UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
UTILITY SCALE WIND TOWERS	)	701-TA-486 and
FROM CHINA AND VIETNAM	)	731-TA-1195-1196 (Final)

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Thursday,
December 13, 2012

Main Hearing Room
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The hearing commenced, pursuant to notice, at 9:32 a.m., before the Commissioners of the United States International Trade Commission, the Honorable IRVING A. WILLIAMSON, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:
Commissioners:

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SHARA L. ARANOFF, COMMISSIONER
DEAN A. PINKERT, COMMISSIONER
DAVID S. JOHANSON, COMMISSIONER
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APPEARANCES: (Cont'd.)

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In Support of the Imposition of Antidumping and Countervailing Duty Orders:

On behalf of The Wind Tower Trade Coalition:

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PAUL SMITH, President, Broadwind Towers, Inc.
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On behalf of CS Wind Tech Co., Ltd., CS Wind Vietnam Co., Ltd., Chengxi Shipyard Co., Ltd., Titan Wind Energy (Suzhou) Co., Ltd., Shanghi Taisheng Wind Power Equipment Co., Ltd. and China Chamber of Commerce for Import & Export of Machinery & Electronics Products:

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KEVIN HAZEL, Vice President of Supply Chain, Siemens

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I N D E X

P R O C E E D I N G S

(9:32 a.m.)

CHAIRMAN WILLIAMSON: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation Nos. 701-TA-486 and 731-TA-1195-1196 (Final) involving Utility Scale Wind Towers From China and Vietnam.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the U.S. is materially retarded by reason of subsidized and less than fair value imports of utility scale wind towers from China and Vietnam.

Schedules 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 the time allocations should be directed to the Secretary.

Speakers are reminded not to refer to business proprietary information in their remarks or answers to questions. Please speak clearly into the microphone and state your name for the record for the benefit of the court reporter. Finally, if you will be submitting documents that contain information you wish classified as business confidential, your requests should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Yes, Mr. Chairman, two preliminary matters. With your permission, we will add Michael Snarr of counsel, Baker & Hostetler, to page 2 of the witness list, and I would note that all witnesses for today's hearing have been sworn.

(Witnesses sworn.)

CHAIRMAN WILLIAMSON: Very well. Okay. Let's proceed with opening remarks.

MR. BISHOP: Opening remarks on behalf of Petitioner will be by Daniel P. Pickard, Wiley Rein.

CHAIRMAN WILLIAMSON: Welcome, Mr. Pickard. You may begin when ready.

MR. PICKARD: Good morning, Mr. Chairman, Commissioners. I'm Dan Pickard from Wiley Rein here this morning on behalf of the Wind Tower Trade

Coalition. We welcome the opportunity to explain today how the U.S. wind tower industry has been materially injured and is threatened with material injury by dumped and subsidized imports from China and Vietnam.

This case is to some degree more complex than many other cases that have come before the Commission. Wind towers are large, fabricated steel products built to OEM specifications. There are extended lead times between the bid, award, production and shipment of towers. Additionally, demand is heavily dependent on the availability of financing. The production tax credit, or PTC, which provides credit for the first 10 years of a wind farm's operation, also affects wind tower demand.

And importantly, the customer base is extremely concentrated. Large, global OEMs possess a significant amount of leverage and have not been afraid to use that leverage to dictate price terms to tower producers and to force tower producers to renegotiate the terms of framework agreements.

Keeping these key conditions in mind, the evidence of material injury is overwhelming. As the staff report confirms and the Respondents concede, subject imports surged during the period of

investigation, capturing approximately 20 percentage points of market share from domestic producers.

The domestic producers should have benefitted from an uptick in demand at the end of the POI, but instead the most recent evidence of record demonstrates operating losses for the industry. Even when including Vestas' data, which Petitioner believes should be excluded under the related party provision or accorded less weight under the captive production provision, the industry posted a negative 9.6 percent operating margin.

A number of U.S. wind tower producers have already exited the industry. Others have laid off workers, are in the process of repurposing their wind tower facilities or are on the brink of shutting down, and some U.S. producers were never even able to get their operation off the ground. This is material injury, and it is due to Chinese and Vietnamese imports.

Subject producers shipped significant volumes of wind towers to the U.S. market in times of both depressed and growing demand and increasingly captured critical U.S. sales, including the Shepherds Flat project in Oregon, the largest wind farm project in the United States.

U.S. shipments of subject imports surged from 2010 to 2011 and increased by almost 200 percent from the first half of 2011 to the first half of 2012. Chinese and Vietnamese producers' share of the U.S. market rose significantly, and by the end of the POI subject producers had seized significant market share at the direct expense of U.S. producers. The surge in subject imports is directly linked to extremely low Chinese and Vietnamese tower prices.

As you will hear from senior officials of Trinity Structural Towers and Broadwind Towers, price is critical whether a producer is bidding for work or is party to a long-term supply agreement with an OEM. OEMs and tower producers intensely renegotiate and renegotiate the FOB price of towers. The data collected by the Commission staff confirm that subject imports significantly undersold domestic wind towers in nearly all instances and that this underselling had price suppressing and depressing effects.

By capturing high profile sales, subject imports recalibrated market pricing for future sales. OEMs and producers quickly learned about these new pricing levels, and for their sales that domestic producers did not lose to subject imports they were unable to sufficiently increase pricing to cover

rising costs.

The material injury currently being experienced by domestic producers occurred in a peak market with the PTC in effect. Subject imports threaten further material injury if not restrained by AD and CVD orders. If the PTC is allowed to expire pricing pressure will only intensify, and low-priced subject imports certainly will secure much of the more limited sales opportunities. Even if the PTC is renewed, it will take some time before the wind tower demand picks back up, and subject imports will readily rush into the U.S. market.

The data on the record shows enormous and growing subject capacity and the ability to ramp up production and shipments to the United States. Demand in other markets, including China and Europe, is waning. Given the industry's current condition, even modest volumes of additional subject imports will have a devastating impact on the domestic producers and workers.

Today domestic producers are in a starkly different position than they were in 2009 due to huge volumes of low-priced, unfairly traded subject imports. On behalf of the U.S. wind tower industry and its workers, we respectfully request relief from

dumped and subsidized Chinese and Vietnamese imports. Thank you.

CHAIRMAN WILLIAMSON: Thank you, Mr. Pickard.

MR. BISHOP: Opening remarks on behalf of Respondents will be by Elliot J. Feldman, Baker & Hostetler.

CHAIRMAN WILLIAMSON: Welcome, Mr. Feldman. You may begin when you're ready.

MR. FELDMAN: Thank you very much. I'm delighted to be here. Good morning. I'm Elliot Feldman, senior partner at Baker Hostetler and counsel to Siemens Energy and Siemens Wind Power. I'm accompanied by my partner, Mike Snarr, and representatives from our client.

The staff has done an excellent job establishing certain facts in this case. The key facts are that domestic towers dominate sales in the heartland of the United States close to where they are manufactured. We've distributed a map displaying the distribution of towers during the POI, installations during the POI in different parts of the United States. Subject towers penetrate this territory only when domestic producers fail to deliver or to accept orders.

Transportation costs, with associated risks and logistical challenges, dominate tower purchasing decisions, not price. Petitioners sold more towers in each year, year over year, of the POI. Tower prices have held steady or risen throughout the POI, despite falling prices for energy. A sealed process for price quotations means Petitioners speculate that they are competing with foreign prices without any knowledge of such prices.

Purchasers consistently have paid more for foreign towers than for domestic towers. Expiration of the production tax credit has driven the tower market. Custom ordering means no inventories and long production lead times. These are all facts established by the staff.

The prehearing staff report reconfirms from the preliminary phase that Petitioners have provided no evidence of lost sales, nor have Petitioners provided a single specific example of underselling. Petitioners' argument now is that unfairly traded Chinese and Vietnamese towers have surged into the U.S. market, suppressing prices and rendering the domestic manufacturers uncompetitive.

They claim that FOB price is the single most important issue in the negotiation of a contract for

towers, that tower manufacturers are forced to bid for contracts against the unfairly traded prices from China and Vietnam, that they consistently lose in this bidding because they cannot compete with the unfairly traded prices.

Purchases in Respondents' briefs are exactly to the contrary; that FOB price is not important at all and that price itself is secondary at best in the selection of contractors for towers because the towers represent a small percentage of the installation of a wind turbine; that OEMs do not collect competitive prices and in any event never show prices of any tower producers to any other tower producers; that Asian towers are never selected solely on the basis of price.

By constructing an argument diametrically opposed to the facts presented in the purchasers' questionnaire responses and as indicated in the prehearing staff report, Petitioners perhaps hope the Commission will split the difference, reckoning that there must be fair points on each side. There's no difference here to split. There is no reconciling Petitioners' argument with the facts of the case.

OEMs report Chinese and Vietnamese towers to be more reliably delivered. There are no reported

lawsuits against Chinese and Vietnamese producers. There are many legal disputes with domestic producers, and they themselves admit many problems in 2010, 2011, 2012 in producing quality towers reliably on time.

According to Petitioners, the Chinese and Vietnamese towers are always much cheaper, and now they claim that OEMs do not bear ocean freight costs so not only would delivered cost not be important, but OEMs necessarily buy cheaper, whether FOB or delivered from Asia, according to Petitioners.

Why, if China and Vietnam have unlimited capacity to produce towers that are better, more reliably delivered and always cheaper, would the OEMs ever buy anything but Chinese and Vietnamese towers? Yet domestic manufacturers sold more towers in 2011 than in 2010 and more in 2012 than in 2011.

The record is full of Petitioners' confessions of turning down orders because they did not have the capacity to deliver, so their loss of market share was due to their inability to produce more, not due to foreign imports. The record is also full of evidence of Petitioners' failures to fill orders, forcing OEMs to cover often with domestic towers, sometimes with Chinese and Vietnamese towers. The record shows that in almost all instances the

delivered cost of the subject towers was higher than the delivered cost of the domestic towers.

And our maps, one of which we've now distributed and you have before you -- the other one contains BPI of another company -- show the absolute dominance of domestic tower sales in the American heartland. Petitioners themselves in their many sworn declarations have acknowledged OEM preference for towers manufactured near wind farms as proven by the map.

Chinese and Vietnamese towers oversell domestic towers bought to cover when domestic towers have not been available. Petitioners claim they rejected orders because they couldn't meet Chinese and Vietnamese prices, but the evidence of record, Petitioners' own communications, show that they had no knowledge of competitive prices and they didn't have capacity --

CHAIRMAN WILLIAMSON: Mr. Feldman, you're going to have to wrap up.

MR. FELDMAN: Thank you. -- or sometimes the equipment or ability to make the towers needed.

Petitioners complain about sealed bids, yet claim to have known somehow what was in the envelopes. There not being a Carnac amongst them, they either

bid against themselves or conjured an excuse for rejecting orders, failing to fill them and not making money. Price competition from foreign imports simply had nothing to do with their apparent travails. Thank you very much. Thanks for indulging me.

MR. BISHOP: Will the first panel, those in support of the imposition of antidumping and countervailing duty orders, please come forward and be seated?

MR. DEFRANCESCO: Good morning, members of the Commission and staff. My name is Robert DeFrancesco of Wiley Rein, counsel to the Petitioners.

Before our witness presentation I'd like to quickly summarize some important points for you to keep in mind as you listen to testimony today. There are several fundamental points the Commission identified in its preliminary determination that remain largely unchanged and have now been confirmed in this final investigation.

As this first slide shows, with respect to the domestic industry Vestas we believe should be excluded from the domestic industry. Vestas' primary interest lies in importing wind towers. In its public filings, Vestas has claimed that its global sourcing strategy, its new global sourcing strategy, is to rely

on outsourcing its production needs.

The Commission has been unable to verify Vestas' information. Vestas' own publicly reported financial statements show that it's been operating at a loss in both 2011 and 2012. Including of Vestas' unverifiable data in the domestic industry we believe will skew the data. Now, having said that, we do believe that excluding Vestas from the domestic industry would provide the Commission a clearer picture of the domestic industry's performance, but we also believe that including Vestas still shows the domestic industry is injured by reason of subject imports.

In addition, we'd also like to point out, as Mr. Pickard alluded to earlier, we also believe that the captive consumption provision would be appropriate. It would be appropriate to apply that in this instance. The internally transferred towers do not enter the merchant market for the same domestic like product. The wind towers are predominantly the physical input in the production process of the wind turbine. It's just physically larger. It's the largest input. And because these towers are generally built to OEM specification, they're not interchangeable as between other OEM specifications.

With respect to the demand drivers, as the Commission staff has indicated there are three primary government incentive programs -- the production tax credit, the expiration of which at the end of 2011 led to an increase in turbine installations and construction, the investment tax credit and the renewable portfolio standards, which are set by the states and require a certain amount of electrical generating capacity to be installed.

In addition, with respect to electricity pricing utilities have a desire to have multiple types of electrical supply as a hedge against their cost. Typically they use coal, gas wind, nuclear and solar as complementary of one another.

With respect to supply conditions, despite the increase in demand and these favorable government incentive programs, the U.S. industry has suffered significant shutdowns and production curtailments. As this next slide shows, prior to the surge of subject imports in 2011 and '12, the domestic industry looked like this. They were spread out all over the country with facilities poised to take advantage of the return in demand as the recovery began.

Following the surge of subject imports in 2011 and '12, the domestic industry now looks like

this. As you can see, there are numerous domestic production facilities that have been shuttered, sold or repurposed. Of these 18 production facilities, at least 11 have been shuttered.

This chart also shows that the domestic producers have facilities in all parts of the country and can supply all parts of the country from all these locations, and the project data that the Commission has collected demonstrates that the domestic producers have supplied projects in all parts of the country from all of these facilities. And at the same time, the Commission staff report recognizes that the Chinese and Vietnamese producers have shipped to all of these geographic regions in 2011.

With respect to some other conditions of competition principally with respect to price negotiations, as we've stated in our briefs because the OEMs typically arrange for transportation of the wind towers negotiations focus on obtaining the lowest FOB price for the towers. Objective evidence demonstrates that OEMs and tower producers negotiate intensely over the FOB price of the towers to be provided.

As the witnesses you'll hear from today, during these negotiations tower producers are

continually asked to reduce their prices, yet the firms with the most interest in maintaining their access to unfairly traded imports have been less than forthcoming in providing the bid data that will show this continued suppression and depression of pricing by the subject imports.

The OEMs have failed to provide the bid data in the manner requested and alternatively provided the Commission simply with final award data. In fact, one of the largest OEMs has refused to provide any bid data, yet in the preliminary phase of this case OEMs did provide some bid data which did show the significant price pressure exerted by the subject imports. And moreover, at least one OEM didn't report their actual delivery cost in this data.

In the next slide, nevertheless despite these issues this slide shows that the OEMs have recognized that price is by far the most important factor in their purchasing decision. In this next slide, in the preliminary determination the Commission recognized as much. The Commission noted that the price of the tower is the primary component of the total landed cost and is an important factor in the OEM purchasing decision.

You can see that in this next slide. This

slide illustrates the importance of the tower in the overall turbine installation cost. In 2011, the National Renewable Energies Laboratory estimated the cost of the tower as approximately 15 percent of the total installation cost of the turbine. Conversely, the transportation cost of the entire turbine, which includes the nacelle, the blades and the tower, is only 2 percent of the total installation cost of the turbine. In light of these dynamics, regardless of how the towers are purchased, the significant presence of unfairly priced subject imports have a substantial price effect on the negotiations of the final tower price in all sourcing negotiations.

As this next slide indicates, as a result of these price pressures and the decline in demand in turbine pricing, the OEMs began turning increasingly to low-priced subject imports. As the MAKE Consulting report in 2010 indicates, weak demand has resulted in price pressure for OEM vendors who in turn are seeking low-cost imported steel towers from Asian manufacturers to aid their profitability.

As this next slide shows, we believe that the Shepherds Flat sale and project is a primary example of this. Shepherds Flat signaled a significant shift in the market at a time affecting

both the domestic industry's volume and prices. General Electric was awarded the project in October of 2009 and put it out for tower bid shortly thereafter with construction and tower delivery slated to begin in May 2011 and continue into 2012.

As the public information indicates, numerous domestic and foreign producers bid on this project. Ultimately the project was awarded to two Chinese suppliers. The loss of this project signaled a significant shift in the market. Subject imports began to increase at a significant rate and at reduced prices. The domestic producers were required to continually reduce their prices to remain competitive.

As this next slide shows, after winning the Shepherds Flat project in 2011 subject imports increased by 143 percent from 2010 to 2011. A significant portion of this increase was made up by the Shepherds Flat project, but there is also a significant amount of subject imports in this increase that is unrelated to Shepherds Flat as well.

Subject imports continued to increase in the interim period and increased by another 193 percent from the first half of 2011 to the first half of 2012. At the same time, U.S. producers' shipments increased by only 8 percent over this period from the first half

of 2011 to the first half of 2012.

