what your conclusions we should draw from the production  
21 trends from ArcelorMittal and import trends between 2014 and  
22 2017.

23                  MR. MULL: Dan Mull, ArcelorMittal. The trends,  
24 as we indicated, the main driver was, there was facilities  
25 in Canada that were shut down by the same packaging

1 companies, transferred their demand to the U.S. and they  
2 asked that product to still be supplied by Dofasco. So we  
3 followed those customers to those facilities. That's the  
4 primary part of it.

5 The other was the drawn and iron portion which  
6 we do not make at Weirton and whenever we were not allowed  
7 to keep Sparrows Point, where we thought we were gonna have  
8 our product mix with drawn and iron made in the United  
9 States, that was the best alternative for us to use as a  
10 complementary piece of product offering to our customers.

11 And the final part to that is that, we do sell  
12 to our customers in a unified way from both of those  
13 facilities because, for the most part, when we acquired  
14 ArcelorMittal Dofasco, we had like customers. As the  
15 justice department, as they listen to the container  
16 manufacturers, they looked at it as one regional market and  
17 we were selling the same customers. So we've kind of kept  
18 that base the same. But it was really the movement of  
19 production out of Canada into the United States that they  
20 followed.

21 COMMISSIONER BROADBENT: Okay. Mr. Gerrish?

22 MR. GERRISH: Commissioner Broadbent, Jeff  
23 Gerrish for U.S. Steel. I think also it's important to  
24 point out that the import volume from Canada has remained  
25 flat over the period of review. There's been no real

1 increase effect; if anything, it's going down a little bit  
2 over the period. You considered this issue -- they raised  
3 the issue previously --

4 COMMISSIONER BROADBENT: I don't think that's  
5 true.

6 MR. GERRISH: In the previous review. They  
7 raised it. And the import volumes were actually increasing  
8 during that period.

9 COMMISSIONER BROADBENT: You're saying import  
10 volumes from Canada went down over the period of review?

11 MR. GERRISH: Well, they remained flat. They  
12 basically, over the period, if anything, you know, there's  
13 been a --

14 COMMISSIONER BROADBENT: I mean, in that table,  
15 I see Weirton production going down and imports from Canada  
16 going up, you know, pretty --

17 MR. GERRISH: Well, if you're looking from 2012,  
18 I guess I'm looking at our import data from the census  
19 bureau data, and which are in Exhibit 14 of our prehearing  
20 brief, which show that imports from Canada from 2012, they  
21 started at about 252-, almost 253,000 net tons and in 2017,  
22 we're 244,000 tons. So that's -- again, they've remained  
23 largely flat over that period. There's been no increase in  
24 imports from Canada.

25 MR. ROSENTHAL: Commissioner Broadbent? I think

1 Mr. Gerrish is talking about imports from Canada overall. I  
2 know you're talking about imports from Dofasco ArcelorMittal  
3 facility, which we'll address the post-hearing brief with  
4 more detail.

5 But I will say generally the changes you see are  
6 number one, very slight, and number two, have to do with the  
7 factor that Mr. Mull described as the Dofasco facility  
8 supplying its formerly Canadian customers who moved to the  
9 U.S. and that that accounts for that slight difference.

10 COMMISSIONER BROADBENT: Okay. All right. I  
11 guess we'll get that sorted out. Mr. Gerrish, we've gotten,  
12 I think, about a 20%, 21-, 22%, I shouldn't say exactly, but  
13 in the range of 20%, market share shift for the nonsubjects.

14 So if we were to remove this order, why would  
15 not the, you know, any injury or any damage that the  
16 domestic industry experiences not mostly come from the  
17 nonsubjects? I mean what leads us to believe that with so  
18 many other alternate suppliers that the damage would come  
19 from Japan?

20 MR. GERRISH: Japan has shown itself to be  
21 increasingly export-oriented over the years, certainly in  
22 this period of review, they've become increasingly  
23 export-oriented. And that's been true over prior review  
24 periods as well.

25 Their own home market is shrinking. There's

1 less demand in their own home market. And they're exporting  
2 more to other markets around the world. And they're chasing  
3 markets around the world. They're shipping to -- and just  
4 last year alone, they shipped to over 50 countries, close to  
5 a million tons of tin-milled products around the world.

6 And in those export markets, they're facing  
7 increasing pressure from the Chinese in those other markets.  
8 So they're being squeezed out of those other markets. And  
9 the pricing levels that they're getting in those other  
10 export markets is much lower than what's available in the  
11 United States.

12 This is a very attractive market for them. It's  
13 one of the biggest markets in the world for tin-milled  
14 products. The prices are higher than they would be able to  
15 get in their other export markets. And that includes their  
16 biggest export market which is right next door in Mexico.

17 The prices there are significantly lower than  
18 they are here. They're hundreds of dollars a ton lower than  
19 what they are here in the United States. So it would be  
20 absurd for them not to switch and look at the U.S. market,  
21 given what the pricing levels they're getting in their other  
22 markets.

23 The other thing is, of course, they have  
24 significant levels of excess capacity. The reported data  
25 show that it's over 400,000 tons of excess capacity, but by

1 any measure, it's certainly hundreds of thousands of tons of  
2 excess capacity that they could easily ship to this market  
3 without having to divert any shipments from their other  
4 import markets.

5 MR. ROSENTHAL: Commissioner Broadbent, just  
6 want to clarify one thing. We're not arguing that the  
7 nonsubject imports haven't had an adverse impact on the  
8 domestic industry. We're not arguing material injury  
9 because that's not the inquiry you are focusing on. What  
10 we're saying is it's an important condition of competition,  
11 which makes the industry vulnerable on statutory terms.

12 So the question for you is, what happens when  
13 you've got a vulnerable industry if the order is revoked?  
14 Our entire argument is that the Japanese will come here with  
15 lower prices and they will do more than simply displace  
16 subject imports. They will displace the domestic industry's  
17 product at lower prices and have a direct volume and price  
18 effect in an already vulnerable industry.

19 They will not simply take market share away from  
20 other subject imports as other nonsubject imports. And  
21 that's really where the rub is. Additional volume by Japan,  
22 it's highly likely for all the reasons that Mr. Gerrish  
23 said. And what's that impact going to be? It will affect  
24 the further material injury if that's the case.

25 COMMISSIONER BROADBENT: Okay.

1                   CHAIRMAN SCHMIDTLEIN: I'd like to go back to a  
2 couple of questions about price. The respondents make the  
3 argument that at this point, given that the orders have been  
4 in place for 18 years, that it makes more sense that we  
5 would look at an adjusted price for laminated tin free  
6 steel, rather than to try to go back and draw inferences  
7 from the behavior of Japanese exports almost 20 years ago.

8                   And I wonder if you could respond to that  
9 argument? Given that the order has been in place for so  
10 long, it doesn't seem completely unreasonable that we would  
11 try to look to other things. And if we did, when should we  
12 take this derivative price that they've come up with, based  
13 on laminated steel?

14                   MS. CANNON: First, I would say that looking at  
15 their behavior pre-order is something that's statutorily  
16 required, so their suggestion that you should ignore that  
17 simply because it was a while ago is not consistent with the  
18 statute.

19                   So I do believe that continuing to look at that  
20 as one of the points in your analysis is very relevant, and  
21 simply because it was a while ago. It's still the only  
22 thing we know that was happening when there was no order in  
23 place.

24                   Number two, taking the laminated steel price and  
25 then trying to do an artificial adjustment, I think is very

1 inappropriate. It isn't showing an actual price of this  
2 product in the market. It's constructing a price, based on  
3 some convoluted cost issues, which isn't reflective of the  
4 market realities.

5           The market realities, as you heard our witnesses  
6 testify, there's competition for tin-milled products in the  
7 market. They're very price-driven. They're looking at what  
8 competition they face. A laminated product is a very  
9 specialty product that isn't produced by very many people.  
10 They're not facing the same price competition in sales of  
11 that product to try to look at that, I think is very  
12 inappropriate.

13           So to try to project what they're going to do, I  
14 would suggest you look at what's going on in the market now.  
15 You look at what the nonsubject import prices are. This  
16 goes a bit to your question earlier about, you know, how do  
17 you factor in things like quality?

18           Look at what the nonsubject import prices are  
19 doing right now. They're undercutting our prices. That's  
20 how they're getting the market share.

21           And the last thing I would say is, if you're  
22 trying to figure out what the Japanese would do here right  
23 now, as opposed to looking back 18 years, another barometer  
24 that is very relevant is, what are they doing in  
25 third-country markets? What are they doing in our

1 neighboring market of Mexico? Their prices there are very  
2 low. They are lower than they are here in the United  
3 States.

4 So one would expect, if you're going to try to  
5 fast-forward and look at pricing behavior now, looking at  
6 what they're selling this product at in the adjacent market  
7 of Mexico is a lot more relevant than trying to construct an  
8 artificial price from their laminated steel pricing in the  
9 United States.

10 CHAIRMAN SCHMIDTLEIN: Okay. So are you, in  
11 terms of the argument about the price of nonsubject, is that  
12 based on the AUVs? Or did you --

13 MS. CANNON: It's both. The AUV figures we've  
14 given you in our brief are indicative -- it's also based on  
15 the industry's experience and knowledge of what's going on  
16 in Mexico and their information that prices in Mexico are  
17 lower than they are in the United States.

18 CHAIRMAN SCHMIDTLEIN: Okay. So testimony here  
19 today? Is what you're --

20 MS. CANNON: Right.

21 CHAIRMAN SCHMIDTLEIN: Okay. Mr. Gerrish?

22 MR. GERRISH: Yes, in terms of the pricing  
23 levels to other export markets, you have all those data on  
24 Page 4-11 of your staff report, Table 4-8, which provides  
25 all the pricing levels for the Japanese producers to other

1 export markets, including Mexico. And it chose that those  
2 pricing levels are significantly below the pricing levels  
3 here in the United States.

4 MR. KOPF: I'd just like to make one more  
5 comment. The reason that they're making this argument on  
6 laminated steel is they have no other argument to make.  
7 It's a niche product. It's not representative of the vast  
8 majority of the tin-milled products that are being purchased  
9 in this market.

10 I found it curious that the respondents in their  
11 opening testimony talked about how things have changed since  
12 18 years ago -- and not everything has changed. There's a  
13 lot of things that haven't changed. In fact, what hasn't  
14 changed is Japan continues to dump product into this country  
15 when they have the opportunity.

16 Two years ago, the Commission, which I'm very  
17 grateful for, found them to have dumped hot-rolled and  
18 cold-rolled into this country. Two years ago, not 18 years  
19 ago or 20 years ago, but two years ago. And they're dumping  
20 product down into Mexico. I have every reason to believe  
21 they'll continue to dump product if the orders are moved  
22 here into the U.S.

23 CHAIRMAN SCHMIDTLEIN: Okay. Let me just follow  
24 up on the -- in terms of the tables in the staff report that  
25 you talked about, right? Where they share the value and

1 so-forth and the volume -- can you respond -- and I  
2 understand that that doesn't -- they provided a comparison,  
3 right? On Page 45 of their brief. Or -- it's based on  
4 Exhibit 4 to their brief. But there's a table on Page 45.

5 And according to the respondents in these  
6 various countries under the HTS--there's several HTS  
7 numbers--there are other countries that are lower-priced  
8 than Japan, right? Does Japan have the lowest AUV? So I  
9 guess, the implication being that -- Japan is not the  
10 country that's driving low prices in those countries? So  
11 can you respond to that? Have you looked at that exhibit?  
12 How do you respond to that argument?

13 MR. GERRISH: I can start on that. And we'll  
14 certainly --

15 CHAIRMAN SCHMIDTLEIN: And you can follow up in  
16 the post-hearing --

17 MR. GERRISH: Exactly. That's right. We will  
18 definitely do that. But just a few comments at this point.  
19 One is, if you look at this charge on Page 45, it does show  
20 that, even where they argue they're not the lowest price  
21 supplier in the market for a number of these markets, they  
22 are certainly among the lowest in the market. But the  
23 really important point here is, even if they are not the  
24 lowest priced supplier in this particular market, they are  
25 selling into this market at extremely low prices.

1                   And those data are reflected in your staff  
2 report. So whether they are the lowest priced supplier in a  
3 particular market, the fact is that they are supplying to  
4 these markets at significantly lower prices than what are  
5 available in the current U.S. market, so they would be  
6 likely to sell in this market at much lower prices than what  
7 are currently sold at in this market. So I think those data  
8 very clearly show that.

9                   MR. ROSENTHAL: Chairman Schmidtlein, if their  
10 argument is that the company with the lowest price gets  
11 every sale, then that company would have 100% of the sales  
12 presumably. That's not the way things work in competitive  
13 markets.

14                   That's why you often see in cases here a mixed  
15 pattern of underselling and overselling when you've got  
16 competition based on price. Some days you win a sale with a  
17 lower price, some days the other person wins a sale with a  
18 lower price. The important thing is that price is driving,  
19 or very important, to purchasing decisions day-in and  
20 day-out in this industry, whether you are located in Mexico  
21 or Japan or the U.S.

22                   And so they don't have to be the lowest in all  
23 these markets to indicate that they are selling a quality  
24 product on price and get a lot of sales there, just as they  
25 would here. They don't have to be the lowest price in order

1 to get every sale. They just need to be the lowest price on  
2 occasional sales to get a significant amount of market  
3 share.

4 MR. KOPF: I guess I'd like to just add one more  
5 point to that. And that is the fact that they don't even  
6 need to bring in the lowest priced product into the market.  
7 The mere offer of a low price forces the domestic industry  
8 to react, either to choose to meet the low price so we don't  
9 lose more sales, or it causes us to lose the business.

10 So we've got a choice that's very untenable. If  
11 they're allowed back into here, they don't have to  
12 necessarily bring Ton Number 1 into this market to be very  
13 impactful into this market and harm this industry more than  
14 it's already been harmed. They will come in here, they will  
15 offer cheap prices. And the mere offer will cause a ripple  
16 effect that's gonna force all of us to have to reduce our  
17 prices. Nonsubject imports will probably reduce their  
18 prices as well. It's a horrible spiral that they will  
19 create.

20 CHAIRMAN SCHMIDTLEIN: Okay, thank you for that.

21 MS. CANNON: If I could just add one more. If  
22 you look at Exhibit 4, actually find a lot of the data that  
23 they've provided, pretty compelling in the opposite  
24 direction. In other words, they say that they're not the  
25 lowest, and there's maybe a couple lower in Mexico. But

1 look how many people are higher. I mean they are way down  
2 there in terms of prices. So we can go into more detail in  
3 our post-hearing brief, but I don't think that this table  
4 helps them. I think it proves just the opposite.

5 CHAIRMAN SCHMIDTLEIN: Okay, thank you. I have  
6 two more questions that relate to volume. First question  
7 is, can you respond to the argument that Japan has a  
8 vertical integration strategy in certain key export markets?

9 And that that strategy -- and they provided some  
10 data to back this up that's reproduced in their brief around  
11 Pages 34, 35, it looks like, 33, that this indicates they  
12 would not have an incentive to ship large volumes to the  
13 United States because they are committed to these affiliates  
14 in certain key export markets, and have been shipping  
15 increasing volumes to those markets.

16 MR. ROSENTHAL: They made the same argument in  
17 the previous review. You appropriately rejected it then --  
18 because we were able to show then and, as we can today, that  
19 that does not prevent them from continuing to export to  
20 Mexico, for example, and then the other destinations.

21 It also doesn't insulate them from attacks on  
22 their own declining home market by the Chinese and others.  
23 Whatever relationship they have, there's not enough to  
24 prevent them from the absolute need to keep their exports up  
25 and keep their capacity utilization up. We'll expand on

1 that more in our post-hearing brief.

2 CHAIRMAN SCHMIDTLEIN: Yes, I would invite you  
3 to do that.

4 MR. KOPF: One more comment, please. They may  
5 have a vertical integration strategy elsewhere. But they've  
6 got more unused capacity in Japan right now in tin-milled  
7 products than they shipped in here when they were found  
8 guilty in 1999-2000, so why wouldn't they take advantage of  
9 that extra capacity they have and ship it here? That  
10 argument doesn't make sense to me.

11 CHAIRMAN SCHMIDTLEIN: Okay. That's sort of a  
12 segue into my last question, which is, the respondents have  
13 cited a couple cases where the Commission found that excess  
14 capacity does not necessarily indicate a likelihood of  
15 increased imports.

16 One is the second sunset review on hot-rolled  
17 steel from Japan and the other was a second sunset review of  
18 cut-to-length plate from Japan. Could you -- and you don't  
19 have to do it now -- but in the post-hearing, could you  
20 please explain why you think those cases are distinguishable  
21 from the situation we have here?

22 MR. GERRISH: Yes. We'll do that in the  
23 post-hearing brief.

24 CHAIRMAN SCHMIDTLEIN: Okay, thank you. My time  
25 is up. So Vice Chairman Johanson.

1                   VICE CHAIRMAN JOHANSON: Thank you, Chairman  
2                   Schmidtlein. On Page 15 to 16 of the U.S. Steel pre-hearing  
3                   brief, U.S. Steel seems to imply that capacity of the  
4                   Japanese producers for excluded products should be counted  
5                   as relevant tin-milled capacity.

6                   Is the point made by respondents at Page 21 that  
7                   the excluded products are high-value specialty products a  
8                   good one? Why would the Japanese products shift out of a  
9                   high-value specialty product into a commodity-grade tin-mill  
10                  product?

11                  MR. GERRISH: They do have significant levels of  
12                  excess capacity to make the covered product and they have  
13                  shown in other markets that they are more than willing to  
14                  increase their sales and shipments of the standard grade  
15                  tin-milled products as opposed to the laminated products and  
16                  other excluded merchandise. And they would certainly look  
17                  for any opportunity to make additional sales here to the  
18                  U.S., as I think Mr. Kopf has testified, these laminated  
19                  products are more of a niche product.

20                  There is a big market here for the products that  
21                  are currently covered by the order, and they would certainly  
22                  look for any opportunity they could, given that significant  
23                  level of excess capacity that they have, to be able to ship  
24                  here to this market and capitalize on the higher prices  
25                  available for the products than that are available in other

1 markets for the same products.

2 And again, they're facing these pressures in  
3 their other export markets as well, which is likely to force  
4 them to ship more to the U.S., given those pressures they're  
5 facing in their other export markets from Chinese exports.

6 MS. CANNON: Commissioner Johanson, if I could  
7 also add -- if you are looking at idle capacity and you look  
8 at the total market, a lot of that is simply an allocation  
9 and when you allocate products, even if you're allocating  
10 them to the excluded product, if the capacity is idle, it's  
11 sitting there available to produce anything.

12 That isn't there for a question of weighing  
13 whether you'd prefer to make a higher-valued product or a  
14 lower value, it's simply a matter of being able to make any  
15 product that you could sell into the market.

16 So I think that that's also relevant to the  
17 Commission's analysis, is to look at the overall idle  
18 capacity that's sitting in these mills that may be allocated  
19 somewhere else, but is nonetheless available to make a  
20 subject product for export, too.

21 MR. GERRISH: That's exactly right. It's idle  
22 capacity. Right now, they're not able to produce any  
23 product. They're not making any sales using that capacity.  
24 They're certainly gonna look for any opportunity that they  
25 can to sell additional product into this market. And that

1 the higher prices that are available here than are available  
2 in other markets for the same merchandise.

3 VICE CHAIRMAN JOHANSON: All right, thank you,  
4 Mr. Gerrish and Ms. Cannon. On Page 27 of the Commission  
5 staff report, there is a comment from a producer "that U.S.  
6 manufacturers are not investing to meet the evolving demands  
7 of the marketplace in terms of quantity and technical  
8 requirements."

9 First I'd like to know how you understand that  
10 phrase, "evolving demands," and is this market really  
11 changing?

12 Second, how do you respond to the claim that the  
13 domestic industry has not invested to adapt to such changes?

14 MS. SMITH-YODER: So I go back to the Can-Do  
15 portfolio and back to a couple of comments -- sorry, Amy  
16 Smith-Yoder from U.S. Steel -- I go back to the Can-Do  
17 portfolio and the two confidential documents that you have  
18 for your reference.

19 And to answer the question that we're not  
20 evolving, there are two particular projects within the  
21 Can-Do portfolio that will upgrade our facilities to be able  
22 to make some of the most stringent requirements of the  
23 product that is a direct request from our customers to be  
24 able to make. So that we continue to be able to supply the  
25 products that they ask us to supply.

1                   In addition, we continue to work with our  
2 customers on trial materials that we partner with them in  
3 order to make the materials that, as their products continue  
4 to evolve, our products continue to evolve with them. So  
5 that process is always ongoing.

6                   I can't think of any instance where, due to any  
7 type of product or process restrictions that we have not  
8 entered into at least those attempts to try and make those  
9 products for our customers. So as their products continue  
10 to evolve, we evolve and are evolving with them.

