

OPENING STATEMENT
INJURY PHASE HEARING
CSPV CELLS
WHETHER OR NOT PARTIALLY OR FULLY ASSEMBLED
INTO OTHER PRODUCTS
INV. NO. TA-201-75
UNITED STATES INTERNATIONAL TRADE COMMISSION

MATTHEW R. NICELY
PARTNER, HUGHES HUBBARD & REED LLP
COUNSEL TO SEIA

1. Good morning. I'm Matt Nicely. I represent the Solar Energy Industries Association, an American trade association of over 800 members. SEIA and its members oppose this Petition and urge the Commission to vote negative in the injury phase of this investigation.

2. The broader solar industry that SEIA represents is made up of over 260,000 workers, a number of whom are here today because their livelihoods are at stake. One out of every 50 new jobs created last year in the United States was a solar job. Solar is an American success story, whose future remains bright. Its continued success could be destroyed by the misguided actions of the two Petitioners and their small group of supporters – whose workers represent less than 1% of all those that work for this dynamic American industry.

3. The Petitioners make it seem like this is a simple case – imports increased, the industry performed poorly, so they think they deserve relief.

4. But, of course – it's not nearly that simple.

5. The standard for relief under Section 201 is much higher than the Commission faces in AD/CVD cases, like those against CSPV products from China and Taiwan. In a safeguard case, rather than merely having to find that imports contributed to the industry's material injury, here you must find that increased imports were the substantial cause of the industry's serious injury. The words Congress and the members of the WTO chose to use here are critical: you must (a) find that the industry experienced much more severe injury than is required in an AD/CVD case and (b) measure whether increased imports were no less important than any other cause of that injury. We do not agree with the petitioners that this industry is seriously injured; and even if it is so injured, we have demonstrated that increased imports are not among the most important reasons for that injury.

6. Let me highlight a few points for you to consider as you listen to the Petitioners' presentation this morning.

7. Unlike in the AD/CVD solar cases, when the domestic industry was on the decline, the domestic industry in this case is on the rise. Capacity increased during the POI, as did production, as did commercial shipments. Meanwhile, costs fell, just like everyone expected them to. This has caused demand for cells and modules to soar. New entrants are building plants in response.

8. Have some companies failed? Yes. But that's the core nature of a high-tech industry; you must innovate to keep up, and deliver quality, reliable products, at scale. The Petitioners failed badly, and their failure has nothing to do with imports.

9. Listen later today to our witnesses who will tell you about:

- how Suniva's ion implant cell technology was a commercial failure;
- how Suniva shipped its cells to other countries to assemble into modules because its own module assembling facility in Michigan was poorly designed;
- how Suniva and SolarWorld both failed to take advantage of opportunities to sell to some of the largest residential solar developers in the country;
- how both companies failed to meet basic delivery and product quality standards, leading to a loss of repeat business; and
- how SolarWorld had the opportunity to sell American-made 72-cell modules to utility-scale developers but filled those orders with imports instead, because they clearly don't have the capacity to meet U.S. demand for these products.

10. Our witnesses will explain how the Commission's questionnaire data and economic modeling also support our position. That imports are not among the most important causes of any injury is proven, among other things, by the following:

- The domestic producers had limited capacity to meet booming demand created by technology advances;
- Most of the increase in imports occurred in the utility-scale segment, where domestic producers largely do not participate; and
- There is no predominant underselling.

11. That the two Petitioners would even bring this case demonstrates their poor business judgment – and their hubris. They seek a public remedy for their own, private failings. If successful, they will undermine the hard work and innovation that is making solar a viable alternative to conventional energy sources. The Commission can and should prevent this ill-advised case from proceeding and allow this clean energy source to thrive, along with the thousands of jobs it creates.

12. We look forward to spending the day with you.