As a result, as you can see from the next slide, the subject imports' share of the market increased substantially at the expense of the domestic industry. By the end of the period, subject imports held a larger share of the market than the domestic industry, as you can see from this slide. In addition, since the Shepherds Flat project was awarded while towers have gotten larger and heavier the subject producers AUVs declined by 11.5 percent from 2010 to 2011 and declined again by 9.7 percent from the first half of 2011 to the first half of 2012.

As the next slide indicates, based on the proprietary analysis in our brief on an FOB basis the subject imports undersold the domestic industry in nearly every comparison. As we explained in our brief, as the margins of underselling increased over the period subject imports gained a greater share of volume.

As a result of the continued loss of market share and the price suppressing and depressing effects of the subject imports, despite the increases in demand toward the end of the period financial performance of those domestic producers that remained in the industry and that were competing in the

merchant market steadily declined over the period. In addition, I would also note that the domestic producers generally, their performance also declined toward the end of the period despite the fact that demand was increasing.

Now, Respondents do not refute these facts. Instead, the Respondents claim that significant market share gains at the expense of the domestic industry were completely unrelated to price. As Mr. Cole and Mr. Smith will testify to, this is simply not true. The domestic producers had available capacity and would have produced more towers had profitable orders existed.

The staff report found that U.S. producers possess a substantial amount of excess capacity and can respond to changes in demand with large changes in shipment quantities. Moreover, as Table III-4 of the confidential staff report indicates, the domestic industry has established production facilities and expanded capacity at existing facilities to service demand throughout the period.

The table also indicates that nearly all of the U.S. producers' facilities were qualified to supply the largest OEMs by 2011, yet the domestic industry's overall capacity utilization continued to

decline over this period. Consequently, the market dynamics the Commission observed at the preliminary stage have not changed significantly. Subject imports are still primarily sold on the basis of price, and the FOB price of the tower is the key selling point in the sourcing negotiations with both the foreign and domestic suppliers.

Subject imports have surged into the U.S. market at the expense of the domestic industry. As subject import penetration grew, domestic producers have seen their tower prices suppressed and depressed. As a result, domestic producers' performance deteriorated over the POI. These fundamental facts are unchanged and support an affirmative determination.

With respect to the threat of material injury, in addition we'd also note that the facts show that the domestic industry is threatened with further material injury. As everyone agrees going forward, the expiration of the PTC will substantially reduce demand. Even if the PTC were renewed tomorrow it would take a significant amount of time for delayed projects and new projects to re-enter the pipeline. Thus, the demand projections for 2013 are weak.

At the same time, the remaining domestic

producers have been forced to shutter facilities and curtail production and are in a weakened financial condition. In this environment, any amount of unfairly priced imports would have devastating effects on the remaining domestic producers.

Chinese and Vietnamese producers possess a significant amount of excess capacity and continue to service the U.S. market. As the Commission staff report indicates, there are a large number of additional Chinese and Vietnamese tower producers with substantial amounts of excess capacity. At the same time, demand in other major global wind energy markets has declined and is projected to continue to decline.

At this next slide indicates, Bloomberg Energy has reported that the Chinese market is expected to decline, will see a 20 percent decline in annual installations over this year and is projected to continue to decline. Bloomberg has also noted that India, as well as China and the U.S. and Europe, also expect to see significant production declines in consumption in those markets.

These markets comprise the vast majority of global demand. As a result, there is simply no additional outlet to absorb the Respondents' excess capacity. In fact, the decline in installations in

China is already manifesting itself in the United States as additional Chinese producers have begun supplying the U.S. market that previously had remained in China.

In addition, we would also note that in our brief we have discussed some of the largest Chinese producers that are directly administered by the Central Government of China and are considered the backbone of the Chinese Navy. These types of companies have virtually unlimited access to capital, allowing them to continually expand their capacity. Thus, notwithstanding the claims you will hear later this afternoon, the subject producers' actions are injuring the domestic industry and threaten the industry with further material injury.

The Commission recognized this in its preliminary determination when it concluded that the resulting volume surge would come at the expense of the domestic industry and would have significant negative price effects on the domestic industry, thereby preventing the domestic industry from benefitting from the demand increase. In the final phase of this investigation, the additional facts collected by the staff confirm the Commission's preliminary conclusions. The Respondents' claims of

capacity constraints have done nothing to refute these facts.

With that, I'd like to turn it over to Mr. Cole.

MR. COLE: Good morning. My name is Kerry Cole, and I am President of Trinity Structural Towers, Inc. On behalf of Trinity and its U.S. employees, I would like to start by thanking the Commission for its hard work on this case.

Trinity is the largest remaining producer of utility scale wind towers in the United States, employing over 550 skilled workers in plants in Texas, Illinois and Iowa. Over the last four years, five major U.S. producers, two of whom were Petitioners in these investigations, have shut down tower operations and left the tower industry. Others have been forced to curtail productions, shutter facilities and lay off workers, all as a result of the surge of dumped and subsidized imports.

Despite increasing demand in 2011 and 2012, Chinese and Vietnamese producers took sales from us and other U.S. producers. At a time when we should have been able to increase our sales and our prices, we were unable to increase prices sufficiently to cover our costs. Although Trinity has managed to

remain in the business, much of our efforts to cope with the severe price competition from these imports have failed, and even our most efficient plants located in strategic areas have been negatively impacted.

We have already closed plants, are planning to idle our facility in Coleman, Texas, and because of lost opportunities have repurposed our facility in Fort Worth to produce tank cars. The sales we lost to the Chinese and Vietnamese imports have and continue to cause this injury.

As the Commission is aware, wind towers are sold to large OEMs either through a competitive closed bidding process or through negotiated supply agreements. The OEM purchaser base is extremely limited and consists of only a handful of large OEMs like Siemens, GE and Vestas and, to a lesser extent, Gamesa and Suzlon. On the other hand, there are a relatively large number of wind tower suppliers that these OEMs can choose from, and this disparity gives the OEMs a significant upper hand when it comes to negotiating prices and volumes.

During the bidding process, tower suppliers provide OEMs with detailed bid responses specifying the ex-works cost of the tower and confirming the

supplier's ability to produce these towers within the OEM's specified timeframe. Because wind towers are produced on a rolling basis and producers may take as long as a year to produce an entire order, the timeframe for OEM pickup of the towers generally covers a period of several months.

I have been involved in bid negotiations for many years, and I know that the price of a wind tower typically is the most important factor in the OEM's purchasing decisions. For the most part, particularly when competing against subject imports, the only price negotiated is the price of the tower. OEMs buying towers on margin can obtain the best margin by purchasing Chinese and Vietnamese towers, and because the ex-works prices are so low freight costs are less of an issue.

You can see this in the OEMs' purchasing decisions. Starting in 2009 and 2010, OEMs began buying their base load capacity from China and Vietnamese producers and used these imports to fill projects in all regions, including the midwest. At the same time, they stopped purchasing significant volumes from U.S. producers. In Trinity's case, we had a framework agreement in place prior to this shift and had not had any delivery or quality issues.

Nonetheless, because the price of subject imports were so low our customers chose subject imports over our towers.

Because of the extreme price sensitivity during the negotiations, the OEMs generally attempt to push prices down by indicating that the tower supplier's price is too high compared to other quotes received. Although the OEMs do not provide specific details about other quotes, they generally have been frank in telling us that they can best maximize their own profits by choosing low-priced Chinese and Vietnamese towers rather than ours.

In some cases, including the Shepherds Flat project, we were specifically told to make our bid FOB Port of Longview along the Pacific coast and thus knew we were competing against these low-priced imports. OEMs also sometimes indicate that their price quotes from foreign suppliers are a certain percentage lower than ours. Often times these prices are far below our cost and it is simply not feasible or sustainable to supply them at such prices. Although we have had opportunities to match these low prices, we have declined.

Apart from the bidding process, U.S. producers also have supply agreements with OEMs that

fix volumes and prices for wind towers. However, as a result of competition from Chinese and Vietnamese imports these contracts are frequently renegotiated, the OEMs forcing U.S. producers to lower their prices, delay or reduce their volume commitments, increase the warranty periods, lengthen the receivables periods and alter liquidated damages and penalty clauses.

To make matters worse, despite the OEMs' contractual commitment to order volumes from us, the OEMs have chosen to instead increase their purchases from China and Vietnam. When this previously committed capacity becomes available, we're unable to fill it with other wind tower orders because of unfair imports from China and Vietnam.

In the past, Trinity has offered to set up facilities in regions where supply is needed and to bring on additional capacity when commercially reasonable to do so. Brownfield facilities generally can be transitioned and running within five to six months and a much shorter time period if the facilities have previously produced products that are similar to wind towers.

Because qualification is a fairly routine process and Trinity almost always qualifies to produce new wind tower designs, this should have been an

attractive option for the OEM, yet Trinity's offers were rejected and Chinese and Vietnamese imports took a large portion of these sales. The sales lost to Chinese and Vietnamese imports forced us to close certain facilities and idle others.

Despite these closures, Trinity still had available capacity to devote to new wind tower production if the orders are there at the right price. But as purchasers rely more and more on low-priced imports from China and Vietnam in order to maximize their profits, U.S. producers are often left with site specific and small volume orders.

Such orders require changes in production processes to adapt to the different tower designs and heights. During any such changes in production, a certain amount of capacity is taken off the market as facilities ramp up for production of a new tower and work out normal quality and efficiency issues that arise with such transitions to new designs. Once the initial ramp up is complete, however, Trinity is generally able to build up production efficiently to minimize delays.

The pressure from competition from unfairly traded Chinese and Vietnamese towers also prevents domestic producers from being able to increase prices

in response to increase in costs. With pressure to lower prices and rising production cost, revenue and margins have fallen and any attempts to mitigate margins by refusing to lower prices further have caused us to lose more sales.

The American wind tower industry has been devastated by Chinese and Vietnamese trade practices. At a time of incredibly high demand due to the potential expiration of the PTC, American wind tower producers should have been flourishing and expanding. Instead, Trinity, like other U.S. producers, has had to close or idle facilities, curtail production, repurpose facilities and lay off workers. Other producers have simply been forced out of the market.

Trinity does not want to meet the same fate. We believe American manufacturers certainly can compete with fairly traded wind tower imports. I respectfully urge the Commission to give us the opportunity to do so by imposing AD and CVD duties against dumped and subsidized imports from China and Vietnam.

Thank you for your time, and I will be happy to answer any questions that you may have.

MR. SMITH: Good morning. My name is Paul Smith. I'm the President of Broadwind Towers, and

I've been with Broadwind since 2008. I'm very familiar with the wind tower industry in general and the wind tower sales negotiation process in particular.

Broadwind was established in 2004 in an old industrial shop turned manufacturing facility at a time when there were few wind tower producers in the United States. Back then, it was a small job shop manufacturing about four towers each month in Manitowoc, Wisconsin. In 2007 and 2008, as the demand for renewable energy increased, Broadwind saw an opportunity for growth and invested millions of dollars in the company, hired new workers and increased its Manitowoc production by 500 percent.

With the high quality towers and dedicated employees at Broadwind, we grew from a single facility tower producer to one of the major producers in the U.S. market. Apart from our tower sales, Broadwind has also contributed to revitalizing the manufacturing community in Manitowoc, creating new jobs and training highly skilled workers in that community.

In 2008 and 2009, Broadwind invested over $20 million to construct a brand new tower manufacturing facility in Brandon, South Dakota, to service the expected increase in wind turbine sales.

This facility was also projected to employ 150 people. Unfortunately, we have not been able to open this facility as many of the sales that would have serviced in Brandon went to unfairly traded imports from China and Vietnam.

With little prospect of being able to use this facility, we are now in the process of selling it at a price considerably under the original investment, resulting in a substantial financial loss. Over the last few years, such dumped and subsidized imports from China and Vietnam have severely injured the entire U.S. wind tower industry. An industry that should have flourished as demand reached prefinancial crisis highs is instead on the brink of collapse with producers like Ameron, DMI and Katana forced to shutter facilities and exit the industry.

The competition from unfairly traded imports and lost sales has impacted Broadwind, one of the few remaining U.S. producers, so negatively that we have been forced to lay off employees, curtail production and even shutter a brand new and unused facility. Instead of using available domestic capacity, unfairly priced towers from China and Vietnam have been sourced at the expense of U.S. production and U.S. workers.

Since 2008, the wind tower market and in

particular the sales process for wind towers has changed considerably. Prior to the financial crisis when the tower market was thriving, sales of towers primarily occurred through framework agreements, which gave us the opportunity to level load our capacity. At that time, prior to the surge of dumped and subsidized imports, we are able to negotiate reasonable prices for wind towers as OEMs worked to secure available capacity from U.S producers in locations convenient to their wind farm projects.

In 2008 and 2009 when the financial crisis hit, the market for wind towers changed. OEMs shifted away from framework agreements with U.S. producers, and sales began to occur on a spot basis. Such spot sales generally involved a bidding process in which tower producers submit bids to OEMs on a project by project basis.

At that time, the sales process for towers became much more competitive because by this time the OEMs had developed steady sources of low-priced imports from China and Vietnam. OEMs were able to take advantage of these imports and adopted aggressive negotiating strategies with the domestic industry. During these spot sale negotiations we are typically provided with target pricing. This usually occurs in

the midst of ongoing negotiations, but on some occasions we are provided target pricing even before negotiations had begun.

On many occasions we were told that unless we met a certain target price we would not be awarded the order. Such prices were often so low with barely acceptable or nonexistent margins that we were forced to choose between accepting the project at the dictated price or laying off workers and waiting for future projects. Because of the constant loss of sales to Chinese and Vietnamese producers, adopting such a wait and see approach was extremely risky.

Even when we offered to invest in facilities near wind farm projects, which would minimize transportation costs from our factories to the wind farm sites for installation, our offers were rejected and the projects were filled with dumped and subsidized Chinese and Vietnamese imports. The Shepherds Flat project is a perfect example. Despite offering to locate a facility within 50 miles of the project installation site, the OEM chose to use Chinese towers.

The fact that we were unable to compete with Chinese towers, even though our transportation costs would have been minimal, is indicative of just how low

Chinese towers are priced, and the loss of this single project, which could have sustained a number of U.S. tower producers in 2010, only further pressured us to lower prices going forward.

Qualifying to produce such towers is not a difficult process. The qualification process generally involves a review of the producer's document control process and traceability of materials, as well as verification of the producer's manufacturing production plan. During the process, OEMs verify that the producer is following each step of the production plan and that the plan conforms to the OEMs' own requirements.

OEMs also generally verify that the plant workers are sufficiently trained to manufacture the towers and in some cases provide additional tower specific training. Finally, the OEM usually does a physical inspection of the first complete wind tower.

The qualification process is generally not overly difficult or involved. Although the process does get slightly more complicated when there are multiple designs being built in the same facility at the same time, even then, however, qualification is generally not overly time consuming and can be completed within a few months.

Broadwind is qualified to produce towers for eight different OEMs, and we have never failed to qualify for any design. At times when OEMs have tight project timelines, production and qualification run concurrently, and Broadwind has produced towers for projects even while our facility was going through the qualification process. Such overlapping production and qualifications has been particularly common this year as OEMs rush to get projects commissioned before the upcoming expiration of the PTC. Qualifying to produce towers, therefore, is not generally an issue.

The U.S. wind tower industry is in a precarious position. Without relief from subject imports, the few remaining domestic tower producers will continue to lose sales, shutter facilities and lay off workers. Duties on unfair imports from China and Vietnam are essential to ensuring that such injury does not continue by providing domestic producers with a level playing field for which to compete.

We have already begun to see positive effects from the filing of this case as orders from our towers have begun to increase. Without continued relief, our ability to maintain this volume is in jeopardy.

Thank you for your time this morning and for

all your efforts in these investigations. I will be happy to answer any questions that you have.

MR. PICKARD: Mr. Chairman, that concludes our direct presentation. We'd like to reserve the remainder of our time for rebuttal.

CHAIRMAN WILLIAMSON: Thank you very much. I want to express our appreciation to all the witnesses for taking time from their businesses to come and present testimony today. It was very helpful to us. This morning we will begin questioning with Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. Allow me to extend my welcome to all of you with special thanks to those who participated in the tour we had a few weeks ago of the Broadwind facility in Manitowoc.

Mr. Smith, you weren't able to be there, but let me assure you that we were well taken care of and had a most interesting discussion. I had never before had the opportunity to see heavy plate being manufactured into anything and so it was quite a fascinating tour. Thank you.

MR. SMITH: We were glad to have you there, Commissioner. Thank you.

COMMISSIONER PEARSON: Let me begin with a

question that popped up in my mind time and time again as I reviewed this record. Is there more than one Shepherds Flat project?

The reason for asking is that there are multiple spellings of Shepherds Flat in the briefs, and I'm just not sure. If we're talking about more than one project it would be important to know that.

MR. COLE: No, sir. It's just one project.