11                  VICE CHAIRMAN JOHANSON: Out of curiosity, can  
12 you describe an example of how a product has evolved?

13                  MS. SMITH-YODER: Sure. With the wider DNI  
14 product that we see coming into the market, that is an  
15 evolution that has taken place within the past couple of  
16 years. We do have a significant interest and investment in  
17 that. And we have been working with one of our customers to  
18 help through the trial process to qualify our material to be  
19 made in their process where they've made significant  
20 investments.

21                  VICE CHAIRMAN JOHANSON: What is wider DNI? As  
22 a consumer, if I were to get this tour, what would I --

23                  MS. SMITH-YODER: It's a two-piece can.

24                  VICE CHAIRMAN JOHANSON: Okay.

25                  MS. SMITH-YODER: Rather than a three-piece can.

1       So the bottom and the can body are one piece and then the  
2       top is the --

3                   VICE CHAIRMAN JOHANSON:  Is that a wider  
4       material then?  Is that the attraction?

5                   MS. SMITH-YODER:  Not necessarily wider.  It's  
6       just one step less, or a couple steps less in the process.

7                   VICE CHAIRMAN JOHANSON:  So it's less expensive  
8       that way then?

9                   MS. SMITH-YODER:  Probably not.

10                  MR. KOPF:  If I can just jump in here for a  
11       moment.  So in the case of wider DNI, you as the consumer  
12       wouldn't necessarily see any difference.  You'd still see a  
13       two-piece can, whether it was made out of narrow DNI or  
14       wider DNI.  The benefit comes to the person making the can  
15       here, where with one punch of the machine, they can generate  
16       more cans per punch, if that makes any sense to you.

17                  VICE CHAIRMAN JOHANSON:  Actually, it kind of  
18       does.  I saw cans being punched in -- at the Crown Cork  
19       Plant in Baltimore about five years ago.  But I do recall  
20       that very well.  So it's a benefit that goes to the producer  
21       then?  That's the bottom line?

22                  MS. SMITH-YODER:  Yes.

23                  VICE CHAIRMAN JOHANSON:  To the can distributor?

24                  MR. KOPF:  Yes.  Exactly.

25                  VICE CHAIRMAN JOHANSON:  Okay, that helps out a

1 lot. Thanks for your answers. Can someone offer an  
2 explanation as to why Mexico is by far Japan's top export  
3 destination? Is there a NAFTA angle here? And is there can  
4 production in Mexico that might end up here in the U.S.  
5 market?

6 MR. KOPF: Rob Kopf with U.S. Steel. Look,  
7 they have excess capacity over in Japan to make tin mill  
8 products. I think they're looking for any market to go  
9 ahead and sell that product to, and there is not a large tin  
10 manufacturing component down in Mexico. So they look to  
11 that market as something that they'd like to penetrate.  
12 They've shown a willingness to do so at any price.

13 There is certainly a concern that product that  
14 ships down into Mexico from Japan at dumped prices will have  
15 impact on products up here in the United States. It's not  
16 necessarily just cans. There are things like closures and  
17 caps and things of that nature that can get made down in  
18 Mexico, and people up here in the U.S. make them as well.

19 You find that dumped products into Mexico can  
20 then get product here after they get stamped down in Mexico  
21 and brought here, and compete with the products that we're  
22 trying to sell to our customers here.

23 VICE CHAIRMAN JOHANSON: Okay. Thanks, Mr.  
24 Kopf. Do you know if there's tin mill production in Mexico?

25 MR. KOPF: Robert Kopf with U.S. Steel. Yeah,

1 I believe there's a very small amount of tin mill  
2 production, but it's much less significant than that of what  
3 we make here in the United States.

4 VICE CHAIRMAN JOHANSON: Okay, thanks for your  
5 response. How much of the downturn in U.S. demand for tin  
6 mill is due to competition with other substitute packaging  
7 materials as opposed to imports of tin mill product?

8 MR. MULL: Dan Mull, ArcelorMittal. The  
9 downward trend, I think we talked about the general earlier,  
10 it's been about one to two percent a year, and so that's  
11 what you would lose to competing materials. The balance of  
12 it has certainly been priced from, driven by competitive  
13 products coming in from imports. So the vast majority of  
14 the loss is certainly the imports that have been -- have  
15 taken. But you know, the demand continues to go down,  
16 about one to two percent.

17 MR. ROSENTHAL: That's -- Paul Rosenthal --  
18 that's one of the very difficult parts of this industry to  
19 comprehend. Yes, demand is declining overall one or two  
20 percent a year. But take a look at the dramatic drop in  
21 market share of this domestic industry. So as the market  
22 shrinks, their share of the market has been dropping by --  
23 and I think it's a public number, I know it's a public  
24 number, over 20 percent in this Period of Review.

25 That's the problem, and that's why they're in

1 such a vulnerable condition. That is why revocation of the  
2 order against Japan is going to put them in an even worse  
3 position. They cannot afford to lose more market share. I  
4 would just add one more thing, because while we haven't had  
5 a question on this, I know this has been argument made by  
6 the Respondents in their brief this time and in previous  
7 times.

8           They have said well, you know, you don't have  
9 to worry about increased imports anymore because the  
10 purchasers rely on domestic industry for the vast majority,  
11 is what they used to say, "vast majority of their sales,"  
12 because of for just-in-time delivery, lead times,  
13 transportation, you name it. All these structural issues  
14 that the Respondents in the past have said will prevent any  
15 significant increase of imports if the order is revoked.

16           They said that in the last review and what  
17 happened? Imports took another 20 percent of the market  
18 share. I don't know if they're going to make that argument  
19 later today, but I suggest to you that there is no longer,  
20 if there ever was, any impediment to purchasers relying on a  
21 more increased basis on imports, subject or non-subject.

22           There is no bottom that we can tell that the  
23 industry could reach because of some inherent advantage of  
24 being located in the United States. This industry truly in  
25 jeopardy if this order is revoked.

1                   MR. KOPF: Robert Kopf with U.S. Steel. If I  
2 can just add one comment to that, that very good one just  
3 made. It's important to note that while the imports are  
4 coming from far away destinations, they are brought in here  
5 in very large quantities by boat and they're staged close to  
6 where the consumers are located.

7                   So it's not as if this product is ordered and  
8 manufactured in the minute. It's unloaded off the boat. It  
9 has to ship to a can plant. They are staging massive  
10 amounts of inventory here in this country in various  
11 locations, to be able to make sure that they can meet the  
12 just-in-time needs of customers, just like we house  
13 inventory in our facilities.

14                   So there is no, to Mr. Rosenthal's point,  
15 there is no distinct competitive advantage of us being  
16 located here in the country.

17                   VICE CHAIRMAN JOHANSON: All right. Thank you  
18 for your responses. My time has expired.

19                   COMMISSIONER WILLIAMSON: Thank you. Just a  
20 few questions. Our data show prices for all products were  
21 relatively steady in 2014 and 2015. They fell in 2016, and  
22 then rose somewhat in 2017, and I was wondering is this the  
23 experience that the U.S. producers saw firsthand, and what  
24 explains these trends?

25                   MR. KOPF: Rob Kopf with U.S. Steel. As I

1 talked about very early on in the discussion here today, the  
2 steel market went through a very intense and massive  
3 correction in 2015, brought on by a lot of factors including  
4 waves of imports coming into this country. The competitive  
5 environment that -- and the price of all steel products into  
6 this country back in 2015, that really essentially hit  
7 bottom at the end of 2015.

8 What tends to happen when you're in that  
9 environment is the contracts that we negotiate with our tin  
10 customers here, which tend to be annual in nature, calendar  
11 year, those are impacted by the tremendous price slide that  
12 we saw in the overall steel market here across all of 2015.

13 So it's really kind of almost a one year lag  
14 effect, if that makes any sense to you, based upon the fact  
15 that these are fixed price contracts that we're negotiating  
16 with our customers, that really went into effect in '16.

17 COMMISSIONER WILLIAMSON: Okay.

18 MR. GERRISH: Jeff Gerrish for U.S. Steel. I  
19 just wanted to add to that. You know, prices were declining  
20 over the Period of Review from 2014 through 2016, and that  
21 was certainly at least in part due to -- maybe in large part  
22 due to the influx of significant volumes of non-subject  
23 imports coming into the market.

24 Now there was an increase in pricing from the  
25 interim period in 2016 and the interim period in 2017.

1 There was also an increase in raw material costs at that  
2 time, and the industry was trying to offset some of that  
3 increase in raw material costs. But as you can see from your  
4 data, they weren't able to do that. They weren't able to  
5 increase prices enough to offset those raw material price  
6 increases, and in fact their operating income or operating  
7 loss went down, I'm sorry, the operating loss got worse in  
8 the interim period in 2017 as a result because they were not  
9 able to raise their prices enough to offset those increases  
10 in their raw material prices.

11 COMMISSIONER WILLIAMSON: Okay. Thank you for  
12 that answer. On some of the domestic industry's financial  
13 performance, the Japanese respondents have made -- make  
14 arguments about the relative performance of particular  
15 domestic producers in their briefs at page 50 and 51. I was  
16 wondering could you respond in your post-hearing brief to  
17 those arguments they make?

18 MR. ROSENTHAL: Certainly we will.

19 COMMISSIONER WILLIAMSON: Okay. This has  
20 somewhat been addressed, but if you could do more in  
21 post-hearing. The purchaser Silgan has provided comments  
22 about the nature of its recent contract negotiations with  
23 U.S. Steel, and I was wondering if you could respond  
24 post-hearing to those, further to those comments?

25 MR. GERRISH: Yes, we'll respond to that in

1 the post-hearing brief.

2 COMMISSIONER WILLIAMSON: Thank you, and I  
3 think that's all the questions I have for now. Thank you.

4 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

5 COMMISSIONER BROADBENT: Thank you, Chairman  
6 Schmidtlein. I wanted to take advantage of all the wisdom  
7 and experience on steel that's in the room today. It's an  
8 industry that's seen remedies, ADCVD remedies as well as  
9 voluntary restraint agreements and global safeguards.

10 During the steel cases of the early 1990's and  
11 early 2000's, to what extent did safeguards or VRAs affect  
12 negative determinations in ADCVD orders, either in original  
13 or in sunset reviews? What was -- historically what's been  
14 the interaction between the VRAs and the safeguards in ADCVD  
15 determinations?

16 MR. ROSENTHAL: When you mentioned wisdom, I  
17 looked around.

18 COMMISSIONER BROADBENT: Well, you're the  
19 personification.

20 MR. ROSENTHAL: Well thank you, and this  
21 uncharacteristic modesty may shock you.

22 COMMISSIONER BROADBENT: Yeah.

23 MR. ROSENTHAL: But we -- you don't have to  
24 agree so readily, Commissioner.

25 (Laughter.)

1                   MR. ROSENTHAL:    But there really has been  
2                   kind of a mixed approach by the Commission and effect to the  
3                   industry on these various remedies that have been imposed.  
4                   I think we're probably better off answering in our  
5                   post-hearing brief, but I can tell you, for example, in a  
6                   case involving wire rod, where the -- we've filed a series  
7                   of anti-dumping countervailing duty cases in around 2002, in  
8                   the midst of the 201 relief that had been imposed, because  
9                   the 201 relief had been ineffective.

10                   And so, you know, you can't simply say well  
11                   gee, you've got relief under a safeguard remedy and decide  
12                   that the industry doesn't need any further relief, and the  
13                   Commission quite appropriately affirmed the determinations  
14                   in the anti-dumping cases filed at that time.

15                   So there's been a mixed reaction by the  
16                   Commission and even the agencies, I'm sorry, the Commerce  
17                   Department, about how duties should be considered. One of  
18                   the issues that I remember being debated and thought about  
19                   back in the early 2000's was whether the -- any 201 duties  
20                   was going to be -- how it's going to be treated in the  
21                   context of an ongoing anti-dumping case with respect to how  
22                   it affects the dumping calculations.

23                   The Commerce Department ruled one way. I'm  
24                   not sure how that would be treated today. So it's a long  
25                   way of saying that there's been a mixed approach, an

1 uncertain approach and certainly not a consistently  
2 statutorily directed approach that the Commission or the  
3 Commerce Department has found. We'll expand more on this in  
4 the post-hearing brief.

5           The record unfortunately at my age will  
6 suggest that we can go back further, back to the days when  
7 -- the 80's when there was a 201 relief on carbon steel, an  
8 '84 case which resulted in voluntary restraint agreements.  
9 A lot depends on the nature of the particular remedy. In  
10 some instances, restraints were imposed in exchange for the  
11 giving up of, or having a peace clause, if you will, and  
12 filing no other cases.

13           So it's been different in every period.  
14 That's why it's hard to generalize.

15           COMMISSIONER BROADBENT: Okay.

16           MR. GERRISH: Commissioner Broadbent, Jeff  
17 Gerrish for U.S. Steel, and agree with everything that Mr.  
18 Rosenthal said, and it is somewhat of a mixed picture. The  
19 Japanese response has cited to the cold-rolled case from  
20 2002. But the situation there was completely different than  
21 the situation in this particular case.

22           There, the Section 201 relief, which was at  
23 issue there, the remedies had been ordered and issued and  
24 the President had issued the relief some time prior to that,  
25 and in fact the decisions had been made as to which

1 countries were being excluded, and in fact what products  
2 were being excluded from the order and from the relief.

3 And in fact because the relief had been  
4 ordered some time before the Commission was looking at it,  
5 the Commission had collected -- was able to collect data in  
6 terms of what the impact of the Section 201 relief was. So  
7 none of that is true here, and as we said, it's completely  
8 uncertain at this point what if any relief is going to be  
9 taken, and even when the President acts in the Section 232  
10 case, we're not going to know what product exclusions are  
11 going to be granted for some time after that, because  
12 there's going to be a whole process associated with that.

13 So the cold-rolled case was completely  
14 different than the situation we're facing here.

15 MR. ROSENTHAL: And I'd add also, to the  
16 extent it makes any difference whatsoever, a sunset review  
17 analysis is different than an analysis of an original  
18 investigation determination. So it is much more complicated  
19 than one can glean from a particular decision on facts that  
20 were totally different than the ones we have today.

21 COMMISSIONER BROADBENT: Okay, thank you.

22 CHAIRMAN SCHMIDTLEIN: I have no further  
23 questions. Vice Chairman Johanson.

24 VICE CHAIRMAN JOHANSON: Thank you, Chairman  
25 Schmidtlein. I was wondering, where is the U.S. market for

1 tin mill products headed? Has it hit rock bottom, or will  
2 the long-term decline continue at about the same rate? What  
3 does market research tell you about substitute products?

4 MR. GOEDEKE: This is Tom Goedeke,  
5 ArcelorMittal. I think we're going to see a continued slow  
6 decline. There's always going to be a need for tin mill  
7 products. There are always going to be canned foods, but  
8 it's going to be less. As the consumer likes other types of  
9 packaging out there, you will find a slow switch to that  
10 kind of packaging.

11 But the canned product really provides a high  
12 quality container, a safe container, a low cost container  
13 that's always going to be needed, but the need is going to  
14 just slowly decline. You may see some years where it's  
15 stable, some years it may go up a half a point; other years  
16 it is going to go down a little bit.

17 VICE CHAIRMAN JOHANSON: Has consumption  
18 declined to some extent due to concerns about Bisphenol A in  
19 coatings, BPA?

20 MR. GOEDEKE: Tom Goedeke, ArcelorMittal. I  
21 don't think we've seen a decline because of BPA. The  
22 canning industry has gone out of their way to work with  
23 coatings suppliers to provide BPA-free coatings. I think  
24 it's a concern by some consumers. I think it's an  
25 unwarranted concern, that's from my own personal view and

1       what I've seen out there from scientific data. But it is  
2       out there, but we don't believe it's caused a decline in  
3       canned foods.

4                       VICE CHAIRMAN JOHANSON: Now I'm kind of  
5       curious about all this, just largely because I kind of grew  
6       up with cans, and --

7                       (Off mic comment.)

8                       VICE CHAIRMAN JOHANSON: Okay. I'm not going  
9       to even comment on that. I turned out okay, I think. I  
10      mean --

11                      (Laughter.)

12                     VICE CHAIRMAN JOHANSON: No, I'm just curious  
13      because I took -- this is all personal here, but I took out  
14      my recycling on Sunday night and I had one can. It was for  
15      tomato paste, because I made a stew over the weekend. I  
16      know we just used to use a lot more, and I'm wondering is  
17      there any industry effort to resurrect the public image of  
18      these products, because I would imagine there are certain  
19      attributes of cans, such as easier recycling, that would  
20      perhaps appeal to consumers?

21                     MR. GOEDEKE: Tom Goedeke again,  
22      ArcelorMittal. Our company is very much involved with the  
23      AISI and the Canned Food Alliance, which does a lot of work  
24      in canned food promotion, mostly from the governmental end  
25      and with dieticians and so on. There's also, and I think

1 Rob Kopf can speak to this from the CMI, what they are  
2 doing. That's the Can Manufacturers Institute and their  
3 promotion of canned goods.

4 MR. KOPF: Yeah, Rob Kopf with U.S. Steel.  
5 Yes, the Can Manufacturers Institute is also very involved  
6 in information, trying to get people to understand the  
7 safety, the strength, all those kinds of things of canned  
8 goods. I would just say that we as a company and I think  
9 several, we used to be part of the Canned Food Alliance,  
10 really have functioned more of a financial resources and our  
11 ability to do all that.

12 You see what our financial statements are in  
13 tin mill products, and we'd love to be able to make more  
14 money, be able to educate people to the benefits of canned  
15 food.

16 VICE CHAIRMAN JOHANSON: Okay. Anybody else?  
17 That concludes my questions. I appreciate you all being  
18 here today.

19 CHAIRMAN SCHMIDTLEIN: All right. That  
20 concludes the Commissioner's questions. Do staff have any  
21 questions for this panel?

22 MR. CORKRAN: Staff has one question.

23 MR. BRININSTOOL: Hi there. This is directed  
24 to ArcelorMittal. In your pre-hearing brief for Exhibit 3,  
25 we noticed that it was a portion of a table, and we were

1 wondering if in your post-hearing brief you could provide  
2 the complete table for Exhibit 3.

3 And also within that request, in one of the  
4 headings there are some abbreviations, and we're wondering  
5 if you could give a definition for each of the abbreviations  
6 in that table? Thank you very much.

7 CHAIRMAN SCHMIDTLEIN: I assume you can do?

8 MR. ROSENTHAL: Yes. Silence in this case  
9 means we're saying yes, we will do that.

10 CHAIRMAN SCHMIDTLEIN: Okay, all right. Very  
11 good. Do Respondents have any questions for this panel?

12 MR. PORTER: Respondents have no questions.

13 CHAIRMAN SCHMIDTLEIN: Okay. Thank you, Mr.  
14 Porter. All right. That brings us to our lunch hour. So  
15 we will take a one hour lunch break until 1:15. Let me  
16 remind you that the hearing room is not secure, so please  
17 take your documents and any confidential information with  
18 you. We will stand in recess until 1:15.

19 (Whereupon, at 12:15 p.m., a luncheon recess  
20 was taken.)

21

22

23

24

25

1                   A F T E R N O O N   S E S S I O N

2                   MR. BISHOP:   Would the room please come to  
3                   order?

4                   CHAIRMAN SCHMIDTLEIN:   Okay, good afternoon.  
5                   Mr. Secretary, are there any preliminary matters?

6                   MR. BISHOP:   Madam Chairman, I would note that  
7                   the panel in opposition to the continuation of the  
8                   anti-dumping duty order have been seated. All witnesses  
9                   have been sworn in and this panel has 60 minutes for their  
10                  direct presentation.

11                  CHAIRMAN SCHMIDTLEIN:   Very well. Mr. Porter,  
12                  you may begin when you're ready.

13                  MR. PORTER:   Thank you, Madam Chair. We're  
14                  going to begin today with the testimony of Mike Arena.

15                  STATEMENT OF MICHAEL ARENA

16                  MR. ARENA:   Commissioners, good afternoon. It's  
17                  a great opportunity to be in front of this Commission again.  
18                  My name is Michael Arena and I am the Vice President for  
19                  logistics and operation support for Silgan Containers.

20                  One of my major responsibilities is supervising  
21                  Silgan's purchases of tin mill steel and other manufacturing  
22                  inputs such as aluminum. I have been responsible for tin  
23                  mill steel purchases for 12 years.

24                  By way of background, Silgan is the largest  
25                  provider of metal food packaging in the United States.

1 Silgan and its sister companies have 55 manufacturing plants  
2 located throughout the United States. Silgan and its sister  
3 companies employ more than 6500 American workers in  
4 high-paying manufacturing jobs throughout the U.S.,  
5 including multiple facilities located in the so-called Rust  
6 Belt.