COMMISSIONER PEARSON: Okay. Then either now or for purposes of the posthearing could you clarify what is the correct spelling of Shepherds Flat? Because I think it's important that we agree on that and get it right in our final opinion. If representatives of the Respondents have input on that, by all means also provide your thoughts.

MR. COLE: I'm not sure what the proper spelling is, but we can get that for you.

COMMISSIONER PEARSON: Okay. I'll look for it later.

The Respondents have indicated that they have made claims for delayed shipments and quality and whatnot, and my question is whether those claims might have contributed to the domestic industry's relatively weak operating results.

MR. COLE: I can say that in my company's

case we have not had any quality issues per se that have resulted in any operating issues financially. We've had normal issues that any other manufacturer would have with startups, but nothing out of the ordinary that would cause a significant decline.

COMMISSIONER PEARSON: Is it correct? Have settlements been agreed? Have payments been made or has money exchanged hands because of these claims?

If necessary, if this is confidential you could respond in the posthearing, but the Respondents talked about this and I'm just trying to understand if there's another side to the story.

MR. SMITH: That is proprietary so I think we are going to have to answer that in a posthearing brief.

COMMISSIONER PEARSON: Okay. That would be fine. Perhaps now at this point you could clarify for the record. Where in the financials would we find those settlement payments if they existed? Would they be in SG&A or in other factory costs?

MR. DEFRANCESCO: Commissioner Pearson, this is Robert DeFrancesco. I think how they accounted for it I think we'll probably have to respond in the posthearing brief.

On a related point with respect to quality

issues and delivery issues, in our brief, again because it's proprietary, the Respondents' characterization of some of these issues is not exactly accurate, and we will be responding to that in the brief.

I would also note that I think Mr. Smith can maybe comment about quality issues that the Chinese towers have had over the same period of time. In fact, they've been asked to examine possible rework of some Chinese towers that have entered the U.S.

MR. SMITH: That is true. There were some towers that were shipped out to the west coast for a project out there. I believe it was the Shepherd Flats or Shepherds Flats or however you spell Shepherds Flats. We were asked to inspect the tower sections and provide a price to repair welds and paint on those towers that came from China, so I have seen firsthand some quality issues

Speaking for my company, I can tell you that we build some of the best quality in the industry. One OEM that we just started working for this year, I know there was some chronic issues with quality with some of their offshore suppliers and we did a very good job with addressing some of the very specific issues that they were looking for, better performance

on doorframes in particular.

They had had a lot of issues with these doorframes, welding them in. The first three that we welded in we had zero indications, and that's just subject to an ultrasonic inspection, so it was quite a win for us. And three of them, we considered that a hat trick.

COMMISSIONER PEARSON: Just out of curiosity, if you had reworked the Chinese towers would you have had to transport them to Manitowoc from the west coast?

MR. SMITH: We declined to quote. We just thought the liability and the exposure issues were too great to overcome, and we declined.

COMMISSIONER PEARSON: Okay.

MR. RUBIN: J.D. Rubin. One thing I just wanted to add to Paul's statements about the effect on the financial statements. Certainly any details would be proprietary, but as a general matter I would say that any settlements did not have a material effect on the financial result, so generally I think it's safe to say that that is the case.

COMMISSIONER PEARSON: Okay. See, because from the Respondents we might be able to get their assessment of how much money exchanged hands, but they

wouldn't know how it affected your financials and so that's why in order to understand this issue and see whether there's really anything there that has an influence on our analysis of the case we need to substantiate this. So please give us all you've got, okay? Along with that, if perhaps you've taken reserves against potential future settlements that also would be good to know.

Shifting gears, if we look at Table V-2 and V-3 on pages 536 and 37, and of course this is proprietary information so I regret that some of you don't have access to it, but we see that at least one purchaser frequently has paid more for subject imports than for domestically produced towers in circumstances in which both types of towers have been used on the same site for the same wind tower project.

Can you explain why purchasers would do this? Why would they pay more for the imported towers?

MR. PICKARD: Why don't I start off? For the record, this is Dan Pickard again. Obviously that information is proprietary.

I think there's a couple of issues maybe that I'll start off with is, one, I think there's a legitimate question regarding the accuracy of this

information that's been provided. There are questions in regard to how the delivered costs were calculated. We'll address that in more detail.

COMMISSIONER PEARSON: Also questions about how the FOB costs were calculated?

MR. PICKARD: No. I think in this issue at least what jumps out predominantly to me was the freight costs that were calculated here, although I think there are also related issues with some of the FOB costs so that's one part of it.

The second part is, and obviously without going into any one particular company's proprietary information there's evidence of record that demonstrates that certain OEMs buy on an FOB basis without knowing where the towers are going first and then later subsequently there are decisions where they're going to be placed. So in that scenario it's not unforeseeable that there would be some scenarios where the freight costs could end up in a higher delivered cost.

A third and I think related issue goes to, and I would respectfully submit that this would be fair grounds for questions in the afternoon panel, whether the OEMs are capable of passing along their freight costs and in sometimes marking up their

freight costs. There is certainly some evidence of record to suggest that that's the case. And if that is the case then we don't have higher costs being absorbed by the OEMs, but there are three kind of initial thoughts.

MR. DEFRANCESCO: And just to follow up on that point, and I think Mr. Cole and Mr. Smith can maybe elaborate on this a little bit. What you've seen over the course of the POI is the subject producers have begun entering into these global sourcing contracts with the OEMs and that they are supplying the OEMs globally and have effectively become their source of base load supply whereas the U.S. industry is now in a position where they've lost that source of base load supply.

As Mr. Pickard said earlier, they're negotiating on the FOB price in every instance. The tower producers and the OEMs are negotiating on the price of the tower. Where the tower goes after that is more of a logistics issue.

COMMISSIONER PEARSON: Okay. My time has expired, but if the Chairman will indulge me a very quick followup question to Mr. Cole and Mr. Smith. Have you ever been involved in a discussion with one of your customers when they say gosh, I wish you could

sell me more towers because I'm having to pay more money to bring in these imported towers?

MR. COLE: Never.

MR. SMITH: We have not.

COMMISSIONER PEARSON: Thank you very much.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Welcome to all of you this morning. I appreciate your being here.

In seven years of hearing these cases, I think this is the first time that I've walked into a hearing in a final investigation, having read all the briefs, the staff report, participated in the prelim, and I still have no idea how prices get set in this market. I just don't understand it. The parties are arguing from two completely different planets.

So can you just walk me step-by-step like I'm really stupid from the first time you ever hear that there's some new project going up to how the final price gets agreed to in your experience?

MR. COLE: Commissioner, I'd like to start. Our two companies are different so I'm going to describe the normal way in which our company does it. Mr. Smith will describe a different method that his

company does it.

Typically Trinity has enjoyed supply agreements, and that's how we have built our business and been able to build the many plants, the four plants that we have or had in operation. The supply agreements are set by some certain volume per year at a certain price. They are always ex-works at our facilities. We never quote on freight. It's always an ex-works price.

The issue that we have had with that process is the contracts that we had were due to be completed in 2010, and because we weren't able to get all the towers that were committed to us those tower contracts now go out into 2014.

COMMISSIONER ARANOFF: Let me stop you there because there was something you said I didn't understand. Weren't able to get all the towers committed to us. What did that mean?

MR. COLE: Our customer did not give us year over year the amount of towers that the supply agreement said they should give us. So in essence we work off normal framework agreements, and I'll turn it over to Mr. Smith and he can describe how his company prices towers.

MR. SMITH: We have a mix of both in our

sales model. We have a framework deal with one of our major customers that we signed a few years ago. It's been extended into 2014, the same idea, but for the most part we bid in what's referred to as the spot market.

So the OEMs will secure a project with a developer and then go out for bid on that specific project. We would typically receive an RFQ package or a request for quote. We would be given the tower design and a quantity and a delivery window and we would quote based on what we could secure material costs for at that time. Basically it's the same process. As I said in my testimony earlier, typically we're given a target price that we have to meet before we could be awarded an order.

COMMISSIONER ARANOFF: So you're saying that at this first stage when the OEM comes to you with an RFQ, that RFQ might include a target price to get you in the door?

MR. SMITH: A lot of times the target price is basically given to us verbally -- this is where we need you to be -- but it has been included from time to time in the RFQ. This is the target price we're looking to get, to achieve.

COMMISSIONER ARANOFF: Okay. And so I want

to just follow up with that. So in a case where you are given a target price either in writing or orally, the understanding is that if you don't meet that target price it won't be considered at all?

MR. SMITH: Yes.

COMMISSIONER ARANOFF: Okay. And if you do meet the target price and you send in your proposal then what happens?

MR. SMITH: Then the OEM would review the quote and decide who gets the award.

COMMISSIONER ARANOFF: Would they come back to you and ask you to adjust your pricing again or anything else about your proposal, or they just choose among what they've got?

MR. SMITH: There have been times where they've come back for a lesser price.

COMMISSIONER ARANOFF: How often would you say that is as a share of the volume that you're selling? How much of it would be subject --

MR. SMITH: Probably just a round number, 10, 20 percent.

COMMISSIONER ARANOFF: Ten, 20 percent. Okay. When you get one of these initial proposals that has a target price and you decide that that is not going to be a profitable price at which you would

be producing, what's the thought process that you go through?

MR. SMITH: Well, we will discuss where we would need to be, but I can tell you going through this process we've never turned away a reasonable request for an order, and that goes for price and/or delivery.

COMMISSIONER ARANOFF: All right. How do you define a reasonable request? Do you have a certain profit level in mind? Does it have to just cover your marginal cost? What's reasonable?

MR. SMITH: I think we're getting into the proprietary.

COMMISSIONER ARANOFF: Okay. Well, if you could provide that for us on the record where you would kind of draw the line on what's reasonable and what's not reasonable that would be very helpful.

MR. SMITH: Okay.

COMMISSIONER ARANOFF: Okay. With respect to cases where you've entered into these framework deals, and this is for both of you who say you've been part of this process. Explain to me how the price piece of that gets set and whether, for example, it has a clause to adjust based on steel prices or any other mechanisms that adjust it over the term of the

contract.

MR. COLE: Yes, ma'am. In our particular supply agreement normally there is an escalation cost for steel prices and there is an escalation cost for flange prices. And the flanges you know are the forgings or the castings that are at the end of the tower. So those two items usually make up a significant amount of cost. So other than that there's usually not an escalator. There's usually no escalators for labor, so whatever rate you go into is the labor rate that's set.

So in essence with the escalation costs that pass through they will affect your profit percentage because if the price of steel goes up then obviously your margin percentage goes down. But there is no other escalators to cover any other overhead costs or labor costs in the supply agreement; only steel and flanges.

COMMISSIONER ARANOFF: Okay. And how long does an agreed price generally last?

MR. COLE: In our case the agreed price was supposed to be three years. We are now working on our fifth year, and it will extend out until seven years.

COMMISSIONER ARANOFF: Okay. So you're saying that's seven years where except for the things

that are adjusted according to some sort of index, everything else stays the same in the price?

MR. COLE: That is correct.

COMMISSIONER ARANOFF: All right. Now, I understand that U.S. manufacturers sell FOB. Are there any U.S. producers or were there at any point U.S. producers who also bid on the delivery logistics component, or is that always performed by separate entities?

MR. COLE: In essence, Trinity Structural Towers is owned by Trinity Industries is our parent company, and we have a Transportation and Logistics Group that's a completely separate business. If any transportation is bid, they bid directly with our customer and we're not involved in that.

The one occasion that we were, Trinity Structural Towers was involved in that, was in the Shepherds Flat project, and the reason we got involved in that was because we could not compete on FOB price and it was too big of an order not to investigate further, so we spent several months working with the railroads trying to figure out an economical mode of transportation, hoping that we'd be able to have inland transportation cost cheaper in the U.S. than what the oceangoing freight cost would be from China

and Vietnam.

But when it was all said and done that was not the case. Our inland rail transportation cost was $12,000 more per tower than it was for the oceangoing cost to bring the towers in to the same FOB point. So in that case we did get involved because we tried to wrap it up in order to get the deal and thought it would be a help and it ended up not being a help in that case.

COMMISSIONER ARANOFF: Okay. Mr. Rubin?

MR. RUBIN: Broadwind's parent company had a logistics company, Heavy Haul Trucking Company, in 2008 through early 2010 and in the 2008 and 2009 time period did attempt to bid a sort of tied tower logistics offering to customers.

One of the observations that we had in that context was often times those purchasing decisions were made in different places, so even though we felt we could give a price that was beneficial because we could bundle these two things together, the decision makers were operating in two different places and ultimately it was not a very attractive offering. We have since divested the logistics business in early 2010.

COMMISSIONER ARANOFF: Okay. All right.

Thank you very much for those answers. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman, and I join my colleagues in welcoming you and thanking you for being here today.

I also have some questions about pricing and in particular about the price data that we should be looking at in determining whether there's underselling or other price effects in this case. Given the very significant product mix issue in this case, is there any basis for relying on average unit values to determine whether or not there's underselling?

MR. DEFRANCESCO: Commissioner Pinkert, Robert DeFrancesco. There is some product mix with respect to the size of the tower where we've talked about towers over the period have gotten larger and heavier so there is that issue.

In our brief we did provide a breakout by tower type. It's BPI, but you can see where we measured the underselling by tower -- by 80 meter tower, by 100 meter tower -- and you can see on a model basis and you can see the same pattern of underselling and price suppression and depression that

also exists in the AUVs. So even though there is a product mix issue with respect to the AUVs, the patterns are consistent.

COMMISSIONER PINKERT: Okay. Now, as you all know, the Respondents emphasized that we're dealing with a custom-made, made-to-order product in this case. Given that that's true, or if that's true shall we say, then what would be the best way of determining whether or not there's underselling?

Now, I understand that there are limitations with respect to the data on the record, but I'm just asking you to sort of think this through with me. What would be the best way to do that? Please answer that question both for situations where you have competitive bids and for situations where you don't have competitive bids.

MR. DEFRANCESCO: Sure. Robert DeFrancesco. Commissioner Pinkert, I think one of the Respondents has said, as you pointed out, that oh, these things are very customized and you can't compare them. I think if you take a close look at the bid data collected, however, it does indicate specific model numbers and weights of the towers, and those are very, very consistent.

The weight of the tower is primarily made up

of the steel, and while there may be some variation it's not significant. So what we've done in our brief is sort of a traditional Commission pricing product analysis. Because the OEMs didn't provide the bid data in the manner requested, which would have showed those price suppressing and depressing effects from the first bid to the second bid, if you break it out in that way where you look at what would be a traditional sort of pricing product analysis, you can see those price suppressing and depressing effects because the products are actually fairly consistent across different products.

In the project data you can see. You'll have similar tower suppliers supplying the same tower model to three, four, five different projects. The weights are the same and the models are the same and the prices are the same. So I think it is consistent that you could do a sort of modified pricing product analysis like we've done in our brief.

In addition, as we've pointed out before, some of the other OEMs, they are purchasing these towers under framework agreements, and the framework agreement will identify particular model numbers to be supplied. Again, we're not talking about a lot of variation in these models They're 80 meter towers

that weigh so much, 100 meter towers that weigh so much.

Again, in the data you see the same 100 meter tower being supplied to four or five different projects with the exact same FOB price with the same weights, so I think it is appropriate to analyze the data in that way.

COMMISSIONER PINKERT: Okay. Now just one clarification. I think you answered this question, but one clarification here.

Suppose you have a situation where there is no competitive bid process. It's simply a discussion between a buyer and a seller that results in a price for a made-to-order, custom-made product. Is there any way to do an underselling analysis if that's the situation?

MR. DEFRANCESCO: I think Shepherds Flat might be an example of that where the tower type is unique relative to some of the other towers that are on the record, but even there you do have some bid data that was supplied at the prelim that would allow you to do that type of analysis where you've had multiple bids from multiple suppliers.

And at the same time, like we've said before, even in a unique situation as you've just

described, the presence of the subject imports in large volumes is having an effect, which is generally across the board in negotiating prices. Like Paul said, I keep getting lower and lower target prices that I'm being required to meet, so it has a sort of radiating effect.

COMMISSIONER PINKERT: Thank you. I'd give anybody else on the panel an opportunity to answer that question, but if there are no other comments on that I'll move on to my next question.

MR. PICKARD: Commissioner, this is Dan Pickard. Maybe just more to echo some of Rob's observations. I think if your question -- I think a clarification might be appropriate.

The idea of really kind of a custom, made-to-order tower that is one-of-a-kind, I don't know if that's really what we're talking about here. If we're talking about an evolution of a new model, an 80 meter but which has some different specifications, I think the industry can probably speak more to that and I think that's more frequent than the idea of a particularly unique one-off.

But then if your question is what is the most appropriate way of kind of evaluating the price effects in those type of situations, I would agree

that I think probably the most appropriate and the most traditional way what the ITC has approached this when you have these type of cases, if you want to call them big ticket or made-to-order cases, has been an evaluation of the bidding process.