7           Although Silgan officially became a company in  
8 1987, it traces its history back to 1899 when the Carnation  
9 Can Company began making its evaporated milk cans. Today,  
10 Silgan is by far the largest manufacturer of tin cans in the  
11 United States.

12           As the largest U.S. manufacturer of tin cans in  
13 the U.S., Silgan is also the largest U.S. purchaser of tin  
14 mill steel. Every year, Silgan purchases around 850- to  
15 900,000 tons of tin mill steel, which is probably about half  
16 of all steel consumed in the U.S. for food cans.

17           My office is in Woodland Hills, California just  
18 outside Los Angeles. I've come to Washington because you  
19 will make a decision that will affect my company's business  
20 and therefore my company believes very strongly that you  
21 should have correct information and correct facts when you  
22 make that decision.

23           Quite honestly, what the U.S. mills have told  
24 you about the U.S. market, what they have stated in their  
25 legal briefs, and what they have told you here today conveys

1 an impression that is simply not true from Silgan's  
2 perspective. What follows will be Silgan believed to be an  
3 accurate depiction of the U.S. tin mill steel market today.  
4 It's a subject I am passionate about as are others in our  
5 industry. We are bearing witness today in front of our key  
6 strategic suppliers because it is the right thing to do for  
7 our industry in this very, very unique situation.

8 I noted that unlike before, I am the only  
9 purchaser to have come to Washington. My understanding is  
10 that this reflects more about complicated schedules than any  
11 disagreement with what I will have to say. Indeed, based my  
12 long knowledge of the market, I am quite confident that my  
13 description today of the competitive dynamics are shared by  
14 the other U.S. can companies.

15 In a few minutes, I will address what  
16 specifically the U.S. mills have said that Silgan believes  
17 not to be true. But right now, I want to make a few very  
18 important overarching points.

19 Silgan is 100 percent supportive of free and  
20 more importantly fair trade. We believe our current tin  
21 mill supply base reflects that philosophy. We are trying  
22 very hard to support the domestic tin mill steel industry.  
23 It is in our business interests to have a vibrant domestic  
24 supply base. It is not in our business interest to be  
25 heavily reliant on imports and our track record 100 percent

1 supports that philosophy.

2 The domestic tin mill industry, however, has let  
3 us down. Collectively, the U.S. tin mill steel industry is  
4 becoming less and less reliable as suppliers. They're  
5 making it harder and harder for us to source domestic steel  
6 to meet our business needs.

7 Trade cases against other steel products have  
8 hurt two domestic suppliers who now struggle to obtain  
9 quality feedstock. Trade restriction on hot-rolled steel  
10 imports have severely restricted the ability of both UPI,  
11 which needs to buy hot bands, and OCC, which needs to buy  
12 tin mill black plate to obtain both the volume and/or  
13 quality of substrate necessary to effectively supply tin  
14 mill steel to their customers.

15 Data that we have collected in the ordinary  
16 course of business shows that the availability and  
17 reliability of tin mill steel has decreased each and every  
18 year over the last five years. Domestic suppliers just have  
19 been unable to supply Silgan's needs on a consistent and  
20 reliable basis.

21 These failures have resulted in significant  
22 disruption in Silgan's operations and chaos and to try to  
23 secure steel while delivering performance decreases and  
24 forecasted annual volume is unmet.

25 In my experience, the domestic tin plate

1 industry just cannot execute or fulfill against these  
2 promises. I understand from the public version of the  
3 Commission and staff's pre-hearing report that other buyers  
4 of tin plate have shared similar frustrations.

5 For these reasons, we have had to increase our  
6 imports from our European and Canadian supply partners.  
7 Silgan also manufactures cans and closures in Europe, much  
8 as it does in the United States and for this reason, we have  
9 supply relationships with the major European producers of  
10 tin mill steel to serve our European manufacturing  
11 operations.

12 When we cannot obtain needed steel from our U.S.  
13 suppliers, we have no choice to turn to our European and  
14 Canadian supply partners to maintain our operations and  
15 fulfill our obligations in our customer contracts. The  
16 alternatives would be catastrophic. We need a vibrant  
17 domestic tin mill steel industry. But even more  
18 importantly, Silgan needs to run its business. And we  
19 cannot do that without reliable suppliers able to meet our  
20 volume needs.

21 As context, contrast Silgan's experience with  
22 manufacturing aluminum cans. Silgan manufactures 15 billion  
23 fruit cans annually in the United States. Of this total,  
24 about \$5 billion are made from aluminum. For these aluminum  
25 cans, 99 percent of that aluminum is sourced domestically,

1 despite the availability of quality suppliers across the  
2 globe.

3           Why is that? The domestic aluminum industry can  
4 and does satisfy our manufacturing needs on a consistent and  
5 reliable basis.

6           Please understand that my critique of the U.S.  
7 mills is done out of frustration, not malice. Love, not  
8 hate, if you will. Silgan will continue to emphasize and  
9 support the domestic tin mill steel industry. We have  
10 rewarded domestic suppliers with quantities of volume that  
11 surpass logic, given those suppliers' performance in  
12 contract execution. To dollarize, we have given the  
13 domestic steel industry close to \$3.5 billion of business  
14 since I was last in front of this Commission.

15           We will do that amount and hopefully more over  
16 the next six years. We recognize the need for these  
17 entities to remain viable. We also continue to reward the  
18 domestic industry with fair prices relative to the global  
19 market.

20           Prices in Europe from the same exact suppliers  
21 are below what we pay in the U.S. The domestic tin plate  
22 buyers have done their part in supporting domestic tin  
23 mills, but we collectively cannot be held accountable for  
24 the reported financial performance of the domestic tin plate  
25 industry.

1                   At the same time, Silgan just desperately needs  
2                   to ensure supply options. Silgan needs concrete and  
3                   practical alternatives to keep our business running when the  
4                   domestic steel suppliers drop the ball and cannot meet their  
5                   supply obligations.

6                   I will now turn to more specific discussion of  
7                   the market, including Silgan's experience in the market and  
8                   most importantly, what changes have occurred over the last  
9                   six years since the Commission last examined this market.

10                  First discussion point. U.S. can companies need  
11                  to buy from U.S. mills. In the legal briefs that the U.S.  
12                  mills submitted to you and in their testimony to you this  
13                  morning, the U.S. mills attempted to convey the impression  
14                  that if you allow the Japanese mills back into the U.S.  
15                  market, can companies like Silgan would not purchase any  
16                  more tin mill steel from U.S. mills.

17                  Indeed, ArcelorMittal USA goes as far as saying  
18                  that. Given this fact, the U.S. mills would be devastated.  
19                  That is a quote.

20                  Commissioners, such hysteria is a bit hyperbole.  
21                  It is a bit hyperbole, because given the demands of our  
22                  business, Silgan has no choice but to purchase the  
23                  overwhelming majority of our needs from North American  
24                  mills.

25                  I've been involved in purchasing tin mill steel

1 for Silgan for more than 12 years. Until recently in each  
2 of those years, more than 85 percent of the tin mill steel  
3 that we purchase came from U.S. steel mills and the other  
4 North American producer ArcelorMittal Dofasco.

5           Until recently, Silgan had rarely purchased more  
6 than 10 percent of its needs from offshore suppliers outside  
7 of North America. We have relied on North American  
8 suppliers by design. Silgan purposely limits the types and  
9 quantities of tin mill steel that we will source from  
10 offshore suppliers. Please refer to Silgan's confidential  
11 declaration for the various reasons why domestic supply is  
12 preferred and required.

13           In summary, it should be much easier and less  
14 complicated to manage a wide portfolio of specifications  
15 with domestic suppliers. Domestic lead times should  
16 theoretically be less than importers. And the risk of  
17 having the wrong material produced and on a boat is real,  
18 given the potential for change in customer requirements  
19 impacting the steel specifications required.

20           This is a critical point understanding the  
21 potential impacts of import as replacing domestic producers  
22 in the U.S. market. We simply cannot take this risk of  
23 having the wrong steel at the wrong time.

24           Therefore, we choose carefully any  
25 specifications that we will purchase from offshore

1 suppliers. It is for precisely this reason that the  
2 overwhelming majority of steel specifications are  
3 essentially dedicated to domestic mills.

4 In fact, in a typical year, Silgan will buy over  
5 400 different specifications of tin mill steel, but only a  
6 handful will come from offshore suppliers. This is why  
7 historically more than 85 percent of our steel ends up  
8 coming from North American suppliers, who can react quickly  
9 to our potentially changing needs.

10 This is a market fact and this will not change  
11 no matter whether the Japanese mills are allowed back in the  
12 market or they are not. It is a fact that given the  
13 vagaries of the harvest, food can companies like Silgan much  
14 purchase the overwhelming majority of their tin mill steel  
15 needs from U.S. mills. And so demand for North American tin  
16 mill steel will remain.

17 From Silgan's perspective, offshore suppliers  
18 and North American suppliers are not largely substitutable.  
19 To think otherwise would be inaccurate.

20 Indeed, as I will address in a minute, over the  
21 last few years, Silgan has purchased every possible ton that  
22 it could from U.S. mills.

23 Second discussion point, why did Silgan recently  
24 increase its purchases from offshore suppliers? Given the  
25 fact that our own customer business needs require that we

1 source from American mills, the third question is why did  
2 Silgan increase its purchases from imports over the last  
3 couple years? There are two reasons.

4 The first reason is the change in customer  
5 requirements that resulted in a movement to specification  
6 that the domestic steel industry has not yet been capable of  
7 supplying. Our only supply source is for this metal exists  
8 outside of the U.S. at this moment.

9 And the second more important reason is the  
10 increasingly difficulties that U.S. mills have in supplying  
11 promised quantities of defect-free steel has forced Silgan  
12 to purchase more from import sources.

13 And please note, there is no third reason called  
14 price. Let me unpack these two reasons. Tin mill steel is  
15 not a fungible commodity product. Rather, there are  
16 multiple different types and specifications that Silgan  
17 requires. Only qualified suppliers can sell tin mill steel  
18 to Silgan. And given the varied specifications that exist,  
19 qualification is necessary for each type of steel not by  
20 supplier.

21 So it is quite possible that certain suppliers  
22 will be qualified for some types of steel, but not others.  
23 Certain suppliers may qualify for some of our manufacturing  
24 sites, but not for others.

25 Indeed, this is the very situation we have with

1 respect to our domestic suppliers. Some are qualified to  
2 supply many, but not all of our tin can production lines and  
3 facilities. And others are only qualified to supply a much  
4 smaller number of our specifications at our facilities.

5 This fact is important because over the past few  
6 years, Silgan's customers have changed their requirements,  
7 requiring Silgan to utilize different assets and manufacture  
8 with different specifications to produce the performance  
9 necessary for our customers' use.

10 Here's an example. Our customers are more and  
11 more migrating to convenience ends, ends with a pull open  
12 tab affixed. The type of steel used for these ends is a  
13 lower gauge, with high elongation attributes, currently not  
14 qualified by the domestic mills. This situation has nothing  
15 to do with the price of steel.

16 The migration of this volume to importers more  
17 reflects the changing market demands and Silgan's response  
18 to its customers' needs. Indeed, Silgan often ends up  
19 paying a higher price and carrying more inventory for this  
20 imported steel, because it has a more advanced technical  
21 specification.

22 The second and quite honestly, the most  
23 troubling reason is the increasing difficulties that U.S.  
24 mills have had in supplying promised quantities of  
25 defect-free steel, forcing Silgan to purchase more import

1 sources to satisfy its operating and customer needs. The  
2 obligations we have to supply our customers' requirements  
3 cannot be understated in this dialogue.

4 I trust that you have seen the confidential  
5 declaration that has been submitted on this subject. This  
6 declaration provides comprehensive details about  
7 difficulties that we have had and are having with our U.S.  
8 tin mill suppliers. Suffice it to say, we have hard data  
9 and records that U.S.-based mills, but increasing  
10 difficulties with both on-time delivery and quality claims.  
11 And it absolutely a true statement that Silgan could have  
12 and would have purchased more tin mill steel from U.S. mills  
13 absent these difficulties.

14 In fact, it was our intention to do so. In each  
15 of the last three years, Silgan's forecast provided to our  
16 domestic mills partners was far greater than was eventually  
17 supplied, forcing Silgan to move to other supply sources to  
18 meet its customer's needs.

19 Third discussion point, ArcelorMittal's  
20 ownership of Weirton and Dofasco. And I want to make an  
21 observation in changing market dynamics, it very much  
22 affects the quantity of tin mill steel sold by U.S. mills.

23 ArcelorMittal North America has two tin mill  
24 operations, Dofasco Canada and Weirton, USA. By way of  
25 observation, how tin mill customers are supplied out of

1       these -- those two facilities seems to be managed based on  
2       legacy customer relationships and technology capabilities  
3       and perhaps the balancing of optimal workload between the  
4       two facilities.

5                       Silgan has consistently told ArcelorMittal that  
6       we are indifferent on supply point, as long as quality and  
7       technical standards can be met. We're not looking to change  
8       the decision made on how Silgan is supplied, I might add.  
9       It is simply an observation.

10                      My understanding is that U.S. mills have argued  
11       that they have considerable excess capacity to supply the  
12       entire U.S. market. It is an odd point to me in evaluating  
13       how ArcelorMittal North America balances its supply to its  
14       U.S. customers. The import volumes from Canada have  
15       continued to grow, while there appears to be the potential  
16       for considerable harm to the U.S. market if protection  
17       against Japanese tin plate were not sustained. I'm having  
18       trouble reconciling those two concepts.

19                      As an aside, it perhaps should be noted that  
20       Silgan does not buy any DNI steel from Dofasco. And it's  
21       possible we are half of their total output. Our growth with  
22       Dofasco over the last five years is a significant portion of  
23       their overall import growth into the U.S. I would also note  
24       that Silgan has never owned a facility in Canada that  
25       Dofasco supplied.

1                   It should be noted that Silgan has also been  
2                   told broadly that there isn't any further volumes available  
3                   here -- this year out of the U.S. My understanding is this  
4                   message is consistent across the industry.

5                   There's another element that I'm having trouble  
6                   reconciling in this process. For those of us who manage the  
7                   sourcing functions at our respective companies, access to  
8                   quality steel day in and day out is a persistent problem.

9                   Fourth discussion point, Japanese suppliers will  
10                  not over the lowest prices. In their briefs, U.S. Steel and  
11                  ArcelorMittal assert that if Japanese suppliers resume  
12                  shipping subject tin mill steel to the U.S., they will do so  
13                  at prices lower than all other market participants,  
14                  including U.S. mills and all other foreign suppliers. Based  
15                  on my experience, this assertion is simply wrong and  
16                  demonstrably wrong.

17                  First, at Silgan, we have long experienced  
18                  buying laminated tin mill steel from Japanese suppliers.  
19                  Although laminated tin mill steel is not subject to the AD  
20                  duties, it is still very much a tin mill steel product. The  
21                  only difference is that a protective coating has been added  
22                  to the tin free chromium-coated steel before being shipped  
23                  to can companies like us.

24                  Although several foreign suppliers offer  
25                  laminated tin mill steel, none of the North American mills

1 offer laminated steel.

2 Silgan has multiple projects in place regarding  
3 laminated steel with all suppliers of laminated steel beyond  
4 just the Japanese suppliers. These have been in place for  
5 several years. We feel we have the appropriate knowledge of  
6 the product to further comment below.

7 We have been purchasing laminated steel for --  
8 from Japanese suppliers for nearly 20 years and we can  
9 confirm that Japanese suppliers are not aggressively trying  
10 to increase shipments by lower their selling price, even  
11 though it would be easy for them to do so.

12 It is important to understand this dynamic. As  
13 long as the economics can work, Silgan actually has a  
14 preference for laminated steel. The reasons are that doing  
15 so allows a cleaner and safer manufacturing operation, then  
16 have Silgan applying the organic liquid coating at its  
17 plants.

18 Indeed, having can companies purchase laminated  
19 tin mill steel is the preferred global regulatory solution.  
20 Certainly, increasing our laminated steel mill purchases  
21 would allow us to optimize our footprint if we didn't  
22 require the current coating operations.

23 In addition, it is very easy to substitute  
24 laminated steel in our production facilities. Only a few  
25 modifications would be required. What this means is that if

1 the selling price made it economical to do so, Silgan would  
2 in fact utilize and review laminated steel for a more  
3 meaningful portion of its needs. Silgan would readily  
4 switch certain applications to laminated steel if the  
5 economics work.

6 However, the economics do not work because the  
7 price of laminated steel remains too high relative to the  
8 price of non-laminated steel. And so for many years,  
9 Japanese tin mill steel suppliers have known that they could  
10 significantly increase their volume of their U.S. exports of  
11 laminated steel to the U.S. if they simply lowered their  
12 selling price to make the economics of using laminated steel  
13 work.

14 But Japanese suppliers have not done so. This  
15 factor's direct evidence that the Japanese suppliers will  
16 not export significant quantities of tin mill without regard  
17 to price. They have not been doing so even when they could  
18 have.

19 Second, Silgan has data demonstrating that  
20 Japanese selling prices for subject tin mill steel do not  
21 undercut U.S. mills or other import suppliers. As noted  
22 above, laminated tin mill steel is simply tin free steel  
23 with a special coating applied after the tin free steel was  
24 produced. And so by definition, the price of the laminated  
25 steel equals the combined cost of the steel plus the

1 protective coating.

2           If one subtracts the cost of the protective  
3 coating from the purchase price, you can derive a fairly  
4 accurate estimate of what the Japanese mills believe the  
5 price for the steel should be.

6           In Attachment D of my confidential sworn  
7 declaration submitted to you, I present this very analysis  
8 using Silgan's actual data. This worksheet shows our prices  
9 for non-laminated tin free steel from U.S. suppliers, the  
10 comparable laminated steel from Japanese suppliers. We  
11 selected specifications that had the same underlying  
12 physical dimensions of the tin free steel so the  
13 comparisons would be apples to apples. We use data obtained  
14 from a commercial third party of what it would cost to apply  
15 the lamination coating to the bear tin free steel.

16           What this comparison shows is after backing out  
17 the cost of the lamination, the Japanese prices are higher  
18 than the U.S. supply prices. From these examples, the price  
19 premium for Japanese steel range from 1 to 8 percent above  
20 the domestic prices. This evidence provides quantitative  
21 confirmation of my qualitative assessment that Japanese  
22 mills are not likely to offer the lowest prices.

23           The data is not concocted as U.S. mills' counsel  
24 asserted. It is how buyers of laminant look at the sales  
25 transaction. Only buyers and sellers of laminant would be

1 informed on this subject and the manner it is being used  
2 for. It is the data.

3 Finally, by virtue of our numerous can meeting  
4 -- making production plants outside of the U.S., Silgan has  
5 bonified experience with purchasing those types of tin mill  
6 steel subject to the AD order.

7 For its production plants located outside the  
8 United States, Silgan purchases tin mill steel for two  
9 central purchasing offices. As the head of strategic  
10 sourcing for all of the Silgan's U.S. plants' needs, I have  
11 regular communications with those offices in charge of  
12 purchasing tin mill steel for Silgan's foreign plants. And  
13 based on these discussions, I can state that the suggestion  
14 by the domestic mills that Nippon Steel and JFE Steel are  
15 aggressive suppliers that will sell at any price are simply  
16 not true.

17 Indeed, my European counterparts have reported  
18 to me that the Japanese mill have reduced their  
19 participation in the European market in recent years because  
20 the prices have -- had fallen too low.

21 While our direct experiences are reflective of  
22 Silgan's expectations on how Japanese tin mill suppliers  
23 would approach the U.S. market, I think it is also important  
24 to note the changed dynamics since this subject was last  
25 reviewed. Imports are up significantly. Prices relative to

1 other markets are up significantly. New entrants have come  
2 into the import market and were able to grow their volume at  
3 these higher prices.

4 Silgan's experiences in data reflect that  
5 imports are not cheaper and we don't ask them to be. My  
6 opinion is that the U.S. market has the supply and  
7 technology void and importers have been able to fill the  
8 void on both fronts. I cannot make the connection that this  
9 is an opportunity for the Japanese tin plate suppliers to  
10 disrupt this ongoing dynamic either logically or based on  
11 Silgan's direct experience with them in other commercial  
12 areas.

13 Fifth discussion point, Japanese imports will  
14 simply replace other import supply sources. Any future  
15 purchases that Silgan undertakes from Japanese suppliers  
16 will simply replace out import supply sources. I can state  
17 this unequivocally because Silgan has already purchasing  
18 every single ton possible from U.S. mills. And Silgan would  
19 purchase more if U.S. mills could supply the additional  
20 quantity.

21 The only reason beyond technology that Silgan  
22 has increased its import purchases over the past few years  
23 is because Silgan Has been forced to do so by the inability  
24 of U.S. mills to supply the quantities desired when the  
25 steel is needed.