And I think I would probably echo the thought in regard to but you weren't given really the bidding data that you requested in this final phase. I think the preliminary phase is very supportive of kind of the price suppression.

More specifically to your question, and I think it's a question that's pretty appropriate for Shepherds Flat. When all of the award goes to China you're not going to be in a position to really kind of do an underselling analysis per se, and I think then there's probative value in the evidence that the witnesses can provide in regard to that long negotiation process, what they were willing to do, the renegotiation of prices downward and downward and downward, and then I think that has probative value in regard to your statutory obligation is to find out if there's significant price effects.

COMMISSIONER PINKERT: Thank you. That's helpful. Now moving on to this issue of qualification, and perhaps the industry witnesses can

speak to this.

There are allegations that the problem for the domestic industry is not subject imports; it's that for a certain range of purchasers you simply did not satisfy the qualification requirements of the purchaser and therefore are not even in the mix in terms of the sale. How do you respond to that?

MR. SMITH: We've never had a problem qualifying for any one of the customers that we've built for on any one of their towers, and typically when you qualify for a customer with one design it facilitates the process on any new designs you would build for that customer.

So I can tell you that our tower quality, I'd put it up against anybody's in the world. Our workforce is terrific. They're engaged. We work with the customer. When they come in and work with us on any qualification they're actually on the shop floor working with our team concurrently, and it just hasn't been a problem for us.

MR. COLE: Sir, in my company's case we've never had an issue qualifying to build someone's tower and since 2005 have been building towers for the largest OEM in the United States continuously and built hundreds of towers for them every year.

COMMISSIONER PINKERT: When you say that it's not difficult, can you describe the qualification process as it typically is constructed or structured?

MR. SMITH: Typically, as I said in my testimony, there's some documentation packages that we put together or a documentation package called an MPP or a manufacturing production plan where we would list all of the documentation that we used to control the process from start to finish from cutting plate to rolling plate to welding plate together through paint, blast, into assembly and then preparation for shipping.

Each step of the process is controlled very closely with process control documents and training, and that qualification is really about that control of that process -- how do we order materials, how do we maintain traceability on all those materials, those types of things -- and then most of the time most customers will look at our training as well to see that our people are qualified per their expectations and their qualifications to make sure that we are compliant with what they're looking for.

COMMISSIONER PINKERT: Thank you. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman, and I would like to thank today's witnesses for appearing here. Have any of the facilities of Trinity and Broadwind been unable to supply requested wind towers?

MR. SMITH: We've never turned away a reasonable request, so no.

MR. COLE: Sir, our facilities are tied up under a long-term supply agreement and so the only time that we would turn down an order is if in fact we already have an order from a previous customer where they're trying to get into the same slots.

COMMISSIONER JOHANSON: Okay. Could you please respond to the Respondents' arguments that the domestic industry has been unable to supply towers consistently and reliably on a time basis?

MR. COLE: In our case when we had our supply agreements in place and our customer was giving us the commitments that met the supply agreement and we had continuous manufacturing and production like the agreements intended to have we never had any issues with delivery or quality issues.

When you don't have all your capacity being utilized and you're going in doing different tower

models you incur a normal ramp down and start up cost from changing different tower designs, and those are just normal, as I stated in my statement, the normal ramp ups and the ramp downs that you would have with producing different towers for different customers.

COMMISSIONER JOHANSON: Mr. Smith?

MR. SMITH: I concur with what Mr. Cole said, and I would add that although we have been late on occasion, we're 95 percent on time and we have worked through some challenges this year especially with compressed schedules and those types of things, but we worked through those.

But for the most part when we've been able to level load our plants, as Mr. Cole was talking about, we delivered on time 100 percent. It is a challenge with the spot market, but I would ask how many of the offshore providers have shipped 100 percent on time as well.

COMMISSIONER JOHANSON: And how do your companies commit their capacity, I mean, when you know that you're going to be working at close to capacity? How do you commit your workers, et cetera?

MR. SMITH: We look at each RFQ, and especially in the spot market it gets tricky because we'll just look at capacity and how it's scheduled now

and where are the holes that we can fit in the new projects. So it's typically how many hours per tower, where does that fit into our schedule, can we get materials on time. It's a standard process.

COMMISSIONER JOHANSON: All right. Thank you.

If the production tax credit is renewed and orders are put in place, what would the effect be on the domestic market if many domestic producers have already sold their assets or are producing other products? I believe, Mr. Cole, you had mentioned that you have begun producing rail cars or something along those lines.

MR. COLE: In one of our plants in Fort Worth we repurposed that plant for rail cars. Our customer saw no demand in the future for that particular facility and we had an opportunity at another one of our businesses in order to capture long-term business.

You know, how I can answer your question about if the PTC passes and the market needs capacity, Trinity built its wind tower business on building facilities for our customers when they had a need. Every single facility that we have or had on line was because a customer requested the capacity and gave us

a commitment for that capacity and we built that facility and operated it based on those agreements.

And we would continue to do that again. Whether we have facilities that are within the Trinity portfolio that we can repurpose or if we would go out and lease facilities or purchase facilities like we've done in the past, we're committed to doing that and growing the business again.

COMMISSIONER JOHANSON: If a plant is producing other products, how long would it take them to go back into wind tower production if they were to refocus on wind towers?

MR. COLE: Well, I would not necessarily -- if there was no work -- if the question is if you're producing one product and you go to another product how long would it take --

COMMISSIONER JOHANSON: Right.

MR. COLE: -- the way I would answer that is if I looked at the reverse, earlier this month we were producing one tower at the plant in Fort Worth, and when the last wind tower came off line we had tank cars immediately behind it ready to come off and fill the tank car market.

Obviously it was at a reduced rate and not at full capacity until they get the learning curve and

fill the plants up and fill the line up with a new product line, but it's not a very long period of time, and I'm not clear on what rail car's ramp up plan is to get to 100 percent capacity in that plant.

COMMISSIONER JOHANSON: Okay. Thank you. And I understand from the briefs that buyers prefer to source all of their wind towers for a specific project from one producer. Isn't that risky for them to rely on just one producer?

MR. COLE: I've not necessarily seen evidence of that. You know, when we build wind towers for our customers we rarely know where those wind towers are going, but if we have people on site we've seen our towers. We've seen Broadwind's towers. We've seen other manufacturers' towers on site.

So I believe it's just as common to mix towers from different manufacturers than it is to solely depend on one manufacturer for a site.

COMMISSIONER JOHANSON: All right. Yes, Mr. Smith?

MR. SMITH: Yes. I would concur with that. I'd be surprised to hear that it's one manufacturer for each project.

COMMISSIONER JOHANSON: Okay. In your experience, when in the buying process do OEMs

evaluate and estimate transportation costs?

MR. COLE: I believe in a situation where you have a supply agreement I believe they evaluate the transportation costs long after the buy and they've come under the supply agreement. It's when the projects -- they don't have visibility three years after they've bought the towers of where the site is going to be, so the transportation costs become an afterthought in the case of a supply agreement.

For example, if we have a three-year supply agreement where we're building towers for a particular OEM for three years, they have no idea at that point in time where those towers are going, so that argues the case that they're buying basically on an ex-works price, the best ex-works price that they can get.

COMMISSIONER JOHANSON: And that's the case even though transportation is of course a very high component?

MR. COLE: Yes. I think what they try to do is pick the best geographic regions where they can get capacity and hopefully try to minimize some of the transportation costs, but the majority of the OEMs aren't that large to be able to support three manufacturers' facilities or three or four people.

I guess for more detail on that you would

have to ask them what their basis of that is, but they have no visibility three years in advance when they're signing supply agreements where the towers or the sites are going to be.

COMMISSIONER JOHANSON: All right. Thank you. The market for wind towers in the United States appears to exhibit what could be fairly characterized as a boom/bust cycle. How does this cycle reflect the operational challenges faced by your companies?

MR. SMITH: I think you're less susceptible to those booms and busts when you have a framework deal like Mr. Cole described. You level load your plant and schedule your people accordingly and ensure that you hang onto the talent that you have within the plant.

So framework deals and the base load being on a domestic base instead of our offshore base would very much help the stability around those peaks and valleys.

COMMISSIONER JOHANSON: Yes, Mr. DeFrancesco?

MR. DEFRANCESCO: Just to follow up on that, this idea of boom/bust cycle, one of the things you've seen in this case, had the domestic industry not been undersold by the subject imports and been able to keep

more of their market share and sustain their market share in 2011 and '12, they would be in a better position to weather the bust cycle, provided the PTC expires, going forward.

COMMISSIONER JOHANSON: All right. My time is about expired, so I will conclude now. Thank you.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you. I want to thank the witnesses very much. My excuse today is that I wasn't at the prelim so I'm catching up a little bit here, and I'm just trying to see this case for underselling, I mean, what evidence I have to look at.

You argue there's consistent underselling, but when I look at our reports, I mean, on an FOB or a delivered basis that's not the story I'm really seeing. Is this a new theory, and how unusual is this in cases that we view at the ITC?

MR. DEFRANCESCO: I don't think it's a new theory from us. I think you can see from our data that there is consistent underselling on an FOB basis based on where the purchasers are buying the towers.

The OEMs, as Mr. Cole has said, they're negotiating on an FOB price and they're purchasing the

towers in advance. On that basis that should be where you base your pricing comparison, which we've done in our brief.

So I think that analysis is actually sort of a traditional Commission analysis. Again, the OEMs hadn't supplied the data requested with respect to the bid data, and had they done so you would have seen the price suppressing and depressing effects.

But with the data that is on the record you can see that as the FOB price declines and as the domestic producers are forced to reduce their FOB price, the market share and the share of the purchases by the subject imports increases.

COMMISSIONER BROADBENT: Yes. Okay. I'm thinking you're proposing something different than what our staff has in the staff report.

MR. DEFRANCESCO: The staff has collected the bid data, and what we've done in our brief is taken that bid data and compiled it in what would be a more traditional Commission pricing product analysis.

COMMISSIONER BROADBENT: Okay. I'm going to talk about the federal and state incentives a little bit. All the parties appear to agree that federal and state incentives have a big impact on demand in the U.S. market, but they certainly don't seem to have

spurred demand growth significantly during the first three years of our period of investigation, and consumption has actually been falling.

When we looked at the Solar Panels case just a couple of months ago or last month, incentive programs seemed to have really a tremendous growth in the market. What evidence is there that these programs do impact demand positively?

I mean, all I'm really seeing is that sort of at the end of that 2012 period when everybody is racing to get advantage of the production tax credit there's an increase in consumption, but nowhere else during the period of investigation. Am I correct on that?

MR. DEFRANCESCO: Sure. I'll start and then maybe Kerry or Paul can jump in. The difference between the Solar Panel case and this case is that these wind farms are massive outlays of capital and very expensive and so therefore there's a large amount of financing that OEMs and the wind farm developers need to obtain in order to develop the wind farms.

So in 2008 when the financial crisis hits and capital and financing becomes very difficult, the RPS requirements, while they establish a floor for sort of a base load of development, it makes it very

difficult to get these projects off the ground and get them financed.

So I think when you look at the installations you see that dip from 2009 into '10 and then a recovery as the financial crisis begins to ease, and I think I would posit that explains some of the difference between this case and the Solar case.

MR. RUBIN: J.D. Rubin. I think Rob summed up nicely sort of the period of time between 2008 and the present with respect to the PTC NE industry. I would add that, from a financing perspective, the PTC is a vital component of wind development at sort of the levels that we've seen over the last few years, and certainly to the extent that it is not in place, that will have a detrimental effect on the industry.

COMMISSIONER BROADBENT: Respondents in their briefs are claiming that producers have publicly said that they have recently shut down facilities because of the expiration of the production tax credit, not really because of subject imports. Do you disagree? Is there an inconsistency between their public statements on the record and the statements here that you're making?

MR. PICKARD: Sure. I'll start. For the record, Dan Pickard. I think there is some disconnect

and I would suggest for the companies that have left the industry, that there would be value in examining the questionnaire responses that have been submitted to the Commission in regard to what they said in conference as far as the effect of subject imports on their businesses, on their profitability and on any decision to leave the market.

MR. DEFRANCESCO: And just to follow up on that point, two of the domestic producers that I think are being referenced, their data is on this record. They have reported data for the period. They were producing towers and they were operating at a loss. So the fact that the PTC went away or was going away in a period of time when they should have seen increased demand, and increased shipments and increased production, they were operating at a loss whether the PTC was still in operation or not.

COMMISSIONER BROADBENT: Okay. In your briefs you argue that the number of purchasers in this market is highly concentrated, while there are a number of producers. You say that it means that purchasers set the price, not producers. If this is so, then why does it matter whether subject imports are in the market? Aren't there enough domestic and nonsubject suppliers for this small group of

purchasers to retain price-setting power? If the purchasers have power in setting prices, why are subject imports the cause of the material injury that we're trying to find here?

MR. DEFRANCESCO: Commissioner, Robert DeFrancesco. I think what we're talking about in our brief with respect to purchasing power, as the OEMs are entering these long-term global supply agreements with the foreign producers, and again, buying based on the cheaper FOB tower price, they have the ability in the negotiating process with the domestics to force down and leverage down their tower prices by using these lower priced imports, whereas the domestics don't have the ability to negotiate the price up, as much as they might like. You can see that in the data, I think.

MR. PICKARD: Right. And I guess I'd follow up and then maybe pass it to one of the industry witnesses. It's the purchasing power in combination with the low priced subject imports that allows the leverage to force down prices on the domestic producers, all right? I think that's the business reality.

MR. COLE: I think that even though some of our fellow tower producers aren't in business anymore,

there's certainly more than enough capacity in China and Vietnam to put the pressure still on the remaining few that are left standing. I mean they have the capacity, in this market and today, to supply the majority, if not all, the towers. Until the market significantly increases again, that will continue to be the case.

MR. SMITH: Yes. I would just add that given the size of the market, I mean we're that much more susceptible to lower prices coming in from offshore. I would go back again to that comment about the baseload. The baseload is coming from the offshore tower suppliers. You know, we're going to be fighting for every single project we get and it's going to be very difficult for us to level load our plants and utilize all of our capacity.

COMMISSIONER BROADBENT: On the first page of your brief you say that the U.S. wind tower industry is on the brink of collapse. As I'm looking at the charts here, I see an industry that the market share has increased over the three, four years of the period of investigation, production, shipments and sales volume have been growing, sales revenue and unit prices are increasing, and generally, employment levels are improving. The negative part, of course,

is the profits. They're not good. But are you really on the brink of collapse?

MR. COLE: I think the evidence that all of our domestic tower manufacturers have gone out of business almost indicates that point. The market went up and some tower manufacturers enjoyed a quick up tick in 2012 because of the relatively short time period in which there was to deliver towers. That's over, that time period is gone, and with the potential expiration of the PTC the market is expected to shrink, even the short-term, even if the PTC gets extended, so it's just left a couple of us fighting for what's out there and the competition and the pricing pressures have not gotten better. They're only going to get worse.

So we saw a temporary up tick in the second and third quarters last year and, to meet the demand for the market, the expiration of the PTC, but that's not been the trend over the last three years or so.

COMMISSIONER BROADBENT: Thank you.

CHAIRMAN WILLIAMSON: Thank you. I don't know if whether you addressed the question is if the PTC expires, how long would it take, and say if it's put back in, how long does it take to sort of, before you would see some benefit from that in terms of

sales, deliveries.

MR. SMITH: Probably about six months before we saw --

CHAIRMAN WILLIAMSON: Okay. So it takes that long for the purchasers to decide to respond.

MR. SMITH: Right. For the manufacturing cycle to kick in and support any new projects that would be generated by that.

CHAIRMAN WILLIAMSON: Okay. Thank you. You want to add anything, Mr. Cole?

MR. COLE: Well, it goes, the cycle is pretty long. I mean without any foresight that a PTC was going to be passed, the upstream developers stop procuring land, stop procuring power purchase agreements, the whole industry stops, so it's not just a matter of when the PTC comes back will there be a magic order placed.

You know, we started being potentially harmed with the PTC expiration at the end of December back in the second quarter because that's the normal length of time. So that's been the out cry of the industry is we can't wait until it expires because the damage occurred nine months in advance. So now we're going to have to wait for that normal cycle again for everything to unfreeze and begin.

CHAIRMAN WILLIAMSON: Okay. Good. Thank you. I got the impression, Mr. Cole, you were saying that some of your contracts, and I'm not sure what percentage of them, you know, people have extended all the way out to 2014. I was just wondering what was the, were there consequences for the purchaser from doing this extension? It might be business proprietary, if you want to address it then.

MR. COLE: No, there was no consequence for doing that. We tried to accommodate our customer by doing that. We believed early on that the reason we were doing it is because our customer didn't have the demand in order to fulfill the contract because of the industry.

What we started hearing after the fact was it wasn't a demand issue, it was pricing pressures on the price of electricity was going down so then the price of turbines started going down. So what we found out was that our customer was buying turbines from China and Vietnam to help offset the pricing pressures they were getting and make more margins and decided to push us out. So they decided to get their baseload from China and Vietnam to help their margins and continued to give us a portion of the contract to keep us happy under the pretense that there just

wasn't a market there.