1           The tin plate market in the U.S. can be broken  
2 regionally. The West Coast is predominantly supplied by UPI  
3 historical patterns in that region are easy to follow.  
4 There are very few bigger volume bars and very few supply  
5 options. In fact, Silgan has not received an offer to  
6 supply any of its West Coast operations by a North American  
7 producer in at least a decade.

8           U.S. Steel has an obvious conflict and others  
9 probably are freight prohibited. Silgan sources nearly all  
10 of its requirements from UPI. It would be my guess that the  
11 rest of the can makers either split their buy between UPI  
12 and imports or are utilizing technology that UPI cannot  
13 support.

14           In any event, the import volumes for use on the  
15 West Coast for non-excluded products that UPI could supply  
16 today are relatively de minimus and this dynamic will not  
17 change, I am confident in that.

18           If Silgan were interested in imports to the West  
19 Coast, we would have already done so. This would be the  
20 primary opportunity for growth, Japanese growth. It is not  
21 Silgan's best interest to jeopardize UPI's financial  
22 stability. Historically, the two parties have agreed on  
23 fair pricing given all elements in play in the market. UPI  
24 has been granted 99 percent of Silgan's volume,  
25 approximately 200,000 tons. A few years ago, UPI's supply

1 was best in class from both a quality and delivery stand  
2 point.

3 At that time, there was no reason to envision  
4 this changing. At the time, neither party was interested in  
5 this changing.

6 We are not interested in changing it today, but  
7 UPI and its suppliers will help determine that and we've had  
8 recent challenges making West Coast tin plate supply more  
9 difficulty for all can makers. We need this to stop.

10 It is critically important to note that the West  
11 Coast is by far Japan's cheapest port of entry versus  
12 getting steel into the Midwest. I can affirm with you today  
13 that the opportunity at the -- on the West Coast for  
14 Japanese import is limited. Silgan is committed to UPI.  
15 Therefore, the import opportunities on the West Coast are  
16 limited, which presents the challenge of them getting metal  
17 into the Midwest, which is far more cost prohibitive than  
18 landing in the ports of California.

19 The ITC report summarizing the respective  
20 questionnaires highlights the deteriorating quality and  
21 supply issues tin plate buyers are facing. In certain  
22 cases, trade actions have contributed to the changing  
23 quality situation as new substrate suppliers enter the  
24 equation. Tin plate buyers are catching the foul ball of  
25 some of these actions. Silgan highlights some of the

1 impacts to its business in its confidential declaration.

2 I was asked what the impact of a decreasing  
3 quality means to a can maker and potentially a tin plate  
4 supplier, so would offer this opinion. Qualify manifests  
5 itself in many ways. In its simplest form, it's a  
6 distraction that our plant folks work hard to navigate  
7 around in conjunction with the supplier. There is little  
8 in the way of hard costs associated, but our plants readily  
9 see the value of steel that runs seamlessly in our  
10 operations.

11 In its extreme, it results in a claim back to  
12 the steel mill. Basically, this means the steel was  
13 sufficiently out of specification, that it could not be used  
14 in can making for its intended use. In this case, the can  
15 maker claims back the full value of the steel it could not  
16 use, plus any processing cost incurred.

17 I'm led to believe based on declarations that  
18 U.S. tin mills operate under very thin margins. That being  
19 the case, the cost of quality claims for a steel mill would  
20 be meaningful and would certainly highlight a challenge  
21 financial performance.

22 As an example, let's say U.S. mills make \$100 a  
23 ton on a \$1,000 a ton coil, and it can't make or process the  
24 coil and added \$100 a ton in cost to it. The can maker  
25 would charge the steel company \$1,100 a ton let's say after

1 scrapping the steel. To get back to breakeven, the steel  
2 maker would need to sell 10 more coils.

3 So when claim rates or quality performance  
4 deteriorates, it can dramatically reduce financial  
5 performance. And if margins are tighter than this simple  
6 example suggests, the problem compounds.

7 The point is the bigger concern should be on  
8 internal improvements for our domestic tin plate industry.  
9 Can customers should not be asked to subsidize these  
10 inefficiencies. More volume doesn't solve this inherent  
11 issue.

12 Sixth discussion point, Silgan does not use  
13 import prices to lower prices paid to U.S. mills. In their  
14 brief submitted to the Commission, U.S. steel and  
15 ArcelorMittal, USA argued that removing the AD duties will  
16 allow customers like Silgan to use the Japanese price to  
17 force U.S. mills to offer a lower price.

18 Such allegation is not accurate and more so,  
19 unfair. I don't know where the facts are that support this  
20 declaration by the U.S. tin mills. The presence of imports,  
21 whether they are from Canada, Europe, or Asia, are now a  
22 given market condition. Silgan maintains the U.S. tin mill  
23 industry was the primary contributor to allowing this  
24 dynamic.

25 As we reiterate, U.S. can makers offer U.S. tin

1 plate manufacturers the highest prices in the world. I  
2 think the ITC is now well aware of the overall  
3 dissatisfaction with domestic supply, despite these prices  
4 that should incent volume and operational execution.

5 The concept that can makers are going to get a  
6 Japanese quote and leverage it for volume that the domestic  
7 industry hasn't been -- proven to be able to supply doesn't  
8 really make a whole lot of sense to me. This hasn't  
9 occurred as other suppliers have entered the market to fill  
10 the supply void.

11 Silgan will continue procuring tin plate as it  
12 does today. I didn't expect that any tin mill supplier  
13 would suggest using Silgan as an example of using foreign  
14 imports to drive down domestic prices. Personally, I'm  
15 offended by that inference. Silgan is three North American  
16 operations' largest customer. As the market leader, we have  
17 been supportive of fair, defensible pricing and will  
18 continue to be.

19 Final discussion point, why Silgan wants to buy  
20 Japanese steel. Given that Silgan only intends to import  
21 quantities it cannot source from U.S. mills, and Silgan is  
22 currently happy with our foreign suppliers, a fair question  
23 is why does Silgan want to have the ability to purchase from  
24 Japan? It is not about the price.

25 As I just explained, Silgan fully anticipates

1 having to pay a price to Japanese mills is likely higher  
2 than we -- than what we pay U.S. mills and certainly higher  
3 than other certain import sources. It is not about getting  
4 a low price. Rather, it's about ensuring adequate supply.

5           Commissioners, the real world in which I live is  
6 not static. Supply sources can change and they can become  
7 scarce. On this topic, I ask you to examine paragraph 76 of  
8 my confidential declaration.

9           In closing, I want to echo something that Dan  
10 Porter said. 18 years is a long time. The U.S. tin mill  
11 market is very different now. In fact, I'm not sure what is  
12 similar beyond the product itself. Today, it's simply not  
13 credible to maintain that imports from Japan will harm U.S.  
14 tin mill suppliers. Thank you for your time.

15           MR. PORTER: For the record, this is Dan  
16 Porter with Curtis. Mike Arena's testimony today  
17 supplemented the confidential declaration that Silgan has  
18 already provided to the Commission.

19           Taken together, the sworn declaration and the  
20 sworn testimony today provide compelling evidence that there  
21 have been sufficient changes in the U.S. tin mill market to  
22 make it not likely that future imports from Japan will have  
23 an adverse affect on U.S. mills.

24           However, there are a couple of other important  
25 market changes that I want to highlight in our few remaining

1 minutes. First probably and foremost, is the expected  
2 imposition of Section 232 import restrictions. As has been  
3 discussed, in past cases the Commission has explicitly  
4 recognized that the existing of other important restrictions  
5 is highly relevant and important to the analysis of  
6 conditions of competition.

7           Indeed, I think as referenced earlier in the  
8 2003 cold-rolled case, the Commission stated "We view the  
9 recent global remedy on steel announced by the President to  
10 be the most important condition of competition." Now I want  
11 to make a comment about the discussion this morning about  
12 timing. It's all right there for everyone to see.

13           The President's announcement happened just a  
14 few months before the Commission's vote in that case. I  
15 looked it up during the morning. You can easily look it up  
16 the same. What does that mean? That means the long and  
17 complicated exclusion process that there was in the  
18 safeguard case hadn't even begun by the time the Commission  
19 made its vote and said its statement about the safeguard  
20 duties. So that that's the first thing about exclusions.

21           The second thing about exclusions is let's  
22 look at the Commerce Department's report, the Section 203  
23 report on page 61. The Commerce Department noted that there  
24 may yet be an exclusion process for customers to come  
25 forward and say I can't get the steel from U.S. mills, can I

1 have an exemption? And Commerce is saying there may well be  
2 that process, or there may be some other things.

3 But Commerce goes out of its way to say if you  
4 do that Mr. President, please adjust the imposition of 232  
5 to make the effect the same. That is, the exclusions are  
6 not going to adversely affect the benefit from the 232  
7 imposition. So this whole business today about speculation,  
8 and we don't know the effect because of this exclusion  
9 process, is actually belied by the very 232 report itself.

10 The next important change that I want to  
11 highlight is the increased and growing presence of  
12 non-subject imports. Today we heard the U.S. mills state  
13 unequivocally that non-subject imports are causing them  
14 harm, are causing them material injury. They seem to think  
15 that that fact, which no one is disputing, helps their case  
16 that the imposition of the Japanese AWR should remain. In  
17 fact, it's the opposite. It helps our case. Why? Because  
18 it shows the legal criteria have not been met.

19 In order for the Commission to find, it should  
20 continue the imposition of the anti-dumping order, it must  
21 find that future imports from Japan themselves are going to  
22 cause material injury to the U.S. industry, or in trade loss  
23 parlance, non-attribution needs to be addressed. This  
24 Commission has repeatedly said that in sunset cases, it  
25 considers the non-subject imports as a non-attribution

1 point.

2 It's important here because the increasing  
3 presence of non-subject imports is in fact one of the key  
4 differences from the last time you looked at it. So we'll  
5 take the U.S. mills at their word. They're being harmed by  
6 non-subject imports.

7 There's no reason to believe that that will  
8 not continue, and so therefore the Commission only can find  
9 that -- to go affirmative if it finds that for some reason  
10 the price of the Japanese is going to be lower than the  
11 increasing Chinese tin mill in the U.S. market.

12 No one believes that to be the case, and  
13 that's why that particular change is important. With that,  
14 I'm going to stop now. We'll reserve the remainder of our  
15 time for closing, and both Mike and I, we welcome your  
16 questions. Thank you.

17 CHAIRMAN SCHMIDTLEIN: Okay, thank you very  
18 much. Mr. Porter and Mr. Arena, I'd like to thank you both  
19 for being here today, as well as your other two panelists,  
20 and for your testimony and help in understanding this case.  
21 I will actually begin the questioning this afternoon. So we  
22 always appreciate it when a purchaser comes to testify.  
23 It's always very helpful. So my first question to you, Mr.  
24 Arena, is what is your estimate of what you will buy from  
25 Japan in the reasonably foreseeable future?

1                   MR. ARENA: So I'd have to say we don't have  
2 any succinct plans in place. I can't envision a material  
3 quantity. It's something where in the global market, if  
4 imports are required for us to sustain our business, we  
5 never have any assurances of where those imports are going  
6 to be. To restrict an import option wouldn't be prudent in  
7 my position.

8                   So we would look to put the Japanese suppliers  
9 in a position to replace other imports, but that would be an  
10 initial step. It's not an application that we would  
11 earmark, and I certainly don't want to do it at the expense  
12 of a domestic supplier. So I'm not trying to be vague. We  
13 just don't have any plans.

14                  CHAIRMAN SCHMIDTLEIN: But you've come here  
15 today to testify from the west coast, and you have no idea  
16 how much you think you might buy from Japan. I might add  
17 you're the only witness here today. The Japanese producers  
18 are not here; importers are not here. So it must matter to  
19 you whether or not this order remains in place.

20                  MR. ARENA: The principles and the support of  
21 our industry, and to maintain the options are what's most  
22 important for us, is that we don't restrict options, in the  
23 event what is happening right now persists. We have no  
24 assurances that what is happening right now as a buyer  
25 doesn't persist for the next five or six years. There's

1 other things that are happening in the world that might  
2 restrict the ability of certain folks we buy from today  
3 from supplying into the U.S.

4 So strictly it's to create the options that  
5 most people in my position like to create. I can't tell you  
6 that we're going to buy 100,000 tons. I can tell you that  
7 we're not going to buy 100,000 tons. I can't tell you what  
8 everybody else would do if this AD order were lifted.

9 But I can speak for Silgan to say that we  
10 would engage the Japanese suppliers like we engage other  
11 import suppliers for applications that fit what they do  
12 well, and we would not look to target domestic suppliers.  
13 As I testified, I would love for the domestic suppliers to  
14 supply us more.

15 CHAIRMAN SCHMIDTLEIN: So it's just about  
16 maintaining options here, and granted you have many options  
17 with non-subject, right? We've seen non-subject coming in  
18 from China now at quite an increasing rate. We've got  
19 non-subject from Canada, we've got non-subject from Germany,  
20 we've got non-subject from the Netherlands.

21 MR. ARENA: Correct.

22 CHAIRMAN SCHMIDTLEIN: But you'd just like to  
23 have another option. But you have no idea how much you  
24 would possibly buy from them?

25 MR. ARENA: I'm not -- the European suppliers,

1       there's rumors that there's consolidation going on in that  
2       market. So there might not be the same opportunity there  
3       for import. We historically have not been an importer from  
4       Asia. I don't know what's going to happen with those. One  
5       of the potential supply options is owned by a bank because  
6       they went bankrupt. So I'm less comfortable with those  
7       supply options.

8                        So our key supply base is not maybe all of  
9       those that you see listed as importers. Other can makers  
10      might have a different portfolio. They might be more --  
11      they might have a different attitude about how quickly they  
12      would look at Japanese supply. We're here sort of a defense  
13      of principle and defense of supply options that we think we  
14      should have available to us.

15                      The Japanese have been, for the products that  
16      we've purchased from them, they've been very good suppliers  
17      both domestically and around the world.

18                      CHAIRMAN SCHMIDTLEIN: And is that the  
19      laminated product that you use for the --

20                      MR. ARENA: Sure. Laminated, yes, and we also  
21      have operations in Asia that they supply.

22                      CHAIRMAN SCHMIDTLEIN: You have operations in  
23      Asia that they supply. So you have relationships with all  
24      of these mills already?

25                      MR. ARENA: Correct.

1                   CHAIRMAN SCHMIDTLEIN: And you haven't spoke  
2 to them about the possibility of importing the subject  
3 product here?

4                   MR. ARENA: To be honest with you, they won't  
5 talk to me about it.

6                   MR. PORTER: Madam Chair, just as a point of  
7 clarification. Japanese producers are here today. If you  
8 look behind me, there are two representatives from Nippon  
9 Steel Sumitomo and two representatives from JFE Steel, one  
10 -- each of which came from Tokyo. They're simply not at the  
11 witness table because of sort of language capability. But  
12 they are here today, that's the first point.

13                   The second point with respect to why our  
14 importer is here, quite honestly the way the Japanese steel  
15 mills ship it's through trading companies, and trading  
16 companies are knowledgeable. But no one is more  
17 knowledgeable about the market than purchasers. So if a  
18 purchaser is willing to come forward, I'm going to want the  
19 purchaser to have more time to answer your questions than a  
20 trading company.

21                   So with all due respect, I don't think that  
22 the absence of Japanese producers or importers really means  
23 something in this particular case.

24                   CHAIRMAN SCHMIDTLEIN: So have you talked to  
25 them about how much they estimate they would be shipping to

1 the United States?

2 MR. PORTER: You mean excuse me, my Japanese  
3 clients?

4 CHAIRMAN SCHMIDTLEIN: Uh-huh.

5 MR. PORTER: That quite honestly isn't part of  
6 my discussion. To be blunt, my job is to help them try to  
7 remove the government restraints, and then it's a business  
8 decision.

9 CHAIRMAN SCHMIDTLEIN: Part of our role here  
10 is to figure out what the likely volume would be if we  
11 removed the order.

12 MR. PORTER: Absolutely, Madam Chair.

13 CHAIRMAN SCHMIDTLEIN: Right. So it would  
14 have been helpful for us, since you haven't talked to them.  
15 I can't talk to them; they're not sworn in. So aren't they  
16 the most relevant people to ask that question?

17 MR. PORTER: Well we can -- of course I will  
18 ask that question, and we will submit in the post-hearing  
19 brief responses to the question, because you have now asked  
20 that question. So you will get an answer to that question.  
21 I can't -- I won't predict what they're going to say. But I  
22 can guess is that they're going to kind of say what I said,  
23 is that we can't predict.

24 First, it's going to take some time. As you  
25 know from reading the past cases, the Commission knows

1       there's a whole qualification process they have to go to,  
2       because they haven't been supplying specific specifications  
3       that my Korean's going to want or may want in the future.  
4       So there's going to be a whole qualification process. How  
5       long that takes and so forth, no one really, really knows.  
6       And then they have to be sort of slotted in.

7                       So to say how much is going to be done in 2019  
8       or 2020, we get into a little bit of sort of guesswork. But  
9       we will ask the question. What I think --

10                      CHAIRMAN SCHMIDTLEIN: They are interested in  
11       the U.S. market then?

12                      MR. PORTER: Of course they're interested in  
13       the U.S. market. I wouldn't be here if they weren't  
14       interested in the U.S. market. But with all due respect,  
15       the fact that the Respondents show up, unlike what Fisher  
16       says, cannot be evidence that there's going to be a large  
17       volume, Madam Chair. That's simply not fair, okay, and if  
18       that's what the Commission will do, you won't have any  
19       respondents ever showing up to sunset cases. It's perfectly  
20       --

21                      CHAIRMAN SCHMIDTLEIN: Well, I guess I was  
22       just keying it off in your brief, you make a statement that  
23       there is a "lack of desire" to ship to the U.S. market on  
24       page 30 of your brief. So I just -- that's why I thought  
25       you just --

1 MR. PORTER: I don't have it right here.

2 CHAIRMAN SCHMIDTLEIN: --you just wanted to  
3 establish that baseline, like are they interested in the  
4 U.S. market.

5 MR. PORTER: Right. I will try to find this  
6 quickly. If I don't -- I can't -- I can't find it quickly.  
7 I think that what was meant to be said was a lack of desire  
8 to ship, you know, large quantities, which is really what  
9 the issue is. It's not a complete absence of desire to ship  
10 tin mill steel to the United States, and if --

11 CHAIRMAN SCHMIDTLEIN: Okay, okay.

12 MR. PORTER: Okay.

13 CHAIRMAN SCHMIDTLEIN: Let me just shift gears  
14 real quick before my time runs out. With regard to the  
15 question of Japanese product only replacing non-subject, and  
16 I know Mr. Arena you testified about this and there's some  
17 information in your confidential affidavit about that.

18 So without getting into that, I guess maybe  
19 the best thing to do at this point is direct the question to  
20 you Mr. Porter, since you're representing the Japanese steel  
21 mills and not Mr. Arena, and therefore this is a more  
22 broadly -- more broad, a broader question.

23 How exactly would they do that if they weren't  
24 going to price lower, and specifically I have in mind how  
25 are they going to compete with the Chinese non-subject that

1 are coming in?

2 MR. PORTER: Madam Chair, I can unequivocally  
3 state they are not going to compete with the Chinese okay,  
4 and --

5 CHAIRMAN SCHMIDTLEIN: And why is that?

6 MR. PORTER: That's not what they do. In  
7 fact, I can show evidence of that and I'll get to that in a  
8 second. The Japanese today, okay, are all about the highest  
9 quality, the more demanding specifications and that's what  
10 they're going to do. I want to sort of segue, if I may,  
11 into commentating and agreeing with the very astute  
12 observation that you made this morning, which is that given  
13 all of the problems domestic mills have had on quality, and  
14 the Japanese are known for their quality, isn't it  
15 reasonable to expect their prices will be higher?

16 And the answer is yes. It is reasonable to  
17 expect. Same thing with the D&I steel that one of the  
18 largest mills said they can't make. So they said well, we  
19 need to bring it in from Canada. The Japanese can make that  
20 D&I steel. So what we're talking about is the Japanese  
21 supplementing what cannot be purchased from the domestic  
22 mills, and that's actually precisely what Mike Arena has  
23 testified and put in his sworn declaration.

24 CHAIRMAN SCHMIDTLEIN: Okay, all right. We'll  
25 come back in the second round to this. Vice Chairman

1 Johanson.

2 VICE CHAIRMAN JOHANSON: Thank you, Chairman  
3 Schmidtlein, and I would like to thank all of you for being  
4 here today, especially Mr. Arena. Thanks for coming in and  
5 testifying before us. You all state in your brief at page  
6 32 that a very large quantity of tin mill steel must be  
7 purchased from U.S. tin mill suppliers, and cannot be  
8 sourced from offshore suppliers such as Japan.