When the market studies came out and we saw our customer's market share and how many they actually shipped and what they bought from us, there was a huge disparity, and, in essence, they could have bought everything they needed to buy from us in those years because they had those types of sales.

CHAIRMAN WILLIAMSON: Okay. Is that analysis in your briefs or anything like that?

MR. DEFRANCESCO: I believe there's a discussion in Trinity's questionnaire response and we've discussed it in our briefs as well.

CHAIRMAN WILLIAMSON: Okay. Thank you. Did that have consequences in terms of your say bidding for other business along the way, and to what extent might that contribute to these allegations of, you know, availability?

MR. COLE: Well, it put us in a very precarious position because we didn't have a lot of advance notice that our customer wasn't going to take the volume they needed, so even though they weren't taking it, we still had a legal contract for that capacity that we abided by. So it was very hard for us to participate in a lot of outside bid process for certain facilities that were tied up because we were

honoring our side of the contract.

CHAIRMAN WILLIAMSON: Okay. Thank you. You mentioned that the tower purchasers will a lot of times buy towers even though they're not sure where they're going to put it. Is there any kind of estimate or percentage? Is that a growing phenomenon?

MR. COLE: When the industry was growing back in 2006, 2007, 2008, and demand far out seated supply, that was the strategy for long-term supply agreements was is to tie the wind tower's capacity up for your future business. So that's when the long-term supply agreements evolved was basically tying our capacity up for their future business in the following years. So that was the mode.

Then when the financial collapse happened and the volume decreased in the industry, then the general customer base wanted to switch it to spot buying. Let me buy it for a specific project, I don't want to be responsible for that capacity anymore, I don't need that capacity, just give me what we need in a certain period of time, which completely disrupted the flow of the facilities from producing the product continuously day, after day, after day, like the commitment was.

CHAIRMAN WILLIAMSON: Okay. So does it mean

that you are both now more spot market providers than before? Is that a fair characterization, whether you like it or not.

MR. COLE: We still have a semblance of a supply agreement in place because, in my earlier comments, the original supply agreement that was due to expire in 2010, our customer has not taken all that volume yet.

CHAIRMAN WILLIAMSON: Okay.

MR. COLE: So we do have that volume tied up in facilities but it's a constant negotiation, and we have had several amendments to the contract as we feel our way through the market with them.

CHAIRMAN WILLIAMSON: Okay. Thank you. Mr. Rubin, do you --

MR. RUBIN: I was just going to add that I think we are generally more on the spot market now than we were in 2008 and earlier when I think the trend was, to Mr. Cole's point, significantly more towards a framework agreement with a steady flow and a plan that was not tied to sort of specific projects, but rather, a general capacity.

CHAIRMAN WILLIAMSON: Okay. Thank you. Mr. Cole, were you saying that people now are sort of, purchasers are now more often to buy things that they

don't know where they're going to put it, or that was the case earlier when supply was tight?

MR. COLE: It's still the case. In any case with a supply agreement where you have an agreement that's two or three years in advance, you don't know, they don't know where they're going. As a matter of fact, going to 2013, we're talking to our customers, and they have virtually, maybe know 20 percent of where 2013s volume is going to go. They don't know, even coming, and here we are, almost in 2013, and they don't know where that volume, the majority of that volume is going to be yet and where those sales are going to come from, but yet we're building towers for them on a supply agreement.

CHAIRMAN WILLIAMSON: So you're saying that basically in terms of price, the purchasers -- the Respondents sort of argued that basically the purchasers figure in the transportation costs in deciding where they want to source from, and your seem to be saying to me that, no, that's not the case.

MR. COLE: In my contracts and my supply agreements they're an *X* works price at every Trinity facility. They're not a delivered price, they're an *X* works price and they always have been since 2008 when we entered the agreements.

MR. SMITH: And I --

CHAIRMAN WILLIAMSON: But in terms --

MR. SMITH: I'm sorry.

CHAIRMAN WILLIAMSON: Go ahead, Mr. Smith.

MR. SMITH: I can add that even in the spot the projects that we're bidding, we bid *X* works pricing.

CHAIRMAN WILLIAMSON: Yes, but is the purchaser, what are they thinking? They're saying I'm going to buy this because it's nearer or my transportation cost is going to be *X*?

MR. SMITH: We don't know that. I mean we're asked to bid the projects *X* works from our facility, and that's it.

MR. COLE: I think one of us stated before, you know, in most OEMs the tower procurement side is here and the logistics side is over here and a lot of times they don't talk, you know?

CHAIRMAN WILLIAMSON: Really? Okay.

MR. COLE: That's the brunt of the issue. So the tower buyer is buying from us at lowest *X* works price. That's what our contracts are, and that's what we're measured against when we're measured against the domestic competition and what we're measured against when we're bidding against the Chinese and the

Vietnamese.

CHAIRMAN WILLIAMSON: Okay. If you have to move it a long distance, that transportation cost gets to be an awful large percentage of the final cost. That's why I'm having trouble understanding this.

MR. COLE: I think when you enter into a supply agreement and you buy a certain amount of secure capacity that you know is going to be there when you need it, there are certain risks that you may take in order to have that secure capacity, and some of those risks may be that you may have to spend a little more money on logistics than you thought you did or needed to because you just don't have the products to find, or the projects to find at that point when you make the purchase.

CHAIRMAN WILLIAMSON: But in today's market, given the supply and demand situation, do you have to do that as much as you used to, might have had to do it, used to do it?

MR. COLE: That's really more of a question, I would think, for the Respondents than us on what their decisionmaking would be because I'm not very clear on it.

CHAIRMAN WILLIAMSON: Okay. Thank you. My time has expired. Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman. Mr. Pickard, toward the end of my first round we were discussing the delivered cost information provided by the purchasers and you indicated there were reasons to doubt its, whether it was correct. Could you please elaborate?

MR. PICKARD: Certainly, Commissioner. I think because it goes directly to specific companies' questionnaire responses it might be most appropriate to do that in the posthearing brief.

COMMISSIONER PEARSON: Okay, because obviously you're not unaware that, you know, if they're trying to mislead us, that's an important thing to know, so, you know.

MR. DEFRANCESCO: Commissioner Pearson, I think it would be safe to say that what we're talking about specifically is the freight data is reported on a standard cost basis, it is not the actual delivered cost, and therefore, it's not clear how much it actually costs to deliver those towers to that facility, to those particular facilities.

COMMISSIONER PEARSON: Okay. Well, tell us more in the posthearing, please. For Mr. Cole and Mr. Smith, in response to a question by Commissioner Pinkert regarding issues of quality and failure to

qualify for the purchasers' requirements, in the public version of the staff report, page 225, we do have that seven of nine responding purchasers reported problems with the quality of either domestic or imported wind towers.

Problems were reported for product from, among others, Broadwind, Trinity, from both the United States and Mexico, problems were reported -- well, yes. It talks about the different problems that were reported, but I don't know which of those would apply to Trinity and to Broadwind. Then on two pages later we have five of nine responding purchasers reporting that wind tower producers had failed to be certified or had been disqualified, including U.S. producers Broadwind and Trinity. I understood your testimony earlier to be different than that. Can you please explain what the apparent discrepancy might be?

MR. SMITH: I can. We've never failed a qualification and never been disqualified so I don't understand the comment.

COMMISSIONER PEARSON: Okay. Well then I can ask Respondents about it later. Mr. Cole?

MR. COLE: My response is the same. You know, like I said, we've built for one of the largest OEMs and have since 2005 and we continue to do so and

build hundreds of towers a year for them, so if our quality was not that good, our supply agreement would have been voided and we wouldn't be in business anymore or we'd have severe issues, and that's not the case.

COMMISSIONER PEARSON: Okay. Well, I will pursue that this afternoon. Mr. Smith, what led to Broadwind's decision to build a facility in South Dakota? The reason for asking is at that time weren't there already competing facilities in Iowa, North Dakota and Minnesota? Please. Sorry. Please go ahead.

MR. SMITH: When we decided to expand the company we looked at market rich areas and we also discussed it with our customers: Where would you like us? That plant was built specifically for a customer. Not one customer, but, you know, the interest that the customers were showing in that region. So it was well thought out, well-planned and discussed with our customers, but never used.

COMMISSIONER PEARSON: Okay. You may have stated earlier why it was never used but perhaps you could elaborate on that.

MR. SMITH: Well, part of it was what happened in 2008, and then once we -- it was post

crisis. We believed that the baseload for the capacity, or the demand, went offshore, so there was no more, the baseload had moved by that time so there was no need for us to open the plant. We couldn't open the plant for a 20 tower order. You open a facility like that based on a two year, three year framework deal, and at that point no one was signing those deals anymore like that, you know? They were being signed with Chinese and Vietnamese --

COMMISSIONER PEARSON: Given the status of the marketplace now, in the event that an order goes into effect such that towers from Vietnam and China would be subject to antidumping and some countervailing duties, would that plant be viable or is there enough other production available so that that plant likely would stay shut?

MR. SMITH: I mean I think it would be viable. It really depends on, you know, the size of the market overall and the size of how much capacity is out there, but yes, I think it's still a viable plant, but at this point we've put it up for sale.

COMMISSIONER PEARSON: Have either of the two firms represented here made any public statements not related to this investigation that have noted that subject imports have been a cause of injury or plant

closings? You know, any communications to stockholders, any press releases, anything like that that would indicate problems from subject imports?

MR. RUBIN: One that comes to mind, especially in light of Paul's recent answer on the Brandon, South Dakota plant, is the statement that we made to shareholders in connection with the write down of that asset. It had originally cost upwards of $20 million to construct and we wrote down $13 million of the value in connection with our decision to put it up for sale, and included in that statement was a note about the fact that part of the reason why it was not viable as a tower plant was because of competition from Asia.

COMMISSIONER PEARSON: Okay. Do we have that statement on our record? Do you know?

MR. DEFRANCESCO: Commissioner Pearson, the statement may be referenced in Broadwind's questionnaire response, but if it's not, we'll put it on the record.

COMMISSIONER PEARSON: Okay. Thanks. I regret. We had an interesting hearing on washing machines on Tuesday and I have not made it through every portion of this record, so thank you. Okay. Commissioner Johanson was touching on this issue but

let me go back to it. How often during the POI have your firms turned away potential new business? Respondents say that that's happened, as I understand it, so I'm just trying to see it from your point of view.

MR. SMITH: We haven't turned away any business, any reasonable requests for business during the POI.

COMMISSIONER PEARSON: Mr. Cole?

MR. COLE: The only requests that we've turned away is when we already had the facility at the timeframe committed to another customer or we had other pending milestones that we could not commit the particular capacity at that time and said that because it was first right of refusal from another customer, but after that refusal was up, then we could certainly offer that capacity up.

COMMISSIONER PEARSON: So what would have been an unreasonable timeframe? Would it be if they would have wanted delivery within six months, within a year? I mean I understand that you're always willing to put business on the books for some point out in the future after you've got all your orders filled, but the question, in large measure, is, you know, what were your order books like and how difficult was it

for you to contemplate adding more business, you know, in a relatively short timeframe?

MR. COLE: Well, what we continually found with people's requests was they wanted a facility in a capacity that was already tied up, and when we offered them alternatives, they did not want to pursue the alternatives, you know, whether the alternatives was capacity in another facility or for us to build a facility for them for that capacity.

You know, we've had several Respondents that we have offered to do business with that we were very close a few years ago in actually giving them a plant if they wanted a type of capacity, and at the last minute they bailed out on that offer after we got pretty far down the road. So, you know, if we had the capacity available, we would have filled the spot. When we had to say no it was because the capacity was already committed somebody else, but we offered alternatives.

COMMISSIONER PEARSON: Okay.

MR. COLE: That's how we grew our business, Commissioner. You know, the plants that we have, we just didn't have these plants that we just opened up for wind tower plants. Our customers came to us and said we have a need in Texas, we put a plant in Texas;

we have a need in the midwest, we put a plant in Illinois; we have a need in Iowa, we put a plant there. We had one customer said we had a need for Oklahoma. We went down the road, we gave them the price, we were close to negotiations, at the last minute they pulled out and now they're one of the ones that are saying they can't get capacity.

COMMISSIONER PEARSON: So it is possible, though, that from the standpoint of the purchasers, if they felt that the lead time for getting domestic product was too long, that could potentially have encouraged them to look overseas for towers that could have been delivered in a shorter timeframe.

MR. COLE: I would have hoped that they would have looked at the other domestic competition, my competitors, before they would have made that decision, but yes, they could have.

COMMISSIONER PEARSON: Okay. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. I'm trying to figure out how the Commission should look at the capacity and capacity utilization data that we have in this case because if you look at it in the aggregate it reports, you know, very

substantial available capacity on the part of the domestic industry through the period, even during times when demand was arguably booming, but I think we've also heard testimony that there are these agreements that require producers to tie up some, or all, of their capacity to hold it available for someone who may not actually be using it at the time but is making it unusable by another customer, so when those situations arise, that would have been recorded as capacity that was not operating even though it was committed.

Does that mean that the Commission should be discounting the amount of unused capacity that the data show on an aggregate basis, and, if so, by how much?

MR. DEFRANCESCO: Commissioner Aranoff, Robert DeFrancesco. No. We think the Commission should take the unused capacity into effect. The fact that the contract is a contract that commits a certain amount of volume, if that OEM doesn't take that volume and decides to purchase subject imports, then that is unused capacity and it was unused because that OEM decided to purchase the subject imports. So it is legitimate to say that that is unused capacity and that that unused capacity is injuring the domestic

industry as a result.

COMMISSIONER ARANOFF: But isn't it only retroactively you know that that capacity was unused? Because it was locked up in a contract.

MR. DEFRANCESCO: It was locked up in a contract, but had the OEM used that capacity, they would have filled those orders and they would have produced more and they would have produced at a profit, and they elected not to.

COMMISSIONER ARANOFF: Do producers sign agreements that commit 100 percent of the capacity of a particular production facility to a single customer? Does that happen?

MR. COLE: Yes.

COMMISSIONER ARANOFF: So when that happens, you just wait then, you just sit there until they send you and say could you make some of these particular towers.

MR. COLE: It's a little more complicated than that. When you commit the facility, you commit the facility at 100 percent of the capacity, and they commit to you to utilize 100 percent of the capacity. Then what happens is is over time they will come to you and say, okay, we really don't have a need for that capacity, but in that period of time is very

short to turn around and be able to sell that to somebody else and produce those orders.

You don't have the long lead time that you need in order to sell that unused capacity, which, you know, just to give you an idea, once we get an order, it will be four months before we get materials in in order to start producing the towers, so it's very long lead times to produce those, so it's not easy to overcome those production slots that have been missed, even though it seems to use a very relatively short period of time. But it's a long process by the time you get an order to get materials in to start production.

COMMISSIONER ARANOFF: Okay. When someone is operating largely in the spot market, Mr. Smith, if you have let's say one time in the year where you are, you don't have any towers to produce or not as many as you could be producing in that particular time, and you have another time of the year where you're producing as many as you can and turning away requests for more because you can't do it in that timeframe, how should the Commission even those things out in terms of looking at available capacity?

MR. SMITH: I mean available capacity to me means that there's production slots available, so, you

know, to Mr. Cole's point, sometimes it is about timing. You know, one way to overcome any of those empty slots of production is if we are level loaded and we get the baseload here instead of moving the baseload into China and Vietnam.

It's all about baseload. If we can level load our plants to a certain percentage of our capacity, that positions us to hang on to our talent, to hang on to the people that know how to build the towers, so that when the orders do come we're prepared to work them through the plant. We can move, shift structure, that kind of thing, whatever it takes to get it done, but we've always shown willingness to all of our customers to add capacity.

As Mr. Cole said, if they told us there's any one region where they needed us to be to help with, you know, what's coming up on their schedules and their forecasts, we'd be willing to do that.

COMMISSIONER ARANOFF: The record seems to be full of a lot of examples where domestic producers either did build capacity for anticipated customer needs, new capacity, or offered to do that as an incentive to get certain work. It doesn't seem like it basically ever was successful. Maybe there are some examples where it was, but it seems like in most

cases the purchasers weren't that interested.

Some of the things that the purchasers seemed to say was we can't afford to have these brand new, unqualified plants popping up when we don't know how long it's going to take them to start up, we don't know what quality workers they're going to be able to get, but we need to be committing in advance for, you know, delivery, and it has to be done within our window, and therefore -- I mean they make it sound like you just would never, ever work for them.

MR. SMITH: Well, I hope I'm not interrupting you, but we have proven that we can get a new plant, brand new plant to market and qualified and build towers in a very short period of time. Our plant in Abilene, Texas, we broke ground on that plant in September of 2008 and were building towers in January of 2009. That's a very tight timeline to get something like that done. We had the people in, we had them trained, we had them qualified and we were building towers in a very short period of time.