9 Yet import market share has increased  
10 substantially since the second review. Does this suggest  
11 that can manufacturers have been more willing to purchase  
12 imports than during the original investigation?

13 MR. ARENA: From our personal experience, it's  
14 been more a necessity, and we've had to adopt our business  
15 and build in some inefficiencies to accommodate having to  
16 offshore more of our business. It's not the optimal way.  
17 You have to build more specification risk. You have to  
18 build more inventory risk, and that's the profile that  
19 happens. When you're obligated to supply your customers  
20 product, you have to get the steel.

21 So in our case, our best option to get steel  
22 in time for the pack season was to get it from offshore, and  
23 we weren't always right in the specification that we  
24 purchased. But we had to sort of use a shotgun to make sure  
25 that we could get the right materials in front of our

1 production lines. So it's not the desired. The domestic  
2 steel mill industry, in my opinion, has an inherent  
3 advantage, that they can only lose. They just need to  
4 defend that advantage and they'll win in the marketplace.

5 MR. PORTER: If I may, Commissioner Johanson.

6 VICE CHAIRMAN JOHANSON: Yes.

7 MR. PORTER: On page 32, it says, and I quote  
8 "It's for this reason most of the larger companies will  
9 purchase the vast majority of their tin needs only from  
10 domestic or Canadian tin mill producers." The obvious . . .  
11 is if they can get it, and if the quality is there, okay. I  
12 mean absent any other evidence, and you're just looking at  
13 an increase of import volume, and absent anything else and  
14 you look at AUVs and the AUV is a little bit lower, you can  
15 make an inference.

16 Absent anything else, that maybe the lower  
17 price was the reason for the increase in volume. Obviously,  
18 we do that all -- in the trade world, that's a big part of  
19 the analysis. However, the key words are "absent all other  
20 information." What you have in the staff report is  
21 purchaser after purchaser after purchaser complaining about  
22 on time delivery from the U.S. mills and quality.

23 And so what the narrative is sure, there was  
24 an increase in imports. But it wasn't because of price; it  
25 was because the U.S. mills were having problems. That's a

1 very different competitive dynamic than just looking at the  
2 increase in imports.

3 MR. ARENA: Yeah. I would also add to that  
4 that every can maker's different, and they're a mixed  
5 profile. But let's say the domestic steel industry had a  
6 bunch of stuff that was more linear and the same spec every  
7 month. They might have lost that because we couldn't get a  
8 full supply from them. So we would give that redundant  
9 spec to an offshore supplier because it's one  
10 specification, and keep the other business domestically. So  
11 that's how you can still have more imports, but still fit  
12 into that equation where we say the vast majority is really  
13 necessitated to come domestically. That's Silgan's  
14 experience. So what we ended up offshoring were things that  
15 had one or two specifications that were long runners, and  
16 then they ended up going to Europe or to Canada. But the  
17 bread and butter every day vegetable/fruit pack stuff stayed  
18 domestic.

19 VICE CHAIRMAN JOHANSON: And Mr. Arena, I  
20 believe you stated that Silgan has three manufacturing  
21 sites?

22 MR. ARENA: No. We have 35 manufacturing  
23 sites.

24 VICE CHAIRMAN JOHANSON: Here in the U.S.?

25 MR. ARENA: In the U.S.

1                   VICE CHAIRMAN JOHANSON: Okay. So you're all  
2 over the place?

3                   MR. ARENA: Yeah, for food can manufacturing.  
4 What I had mentioned that we're three of the steel suppliers  
5 and North America's largest customer.

6                   VICE CHAIRMAN JOHANSON: Okay. My apologies.  
7 I was confused. In your experience, is delivery time more  
8 of the problem than quality, and can you maybe give a few  
9 examples?

10                  MR. ARENA: So it's hard to -- it's hard to  
11 ever put quality second in any dialogue, because we're going  
12 to -- once you get a coil of steel in your door and then  
13 it's not good. That's a process that's really inefficient.  
14 Where we've had breakdowns is you place an order. You want  
15 the steel at this date. It's promised at a date subsequent  
16 and then it doesn't come to your door on time.

17                  So when it's not -- if it's not there you've  
18 got -- we have a finite amount of capacity, so we have to  
19 run something. So we'll just run something that maybe we  
20 shouldn't run at that time, but we've got to keep our lines  
21 operating because we -- like I said, we have a finite  
22 capacity. So the cost of quality can be catastrophic if we  
23 sell a bad can to a customer and they fill it and it gets  
24 into the market.

25                  That can be catastrophic. Not having a supply

1 and not being able to supply our customers can have an equal  
2 negative effect. So I would hate to -- I would hate to  
3 prioritize one flaw over the other, because they're both  
4 things that dramatically affect how your can-making  
5 operation runs.

6 MR. PORTER: And Commissioner I'll just note,  
7 in the confidential affidavit that Silgan has provided, you  
8 have hard data on each of these. What's noted in the  
9 confidential affidavit Silgan, because it's so important,  
10 tracks each of these religiously and has hard data on each  
11 of their suppliers for on time delivery and for quality, and  
12 that data has been given to you in the confidential  
13 declaration.

14 VICE CHAIRMAN JOHANSON: Okay, thank you. I  
15 appreciate your responses. Table 2 in your prehearing brief  
16 shows Japanese capacity and utilization over the period  
17 since the original investigations. What I notice is a drop  
18 in Japanese capacity between 1992 and 2002, of more than a  
19 million short tons, and then capacity more or less flattens  
20 out.

21 Would it be safe to assume that this decline  
22 in capacity was a direct result of the imposition of the  
23 anti-dumping order?

24 MR. PORTER: I'm sorry, would it be safe to  
25 assume that the declining capacity? No, it would definitely

1 not be safe to assume. You can go back and look. The U.S.  
2 market has never been an overwhelming proportion for Japan.

3 The Japanese view capacity on a global basis,  
4 and so it would -- the reduction in capacity was what  
5 everyone's acknowledging worldwide there's kind of a -- I  
6 think it's slowed down more recently. But there has been a  
7 decline in consumption of tin mill steel. So that was the  
8 reason for the reduction in capacity.

9 VICE CHAIRMAN JOHANSON: Okay, thank you Mr.  
10 Porter. On page 27 of your brief, you argue that capacity  
11 utilization in the Japanese industry has been remarkably  
12 consistent for 20 years. If consumption of tin mill  
13 products has been going down in Japan, and you can see this  
14 in U.S. Steel's brief at page nine, and production capacity  
15 in Japan has also been fairly consistent, then what does  
16 this say about exports by the Japanese industry? Has Japan  
17 been increasing exports to maintain capacity utilization?

18 MR. PORTER: Commissioner Johanson, the data  
19 is the data. Everyone has the data. So if the data show  
20 that, you know, over 20 years the mix between exports and  
21 home market is up, then that's what the data show. I think  
22 though that the more important point, the reason we've put  
23 it by the way on a page by itself, thank you for no page  
24 limits, is because you have 20 years of data. That says  
25 something, okay.

1                   The U.S. mills have argued this morning that  
2                   if you remove the anti-dumping duty order, the Japanese  
3                   mills will tomorrow go to a 100 percent utilization and ship  
4                   all of that excess capacity to the United States. This is  
5                   one piece, and there's other pieces of evidence that says  
6                   that's not true. If they were going to do that, they would  
7                   have done that in any other ex-mark around the world?

8                   Why? Because there are no restraints on  
9                   Japanese exports, other than the United States. So why is  
10                  this logic that they're going to go to 100 percent  
11                  utilization when they've never done that before? The point  
12                  is that the Japanese mills are comfortable in the high  
13                  70/low 80 utilization, and they've been that way except for  
14                  one or two instances when it got a little bit higher to 90.

15                  It's roughly been about mid-80's capacity  
16                  utilization. At mid-80 capacity utilization, the excess  
17                  capacity, based on 2017, is just 100,000 tons. I submit  
18                  that that 100,000 tons in and of itself doesn't match the  
19                  significant volume that you have to find under the law.

20                  VICE CHAIRMAN JOHANSON: Okay. Thank you, Mr.  
21                  Porter. The red light is on, so I'm done with this round.

22                  COMMISSIONER WILLIAMSON: Thank you. Thank  
23                  you Mr. Porter for coming and the others for being here.  
24                  Just to follow up on this capacity question, I guess there  
25                  has been some lower recent capacity. So I guess the

1 question, have Japanese producers been shutting down some or  
2 any prior mill, tin mill capacity?

3 MR. PORTER: You mean in the future?

4 COMMISSIONER WILLIAMSON: No, no, in recent  
5 period. You know, there's not much change but --

6 MR. PORTER: Well, I mean you -- the numbers  
7 here, over 20 years, they went from 3.3 to 1.9. So that's a  
8 fairly big drop.

9 COMMISSIONER WILLIAMSON: So that's meant  
10 there have been some mills that have been closed or there's  
11 been lines closed?

12 MR. PORTER: We can -- it's a question we  
13 will give a more detailed answer. But there have  
14 definitely been some lines that have been closed. There  
15 have been some consolidations. So yes. But I mean this is  
16 -- you have -- this is practical capacity reported by  
17 essentially the only three Japanese producers who produce  
18 tin mill steel.

19 COMMISSIONER WILLIAMSON: Okay, thank you.  
20 That would be helpful. Mr. Arena, on page five of your  
21 testimony, I guess the second paragraph, you note that  
22 "prices in Europe from the same supply sources are below  
23 what we pay in the U.S." So are you -- and I was just  
24 wondering what that exactly meant. I didn't quite  
25 understand that statement.

1                   MR. ARENA: Okay. I apologize. I'll clarify.  
2                   So we buy steel in Europe from U.S. Steel Europe. We buy  
3                   from the German supplier that imports into this market. We  
4                   buy it from the Dutch supplier who imports into this market.  
5                   The prices we pay from the same suppliers we buy in the U.S.  
6                   In Europe, the same steel; steel doesn't know where it's  
7                   going, are much cheaper in Europe than they are in -- from  
8                   the same supplier than they are here in the U.S.

9                   COMMISSIONER WILLIAMSON: Do you know why  
10                  that's the case or what --

11                  MR. ARENA: You know markets ebb and flow, and  
12                  right now the U.S. market is the higher priced market, and  
13                  the European market is the lower-priced market. It's been  
14                  different historically, but over the last three or four  
15                  years the pendulum has swung, where this is the highest  
16                  priced tin plate market in the world, and the European is  
17                  somewhat of a lower-priced market right now.

18                  COMMISSIONER WILLIAMSON: I know, I guess the  
19                  European economy seems to be doing better than it was doing  
20                  several years ago. Is that a factor in this or is there  
21                  something -- or are they just cutting back on tin can  
22                  production more than we are?

23                  MR. ARENA: There's a lot of import activity  
24                  into that market, and that is I think effectively made it  
25                  more competitive in that market and it's sort of driven the

1 prices down. Now the dollar has weakened a bit, so that  
2 correlation between the two has narrowed over the last year.  
3 When the dollar was stronger, there was a much wider gap  
4 between the two.

5 COMMISSIONER WILLIAMSON: Okay, thank you.  
6 This is a question about the black plate versus the subject  
7 product. You argue that Japanese producers focus on exports  
8 of black plate, and that that reduces the producer's ability  
9 to make tin and chrome steel. How is the capacity used for  
10 black plate reflected, if at all, in the capacity and  
11 production figures reported to the Commission and shown on  
12 page 4-4 of the staff report? It may be 4-9. If you want,  
13 you can do that post-hearing if you want.

14 MR. PORTER: Commissioner --

15 COMMISSIONER WILLIAMSON: Right. It's 4-9.

16 MR. PORTER: Okay. Tin mill black plate is a  
17 cold-rolled steel product that is the substrate used to make  
18 tin mill steel, okay, and so you need to make a ton of tin  
19 mill black plate in order to make tin mill steel. And so if  
20 you take that tin mill, let's say you only have 100 tons and  
21 you need to shift the tin mill black plate to a joint  
22 venture somewhere outside of China, then you don't have that  
23 ton to transfer to your tin mill steel operations.

24 So that's sort of the concept. On 4-9, this  
25 is about tin mill steel production and capacity, okay. So

1 if it says "overall capacity" then essentially it says  
2 production of subject merchandise, excluded products, these  
3 other products which are essentially very small, and then  
4 total production.

5 But that's a tin mill steel, okay. Tin mill  
6 blackplate is the step before. It's the cold-rolled steel  
7 to make tin mill steel.

8 COMMISSIONER WILLIAMSON: Okay. But how much  
9 tin mill black plate, how much black plate you make may  
10 affect how much your capacity, your ability to make --

11 MR. PORTER: Yes, yes Commissioner. You need  
12 to have essentially at least as much, if not more, tin mill  
13 black plate production capacity to make the tin mill that  
14 you have, right. So typically, and this is true for every  
15 mill in this room, if you have the capacity to make 100 tons  
16 of tin mill steel, okay, you need at least 100, let's call  
17 it maybe 110 capacity of tin mill black plate.

18 Why? Well, you have a little bit of yield  
19 loss. Second, if you want to take that tin mill black plate  
20 and sell it as tin mill black plate, which by the way  
21 there's kind of a market for tin mill black plate, as you  
22 know from the cold-rolled cases. Or you want to take the  
23 tin mill black plate and ship it to another tin mill  
24 facility outside the United States, you need that too.

25 So that's why typically people have more tin

1 mill black plate capacity than tin mill steel capacity.

2 COMMISSIONER WILLIAMSON: I got you, and that  
3 overall capacity in that table is -- is that what the  
4 capacity is being used for --

5 MR. PORTER: Yeah. I have to -- I would have  
6 to double-check. So let me answer this post-hearing.

7 COMMISSIONER WILLIAMSON: That's fine.

8 MR. PORTER: Because I don't remember  
9 precisely how the Commission staff asked that. I still  
10 believe this is only tin mill, but we'll check that. I  
11 think there is another table elsewhere that gets at tin mill  
12 black plate production, but I'd have to find that. We'll  
13 get this sorted out post-hearing.

14 COMMISSIONER WILLIAMSON: Okay, fine. Thank  
15 you. Okay. So do Japanese producers sell excluded tin mill  
16 products to most of the major U.S. canning companies? I  
17 mean here's the major one, but I guess there are others too.

18 MR. ARENA: Yeah. Laminated steel is  
19 purchased by at least three of the major can makers.

20 COMMISSIONER WILLIAMSON: Okay, and are those  
21 products experiencing the same demand trends as is the  
22 subject product?

23 MR. ARENA: Well, laminated steel can be  
24 promoted into different applications, and so it has the  
25 potential to grow at the expense of -- at the expense of say

1 tin plate, just untreated tin plate or unlaminated tin  
2 plate, because the potential markets that it may be  
3 introduced to will therefore allow it to grow in an overall  
4 market that is flat to slightly declining.

5 We haven't given up on the market yet, so we  
6 haven't given -- we're not conceding the erosion of food  
7 cans just yet. So we're still optimistic on the food can.

8 COMMISSIONER WILLIAMSON: Okay, okay. What  
9 about the -- I'll come back to that statement. But what  
10 about the other excluded, the ten other excluded products?  
11 Are they being used by the -- all of the domestic companies,  
12 can companies?

13 MR. ARENA: I can only speak for Silgan. We  
14 don't buy any other excluded products from the Japanese.

15 MR. PORTER: Commissioner, we will happily  
16 provide in post-hearing the identity of all the customers of  
17 all the excluded products. I just, I believe the laminated  
18 is the biggest one, I believe. I believe there's also  
19 something --

20 (Off mic comment.)

21 MR. PORTER: So sorry. My knowledge is  
22 mostly about laminated. But we'll, we will provide in  
23 post-hearing a breakdown of the excluded products shipped to  
24 the United States and which customer is buying them.

25 COMMISSIONER WILLIAMSON: Okay, thank you for

1 that. Now back to that, your reason for your optimism.

2 MR. ARENA: Well we've, with -- through CMI,  
3 which Silgan helped fund a dramatic portion of it, there is  
4 a campaign called "Cans Get You Cooking."

5 COMMISSIONER WILLIAMSON: Cans?

6 MR. ARENA: "Cans Get You Cooking," that  
7 sought to give let's say homemakers permission to buy more  
8 food cans. It wasn't trying to convert folks who didn't buy  
9 food cans to buy food cans. It was those who bought a  
10 limited amount of food cans. You wanted to give them  
11 permission to buy more, and we tried to advocate the safety  
12 of the food can, all the reasons to have the food cans.  
13 There's a big advertising campaign.

14 We had a spot on the television show The Chew.  
15 There was a can tree once a week on a Friday for about a  
16 month. They converted the stage to a can tree and all the  
17 recipes were made with food cans. We had a show on the Food  
18 Network. So there's a pretty big campaign, and we saw that  
19 food cans actually stabilized. There was a declining  
20 pattern of like 2-1/2 percent and then it went to like a  
21 half a percent, and that campaign's been reenergized.

22 Then there's another section of the business  
23 on the pet food space that's growing leaps and bounds. So  
24 we, a lot of those cans are aluminum, but any can that's  
25 aluminum can be steel. It doesn't work the other way

1 around. Most steel cans can't be aluminum, but every  
2 aluminum can could be steel.

3 So there's, there's I think generally speaking  
4 at Silgan, we don't go to work every day trying to figure  
5 out what we're going to do next. We're supportive of this  
6 industry and expecting it to worst case stabilize, but  
7 hopefully grow.

8 COMMISSIONER WILLIAMSON: Okay. Thank you.

9 MR. ARENA: Now it's a subject I'm passionate  
10 about, so I can talk forever about the food can.

11 COMMISSIONER WILLIAMSON: Maybe we can talk  
12 later. Like Commissioner Johanson, sometimes I play around  
13 in the kitchen and it's -- sometimes cans are a whole lot  
14 easier if you want to throw something together if you get up  
15 late. So I was curious.

16 MR. ARENA: Thank you for that.

17 COMMISSIONER WILLIAMSON: Okay, thank you. My  
18 time has expired.

19 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

20 COMMISSIONER BROADBENT: Thank you. Mr.  
21 Arena, it seems to me that this order went into place like  
22 around Y2K, is that right, in 2000? Did you have an uptick  
23 in your can consumption as people were getting ready for the  
24 --

25 MR. ARENA: There wasn't the hurricane effect

1 around Y2K.

2 COMMISSIONER BROADBENT: It didn't help?

3 MR. ARENA: Catastrophes, unfortunately, are  
4 helpful for cans and for shelf packing for sure.

5 COMMISSIONER BROADBENT: Yeah, good. All  
6 right. Can you explain whether and how delayed deliveries  
7 of the domestic like product affected purchasers'  
8 operations?

9 MR. ARENA: Yes. So if you place an order  
10 for, I'll just broadly, 20,000 tons in a month and you have  
11 32 manufacturing plants and each manufacturing line within  
12 those plants is expecting to get steel in front of it to  
13 run, and you've manned those plants with the appropriate  
14 labor and the steel doesn't come, you have people sitting  
15 around idle.

16 So that's just something in our business.  
17 One, we don't have enough capacity to burn the capacity. So  
18 we end up having to run something maybe we shouldn't run.  
19 We get steel, but we also have to -- we really sometimes  
20 have to go to some place else, and just grab steel and run  
21 it. And so the disruption is that you have to sort of do  
22 things out of sequence from what you'd like to do, to keep  
23 -- so you don't burn capacity, so that you utilize the labor  
24 that you have in your plants.

25 It would be no different at a steel mill. If

1       you're moving something from one step to the other, you  
2       don't want that next step needs its feedstock, so the people  
3       aren't sitting around idle. So it can be very disruptive  
4       when you don't have steel when you expect it.

5                       Now on a broader sense, what Silgan has to do  
6       is build in a bunch of insurance, so that we can have cans  
7       to our customers well in advance of when they need it. So  
8       we're ordering things earlier than we should, with the hope  
9       that we get it, and then if we do get it a month later, that  
10      we can -- it's still in time to satisfy our customer's  
11      needs.

12                      So it can be very disruptive on a day-to-day  
13      basis, and then very disruptive on a broader basis. So what  
14      happens if you have a pattern of non-delivery, you sort of  
15      take that non-delivery quantity off the table, hope that  
16      supplier can deliver that quantity, and put that non-supply  
17      quantity out to another supplier for that particular year.

18                      In Silgan's particular case, and I believe  
19      that's how it would have happened with others, we've had to  
20      park other quantities that rightfully belong domestically to  
21      other folks, just so we can secure supply and hope the  
22      domestic suppliers get better. When the domestic suppliers  
23      get better, they'll have the opportunity and they will get  
24      that volume back.

25                      But we're thankful for the investments that

1 are being made, but over the last three years those  
2 investments haven't really helped us manage our business day  
3 to day. It's allowed, I think, the migration of further  
4 imports and it's allowed for a little bit of a deterioration  
5 between the trust between can makers and the suppliers.