COMMISSIONER ARANOFF: Broader question. The U.S. industry producing wind towers seems quite young, at least the companies here sort of seem to have come into the market in the mid-2000s. Why is the industry this young since I mean some of the tax

incentives and things have been around for a while on and off, and there are, I think, longer standing industries in some other countries. So I'm trying to figure out why the U.S. industry is as young as it is.

MR. COLE: It's more about the sustainability of the PTC. You know, the PTC, I believe it was 2005 when it was renewed, and it was sustainable up until this year where it's going to expire, so that sustainability enabled manufacturers such as ourselves, tower manufacturers, to build here because we saw a future and we saw that mechanism for growth.

On the flip side, the OEMs made the same model. At that time there was only one or two OEMs that were manufacturing turbines in the United States, and it gave them the opportunity to take foreign plants away and build plants in the U.S., to do that. So we saw a sustained growth of the PTC, or sustained length of it, that enabled us to have the growth, enable companies such as myself, our company, to say, wow, this is a sustainable market, it's a good market, and we're in, and we can see some growth in it and we're willing to entertain in playing in this market.

MR. RUBIN: J.D. Rubin.

COMMISSIONER ARANOFF: Go ahead.

MR. RUBIN: Just to add to that, one of the reasons I think, also, is because that for some period of time a lot of the towers were being manufactured in Europe. Over time, companies like Trinity and Broadwind saw an opportunity in the United States to establish these manufacturing facilities to serve this market, and because of the sustained PTC have been able to flourish, but for now, kind of the issues that we're having relative to the expiration and the, you know, imported towers from China and Vietnam which are causes, you know, issues with respect to what has become, I think, or had been, you know, an industry that was really starting to build.

COMMISSIONER ARANOFF: Okay. Now, we recently completed work on a case involving solar panels and one of the things that at least some people seemed to believe in that case was that there were some parts of the United States where solar generated electricity had achieved grid parity. Has wind energy achieved grid parity anywhere in the U.S., or is it close?

MR. RUBIN: I think the short answer is yes.

COMMISSIONER ARANOFF: Okay. If there's more you can provide on that, and it doesn't have to be a large volume more, for posthearing, I think that

would be helpful because it helps us gauge what demand would be like, you know, in the near future, absent the tax credit. Okay. Let's see. My time is almost up so I'm going to stop there. Thank you very much.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman. Just a follow-up on the questions I had about underselling. What percentage of this market is set up for competitive bids? Do we have an ability to quantify that?

MR. COLE: I'm not really sure I understand the question. Can you please ask it again?

COMMISSIONER PINKERT: Well, there may be situations where you have a made to order custom made product and there is no competitive bidding process, there's just a negotiation between a buyer and, I mean between a seller and an OEM. There may be other situations where there's actually a competitive bidding process. How often is that the case?

MR. DEFRANCESCO: Commissioner Pinkert, Robert DeFrancesco. I think in this instance when you look at some of the purchase data it's a bit mixed where you'll see OEMs purchasing towers through long-term framework agreements from the subject imports and

also putting out to bid the same project to some of the domestics or vice versa. Again, it's what we went back to before, they're really buying the towers first and then deciding where they go later. So I think we'd have to think about that and maybe get you an answer in the posthearing.

MR. PICKARD: If I understand correctly, Commissioner, is your question ultimately driving at really what percentage of products is there going to be some form of head to head competition between either the domestic industry and other domestic producers, or the domestic industry and imports, or some combination thereof?

COMMISSIONER PINKERT: It's not exactly what I asked, but I'll take that as a reformulation. Go ahead.

MR. PICKARD: Well, in that case I'll defer to the industry witness.

MR. COLE: I would think it's almost every time. You know, you had mentioned about a large, I don't remember exact words, complicated, one off project. I mean that's not the case in wind towers. Each OEM produces their towers a little bit different, they have a little bit different spec, but at the end of the day, whether I'm producing four manufacturers'

towers, our production processes generally don't change. We don't change out our major equipment. We run those towers right down the same line as we would another manufacturer's towers.

So some are a little bigger, some are a little smaller, some have different specs and requirements, but there's not the one offs in this industry.

COMMISSIONER PINKERT: Okay. Well, now that's another reformulation of the question. I understand your point about custom-made versus made more in a, for want of a better term, commodity kind of a context, but that still doesn't address the question of how frequently is there the kind of head to head competition that Mr. Pickard was just talking about, or, in my original formulation, a competitive bidding process.

MR. COLE: I believe it takes place the majority of the time, a competitive bidding process.

MR. SMITH: I would concur with that.

COMMISSIONER PINKERT: Did the record pick up Mr. Smith's answer?

MR. SMITH: I concur.

COMMISSIONER PINKERT: Thank you. Any additional information you can supply in the

posthearing I think would be helpful. Now, to what extent are the domestic industry's 2012 financial results affected by nonrecurring charges that are unrelated to subject imports? If you want to answer that in the posthearing, that would be fine.

MR. DEFRANCESCO: Yes. I think we'd have to answer that in the posthearing. Thank you.

COMMISSIONER PINKERT: Thank you. Now, on this next question, even though the parties appear to agree on the issue of cumulation for purposes of a threat determination, I do want you to give me some additional information on this. Why should the Commission cumulate imports from Vietnam and China in a threat context given that the pricing data shows substantial differences between the two countries?

MR. PICKARD: Sure, and we'll be happy to flesh that out in the posthearing, but I would say some of the most traditional factors in regard to geographic overlap, simultaneous presence in the market obviously from the current material injury analysis is applicable in the threat analysis, but arguably one of the most compelling facts is the fact that you've got subject producers with facilities in both countries.

Off the top of my head I can't think of any

case where the Commission didn't cumulate under that fact pattern, but obviously we'll provide you a more thorough analysis in our posthearing.

MR. DEFRANCESCO: Just to follow-up on that, one of the largest foreign producers has facilities in both countries and so it really operates as one entity.

COMMISSIONER PINKERT: Let me just get an understanding of the implications of that point. Are you suggesting that noncumulation would provide an avenue for circumvention?

MR. DEFRANCESCO: Potentially. If the Commission were to make a negative with respect to one country and an affirmative with respect to another, yes.

COMMISSIONER PINKERT: Thank you. Now, there was a question by Commissioner Aranoff about grid parity. I do want to ask some questions about competing products or competing sources of energy. What is the impact of declining prices for natural gas likely to be in the reasonably foreseeable future on the U.S. market for wind power? So this is one of these questions having to do with threat looking to the reasonably foreseeable future. If the declining prices in natural gas continue, what's the impact

likely to be on this industry?

MR. RUBIN: Well, natural gas prices affect the wind industry and affect demand for turbines, and hopefully prices are, at least for our industry, not going to go that much lower, but while they have an effect, there are a number of other things that mitigate that mitigate that effect.

The first is state RPSs that, you know, call for some level of renewable energy, and wind is a great source for that, and installations of wind over the past few years, even with low natural gas, you know, continue to be relatively strong. In addition, there's obviously lots of demand from consumers and others for more green energy and that will also help wind.

So there are, while gas is an issue, there are certainly other ways that wind can succeed, even with low natural gas, and, you know, it's one of many potential energy sources that will hopefully, you know, bridge the gap into the future and move us forward into a different type of energy system in the United States.

COMMISSIONER PINKERT: Okay. So we talked about natural gas. Are there other forms of energy that also will be having an impact on the market for

this product in the reasonably foreseeable future?

MR. COLE: I believe the great strides that the turbine manufacturers have made over the last few years in developing their technology, natural gas remains the only viable potential issue. The numbers with coal, and nuclear and some of the other more traditional forms, wind has been able to develop its technology and be able to compete head to head with those other forms of energy.

MR. RUBIN: This is J.D. Rubin again. If there's one more point that I could add I think it's that in many ways gas and wind are actually complimentary because of the nature of the delivery systems.

You know, wind, you know, has sort of a peak times and non peak times and gas is, I think, my understanding, they're much more able to turn it on sort of quickly to meet spikes in demand, whereas other types of energy, like nuclear and coal, are harder to run the plants that way, so in some ways, and there have been commercials on television, you know, from the gas industry to show that wind and gas have a complimentary relationship in providing power to the grid.

MR. PICKARD: I guess, Commissioner, to your

specific question in regard to the threat analysis, I think we know some things. Even during times of very low natural gas, installation of wind towers generally went up over the POI, and that renewable portfolios indicate that there will be some demand for wind towers for the reasonably foreseeable future, even in the face of the expiration of the PTC. There will be just a considerably decreased demand.

So for purposes of threat, not surprisingly, I would suggest that that mitigates in favor of an affirmative determination, right, so that in a time where there will be some demand, just decreased demand, price competition becomes even more fierce, which means that the injurious effects of the imports are magnified even with smaller volumes.

COMMISSIONER PINKERT: Thank you. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman. The staff report states that wind towers are built for the specifications of the specific wind turbine that will be used at a particular project site, and that is at pages, basically pages 1 to 15 of the staff report. Is this no longer the case in light of what you all were inscribing earlier as the

purchaser's practice of ordering towers without knowing where they will be placed?

MR. COLE: Yes. In our case, our customers may order two or three different models in those supply agreements. They may just not be limited to one model, they may have several models that they're requesting for us to build over the years so they have whatever inventory or model they need to fit the specific turbine requirement.

COMMISSIONER JOHANSON: Okay. And if towers are ordered without specific destinations or intended projects, would we expect to see inventory levels to be higher?

MR. COLE: In essence, yes. Inventory levels could be higher because normally the manufacturers, as ourselves, will have a level build throughout the year, and then there is a somewhat seasonal nature of the installation of when they would actually take the towers to the site.

COMMISSIONER JOHANSON: Okay. Given the seasonal nature of your industry and also what I would ascribe as a boom, bust cycle, I know there might be some arguments as to whether or not there is, indeed, a boom, bust cycle, but given the cyclical nature of the industry, are you all able to hold on to talent?

MR. SMITH: Yes. Typically, it takes a certain period of time to build an order, anywhere from six months to a year depending on the order, so as long as we get the order and we're level loaded, yes, we can hang on to talent.

COMMISSIONER JOHANSON: Okay. It would seem to me in your industry that would be quite difficult, not only given the seasonal nature of the industry, but also the fact that there's a spot market.

MR. DEFRANCESCO: Just a point of clarification for Mr. Johanson. I think, with respect to seasonality, the installation may be seasonal, but the production of the tower is not.

COMMISSIONER JOHANSON: Okay. Okay. Thank you for clarifying that. I appreciate it. Your brief included information about producers in Spain and Germany and other global producers who are struggling with reduced government support and declining demand. How is what is happening in the United States' market different than what is happening in other parts of the world?

MR. DEFRANCESCO: Commissioner Johanson, Robert DeFrancesco. I think in our brief we discuss the effects of the European financial crisis on installations in Europe and you can see the effects on

some of the OEMs that are based in Europe, Vestas being one of them. There's also, as we talked in our slides, the demand in China has declined. Their installations are down and projected to decline again this year. In India, also one, the third largest, I believe, wind market in the world, they're also declining. Suzlon, which is an Indian turbine manufacturer, has suffered losses for the last three years in a row. So the markets generally around the world are contracting and I think you'll see that in our brief.

MR. PICKARD: Commissioner, if your question is how is the contracting demand in the United States perhaps different than contracting demand in other parts of the world --

COMMISSIONER JOHANSON: Right. How is what is happening in the U.S. industry, when you compare it to what's happening around the world, what differences are there, or are there differences?

MR. PICKARD: One significant difference that springs to mind is that the U.S. market doesn't have a domestic content requirement for wind towers, so when you have contracting demand in other markets but who have domestic requirements, those are essentially closed off markets.

So if you have Chinese and Vietnamese producers who have massive excess capacity and there is shrinking demand throughout the globe but some of those markets aren't open to their imports, it makes it all the more likely that those imports come here, that even with decreased demand they remain, this market remains more attractive than perhaps other also shrinking markets.

COMMISSIONER JOHANSON: Okay. What other markets have, major markets have domestic content requirements?

MR. DEFRANCESCO: Robert DeFrancesco. Just off the top of my head, China has domestic content requirements, South Africa has domestic content requirements, the Ukraine has domestic content requirements and I believe the Australians may as well. We can get you a --

COMMISSIONER JOHANSON: Okay. That would be helpful. As far as you know, the European countries do not?

MR. DEFRANCESCO: I would have to check. Some of them may. I'm not aware.

COMMISSIONER JOHANSON: Okay. All right. Thank you. Table VI-3 of the staff report indicates that the financial performance of individual U.S.

producers varied somewhat during the period examined. While copy-specific financial results are confidential, what do you consider to be important factors which explain this variability?

MR. DEFRANCESCO: I'm sorry, Commissioner, can you repeat the question?

COMMISSIONER JOHANSON: Yes. If you look at Table VI-3 of the staff report it shows that U.S. producers, their financial performance varied, sometimes quite substantially, and I was wondering if you knew what might have caused that. I realize that specific information is confidential, but thought you might be able to give an overview as to why that might be the case or why that is the case.

MR. PICKARD: Why don't I start it off and maybe I'll refer more from the legal issues connected with it, and then maybe others might want to flesh out kind of the more factual basis. There have been some concerns sometimes with arguments made before the Commission that unless the domestic industry is all, are all simultaneously impacted in the same way during the period of investigation, then the cause of injury must be something besides imports, right, that we've heard before arguments made that if injury is manifested in different ways by different U.S.

producers, for example, maybe that's a sign of entry to industry competition. I would suggest that that's got no basis in the statute.

Imports are going to have different affect on different producers, and kind of keeping within the statutory framework, I think sometimes you're going to see it manifested more as a volume effect for some producers. They're going to decide to not bid on those projects or not take sales at below profitable levels and then their injury is going to be manifested more in their production data.

I think other U.S. producers in this case, and other cases, their injury is first manifested as a price effects. They try and maintain share by fighting it out with the domestic industry, and therefore, you see decreases in their sales revenue and they dropped for their bottom line. Also, I think some producers are situated in different ways when the impact of imports first come in.

If your question really kind of goes to if you look at the data, what's really kind of the most important thing to see in regard to the fact that there are different performances by some of the domestic producers, what's most telling, I would suggest that the idea that you, while charged with

looking at the industry in the aggregate, you see an industry that goes from a profitable level to posting an almost 10 percent negative operating income in the most recent period examined, and that's even if you include Vestas' data, which is, I would suggest, has, raises some concerns.

COMMISSIONER JOHANSON: Yes, Mr. DeFrancesco?

MR. DEFRANCESCO: Just to follow-up on that point, again, with respect to the U.S. producers whose data wasn't verified, that accounts for some of that anomaly which we'll get into more in the posthearing brief.

Going more to the point of seasonality, if you look at the data at Table III-4 in the staff report where the producers were asked to break out by facility their production on a half year basis for each year of the POI, you can see that that production from half year to half year at every year of the POI is fairly consistent so that they are producing on a rolling basis over the course of the year.

COMMISSIONER JOHANSON: All right. Thank you. My time is about to expire so that concludes my questions. Thank you.

CHAIRMAN WILLIAMSON: Commissioner

Broadbent?

COMMISSIONER BROADBENT: Thank you. Were you able to see the Respondent Siemens map at all? Have you seen that? If you haven't seen it, I just have a question. Are you aware of wind tower facilities on the East Coast? This shows a big lack of any activity on the East Coast and I just wondered is that consistent with other, with the whole market? Is most wind towers out west and in the wind corridor here, in the midwest?

MR. COLE: At one time a manufacturer built their own towers in Pennsylvania but has ceased operations in doing that. You're correct, you're not seeing much on the east because there's not much of a wind market in the east. The wind market is predominantly in the midwest corridor, from Texas all the way up through Canada between the Mississippi and the Rockies, and then on the West Coast, California and the Pacific Northwest. Primary markets.

COMMISSIONER BROADBENT: Now, is that because of population density or the wind just doesn't blow as much on the East Coast?

MR. COLE: You're exactly right. It's wind speed is what's determined. I mean it's been labeled, the midwest and the Plains through between the Rockies

and the Mississippi has been labeled the Saudi Arabia of wind for the United States.

COMMISSIONER BROADBENT: Right. Okay. Mr. Smith, I'm going to kind of probe you a little bit further here. You said you hadn't denied any unreasonable requests for towers. Can you tell me what kind of requests were unreasonable or how you would characterize an unreasonable request?

MR. SMITH: We talked a little bit about price, if the target price is unreasonable and also if we had already committed that capacity or if the timeline was just too tight to meet, if the schedule was too tight.

COMMISSIONER BROADBENT: So if you'd already committed the capacity to somebody else, then if you had a request for an order, you wouldn't deem that to be unreasonable?

MR. SMITH: If we already had an order and we suggested an alternative schedule, you know, part of it's based on lead time for materials. It takes three to four months to get all the materials in from time of order.

So if we had the capacity filled and we suggested an alternative schedule where we could build and meet the commitments we'd already made, then I

would consider that unreasonable if that was shot down.

COMMISSIONER BROADBENT: I mean, I guess that the word unreasonable is hard for me to use in that sense if you can't meet their demand when they need it.

MR. SMITH: We typically try to find a way to get any order where we can make the order profitably. We will try to find a way to get it done, whether we suggest we move capacity to another location or, as I said, suggest an alternative schedule. We're always trying to find ways to get orders produced in our plants.

If the customer was to come back and say, no, we need it all in this time period and we've explained that we don't have those slots available but here's an alternative schedule, I would consider that unreasonable.

COMMISSIONER BROADBENT: Okay. For Mr. Smith and Mr. Cole, I wanted to talk a little more about the supply agreements with purchasers. How often roughly do purchasers not buy the number of towers that they have contracted for? Does this happen often? Sounds like it does, but maybe you could answer that.

MR. COLE: I would say it didn't happen until 2009, and at that time with the financial collapse and the energy crisis being depressed and the demand being depressed, which therefore the turbine prices became depressed, then that's when the supply agreement stopped being honored because the base load to help the margins was being brought in by the Chinese Vietnamese towers to help out the OEM's margins because they were being depressed from the industry. Previous to 2009, they were usually honored, the agreements and the volume every year, because the demand was there and they needed it.

MR. SMITH: In a spot market, typically it's on a spot basis anyway so it's tied to a real project, so relatively never.

COMMISSIONER BROADBENT: Okay. Do you see the business changing? Aren't these agreements putting you into sort of an untenable position because you're having to turn down work and then not knowing that you've really got a commitment and the commitment on paper doesn't seem to reflect what people are following through on.

MR. COLE: We've evaluated our position, and even though the supply agreement is not what it was intended to be and brought the financial rewards we

thought it would be, it's still better in our mind than going back to the spot market.

MR. DEFRANCESCO: Just to follow-up on that point, again, we would note that the foreign producers have similar agreements with the OEM's. Those appear to be being honored whereas these are not.

CHAIRMAN WILLIAMSON: Thank you. So, following along that similar line of questioning and also trying to get at Commissioner Pinkert's question about how many times there were comparative bids, if you made reference to, and I guess we've seen also reference in the record, that sometimes the OEM's have pointed global supply agreements they may have with a foreign producer as a reason for not buying domestically and wanting to satisfy that.

So I was trying to figure out how important that is, that trend, because money is money. Are you a victim of globalization in the sense that the OEM's and some of the foreign suppliers are basically operating on a global market and almost like treating the U.S. producers as secondary suppliers or supplemental suppliers?

MR. COLE: That's what it's turned into, and that's the problem is the more -- if we the tower manufacturers, domestic tower manufacturers, had that

base load work in our shops, then we would be more competitive. We would be having base load work day in and day out. Our efficiencies would only enhance, and that's the way it was intended.

That's the way it was intended to be, and that was the bet and in 2008 when these agreements were signed, and my analogy is if you and I are betting on a football game and my team's up 40 to nothing in the fourth quarter and you want to change the bet because your team's losing. And that's what happened in our industry.

The OEM's wanted to change the bets. They didn't want the supply agreements that they had with us anymore because the pricing margins went down, and they went elsewhere to go ahead and help enhance their margins. They changed the bet.

MR. PICKARD: Commissioner?

CHAIRMAN WILLIAMSON: Sure, go ahead.

MR. PICKARD: Oh, I'm sorry. I was just going to follow-up and say I think I would make a distinction or respectfully disagree with the term victim of globalization.

CHAIRMAN WILLIAMSON: I thought you might, but go ahead.

MR. PICKARD: Because it's not global

trading, right. It's the unfairly priced trade. It's the fact that if these OEM's are making purchasing decisions based on the lowest price and if they can get price from Chinese producers who are receiving subsidized steel for their towers are willing to sell at dumped prices. It's not the globalization per se.

It's these two specific sources of subject imports which are taking away from the sales either in the spot market or from volumes that were already committed under a supply agreement.

CHAIRMAN WILLIAMSON: Actually, my next question was going to be should we be looking at sort of the X-factory price, China and Vietnam, versus X-factory price in the U.S. in this situation? I mean, I know you've got transportation costs, but I'm not sure if you -- we can't seem to sort out how we should treat that. I mean, the Respondents are saying you've got to look at the transportation costs and then compare.

MR. PICKARD: My colleague and I have worked out a pattern where I start and answer and he finishes.

CHAIRMAN WILLIAMSON: Okay.

MR. PICKARD: So why don't we go back to I think there's some issues. There can be value with an

X-works to X-works comparison or a delivered cost to delivered cost comparison.

Assume your data is accurate, right, and we've discussed already that some of the delivered cost data that's been reported, there's some questions in regard to the fact that it's not actual freight data cost data. It's more standard cost and questions in regard to how that standard cost was calculated. So that's one part.

Two, I think there's an open question in regard to whether freight is absorbed. I think if the Commission should determine that the OEM's have the ability to move freight cost to the wind farm, especially if they have the opportunity even if it's frequently or just generally to markup the freight costs, then I think you have an even more compelling reason to make an FOB or an X-works to X-works comparison.

CHAIRMAN WILLIAMSON: Excuse me. Do we have the information to be able to do that and make that determination or can you supply it?

MR. DEFRANCESCO: Yes, Commission. In our posthearing brief we've done that analysis for you, our complete selling analysis does that.

CHAIRMAN WILLIAMSON: Okay.

MR. PICKARD: And since we're going to be tag teaming back and forth here, I would also suggest if a price negotiation is being done on the FOB price, then I think that also weighs in favor of examining that FOB or X-works price because that's where you're seeing the price depression or price suppressing effects of the imports where the actual negotiation is going on.

And then last but not least as we've talked about in other places, there are instances where sales are being done under supply agreements where freight's not being factored in, so that again suggests comparison at kind of an X-works to X-works which makes sense if you have purchasing decisions for towers being done by one unit of a business and a logistic center making subsequent determinations in regard to freight cost.

CHAIRMAN WILLIAMSON: Okay. My time has expired. Even if I wanted to take some of Commissioner Broadbent's time, I don't think I can do that.

So Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. We've been talking a lot about supply agreements, so for purposes of the post hearing, could

you please let us know which firms in the domestic industry had supply framework agreements for which facilities covering how much capacity per year or whatever's the correct way to look at the time frames? And then let us know how much was actually supplied under these framework agreements.

And after doing all that in a way that we can understand it, maybe you could provide us with the agreements themselves so that we could look at them because this is an issue that's got me -- I'm uncertain what to think of it.

Mr. DeFrancesco?

MR. DEFRANCESCO: We'd be happy to provide that in our post hearing. We'd also like to request that you make the same request of the foreign producers to supply their supply agreements as well.

MR. PICKARD: And I think I would just echo that thought because obviously to the extent that we've got some of these documents, they're limited to clients we represent. But the OEM's are going to be in a position to provide all of the relevant supply agreements.

COMMISSIONER PEARSON: Okay. And then a specific question for Mr. Cole, and you may wish to comment on this now or perhaps in posthearing, but

this comes out of my experience with supply agreements where, preferred supplier agreements is what I was more familiar with, in the event that not all capacity was needed, the purchaser in my experience had some obligation to hold harmless the supplier such that the supplier wasn't sitting out there not producing anything and losing money. If I understand you correctly, that's not the situation you're in; is that right?

MR. COLE: That's correct. We made an effort to accommodate our customer because we believe the demand that was less than the contracted volume was based on some kind of an economic issue or an industry or a market issue, so we did work with our customers and accommodated them several times on several amendments to move that volume out. And basically we did that at no financial penalty to try to help our customer out and maintain the relationship that we had with that customer.

COMMISSIONER PEARSON: Did some of those discussions take place in the context of the recession in which demand for lots of things was evaporating and everybody was scrambling to try to figure out how to keep body and soul together.

MR. COLE: Well, and that was the reasoning,

but as we found out, that wasn't necessarily the truth.

COMMISSIONER PEARSON: Okay. Well, thanks. If there's anything more we should know, go ahead and put it on the prehearing record.

Mr. Chairman, I believe that concludes my questions, so I'd like to thank the members of this panel very much for your testimony this morning.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Aranoff.

COMMISSIONER ARANOFF: Just one last question. The Staff Report lists several substitute types of towers that might have started to be seen in the market including concrete lattice mast or space-framed towers.

Are any of these products that the domestic producers of the type of towers that we're talking about also make or are they different producers and to what extent have you seen these products used in the U.S. market?

MR. SMITH: We haven't seen a lot of any of those so-called hybrid towers or concrete towers in the U.S. market. Right now they're primarily used in Europe. And we've done quite a bit of market research on concrete towers and those types of hybrids, and we

don't see them as a threat at this point.

COMMISSIONER ARANOFF: Why is that?

MR. SMITH: I think it's just about the cost of the tower and the economics. It just doesn't make any sense.

COMMISSIONER ARANOFF: So are concrete towers more expensive than a steel one?

MR. SMITH: Yes.

COMMISSIONER ARANOFF: Okay. And these others with the lattice, so that's the way to achieve the same effect with less steel, right?

MR. SMITH: Right, but I don't see it as a viable technical option at this point.

COMMISSIONER ARANOFF: Do they blow over, I mean, well, what doesn't work about them?

MR. SMITH: You know, we're probably getting into some territory here that I'm not 100 percent comfortable with, but it's more about the labor that would go into installing these towers in the field, You know. They're cheaper when it comes to buying the material but much more expensive to install in the field, so there really is no economic gain to using them.

COMMISSIONER ARANOFF: Okay.

MR. DEFRANCESCO: Commissioner just to

follow-up, I think some of the lattice mast towers you may be thinking of are really more for small wind applications whereas we're covering a utility scale and there really aren't lattice mast towers used in utility scale operations yet.

COMMISSIONER ARANOFF: All right. That is helpful, and I'm trying to analogize this to what I learned about the solar industry not long ago, but in the solar industry they're obviously is a utility scale market but there's also a residential and commercial market. Is that also true for wind?

MR. SMITH: Yes. There's what we call a small wind market or community type market. It's not on the grid.

COMMISSIONER ARANOFF: Okay. So some of these installations that we have, for example, in our Staff Report that show one or two towers and it seems to imply that it belongs to a municipality or something, that's what you're talking about?

MR. SMITH: That's correct. Typically they'll be connected directly to the user rather than connected to a utility grid.

COMMISSIONER ARANOFF: Do you also build those? Are there domestic producers who are building those who are also building the utility scale towers?

MR. SMITH: We've built one or two of them, but it's not really something that's high volume. We did it more as a favor to the end user.

COMMISSIONER ARANOFF: Okay. Seems like a great way to fill in these little pieces of capacity that you can't use.

MR. SMITH: That's what we used it for was a filler at our plant in Adeline.

COMMISSIONER ARANOFF: Okay. Well, I want to thank all of the witnesses for your answers. I don't have any further questions.

Thanks, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: No further questions. I thank you too.

CHAIRMAN WILLIAMSON: Commissioner Pearson? Johanson. Sorry.

COMMISSIONER JOHANSON: Yes. Mr. Chairman, I have no further questions, but I would also like to thank the witnesses for appearing here today.

CHAIRMAN WILLIAMSON: Commissioner Broadbent, no?

COMMISSIONER BROADBENT: No further questions. Thank you very much.

CHAIRMAN WILLIAMSON: Okay. I have a couple

quick ones. Mr. Cole, you talked about the option of, I guess, getting wind towers to the project in Oregon and you talked about it just wasn't feasible.

You didn't mention, I think, shipping by boat. Since you are in Texas, I mean, through the Gulf and the Panama Canal. Was that not an option or not a cost effective option?

MR. COLE: Our plant, our FOB point would be Coleman, Texas which is west Texas, so we had looked at that but it would require truck transport down to the port and then ocean going transport around, and it wasn't cost effective.

The normal source of trucking for towers is over-the-road trucks, and that was no effective from either of our plants. So the best most effective source of transportation that we could get close to was rail transportation.

CHAIRMAN WILLIAMSON: Okay. I was just wondering about that. Knowing that two of the U.S. producers in the west coast closed, do we have a regional market here by any chance? There haven't been any discussion of it or data on it, but I was just curious.

MR. DEFRANCESCO: Commissioner, we would say no. It's not a regional market. I think if you look

at the data, the project award data that you have on the record, you see that towers are shipped from the U.S. facilities, all of the facilities all over the country to all different parts of the country and specifically the two facilities that did exist on the west coast could have serviced that market but for the subject imports.

MR. PICKARD: And I guess I would just follow-up that it's a national market and what you see is Ameron and Katana who were in a sweet spot of the market -- California has traditionally had a robust demand for wind energy, should have been in the sweet spot -- but they were at ground zero with Chinese imports landing and arguably felt the first brunt of the attack. But then what we've seen is since then subject imports into every region of the U.S.

CHAIRMAN WILLIAMSON: Okay. Thank you. So with respect to the captive production provision, can you explain your position that the third criteria is met since all wind towers are used for the production of wind turbines?

MR. DEFRANCESCO: Commissioner, Robert DeFrancesco. It's our position that because the wind towers are interchangeable with respect to a particular OEM's specification, that wind tower is not

necessarily interchangeable with another OEM's specification. So under that basis, we would think that the third criteria would be met.

MR. PICKARD: I would suggest that if you should choose to apply the related party provision, there's a decent chance that you don't get to the captive consumption issue, and I would suggest that there's some very compelling reasons for application of the related party provision.

But to follow up specifically on the captive consumption provision, I think what we've seen from the Commission in the past is even if the captive consumption provision isn't strictly applied, in situations like this it's been recognized as a significant condition of competition.

So regardless of whether there's a finding that the three factors are specifically met or it's just recognized that one particular producer has significant internal consumption and that import competition takes place most directly in the merchant market, it's my understanding that the Commission's practice has just been to recognize that and to place a larger focus on the merchant market.

CHAIRMAN WILLIAMSON: Okay. Thank you for that clarification. Are there differences in

producing an 80 meter versus 100 meter towers in terms of equipment needed or other factors?

MR. SMITH: There aren't. They're pretty close in design. Typically an 80 meter tower can be three to four sections, and a 100 meter tower will be four to five sections, but the process used and the equipment used to build both are pretty much the same.

CHAIRMAN WILLIAMSON: Okay. So are there any wind towers that you're currently incapable of producing due to factors such as height or other specifications?

MR. SMITH: None that I've seen on the market.

CHAIRMAN WILLIAMSON: Okay. Good. Okay. With that, I think I have no further questions and I think no other Commissioner has any questions, so I guess does staff have any questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Chairman Williams. The staff has no additional questions.

CHAIRMAN WILLIAMSON: Okay. Do Respondents have any questions for this panel?

MR. FELDMAN: No questions, sir.

CHAIRMAN WILLIAMSON: Okay. Thank you. I think we'll take a lunch break now. I want to remind

everybody that the parties should not leave confidential business information in the room because the room is not secure. So we'll take a break until 1:30. Thank you.

(Whereupon, at 12:26 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:30 p.m. this same day, Thursday, December 13, 2012.)

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

(1:34 p.m.)

CHAIRMAN WILLIAMSON: Welcome, Mr. Feldman. You may begin.

MR. FELDMAN: Thank you, Mr. Chairman. Again, I'm Elliot Feldman from Baker and Hostetler and representing counsel to Siemens. We too want to thank the staff, of course, and the Commission for its hard work on this case.

This morning I felt like I was watching an episode of Family Feud. Obviously Trinity has contractual issues with one of the two largest OEM's, and I'm glad to say it's not us.

Mr. Cole testified this morning that in 2009 he was betting on a model of a level load that he would establish through guaranteed supply agreements. For some three years now he apparently has had a problem with the enforcement of contractual terms, yet he reported this morning that he was extending the agreement and still prefers it even while he claims the industry itself is collapsing. He doesn't want to be in the spot market, he said. Sounds like an abusive marriage not a trade dispute. That family feud does not describe this industry which was described extremely well by the staff.

Siemens has had no such guaranteed supply agreements. Trinity has turned us away often saying it did not have capacity to supply us. We were offered cheaper towers, however, where there was capacity in Mexico.

Others in 2012 told us the same thing. This morning we heard a little bit more about why because such requests, without a guaranteed supply agreement, apparently are unreasonable. And maybe Mr. Cole thinks he can inventory towers, but certainly not for Siemens.

We commend to the Commission pages 25 to 36 of our brief which details the capacity issue one supplier after another. There you will also find this statement from one of the petitioners at page 32 in response to one of the last questions this morning.

Just spent some time with our manufacturing and engineering group reviewing the 99.5 meter tower. The weights on the tower sections, especially the base at 110 tons, exceeds our crane capacity. Quite frankly, it exceeds the crane capacity of most of our plants. Thanks for the opportunity, but we will have to pass on this project.

Yes, the change in the design and size of the towers has made a difference and, no, all of the

suppliers in the United States are not able to produce them.