6 COMMISSIONER BROADBENT: Okay. So you've been  
7 really kind of forced to adjust by offshoring certain  
8 operations?

9 MR. ARENA: I can honestly say that we have  
10 moved more business offshore, to ensure that we could make  
11 food cans for our customers. Not out of desire to move  
12 steel offshore, not for price.

13 COMMISSIONER BROADBENT: Well and you said you  
14 employ what 5,000 people or something?

15 MR. ARENA: Us and our sister companies, yeah.  
16 At our food can manufacturing plants, it's probably closer  
17 to 3,500. But it's a typical manufacturing operations.  
18 These are big pieces of equipment. We make 15, 16 billion  
19 cans. It's a significant operation. It's significant to  
20 coordinate the footprint across the country. Wherever  
21 vegetables are grown, we're going to have a plant generally,  
22 and wherever our customers decide to fill stuff, we're going  
23 to have a manufacturing plant.

24 COMMISSIONER BROADBENT: Okay, thank you. I'm  
25 trying to understand the statements on page 2-7 of the staff

1 report. Eight purchasers reported that the availability of  
2 the domestic like product has changed over the period due to  
3 a reduction of capacity, and all 11 purchasers experienced  
4 delays from its -- from suppliers.

5 However, the domestic industry had excess  
6 capacity throughout the Period of Review, and this excess  
7 capacity grew. It seems to me that there's a bit of  
8 something to reconcile there.

9 MR. ARENA: Yeah, I completely agree. I mean  
10 there could be -- I'll answer firsthand, if you don't mind.  
11 There's probably a Sparrow's Point dynamic in there. But so  
12 there's capacity and then there's capacity, can you place an  
13 order and get the steel. So there's let say the mill on the  
14 west coast. My belief it has its focus, its customers to a  
15 very small geographic area that doesn't have 500,000 tons of  
16 customer.

17 It only has 280,000 tons of customer. So  
18 they're going to report 220,000 tons of excess capacity.  
19 They don't elect to export. They don't elect to compete in  
20 the Midwest, where there's other volume. Their joint  
21 venture partner is right there. So there's sort of dead  
22 excess capacity, and so I think what you get into is some of  
23 this dead excess capacity, and we could go to the Midwest  
24 suppliers and say right now, we'll give you 200,000 tons  
25 additional starting in Q3. Nobody could say yes.

1                   Now I don't doubt that there's ten lines  
2 sitting idle that would take quite some time to maybe  
3 reenergize and get to a whole new labor force, and get to  
4 that capacity. But that is a monumental effort that they've  
5 been reluctant to make that sea change.

6                   So what ends up happening day to day is day to  
7 day there's no capacity. On paper, there's capacity.  
8 That's my inference. If I try to get 30,000 more tons in  
9 June domestically, I would have trouble getting it.

10                  MR. PORTER: Commissioner Broadbent, you are  
11 100 percent correct. It's hard to reconcile the data, which  
12 suggests that one aspect of the one side of the equation is  
13 -- may not be as correct as it appears. We respectfully  
14 submit it's just what Mike said, it's the capacity side.

15                  Look at Silgan's confidential declaration.  
16 There is an actual example where Silgan went to a domestic  
17 mill and said this is in 2018. Could not be more relevant,  
18 could not be more current. Silgan went to the domestic mill  
19 and said I want to buy more of your steel, and the domestic  
20 mill said I can't. I'm tapped out. That's in 2018, yet if  
21 you go to that domestic mill's ITC questionnaire response,  
22 you'll see tons of excess capacity. So how can both of  
23 those things be true?

24                  Well, it's what Mike was saying. They  
25 theoretically have the capacity, but it's not operational.

1 It can't supply him the steel that he wants. So you're  
2 absolutely right. There is a bit of a disconnect and a lack  
3 of reconciliation. But we submit it's not what Silgan has  
4 said; it's what the -- the way in which the capacity has  
5 been reported.

6 MR. ARENA: Silgan, and just to augment what  
7 Dan said, Silgan would love a proposal for some of this  
8 excess capacity. We would love it. We don't get it.

9 COMMISSIONER BROADBENT: Okay. Mr. Porter,  
10 realistically given Japan, Japanese producers' large volume  
11 of exports to Mexico, why wouldn't they also seek to export  
12 large volumes to the United States?

13 MR. PORTER: The issue is what do we think  
14 the Japanese mills, the volume -- as Madam Chair correctly  
15 identified, your job is to figure out what volume will the  
16 Japanese mills ship if the order is lifted. That takes into  
17 account a whole lot of different things. Excess capacity is  
18 certainly relevant; past practice is certainly relevant.

19 But what is equally relevant is the conditions  
20 in the U.S. market, and how they have -- how they have  
21 changed. What we're saying is this is not 1999. In fact,  
22 the Period of Review was actually '97 to '99. This is not  
23 the late 90's. This is 2018. The world is different. So  
24 even if the Japanese had the ability to ship doesn't mean  
25 that they're going to ship.

1                   The Mexico, I'm glad you bought up Mexico,  
2           Commissioner Broadbent, because the other side tries to use  
3           that in their favor. In fact, the behavior of the Japanese  
4           in Mexico supports us. Please look at the chart that we  
5           did, my colleague will find it, where we have imports into  
6           Mexico. You see the Mexican market is growing. It's a  
7           growing market, and yet the Japanese share declined.

8                   Why? Because it wasn't proper or wasn't good  
9           for them to sell there. That's more evidence that they're  
10          just not going to flood the market, price be damned. So  
11          with all due respect, take all of those things into account  
12          to say that it's less likely that the Japanese are going to  
13          ship large volumes of low price steel to the U.S. market.

14                   COMMISSIONER BROADBENT: But how do the prices  
15          compare between Mexico and the U.S.? I would think it would  
16          be easy for -- the Japanese would do a lot better in our  
17          market.

18                   MR. PORTER: Okay. First, it's a little bit  
19          different than before. It's true today that the U.S. market  
20          has the highest tin mill prices. That's true, okay. But  
21          the more relevant question is the Japanese relative to other  
22          import sources, and that's the more relevant question.  
23          Because in order for you to find that the volume of Japanese  
24          shipments is going to cause material injury, you must find  
25          that it's going to be lower than other import sources.

1                   Otherwise, you're not matching the volume of  
2                   Japan to the material injury, which you're required to do  
3                   under the law. What we're saying is the other evidence  
4                   demonstrates that Japan is not the lowest price in the  
5                   markets in which they serve. So if they're not the lowest  
6                   price, now why would we expect them to be the lowest price  
7                   in the U.S.? It doesn't make sense. That's not a  
8                   connection.

9                   COMMISSIONER BROADBENT: Okay, thank you.

10                  CHAIRMAN SCHMIDTLEIN: Oh okay, thanks. So I  
11                  guess just following up on that, but it doesn't -- it  
12                  doesn't have to be the lowest price in the U.S. It just has  
13                  to be lower than the U.S., right?

14                  MR. PORTER: Madam Chair, I respectfully  
15                  disagree. No. The Commission has long sort of looked at  
16                  the idea of non-attribution with respect to non-subject  
17                  imports, and you know, you can -- if the U.S. is at 100,  
18                  Japan's at 98, the Chinese are at 85 and everyone's doing  
19                  the same volume, can you really say it's the Japanese that  
20                  is causing the lower price?

21                  I don't think so, and the Commission actually  
22                  in the past has looked at that sort of very analysis and  
23                  said we, you know, we can't say that and so we're not going  
24                  to attribute the injury from low price all only to Japan.

25                  CHAIRMAN SCHMIDTLEIN: So okay, and this takes

1 me back to I think what we were talking about during my  
2 first round of questions, which is the question of Japan  
3 replacing non-subject, and I thought I -- my understanding  
4 of your answer at that time, at least from Mr. Arena's  
5 perspective, is that it's the quality. In other words, you  
6 said I think they wouldn't be competing with the Chinese.

7 But I assume, even if we accept that, which I  
8 don't know if that's true; I haven't looked at the types of  
9 specifications the Chinese are sending in. What about the  
10 other non-subjects? I mean Germany, the Netherlands, you  
11 know. Are you saying Japan wouldn't compete with any of  
12 those in terms of the quality and specifications they're  
13 capable of sending? If they do, then why would they take  
14 sales from those imports?

15 MR. PORTER: Okay. I'll let Mike sort of  
16 answer that from a business standpoint. I'm simply doing it  
17 from a sort of data/logic/trade law standpoint, okay, and  
18 the -- you know, you have to start. The U.S. mills want you  
19 to believe every single ton of tin mill steel is fungible,  
20 okay. That's their premise, and so only price matters.

21 So if we take them at their word and Japan is  
22 not going to be the lowest price, then I'm sorry, they've  
23 sort of lost that round. The Japanese will likely compete  
24 for some of the European and Canadian, and whether one week  
25 they're lower, one week we're higher, that's sort of, you

1 know, up to Mike's negotiations and so forth. But the point  
2 is that there's -- if there are other prices lower, which  
3 there are likely to be, how can you attribute the price  
4 effects to Japan? That --

5 CHAIRMAN SCHMIDTLEIN: I guess we won't know.  
6 I mean what I'm trying to get at is I think, I feel like I'm  
7 hearing you say two different things. I mean price is a  
8 factor. I mean, right, for these non-subjects. The  
9 non-subjects are competing with each other based on price to  
10 a certain degree?

11 MR. ARENA: Yes. So in this particular  
12 instance, I don't want to speak for other can makers. I can  
13 only really articulate my direct experience.

14 CHAIRMAN SCHMIDTLEIN: Uh-huh.

15 MR. ARENA: At this point, and for 2018  
16 specifically, we are not running some can lines because we  
17 can't get steel. So instead of operating and keeping our  
18 inventory the same year over year, we've decided to take an  
19 aggressive working capital approach. One of the factors in  
20 that is that we could not secure steel in advance in 2018 to  
21 the extent we needed to, to run the business in the same way  
22 in 2017.

23 CHAIRMAN SCHMIDTLEIN: Meaning you couldn't  
24 get it from any non-subject sources either?

25 MR. ARENA: We don't, we're not -- let's say

1 we're not qualified with a Chinese source.

2 MR. PORTER: They're not qualified with you.

3 MR. ARENA: They're not qualified.

4 CHAIRMAN SCHMIDTLEIN: Right.

5 MR. ARENA: They're not qualified for us, and  
6 the applications -- and this is -- so you really have to  
7 regionalize the conversation around tin plate. The west  
8 coast is contained. I think there's very little import  
9 opportunity. We're not going anywhere. There's very few  
10 imports that the west coast supplier can produce that they  
11 don't have that business. It's small, like less than 20,000  
12 tons I would guess, maybe a little bit higher than that.

13 That's where Japan's going to come first.  
14 That's their cheapest operation. To get --

15 CHAIRMAN SCHMIDTLEIN: That's where the  
16 Chinese were probably coming first too, right?

17 MR. ARENA: Correct, and we haven't bought a  
18 ton from them. So we're --

19 CHAIRMAN SCHMIDTLEIN: How many other  
20 purchasers are there on the west coast?

21 MR. ARENA: There's three and then smaller  
22 folks. But there's three of size, and there's three  
23 commercial can makers.

24 CHAIRMAN SCHMIDTLEIN: Including you?

25 MR. ARENA: Yeah. We're probably --

1                   CHAIRMAN SCHMIDTLEIN: Purchasers, right?

2                   MR. ARENA: Yeah. We're probably 80 percent  
3 of the market. One of the can makers there, everything they  
4 run in their plant, UPI can't manufacture. It's a type of  
5 metal or a width that they don't do. They could or the --

6                   CHAIRMAN SCHMIDTLEIN: So where do they get  
7 their product? Do you know?

8                   MR. ARENA: I think they get certain metal  
9 from Korea, certain metal from other sources. It's hard to  
10 -- when they get the import data, it's hard to really  
11 dissect. But UPI could probably, would probably know  
12 better. And then there's another can make that historically  
13 splits the buy between UPI and then imports. I don't  
14 envision that changing.

15                   So the mos cost efficient place for Japan to  
16 go is the west coast. I don't know how they're going to get  
17 there. So now they're left to go to their least cost  
18 efficient. I know it's their least cost efficient because  
19 when we run laminated steel in our Midwest facilities, it  
20 costs way more than when we run it on our west coast  
21 facilities. So I know that there's a big price difference  
22 for them in the Midwest than on the west coast.

23                   Our goal is to have a Quick-Top whenever we can.  
24 It's every Can maker's goal. There's an absence of quick  
25 top metal at the specifications that we run in the

1 marketplace. It's hard to find and so -- run quick top  
2 metal.

3 CHAIRMAN SCHMIDTLEIN: And so you would be  
4 sending that, though, to your Midwest facility.

5 MR. ARENA: Only our facilities in the Midwest  
6 make quick tops.

7 CHAIRMAN SCHMIDTLEIN: Okay. But even with the  
8 less efficient --

9 MR. ARENA: Yes, if the Japanese tin plate came  
10 in and we used them they would have to get to the Midwest.

11 CHAIRMAN SCHMIDTLEIN: They would have to go to  
12 the Midwest for you?

13 MR. ARENA: Yes.

14 CHAIRMAN SCHMIDTLEIN: Okay.

15 MR. PORTER: Madam Chairman, just to reiterate  
16 what Mike is talking about are specifications, types of  
17 steel that he cannot get from U.S. mills. So when that is  
18 the underlying factual predicate, I respectfully submit the  
19 whole pricing discussion is a little less, okay, because  
20 price is only important when you have head-to-head  
21 competition.

22 CHAIRMAN SCHMIDTLEIN: I assume the Japanese  
23 make all of the specifications -- I assume they make the  
24 specifications that the U.S. mills make.

25 MR. PORTER: Right. And I'm not saying

1 otherwise.

2 CHAIRMAN SCHMIDTLEIN: Right.

3 MR. PORTER: What Mike is saying he's going to  
4 buy, because you asked that question. Mike, what'd you  
5 going to buy from the Japanese.

6 CHAIRMAN SCHMIDTLEIN: Right.

7 MR. PORTER: He's saying he's going to  
8 concentrate on those specifications that the U.S. mills  
9 either cannot make or have had trouble supplying on time.  
10 And so it's quintessential, non-price fact import purchase  
11 situation. That's what's going to happen.

12 MR. ARENA: Just to augment this, the Japanese  
13 mills have width limitations and so in several aspects U.S.  
14 steel has a competitive advantage over them. They mentioned  
15 they're trying to qualify for a wider DNI application. The  
16 Japanese can't come anywhere near that width, so there is a  
17 bunch of business, particularly, in the two-piece can space  
18 that the Japanese can't participate because of their  
19 limitations around technology and that's the capability of  
20 running wider coils, which when you -- we just built a new  
21 plant in Burlington, Iowa. It's one of the biggest food can  
22 plants in the world. We built it to enable domestic mills  
23 to supply it, but you can build the manufacturing lines at a  
24 width that are wider than the domestic mills can supply.  
25 You sort of have options. And in no case can the Japanese

1 supply any of our two-piece lines, so they're very limited  
2 in what they can do.

3 I just gave you an example of an application  
4 that's sort of value add that we would like for them to  
5 participate because we only really have one supplier now in  
6 our quick tops.

7 CHAIRMAN SCHMIDTLEIN: Okay. I'm not sure if  
8 this has been covered, but one of the other arguments the  
9 domestic industry makes is that following the revocation on  
10 hot-rolled steel where the Japanese steel mills had said  
11 they didn't plan to send significant quantities here there  
12 was a significant increase in their imports after the first  
13 year. Can you respond to the argument that this would be no  
14 different? I mean what do you say in response to that? I  
15 mean on one hand you want to look at the pricing behavior  
16 with regard to laminate product coming from Japan and  
17 arguing that that would be -- that that's indicative of  
18 their behavior with regard to this, so hot-rolled is a  
19 different product, but same companies, right?

20 MR. PORTER: Madam Chair, I 100 percent agree  
21 that what domestics have provided is some data and that the  
22 date can be arguably said is relevant. Again, I go back to  
23 my, absent other information, you might draw some  
24 conclusions that you're talking about, but this same issue  
25 -- I apologize. You weren't there. This exact same

1 argument on their side was presented last time. So we will  
2 present to you what we presented last time, was the  
3 confidential affidavit from the largest purchaser of  
4 hot-roll steel about why he had to increase purchases from  
5 Japan. And I assure you, they're for all non-price reasons.  
6 So we'll get that. We have it. It's our client's  
7 information and we will submit it in response to your  
8 question. And so what that shows you is that it was an  
9 explanation for the increase.

10 The domestics love to just say increase imports  
11 it must be because of low price. Absent any other  
12 information, maybe you can draw the inference, if, in fact,  
13 the price is lower. But if there is other information,  
14 which we will provide you, I respectfully submit you need to  
15 take that in account before making the inference that  
16 domestics want you to make.

17 MR. ARENA: My belief there's shortfall in the  
18 U.S. and the supply has driven prices up in this market.  
19 Importers have been wise and they realized that buyers need  
20 steel and so it's actually had an effect of increase in  
21 prices. It would be interesting what prices would be if  
22 that 47 percent capacity was made available to the  
23 marketplace. I would surmise that prices would dramatically  
24 go down if, let's say, the installed capacity became real  
25 capacity. It would be interesting to see what happened

1 with prices.

2 I think the supply challenges we faced has  
3 forced prices up in this market and its relative nature to  
4 the rest of the world I'm not sure the defense against that  
5 argument.

6 CHAIRMAN SCHMIDTLEIN: Okay, my time is up, so  
7 Vice-Chairman Johanson.

8 VICE CHAIRMAN JOHANSON: Thank you, Chairman  
9 Schmidtlein.

10 On page 28 of your brief, you seem to indicate  
11 that the Japanese industry is happy with capacity  
12 utilization rates between 80 and 85 percent. Is there  
13 anything that you could provide to give that statement more  
14 economic reasoning? Many times we investigate industries  
15 that are referred to as "capital intensive" with the  
16 implication that they must have 100 percent capacity  
17 utilization. Is tin mill not a capital-intensive industry?

18 MR. PORTER: Commissioner Johanson, I am not  
19 sure, but I'm pretty sure I didn't use the word "happy."

20 VICE CHAIRMAN JOHANSON: Okay, yeah, I don't  
21 think you did.

22 MR. PORTER: I'm sorry?

23 VICE CHAIRMAN JOHANSON: No, I don't think you  
24 did.

25 MR. PORTER: Okay. Because I think if I did I

1 think my clients would be a little bit upset. They, like  
2 all mills, all mills want to increase their capacity  
3 utilization. The Japanese are no different. What we were  
4 attempting to do here, and as you can imagine, Commissioner  
5 Johanson, this is the fourth time we've been arguing with  
6 the domestic mills about what different data means and so  
7 forth and we were trying to rebut an argument that they had  
8 made last time. This idea that if you remove the  
9 anti-dumping duties the Japanese will immediately go to 100  
10 percent utilization and use all the excess capacity to the  
11 United States. And we're simply saying you can't make that  
12 assumption if you have 20 years of data in which they have  
13 been, on average, only mid-eighties capacity utilization and  
14 no other restraints in any other market.

15 Okay, so you can't have it both ways. They  
16 can't say that they're export, you know, happy creatures and  
17 they're just going to just flood every export market when  
18 they have access capacity, but then the data doesn't support  
19 that. So we would definitely say the data is the data.  
20 You've collected it. What we reported on at page 24 is  
21 essentially the data that you've collected over 20 years and  
22 we submit that their actual practice in the real world is  
23 more probative than the U.S. mills assertion of somehow this  
24 economic incentive of wanting to go to 100 percent  
25 utilization and therefore they're going to use the U.S.

1 market to do so.

2 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.  
3 Porter, for your response.

4 On page 21 of your pre-hearing brief, you argue  
5 that tin plate represents the vast majority of what is  
6 produced on this production equipment and most of the  
7 remaining products are excluded tin mill products that  
8 command a higher average unit value in unit price than tin  
9 mill. Would you say the excluded tin mill products that  
10 have a higher AUV represent a greater opportunity to export  
11 to the U.S. market than exporting subject tin mill to other  
12 markets and are the distribution channels for excluded tin  
13 mill and subject tin mill similar?

14 MR. PORTTER: I guess I would say the  
15 distribution channels are largely the same because as Mike  
16 Arena has testified he is a purchaser of the excluded  
17 laminated steel product and he's also a purchaser of the  
18 subject steel product, though, obviously not from Japan. So  
19 I think you have the same kind of customer universe. An  
20 individual can company may use more or less laminated,  
21 depending on their operations.

22 As Mike can explain much better me, some can  
23 companies are set up to use more laminated. Some can  
24 companies, like Mike -- actually, he does some -- whatever  
25 the effective thing of laminating himself. With respect to

1 opportunity, the answer is looking at raw volumes; of  
2 course, the subject is more than the excluded, so obviously  
3 there is a higher universe of what we would call subject tin  
4 mill than the excluded universe.

5           As you can imagine, the only reason they are  
6 excluded is because the domestic mills said we agree we  
7 can't make it, so we agree to exclude it. That's obviously  
8 a smaller universe and that's how all these exclusions  
9 happened. I was behind every single one going to the U.S.  
10 Petitioners saying customers say that you can't get it.  
11 Okay, we agree and they would exclude it. A lot of the  
12 exclusions were done in an original Order. The other  
13 exclusions were done over time.

14           So of course, the volume exclusion is smaller,  
15 but with respect to opportunity I'm glad you raised that  
16 because I wanted to reference something that Mike said in  
17 his testimony. And that is if the Japanese wanted to  
18 increase dramatically their shipments of excluded laminated  
19 steel they could by dramatically lowering the price because  
20 lamination for a lot of applications, as Mike will explain,  
21 is kind of preferred for some applications. Preferred to  
22 use laminated for all sorts of complicated business and  
23 environmental reasons prefers to use laminated steel, but he  
24 can't get it and it has to work economically, which means  
25 the laminated steel supplier has got to lower the price and

1 the Japanese aren't.

2 So here you have, if you will, let's call it a  
3 natural experience before your very eyes. The Japanese  
4 could have gotten a lot more volume by lowering their price  
5 and they haven't. That, to me, Commissioner Johanson, is  
6 more probative than what happened in 1997. That's why we've  
7 spent so much time on it.

8 VICE CHAIRMAN JOHANSON: Thanks, Mr. Porter.

9 And Mr. Arena, I've got a quick question for  
10 you. And perhaps I've read this, but I just don't remember.  
11 Why would some customers want laminated and some not; is it  
12 the product being packed?

13 MR. ARENA: Yes, so laminated has, for lack of a  
14 better term, like a plastic coating around the steel and so  
15 we don't have to -- most every can of steel is painted on  
16 the inside and on the outside. So if you buy laminated  
17 steel, you don't have to paint the metal. Painting the  
18 metal it's a messy operation. It's not a value-added  
19 operation, so it's an operation that you could move from  
20 your manufacturing footprint. It gives you a cleaner  
21 manufacturing space. From a regulatory purpose, it's a  
22 product that's more accepted around the world and so it's a  
23 better product. That's why it costs more. And because it's  
24 a better product our experience is long with it in a  
25 particular market, the salmon market, we've spent seven or

1 eight years trying to develop and get laminate into our  
2 system in a much bigger fashion in different applications.

3 We have it so that we could socialize it in  
4 other application. The problem is our customers won't pay  
5 for it and they won't pay for it because it's priced up from  
6 our existing can and it's price up because the substrate is  
7 more expensive and I think that's to Dan's point. I know  
8 the folks this morning were somewhat dismissive, but this is  
9 a real project for us that we're really trying to latch  
10 onto. You'd ask the question about BPA. This is a BPA  
11 solution. This is the cleanest BPA solution we have is  
12 laminate.

13 VICE CHAIRMAN JOHANSON: Okay, that's very  
14 interesting. Thank you. I appreciate your answer.

15 And getting back to the number of reviews that  
16 have been conducted, and Mr. Porter, you've mentioned this a  
17 number of times, what specifically is different about the  
18 record in this third review from the first and second  
19 reviews that should lead the Commission to find no likely  
20 significant adverse price effects?

21 MR. PORTER: I'm sorry. You're focusing just on  
22 price effects?

23 VICE CHAIRMAN JOHANSON: Actually, anything.

24 MR. PORTER: Okay.

25 VICE CHAIRMAN JOHANSON: It's open.

1 MR. PORTER: Okay, thank you.

2 What we view is the biggest changes from the  
3 last couple of sunset reviews. Sorry, but number one,  
4 numero uno, imposition of Section 232. It's going to  
5 happen, we respectfully submit. That's a huge, huge game  
6 changer the Commission has got to take into account, as  
7 they've done before.

8 Another change that's different before, the  
9 increasing presence of non-subject imports. I talked at  
10 length about that before. That's something that's different  
11 than the first and second review. And then, with respect to  
12 your last point about price effect, quite honestly, we  
13 thought real hard, well, we need to give additional  
14 information. What is more probative about the Japanese  
15 pricing behavior today than simply kind of looking back  
16 what did they do in 1997?

17 So we sat down and we said, Mike, you buy this  
18 steel from Japan. Do you buy it from others? Explain what  
19 it is. Explain everything. And then helped us walk through  
20 this. You can actually derive a subject merchandise Japan  
21 steel price using actual data because the -- he outsources  
22 the lamination. So he can just take that, do it, and you  
23 get, essentially, what the Japanese believe the value of the  
24 substrate, the subject merchandise tin free steel -- the  
25 chromium steel is. And he took that number and he compared

1       it to what he's paying the exact same chromium steel from  
2       U.S. mills and he said it's higher. So that is new evidence  
3       that you did not have before that demonstrates the absence  
4       of future price effects.

5                   VICE CHAIRMAN JOHANSON:  Alright, thank you for  
6       your comment, Mr. Porter.  My time has expired.

7                   COMMISSIONER WILLIAMSON:  Okay, thank you.

8                   Mr. Arena, I was wondering what your assessment  
9       of the Can-Do Program and what impact it might have if it's  
10      successful?

11                  MR. ARENA:  I'm incredibly optimistic around it.  
12      I'm thankful that they're pursuing it and we'll be there  
13      side-by-side with them trying to ensure their success and do  
14      what we can to make them successful.  So this is very much  
15      welcomed.  U.S. Steel has historically been our lead  
16      supplier.  I can't envision a scenario when they're not and  
17      so this is -- it's tremendous to see this type of investment  
18      in this space.

19                  COMMISSIONER WILLIAMSON:  How long do you think  
20      it might take before that deals with the quality problems  
21      and supply problems that you've been complaining about?

22                  MR. ARENA:  You know these are complicated and  
23      difficult projects to execute and so I wish I could tell you  
24      we were seeing benefits today, but I'm optimistic that  
25      there's a new energy around tin plate and that they'll be

1       able to execute against these projects. It's a different  
2       subject than why I'm here, but I think it's important to  
3       note that they are making that investment.

4                   COMMISSIONER WILLIAMSON: Okay. I wondering  
5       about -- you talked about not being able to get from the  
6       domestics the product you want. I think you talked about  
7       you wanted something for the second quarter period of time.  
8       I was wondering how would it be different if you were  
9       saying, look, next year, a year out, these are going to be  
10      my demands. Is that -- would that make them more  
11      competitive?

12                   MR. ARENA: The U.S. industry understands what  
13      we would like to buy from them and so that target has been  
14      out there for, in my mind, quite some time. And then you  
15      have to realistically assess where you are against that  
16      target and then backfill the void with somebody else. And  
17      so I think there's numbers out there that have been  
18      sufficiently communicated of what we would like to do with  
19      the domestic steel industry and they're not just capable of  
20      right at this moment or I would envision for a little bit of  
21      time still.

22                   So I'll back to we've increased our import  
23      program and this is -- generally speaking, you can't bring  
24      steel from UPI into the Midwest, generally speaking. You're  
25      buying hot bands from U.S. Steel, going on a rail car, and

1 they've got to come back. It's a very good model. So I'm  
2 talking about east of the Mississippi. We've had to  
3 increase our import program to satisfy our production  
4 needs. Some day we hope that problem rectifies itself.

5 MR. PORTER: Commissioner Williamson, I believe  
6 the precise or the direct answer to your question was  
7 actually done by Mike Arena a little bit earlier in his  
8 testimony. The example that I referenced and I think Mike  
9 did as well about this second quarter. And you're saying,  
10 okay, that may be a one off, might need a little bit more.  
11 He went and they said they were too topped out. That  
12 doesn't really get at the issue of about what about these  
13 next year volumes, but what did he say earlier during his  
14 sworn testimony?

15 He said he went to the U.S. mills and he said  
16 here is my forecast for the entire next year. I'm telling  
17 you right now this is what I'm going to need and they said  
18 fine and we're saying I want you to provide me this quantity  
19 over the entire next year and what he said is they couldn't  
20 do that. So they had lots of advanced notice. It wasn't  
21 just like, oh, I'm being -- they had lots of advanced  
22 notice and they couldn't even supply what they had agreed to  
23 and so that's the direct evidence of this problem that  
24 we're talking about. It's not a one off, temporary thing as  
25 the U.S. mills said. We're talking Mike went to them with

1 forecasted annual volumes and they couldn't honor that  
2 committed volume. They actually sold to Mike much less.

3 COMMISSIONER WILLIAMSON: Okay, thank you.

4 How significant is the quick top market of your  
5 production. I think it's a growing significance, but I just  
6 want to get some idea of the magnitude of that.

7 MR. ARENA: It's, let's say, about 10 percent of  
8 our steel purchases.

9 COMMISSIONER WILLIAMSON: Is it expected to go  
10 up from there?

11 MR. ARENA: I think us and every can maker would  
12 like to have an easy open end on every can and so we're  
13 trying to develop ways to put it on every diameter of can to  
14 make it easier for the consumer, give them permission to use  
15 a can.

16 COMMISSIONER WILLIAMSON: Including cans that  
17 old folks can use?

18 MR. ARENA: That's why we need higher elongation  
19 and thinner steel to make it easier for everybody to open.

20 COMMISSIONER WILLIAMSON: So higher elongation  
21 means?

22 MR. ARENA: It allows the performance of the end  
23 to be better than maybe the steel we used to use on a quick  
24 top end.

25 COMMISSIONER WILLIAMSON: Okay, thank you.

1 That's a hopeful sign too. Okay, thank you.

2 So now are you saying the domestics aren't  
3 prepared to I guess supply you with what you need for this  
4 type of market?

5 MR. ARENA: I believe they will energize  
6 themselves to participate in this market, but at the moment  
7 the, let's say, 80,000 tons of quick top metal that we buy  
8 they're not prepared to supply that.

9 COMMISSIONER WILLIAMSON: Okay. Does that  
10 require additional investment?

11 MR. ARENA: It starts at the beginning of making  
12 the steel and the steel cleanliness and works through  
13 various operations that you have to have the capability.  
14 I'm not an expert in the different technologies at different  
15 stages in the manufacture of steel. It's incredibly  
16 complicated to make steel and so this requires a sort of  
17 unique skill set or equipment set to do so.

18 COMMISSIONER WILLIAMSON: Okay, thank you.

19 You've argued that purchasers requirements for  
20 small order quantities and the ability to make order changes  
21 on short notice limit the ability of purchasers to source  
22 tin mill steel from overseas; however, our data is showing  
23 that non-subject imports are growing and have captured more  
24 than, I guess, 30 percent of the market. So how have  
25 purchasers been able to source such a significant share of

1 their requirements from offshore sources? Mr. Arena  
2 mentioned something about having to, I guess, carry larger  
3 inventories.

4 MR. ARENA: That would be part of the solution  
5 and not every can maker needs to support a food pack. I  
6 mean there's non-food tin applications that are maybe more  
7 -- their entire portfolios may be perhaps easier to import.  
8 For us, where the domestics have lost some business is not  
9 in those items. They still have those items, but maybe the  
10 bigger runner, things that have less specifications we've  
11 had to offshore because we had to offshore something, so we  
12 offshore the easiest thing, while retaining their business.  
13 That is the bulk of our business. I mean the domestic  
14 industry still has 600,000 tons of our business, so it's not  
15 like -- so when we say the vast majority, we feel that's the  
16 vast majority.

17 COMMISSIONER WILLIAMSON: Okay. So what are the  
18 types of things you would be off-shoring for end users; are  
19 those like the paint cans?

20 MR. ARENA: No, even a soup can, but a soup can  
21 might only have two different specifications. There's  
22 chunky soup -- and I'm suing Campbell's as an example -- and  
23 then there's condensed soup, so there might only be two  
24 specifications.

25 COMMISSIONER WILLIAMSON: That's a different

1 can.

2 MR. ARENA: Yes. And so you can -- but if you  
3 get to a vegetable or a tomato pack there's cans for  
4 restaurants. There's cans for consumers. Every can size is  
5 made for a recipe that says do you want one can of paste.  
6 That's why the recipe in a can is that size because there's  
7 one can of paste in the recipe. They try to make it -- you  
8 know sizes to the recipe and vice versa. So when you get  
9 into the tomatoes and the corns, there's all sorts of shelf  
10 size for consumers and then industrial sizes and a brand  
11 might decide we're going to put more in this size than that  
12 size. The crop wasn't as good, so we want to put it more in  
13 institutional -- I'm making it up -- versus off-the-shelf  
14 for consumers, institutional, mean restaurants. So if  
15 you're in the pack business, and a lot of us are in the pack  
16 business, but not all of us. Those types of things are  
17 where you can get some quick turnover.

18 If you're at a plant that just makes the same  
19 soup can every day, then that's business that can easily be  
20 moved off of the domestic and fill the supply void. Does  
21 that make sense?

22 COMMISSIONER WILLIAMSON: Because you know that  
23 if I'm going to make 10,000 cans I'm going to need 1,000  
24 tons or something.

25 MR. ARENA: And it's one specification versus --

1 all those different cans I explained have a different  
2 specification. It' might be a different width. It might be  
3 a different tin applied to it. It might be a different  
4 thickness, whereas a soup can has two different specs. So  
5 you know sometimes U.S. Steel has -- or the domestics have  
6 the heavy lifting when they have the wide variety of  
7 specifications that they supply us and the industry. But it  
8 is, to me -- I think it's very much factual that that's a  
9 dynamic of the business that's always existed and is part of  
10 the element that will always keep us domestically focused as  
11 Silgan as long as we have the same customer base that we  
12 have today.

13 COMMISSIONER WILLIAMSON: I'm going to have fun  
14 tonight looking in my pantry at the different cans.

15 MR. ARENA: If you have any pets, there's an 85  
16 percent chance it's going to be one of our cans.

17 COMMISSIONER WILLIAMSON: Okay. Okay, thank you  
18 for those answers.

19 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

20 COMMISSIONER BROADBENT: Thanks. Mr. Porter, I  
21 asked this question of the Petitioners and I thought I'd  
22 give you a chance to reply either here or in the  
23 post-hearing with respect to how we deal with all the trade  
24 remedies and the ADCD dumping petitions going on at the same  
25 time. You know, historically, we had these voluntary trade

1 agreements and global safeguard actions that overlapped and  
2 I'd just like your perspective on what we should take into  
3 account and what we shouldn't take into account with respect  
4 to other remedies.

5 MR. PORTER: I guess I'm just going to for now,  
6 I'm going with the request, so I can think about it a little  
7 bit more. But my immediate answer now is I'm simply going  
8 to rely on past Commission practice. Then the Coldwell case  
9 is a good one.

10 As you know well, there are sort of trade cases,  
11 ADCVD and so forth on many different steel products, a lot  
12 of which the same companies this petitioner has come. The  
13 Commission has generally said, for example, in ADCVD in  
14 OCTG, not going to be really too relevant to your analysis  
15 of tin mill. And they kind of -- that's, you know, I think  
16 no one would dispute that.

17 What we're talking about here, though, and then  
18 Coldwell is a good example, is when the president imposes  
19 complete and sort of total relief for all steel products,  
20 including the very product that we're talking about. And I  
21 think that's the difference.

22 You know, I as an economic matter, can say,  
23 well, the benefit that the U.S. Steel and ArcelorMittal have  
24 gotten in hot and cold roll should be somehow taken into  
25 account when you're thinking about the health of the

1 industry, but correctly the other side would say, ah, you  
2 got to -- you have a little bit of constraint of like  
3 product here and you got to look at sort of tin mill steel  
4 and the health of the industry.

5 But that's the whole point of the 232. It's  
6 completely all comprehensive and it's global, okay? And I  
7 didn't get a chance to -- you know, we gave you some  
8 articles and just the latest information.

9 And the information suggests that the President  
10 is going to take the most restrictive option of the 232  
11 options. He's going to put high duties on all steel from  
12 all countries, which is almost identical to what they did in  
13 the safeguard case. If anything, it's more restrictive and  
14 it's -- it will have a greater effect.

15 And so I think that's something that you  
16 actually can, and I actually go far to say you require to  
17 take into account as important condition of competition.  
18 And I think that's different from the ADCVD on the different  
19 variety of products which as an economic matter, I may  
20 argue, but as you see, we haven't done that. We're focusing  
21 on the 232.

22 COMMISSIONER BROADBENT: Okay thank you very  
23 much. Appreciate all of your attendance today.

24 CHAIRMAN SCHMIDTLEIN: Vice Chairman Johanson?

25 VICE CHAIRMAN JOHANSON: I was wondering, is tin

1 mill consumption increasing in any region of the world?  
2 Respondents argue -- you all argue the consumption in Asia  
3 has increased. You note this at page 36 of your brief. Is  
4 this perhaps because certain countries in Asia are moving  
5 more from informal public markets to super market culture?

6 MR. PORTER: I will exhaust my knowledge in  
7 about 10 seconds and then I'll turn it over to Mike, but big  
8 picture, and our clients do this, the sort of consumption of  
9 tin mill steel, of course, goes with the consumption of tin  
10 plate. And as developing countries get a little bit more  
11 wealthy, they start buying more canned goods. And that's a  
12 correlation that's been around for a while.

13 And so as you see what we call lesser developed  
14 countries, that's where you're seeing the growth and the  
15 consumption of the cans and therefore the consumption of  
16 this deal.

17 MR. ARENA: Yeah, it's the -- probably the most  
18 effective vehicle of getting vitamins to all different parts  
19 of different countries. And so what I think you're seeing  
20 is the migration of people not wanting to waste food and  
21 then trying to get food to people who eat it. And it's the  
22 best vehicle for that. And so as these countries begin to  
23 develop, they begin to develop the sort of -- the utilities  
24 and the tools to deliver food to the people who most need  
25 it. And this is the best package to do so.

1                   VICE CHAIRMAN JOHANSON: So this could  
2                   conceivably lead to increased exports to developing  
3                   countries from Japanese and other countries, correct?

4                   MR. ARENA: Theoretically, over -- it'll be a  
5                   long period of time.

6                   VICE CHAIRMAN JOHANSON: Uh-huh.

7                   MR. ARENA: But yeah.

8                   VICE CHAIRMAN JOHANSON: Okay, well, it's  
9                   amazing technology. I mean, it's been around a long time,  
10                  right?

11                  MR. ARENA: It has been.

12                  VICE CHAIRMAN JOHANSON: And it's been effective  
13                  for a long time?

14                  MR. ARENA: Still is.

15                  VICE CHAIRMAN JOHANSON: Okay. Well, very good.  
16                  I appreciate you all being here today. That concludes my  
17                  questions.

18                  COMMISSIONER WILLIAMSON: Okay. Thank you.  
19                  Just a few questions. And if you've addressed it already,  
20                  just refer to the earlier answer.

21                  Okay, you know Japan -- the share of Japan's  
22                  shipments that are exported as risen significantly over the  
23                  POR and typically, we've taken this to mean that this type  
24                  of development as increasing likely hood that a subject  
25                  country will ship significant volumes of the product to the

1 U.S. upon replication. On what basis should the Commission  
2 reach a different conclusion here?

3 MR. PORTER: Thank you, Commissioner. We would  
4 have to look this. So just I'll refer that, again, absent  
5 other information, that inference is permissible. But here,  
6 we have a lot of information that demonstrates the  
7 constraints that the Japanese will have when shipping to the  
8 United States because of the changes in the domestic  
9 industry and the configuration of the market as Mike Arena  
10 has explained.

11 COMMISSIONER WILLIAMSON: Okay.

12 MR. PORTER: So the fact that they're export  
13 oriented doesn't itself answer the question when there  
14 exists this other information.

15 COMMISSIONER WILLIAMSON: Good, okay. Thank  
16 you. Domestic producers claim that the U.S. market has, you  
17 know, the market has prices that are more -- would be  
18 attractive to Japanese suppliers. And you point to AUVs.  
19 Could you comment on this information and line of argument?  
20 I think you touched on it before, but I --

21 MR. PORTER: Yeah, just real quickly. It's a  
22 fact that today, the prices for tin mill steel in the United  
23 States are higher than other markets. That is a fact. The  
24 -- as I said, that doesn't answer the question of the effect  
25 of the volume of coming from Japan because price is about

1 price effects.

2 And as I said before, if the evidence is the  
3 Japanese are not the lowest priced steel in the markets they  
4 serve, and I respectfully submit that they're not going to  
5 be here, and that has direct implications for your analysis  
6 of price effects.

7 COMMISSIONER WILLIAMSON: Okay, thank you. And  
8 my last question, how do you respond to the domestic  
9 producers' contention that the data in this third review  
10 should show that the domestic industry is equally or more --  
11 in an equally or more weakened state than in the first or  
12 second five-year reviews?

13 MR. PORTER: Commissioner Williamson, you were  
14 here six years ago and we had sort of a similar discussion.  
15 We believe that the Commission, the requirement of the  
16 Commission is to find that the volume of Japanese tin mill  
17 steel somehow demonstrate, will have a material adverse  
18 effect on the U.S. mills.

19 We respectfully submit that you're required to  
20 take into this issue of non-attribution. If there's  
21 something else causing the U.S. mills' poor performance, you  
22 need to take that into account to make sure you're not  
23 attributing that other factor to the imports from Japan.

24 And we said this last time, and I'm sorry, I  
25 still believe it's true, if the domestic industry has had

1 poor performance for 20 years, doesn't that suggest there's  
2 something else going on that has nothing to do with imports?  
3 And I respectfully submit if -- that is true and that you  
4 need to think about that when you're evaluating what effect  
5 -- whether the Japanese imports will have a material effect  
6 on the health of domestic industry.

7 COMMISSIONER WILLIAMSON: Okay. But what -- but  
8 I was getting to the question, what's the state of the  
9 industry now, not what's necessarily what's the stake going  
10 to be if we revoke?

11 MR. PORTER: I guess I'm a little confused.

12 COMMISSIONER WILLIAMSON: Oh.

13 MR. PORTER: The data is --

14 COMMISSIONER WILLIAMSON: Are they more  
15 vulnerable now than they were five years ago or during the  
16 first review?

17 MR. PORTER: I would not -- I would say the data  
18 shows them to be less vulnerable. Just simply the nice  
19 thing is you're very, very good competent staff has a very  
20 nice table in the report going back 20 years. And so you  
21 can see for yourself and I can't disclose confidential  
22 information --

23 COMMISSIONER WILLIAMSON: Okay. Okay, but --

24 MR. PORTER: -- but let's just say they're more  
25 profits going on in this period --

1 COMMISSIONER WILLIAMSON: Okay.

2 MR. PORTER: -- than there were no previous  
3 years.

4 COMMISSIONER WILLIAMSON: Okay, thank you. So  
5 you think that that would show that they're not?

6 MR. PORTER: I would say that domestic industry  
7 is less vulnerable today than they were before, yes.

8 COMMISSIONER WILLIAMSON: Good, okay. Good.  
9 Well, thank you for all those answers.

10 CHAIRMAN SCHMIDTLEIN: Okay, I think that  
11 concludes the Commissioners' questions. So I'd like to  
12 thank you again, Mr. Arena for being here. We really do  
13 appreciate it. And you as well, Mr. Porter. And so I would  
14 dismiss -- well, you know what? Before I do that, let me  
15 ask if the staff has any questions of this panel.

16 MR. CORKRAN: Douglas Corkran, Office of  
17 Investigations. Thank you, Madam Chairman. Thank you,  
18 panel. The staff has no additional questions.

19 CHAIRMAN SCHMIDTLEIN: Okay. Thank you. Do  
20 petitioners have any questions for this panel?

21 MR. ROSENTHAL: No.

22 CHAIRMAN SCHMIDTLEIN: No, okay, thank you. All  
23 right, now I will dismiss you before we move to closing  
24 statements.

25 MR. PORTER: Thank you, ma'am.

1                   CHAIRMAN SCHMIDTLEIN: Sure.

2                   Petitioners have 8 minutes from direct and 5  
3 minutes for closing for a total of 13 minutes.

4                   Respondents, you have 26 minutes from direct, 5  
5 minutes for closing, for a total of 31 minutes.

6                   CLOSING STATEMENT OF LUKE A. MEISNER

7                   MR. MEISNER: Good afternoon, Commissioners.

8 For the record I am Luke Meisner here on behalf of U.S.  
9 Steel.

10                   The Japanese producers have advanced a number of  
11 arguments in opposition to continuation of the Order. None  
12 of them have any merit.

13                   First on the issue of volume, the Japanese  
14 producers claim that of course they are interested in the  
15 U.S. market, but only a little bit. Just not interested in  
16 shipping large volumes at all.

17                   Yes, the data are the data, and they show that  
18 Japanese producers have become more export oriented than  
19 ever. They exported almost one million tons of tin-mill  
20 products to 55 countries last year, with their largest  
21 market being our neighbor Mexico. And the reasons for this  
22 trend are simple: Demand in Japan is steadily declining,  
23 while Japanese producers have more excess capacity than  
24 ever, leaving them no choice but to export more and more.

25                   And as counsel for the Japanese producers

1       acknowledged, the U.S. market is the highest priced market  
2       in the world.  Furthermore, Japanese producers are being  
3       squeezed out of their other export markets.  So of course  
4       they want to ship as much volume to the United States market  
5       as possible, and take advantage of the higher prices here  
6       compared to their other export markets.

7                The Commission should reject the Japanese  
8       producers' claims that they are comfortable--they didn't use  
9       the word "happy," but they did use the word "comfortable"--  
10      not maximizing their production, but instead sitting at 70  
11      to 80 percent capacity utilization rates.

12              It is completely illogical to think that a  
13      capital intensive, profit-maximizing steel producer would  
14      ever remain just "comfortable" with a lower utilization rate  
15      when it had an opportunity to increase its utilization rate  
16      by making more sales to the large U.S. market.

17              In years where it has been able to do so, the  
18      data show that the Japanese producers' capacity utilization  
19      has exceeded 90 percent.  And you can be certain that it  
20      would exceed 90 percent if the Order was revoked and the  
21      Japanese producers were allowed to return to this market.

22              The domestic industry unfortunately does not have  
23      an inherent advantage over imports.  As you heard from  
24      testimony today, under their contracts purchasers are always  
25      free to purchase imports instead of the domestic

1 like-product. That is why from 2011 to 2017 the domestic  
2 industry's market share dropped from over 80 percent to just  
3 50 percent.

4           These data completely belie the purchasers'  
5 testimony that they have, quote, "no choice but to purchase  
6 the overwhelming majority of their needs from U.S.  
7 producers."

8           And when the Japanese producers come flooding in  
9 here, they would not just replace other imports when they  
10 flooded into the market. Look at the record of what imports  
11 have done over the last five to six years. You don't see  
12 nonsubject imports all competing with each other for a  
13 steady share of the U.S. market. Instead, imports are  
14 competing directly with the domestic like-product based on  
15 price and rapidly taking away the U.S. producers' market  
16 share.

17           Japanese imports will do exactly the same thing  
18 if this Order was revoked. The Japanese producers also  
19 claim that they would not undersell the domestic industry.  
20 The best evidence we have on the record of how they would  
21 behave without the Order in place is their behavior before  
22 the Order was actually issued.

23           That evidence shows how the Japanese producers  
24 aggressively attacked this market through underselling.  
25 Silgan's attempt to show the Japanese producers sell

1 tin-free steel at prices above the U.S. producers' prices by  
2 subtracting the cost of lamination from the price of  
3 laminated steel is convoluted and flawed and does not  
4 involve an apples-to-apples comparison. And we will get  
5 more into that in our post-hearing brief.

6 A more relevant comparison is the  
7 average-unit-value of Japanese exports to the U.S. price  
8 during the Period of Review. For example, in 2016, the AUV  
9 of Japanese exports to Mexico was \$654 per ton. That same  
10 year the price prevailing for tin-mill products in the U.S.  
11 was \$921 per ton.

12 Finally, this Order has never prohibited the  
13 Japanese producers from selling to the U.S. market. It has  
14 only prevented them from selling here at dumped prices. In  
15 17 years, however, the Japanese have never been able to ship  
16 any significant volumes here. This also shows what their  
17 prices would look like if the Order was lifted.

18 The Commission should reject any suggestion that  
19 the Order should be revoked because of issues relating to  
20 quality and delivery.

21 First of all, the fact that U.S. producers have  
22 faced some challenges on this front doesn't mean that  
23 Japanese producers should be given the green light to flood  
24 this market with dumped imports, and cause additional,  
25 distinct, material injury to U.S. producers.

1           Second, the testimony you heard today and the  
2 overall record shows that purchasers are not interested in  
3 imports, including Japanese imports specifically, simply  
4 because of quality and delivery issues. They are very, very  
5 interested in access to the low prices of Japanese imports.

6           Finally, even though it is in an extremely  
7 precarious state with record-setting lows in terms of  
8 production, sales, and capacity utilization, the U.S.  
9 industry is making massive capital investments to improve  
10 its quality and on-time delivery. I would invite you to  
11 really examine the confidential handout provided by U.S.  
12 Steel regarding its Can-Do Program, and you can see how  
13 comprehensive and substantial these investments are.

14           These investments have brought hope to the  
15 workers on the factory floor who, by the way, as Mike Young  
16 testified, played a vital role in shaping these investments,  
17 and the investments have the potential to return the  
18 industry to profitability for years to come.

19           Given these developments, it would be truly  
20 tragic to revoke the Order now. Please keep this very  
21 important relief in place.

22           CLOSING STATEMENT OF PAUL C. ROSENTHAL

23           MR. ROSENTHAL: Paul Rosenthal. I am going to  
24 conclude our rebuttal.

25           I wish Mr. Porter understood how unique he is in

1 his argument, because I think he is the only person in  
2 Washington who knows what President Trump is going to do on  
3 the 232, or anything, for that matter.

4           There are a variety of options in front of him,  
5 and no one knows what he is going to do. Right now the  
6 Order in place has a 90 percent tariff. One of the options  
7 on the table would be to have an across-the-board tariff of  
8 24 percent. If that is the one that is adopted, is that  
9 going to provide the necessary relief for this domestic  
10 industry?

11           Of course you can't answer that now because you  
12 don't know what's going to happen, or what, as Mr. Porter  
13 acknowledged before about the exemption program, or the  
14 exclusion program, how that's going to work and whether  
15 tin-mill is going to be a part of all this.

16           So all the speculation by Mr. Porter and others  
17 really is just that, and it is not a basis for a decision by  
18 this Commission.

19           And I would also caution the Commission with  
20 respect to interpreting the testimony by Mr. Arena on behalf  
21 of all U.S. purchasers as reflecting the needs and views or  
22 intentions of those U.S. purchasers. He represents a very  
23 important company and we respect his judgment, but he does  
24 not represent the views of everybody.

25           And I would also say, Chairman Schmidlein noted

1 that none of the Japanese Respondents appeared and were  
2 subject to cross-examination. I would urge you to go back  
3 to an early case involving the Matsusha Company's  
4 televisions from Japan involving 751(b) changed circumstance  
5 review where the Commission made adverse inferences with  
6 respect to the Japanese producers' intentions in that case.

7 Their lawyers testified that the Japanese had no  
8 intention of coming into the United States and flooding the  
9 market with more Japanese televisions, but the Commission  
10 said: you know what? We're not going to let the lawyers  
11 represent what the intentions are. We want the industry  
12 witnesses to testify. And they didn't. The Commission made  
13 an adverse inference. The courts upheld that.

14 Mr. Porter's analysis of nonattribution is simply  
15 legally wrong. The ITC has never said that subject imports  
16 must be the lowest priced imports. The ITC has never said  
17 that if you can't find likely continued or recurrent injury  
18 from subject imports if the nonsubject imports are causing  
19 harm. In fact, you often have very--facts where the industry  
20 is vulnerable because of nonsubject imports, just as you  
21 have here. And that's one of the reasons why you felt it  
22 necessary to keep your Order in place. And I'll come back  
23 to that in a minute.

24 Price matters. You heard that reaffirmed by the  
25 Respondents. Just go back and look at the discussion of

1 laminated tin plate, if you're not sure of what I've--or  
2 what they've testified to today. And also with respect to  
3 whether the industry is more or less vulnerable than before.  
4 This industry is in bad shape. It's vulnerable. Take a  
5 look at our slide numbers 6 through 8. We don't have to  
6 show that we're more vulnerable, although I think we are.  
7 The question is what's going to happen to this vulnerable,  
8 undeniably vulnerable injury in the wake of--or in the face  
9 of a revocation of this Order.

10                   And in the couple of minutes I've got remaining,  
11 I just want to go back to a couple of key themes that we  
12 have.

13                   Number one, I find it interesting that Mr. Porter  
14 and others repeatedly mentioned the number 18. That happens  
15 to be a very symbolic number in the Hebrew language in the  
16 Jewish Religion because it means life, heim, and this  
17 Commission is effectively deciding today the number 18,  
18 whether this particular industry is going to live or it's  
19 going to die. It's that simple, and I don't want to be  
20 melodramatic, but given the condition of this industry I  
21 don't think you can disagree that this is a very, very  
22 momentous decision.

23                   Yes, as you've heard, this industry has had  
24 issues with respect to quality, at times with respect to  
25 satisfying its purchasers, but it hasn't been unable to

1 supply the market. It has, as you heard before, customers  
2 relying on it for large quantities now. But it will not be  
3 able to continue in business.

4 It will not be able to effectuate its plans to  
5 reinvest and make itself a better producer unless there's  
6 relief from the potential imports from Japan that would come  
7 in and undoubtedly have lower prices than the domestic  
8 producers, and certainly have good quality.

9 And with respect to what you heard from  
10 Respondents, there is every incentive for the Japanese to  
11 come into this market.

12 Mexico is a very good example of why they would  
13 flood, and how they would do it. They don't have to be the  
14 lowest price in the marketplace, which they aren't in  
15 Mexico. All they have to do is get a few big sales and they  
16 will have the effect of reducing the volumes significantly  
17 and, as you heard from the domestic industry witnesses,  
18 causing lower prices to prevail in the domestic market.;

19 So on behalf of the workers in this industry who  
20 are working cooperatively with the companies to get better,  
21 maintain their jobs, maintain their communities, we urge you  
22 to keep this Order in place and not revoke it based on  
23 speculation or on mischaracterizations of the standards this  
24 industry or this Commission is supposed to employ in making  
25 your decisions.

1 Thank you.

2 CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Rosenthal  
3 and Mr. Meisner.

4 MS. BELLAMY: Closing remarks on behalf of those  
5 in opposition to continuation, Daniel L. Porter, Curtis,  
6 Mallet-Provost, Colt & Mosle, LLP.

7 Mr. Porter, you have 31 minutes.

8 CLOSING STATEMENT OF DANIEL L. PORTER

9 MR. PORTER: Madam Chair, Commissioners, I 100  
10 percent promise I'm not going to use 31 minutes.

11 I just want to touch on a couple things that I  
12 don't believe we were able to get to as a means of some  
13 rebuttal, from some of the things that U.S. mills said in  
14 the brief and they said today.

15 Today and in their briefs the U.S. mills assert  
16 that the Japanese market is in steep decline. To support  
17 their argument, the briefs quote an executive from Nippon  
18 Steel Sumitomo, but this quote has limited probative value.  
19 The quote notes that the Japanese market as of early 2015  
20 had experienced a drop in demand. And this is true.

21 However the U.S. Steel brief ignores the fact  
22 that what is most important is that during the most recent  
23 period from 2015 to 2017, the evidence is that the fall in  
24 demand has effectively hit bottom and the Japanese market is  
25 now stable.

1           Just look at the data collected by the staff.  
2           From 2015 to 2017, total shipments in Japan are in fact  
3           stable. This is not evidence of a steep decline, recent.

4           Next, in their--the U.S. mills in their briefs  
5           attempt to dismiss the purchasers' questionnaire responses.  
6           We respectfully ask you to look at the purchasers'  
7           questionnaire responses.

8           In fact, the purchasers' questionnaire responses  
9           completely support the testimony you heard today from Mike  
10          Arena. Virtually all purchasers agree that the U.S. mills  
11          had increasing difficulties honoring their promise to  
12          deliver quality steel at their agreed-upon delivery  
13          schedule. And it is these difficulties, not price, that has  
14          led customers to seek import supply.

15          Next, price sensitivity. Primarily citing  
16          Commission findings made years, if not decades, ago, the  
17          U.S. mills claim the tin-mill market is extremely price  
18          sensitive. This argument is both wrong and misses the  
19          point.

20          The argument is wrong that simple repetition of a  
21          past factual finding does not make it true today. Yes,  
22          years ago the Commission found the U.S. market was price  
23          sensitive. But that was then. Today the evidence is rather  
24          different.

25          Today the evidence is that the U.S. mills either

1 are completely tapped out, or they cannot even fill the  
2 agreed-upon volume levels for their customers. Given this  
3 evidence, the claim of intense price sensitivity rings  
4 rather hollow. But even more important, the claim of price  
5 sensitivity is essentially meaningless unless there's  
6 evidence that the Japanese mills will be the lowest price in  
7 the market.

8 Mr. Rosenthal said the Japanese don't have to be  
9 the lowest price, but under the U.S. mills' theory if  
10 they're not the lowest price they won't get the sale.  
11 That's their theory. The lowest price gets the sale.

12 And so if the--and the evidence is that not a  
13 single U.S. purchaser believes that the Japanese will offer  
14 price that are lower than the sizeable quantities of Chinese  
15 and other import sources in the market; that purchasers  
16 refute that proposition.

17 Next I want to talk about this idea of the  
18 benefit of the Order to the domestic industry. As you know  
19 well, the underlying legislation requires the Commission to  
20 consider whether any improvement in the state of the  
21 industry is related to the Order.

22 U.S. Steel had, in their brief had the audacity  
23 to argue that the primary benefit was the elimination of  
24 imports from Japan. Excuse me, but that is not what  
25 Congress intended. Congress wanted the Commission to

1 examine whether the effective elimination of the targeted  
2 imports actually resulted in improvement to the domestic  
3 industry condition.

4 With this statutory provision, there is no  
5 question that the Commission must evaluate to what extent  
6 the imposition of the AD Order helped or did not help the  
7 domestic industry improve its condition.

8 And the Statement of Administrative Actions  
9 suggest that the Commission is entitled to make inferences  
10 from finding such a connection. That is, should the  
11 Commission find that imposition of the AD Order help the  
12 domestic industry to improve its condition?

13 Absent other contrary evidence, the Commission is  
14 permitted to infer that return of the same volume as subject  
15 imports at th same prices would likely lead to recurrence of  
16 material injury.

17 We respectfully submit that this same statutory  
18 language makes the converse equally true. That is, should  
19 the Commission find that imposition of the AD Order did not  
20 help the domestic industry to improve its condition then,  
21 absent contrary evidence, the Commission is entitled to  
22 infer that return of the subject imports will not likely  
23 lead to an adverse impact on the domestic industry.

24 The second relevant statutory provision is about  
25 taking into account all relevant economic factors. Needless

1 to say, this statutory instruction is part of the  
2 Commission's overall obligation to analyze whether  
3 revocation of the Order would likely lead to continuation or  
4 recurrence of material injury.

5 And so we believe the application of these  
6 statutory provisions is straightforward. Given that 20  
7 years of data, there can be little dispute there are  
8 economic factors other than imports from Japan--in fact,  
9 other than "all imports," they have a dramatic adverse  
10 effect on the domestic industry. We submit the Commission  
11 must evaluate these other economic factors when conducting  
12 its analysis of likely impact.

13 And if the Commission finds that these other  
14 economic factors will make any impact of subject imports not  
15 material, then the Commission must conclude to terminate the  
16 AD Order, because the legal criteria has not been satisfied.

17 Madam Chair, Commissioners, as always these cases  
18 are about the evidentiary record. The U.S. mills  
19 desperately hope that you will ignore the current  
20 evidentiary record and simply rely on past Commission  
21 decisions about the tin-mill market.

22 It is for this reason that the overwhelming  
23 majority of their prehearing brief simply referenced or  
24 quotes past Commission determinations made years and decades  
25 ago.

1                   In contrast, Respondents know that you will  
2                   examine what's going on in the current U.S. tin-mill market  
3                   today. And we trust that when you examine and understand  
4                   these new and different changes in the competitive dynamics,  
5                   you will agree that there is no likelihood that the expected  
6                   future imports from Japan will cause material injury to U.S.  
7                   mills and therefore a negative determination is appropriate.

8                   Madam Chair, Commissioners, thank you for your  
9                   attention.

10                  CHAIRMAN SCHMIDTLEIN:     Thank you, Mr. Porter.

11                  Alright, post-hearing briefs, statements  
12                  responsive to questions, and requests of the Commission and  
13                  corrections to the transcript must be filed by March 7th,  
14                  2018. Closing of the record and final release of data to  
15                  parties will be April 3rd, 2018. And final comments are due  
16                  April 5th, 2018. Again, I would like to thank all the  
17                  witnesses for being here today, and with that this hearing  
18                  is adjourned.

19                  (Whereupon, at 3:42 p.m., Tuesday, February 27,  
20                  2018, the hearing in the above-entitled matter was  
21                  adjourned.)

22  
23  
24  
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## CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Tin- and Chromium-Coated Steel Sheet from Japan  
 INVESTIGATION NO.: 731-TA-860

HEARING DATE: 2-27-18

LOCATION: Washington, D.C.

NATURE OF HEARING: Third Review

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.

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