I'm going to let Mr. Hazel and Mr. Revak introduce themselves. They come extremely well credentialed. They are the best we could produce for you and we're very happy to have them testify today at your hearing. Thank you.

MR. HAZEL: Good afternoon. I'm Kevin Hazel. I'm vice president of the supply chain for the Americas region of Siemens Wind Power. I've been with Siemens for 34 years managing the supply chain for wind power for the last five.

Throughout the period of investigation, I have been responsible for the procurement, quality, and delivery of wind towers. Petitioners have speculated a lot about our policies and practices in procuring towers for wind farms. Here are the facts.

When tower manufacturers produce towers for Siemens, they are making our product according to our design. We do not buy towers from manufacturing plants we have not qualified. Qualification is for quality control as Petitioners seem to recognize. It often takes months to qualify a facility.

The primary expensive of qualification, typically between 250 and $500,000, is borne by

Siemens. Petitioners apparently think qualification is automatic. It isn't, as Katana's Washington plant ought to know. Petitioners also seem to think it's based on prior price negotiation. It isn't. The criteria are technical and based on performance, capability, and capacity.

We do not take bids for towers. Because of the logistical problems in moving towers and the expense, we always, let me repeat always, try to buy as many towers as we need for a domestic project from a qualified facility closest to the project.

The most important considerations are whether the facility has the capacity to deliver the number of towers we need meeting Siemens' quality control standards in the window when we need them. When it can, it gets the complete order. If it can supply some but not all of the towers, we may take what we can get although we would still prefer to get all of the towers for a given project from one place and may try someplace else.

When we can't get all of the towers or the rest of what is needed from the first or second choice, we move on. We invariably move to the next nearest qualified facility determined by geography, and we continue in this manner until we have all of

the towers we need for a given project.

Of course, sometimes we know that the next nearest facility has no capacity so we were forced to move even further away. We know that the further we go, the more it will cost us regardless of the FOB price.

At no time, however, do we collect more than one quote from more than one producer in order to compare them or persuade them to meet the price of the other. Our overwhelming priority is to meet our contractual obligation to our customers including public utilities which means to assemble and install the contracted number of wind turbines according to a specific design and on time.

Domestic tower manufacturers have spaced themselves so far apart that there is no real competition among them. Again, the supplier that is closest to the project site has an overwhelming advantage assuming capacity and quality control standards can be met.

The tower manufacturers in the United States are all around 500 miles or more apart from one another, and we generally are trying to move towers a good deal fewer than 500 miles.

We've invested substantial resources in 2011

to expand the number of qualified domestic producer facilities so we could increase the domestic production capacity available to us and could lower our costs and commercial risk for tower transportation to project sites.

Contrary to Petitioners' theory that we were only looking to buy more towers from China and Vietnam, we were diligently and at great expense trying to grow the number of potential suppliers in the United States.

In addition to the domestic suppliers we already had qualified and relied upon, Ameron and DMI, in 2011 and 2012, we qualified Katana's Nebraska and Washington State facilities, Martifer Hirschfeld's Texas facility, and Broadwind's Wisconsin facility. All of these qualifications were completed or underway before the petition was filed in this case.

We also had numerous communications with Trinity that we hoped would lead to qualification of facilities in Iowa and elsewhere, but we could not come to agreement on warranties, liquidated damages, and other issues, none of which were price related, nor could we reach agreement on the kind of capacity Trinity would have available and the terms for its availability.

We buy towers from China and Vietnam for only two reasons.

All of the domestic manufacturers, with the exception of Ameron in Southern California and Katana's Washington plant, which was not available to us until it qualified for Siemens' production in January of this year, are in the middle of the country and distant from port facilities.

Transportation from those facilities to the Atlantic and Pacific coasts, to Puerto Rico and Hawaii is too difficult and too expensive. If OEM's were unable to procure Chinese and Vietnamese towers, our customers would be unable to supply electricity through wind power to those densely populated areas of the United States.

Our second reason for buying Chinese and Vietnamese towers arises when our domestic suppliers let us down. They may contract with us and fail to deliver, whether on time or of adequate quality, and they may refuse to contract with us all together, a frequent occurrence in 2012.

Often when we need towers, there is no nearby qualified facility, none that is ready or none that will be ready in the time that the towers will need to be delivered.

Petitioners have reported various efforts and interest in building facilities on behalf of OEM's new projects. Unfortunately, they typically want OEM guarantees before they build or even staff.

That is the story for our project in Washington state and apparently for GE on Shepard's Flat. In my judgment, GE could not reasonably be expected to wait for a supplier to build a local facility any more than Siemens could wait to contract for a major supply of towers when Katana Summit only had two employees in the facility.

Two major domestic producers have proposed to me personally that they would build a new facility at a specific location if I would guarantee to purchase a significant quantity of towers from that location for a minimum of three years.

Thus, before there was even a factory let alone one with employees qualified to build towers meeting Siemens' standards and specifications and before Siemens had wind power contracts, they wanted a guarantee of wind power purchases fixed to a location where there might not ever be a project.

One of the leading Petitioners complaining bitterly about foreign towers in the U.S. market repeatedly has tried to persuade Siemens to buy towers

from facilities it has in Mexico. Apparently there was plenty of excess capacity there and they have offered FOB quotes that undersell all of their domestic options, but we do not want towers from Mexico which faces worse transportation and logistical solutions than American, or Chinese, or Vietnamese towers. Perhaps they think it's all about price and we should buy those towers. We're not buying.

Let me offer an example of an exception where we did deliver foreign towers to the Midwest. We qualified and contracted for that project with one of the Petitioners. That manufacturer let us down, failing to deliver. We had to scramble for towers. The other nearest domestic manufacturers either were not qualified to produce towers or lacked the capacity to do so.

Therefore, we had to bring towers in from further away in the United States and also from Asia. We lost money, but we would have lost even more had we failed to install the turbines. Chinese towers were bought for this project as a last resort when domestic companies failed to deliver. The record shows they cost us more than the domestic towers.

Petitioners are focused on price. We generally know market prices at any given time because

our contracts with tower suppliers to manufacture our unique towers are typically based on their concept of "conversion".

They charge us a price for their conversion of the steel plate into steel towers for wind turbines and then add charges that they pass through to us for the changing costs of their inputs particularly and most importantly steel.

We have submitted for the record statements from suppliers explaining price rises for towers due to steel prices. We absorb those additional costs, not the domestic tower manufacturers. The price of towers from China and Vietnam has never determined whether we would purchase American towers nor at what price. We prefer to buy American which is why we have diligently sought to qualify more domestic facilities.

As responsible for the supply chain, I want to deal with the fewest possible number of suppliers at the shortest distances. I prefer solving problems by speaking in the same language and in the same time zone. Unfortunately, sometimes I can't have it the way I'd prefer. But towers from China and Vietnam have never displaced the purchase of an American tower.

Siemens qualifies tower manufacturers

everywhere in the world the same way and at the same expense. Today only one supplier in China and one in Vietnam are qualified to supply Siemens with custom design towers. They have no inventory of towers for Siemens because Siemens designs and buys towers for specific projects.

Siemens cannot buy towers made for any other OEM for Siemens' project. Anyone making towers for us in China and Vietnam has to be qualified the same way we qualify facilities in the United States.

I understand the law to require a threat of injury to be imminent. There is no threat from China or Vietnam. There is no inventory. There are only two qualified manufacturers, and it would take up to a year to deliver on new orders. And for all of that, we would still prefer whenever possible to buy American. Thank you,

MR. REVAK: Good afternoon. I'm Mike Revak, and I'm happy to return here to assist the Commission in its investigation as I did last January. I am responsible at Siemens Energy for the selling of wind turbine generators and their delivery, installation, and commissioning. I deal directly and personally with customers and the evolving market.

As Kevin just testified, our first

obligation is to our customers, the wind farms, and public utilities who choose to install wind power for them. We design our wind turbine generators uniquely to suite their specific needs.

After we win a contract with them, we seek suppliers for the proprietary towers we will need. Our towers are unique, and we contract for their manufacture and they are delivered directly to us. No one else can use them. We contract only for what we need.

Although Petitioners may believe many different designs are all similar, towers of one design cannot substitute for towers of another design, and the towers designed for one OEM can never substitute for towers for any other OEM.

More than one manufacturer can make the same tower, but because of licensing and intellectual property, none can make the same tower without a specific contract and we will never make a Siemens tower for anyone but Siemens.

Although all towers are being used as the base for wind turbines making them all like products, because they are uniquely made for each OEM, they are in our view distinct like products.

Petitioners now seem to think that we can

pass ocean and freight cost onto our customers. We don't. We can't. And the tower manufacturers enjoy a pass-through provision in contracts with us. We have no such benefit from our customers.

The reason for the difference is easy to explain. We complete fiercely for the opportunity to supply wind farms. We believe in the long term future of wind power in the United States, and we intend to be around when the future is brighter than it is today.

There are many bidders for opportunity to supply wind farms. There are not a lot of tower manufacturers and their geographic dispersal mean they do not have to compete very hard for the business. They know that OEM's need to buy towers close to the wind farm sites and tower manufacturers are spread out so far apart that we rarely have more than one initial choice for supply.

While we may inquire about quotes from time to time, we do not contract for towers until we know we need them. Throughout the POI in this case, we have been buying towers on the spot market.

The expiration of the PTC and the consequent consolidation among tower manufacturers, Trinity acquiring DMI while converting some production to

railcars, Martifer Hirschfeld exit, along with Katana Summit is forcing us to consider supply agreements with a few remaining producers but we know such agreements will only increase the hold the small and dispersed manufacturers will have on us.

Everyone wants to limit the risks, but not everyone complains and sues when they cannot pass the risk onto us. In effect, the Petitioners have sued us, a high technology American industry innovating for the future and creating more employment than they create, because we would not assume all the risk.

The issues in the case did not arise from Chinese and Vietnamese towers. They arose when Government incentives expanded market demand that domestic tower manufacturers could not meet only to see the incentives expire with domestic turbine manufacturers responding to the new demand bought as many towers from domestic manufacturers as they could produce and would sell to us.

When they would not or could not supply more, and they always told us it was because they did not have the capacity to do so, then we looked for alternatives as we always had to for coastal and island projects. When incentives started going away, the tower manufacturers started quitting. We did not.

We are still here although it is not easy.

Eight years ago, I became the first Siemens Energy employee for wind power in the United States. Before we had to lay off 615 employees and over 200 contractors in the United States a few months ago, we had reached almost 2,000 American employees.

We employ far more in the wind energy than any other tower manufacturers and have lost more than they because of the expected expiration of the production tax credit, but it is the expiration of the tax credit not foreign competition that has impacted employment and profits in wind energy.

Unlike tower manufacturers, we are committed to wind energy for the long haul. We just have to hope that the Commission will not make the business even more difficult for us.

MR. DOUGAN: Good afternoon. I'm Jim Dougan from Economic Consulting Services, and I'm here on behalf of the Chinese and Vietnamese Respondents. It is my opinion that the record evidence shows that imports from China and Vietnam cause no adverse price affects and no adverse volume affects to the domestic industry and that any injury the U.S. producers may have suffered is not by reason of subject imports.

By now, the Commission has no doubt gathered

that this is an unusual case. To fully and correctly analyze price, volume, and impact, there are important conditions of competition that the Commission should consider.

Respondents discuss them at length at section 5 of our prehearing brief, but they can be summarized as follows: Number one, demand for wind towers in the United States is largely dependent on Government incentives for wind energy projects. Mr. Cole and Mr. Rubin testified this morning that basically the reason the industry even exists at all is because of the current PTC.

Number two, the 2008 financial crisis and impending expiration of certain Government incentives included in the PTC have been the critical demand drivers during the POI.

Number three, wind towers are generally sourced through a sealed process where prices are not shared with tower producers and, therefore, tower producers have an incomplete and skewed view of competitive dynamics. Number four, supplier qualification is a critical factor in purchasing decisions.

Number five, the U.S. wind tower market is highly seasonal with a vast majority of installations

taking place in very few months. Number six, the weight and size of wind towers mean transportation costs drive purchasing decisions and lead to somewhat attenuated competition by geography.

Number seven, the combination of seasonality and geography leads to unbalanced production loads and overstated capacity figures for U.S. wind tower producers. Number eight, delivery timing is critical as late deliveries expose OEM's and in turn wind tower producers to liquidated damages.

First with regard to price effects, the staff has done an admirable job in compiling and analyzing the pricing data provided by the parties. The Commission will find from staff's analysis that there was no underselling by subject imports during the POI and that, in fact, significant premiums were paid by OEM's to use subject imports for projects in the United States.

Staff's analysis of GE's pricing data at prehearing report page 5-6 shows that where projects were sourced from both domestic and subject import producers, the price of imports from Chinese on a delivered basis were higher than U.S. producers prices in nearly all 24 comparisons and, in aggregate, GE paid a very substantial premium for the use of Chinese

towers for these projects.

Likewise, staff's analysis of Siemens' pricing data at prehearing report page 5-40 shows that where projects were sourced from both domestic and subject import producers delivered prices for imports from both China and Vietnam were higher than U.S. producer delivered prices in a majority of comparisons and in aggregate Siemens too paid a premium for the use of subject import towers for these projects.

The discussion of pricing in Petitioners' prehearing brief and what you heard this morning completely ignores staff's compilation and analysis. The alternative underselling analysis that they present is highly flawed conceptually and is in opposition to the conditions of competition in this industry, Commission precedent, and frankly common sense.

Petitioners present their entire analysis on the basis of FOB pricing and insist that this is the appropriate basis on which to evaluate underselling, but the record evidence shows that this is not the price on which OEM's base their purchasing decision and common sense demonstrates why they never would.

The Staff Report at page 5-5 notes that GE relies on the delivered cost rather than the FOB cost

because, quote, transportation costs account for a large portion of the total cost of the finished wind tower, end quote.

And as you've heard from Siemens' witnesses today, they too make purchasing decisions on the basis of delivered not FOB price. The reason is simple. Utility scale wind towers are very heavy usually weighing over 100 metric tons a piece and tall, most commonly 80 meters or greater in height and transported in sections of 20 to 30 meters a piece.

Petitioners dismiss freight as a, quote, logistics issue as if logistical arrangements related to the transport of products that tall and that heavy would be, in Mr. Cole's words, an afterthought.

For a hypothetical example that provides some context, please see slide one. To adopt Petitioners view of the world, one would have to believe that an OEM seeking to source wind towers for a project in the American Midwest, the yellow dot, would compare prices on the basis of FOB price at the port in China, the blue dot, and X factory price of a U.S. producer, the red dot.

Hypothetically, if the X work's price of the U.S. tower is $300,000 a tower and the FOB China price is $250,000 a tower, Petitioners argue that this

represents underselling, but OEM's do not make a purchase of the Chinese tower on the basis of this supposed $50,000 savings because to do so would be irrational.

The price comparison fails to reflect the very significant costs involved in getting the towers from China over the 10,000 miles of ocean to Houston, the U.S. port nearest to any project site in the Midwest. This could amount to $100,000 per tower or more.

In addition, the inland freight from Houston to the installation site could run $50,000 per tower, meaning that the total delivered price of the Chinese towers would be $400,000 per tower.

In comparison, the inland freight to the U.S. producer to the project site could be $25,000 which means that the total delivered price of the U.S. towers would be $325,000 which is $75,000 per tower or about 18 percent less than the Chinese towers.

If in this example the OEM sources towers from the domestic producer, it may be doing so because of non-price factors such as availability of qualified capacity at the required time. But make no mistake, it's also choosing the lower priced alternative.

If the OEM sources towers from China, the

Petitioner would have you believe that this is underselling and that the decision is made on the basis of the lower FOB price, but the only pricing metric that matters to the OEM, total delivered cost to the site, they're paying a premium, therefore, by definition this sourcing decision would be made for non-price reasons which might include a lack of available supply from the domestic producer because of capacity constraints, order refusals, or cancellations.

Pricing under a framework agreement may be negotiated in advance, but the decision as to where to send that supply to source a particular project is made on the basis of delivered price, and this is the only relevant basis on which one can make a comparison with subject imports.

Now, this is a hypothetical example with made up numbers but the numbers are well in the range of data provided by the purchasers and the record is full of many actual examples just like the one I walked through including the one mentioned earlier by Mr. Hazel.

The fact is, if a purchaser pays a premium price for an import, there's no underselling. Mr. DeFrancesco alluded this morning to a more traditional

pricing product analysis that they present in their prehearing brief, but as we'll show in our posthearing brief, this really only works to support their argument on an FOB basis, that is a red-dot to blue-dot comparison. If ocean and inland freight costs are considered, their analysis supports our case too.

Also, a couple of questions. If inland freight costs and site proximity are so inconsequential an issue to the purchase decision, why do Petitioners make so much of their offers to build facilities close to OEM project sites as Mr. Cole and Mr. Smith did this morning?

Number two, why do the OEM's not source their East Coast projects from subject import suppliers or from domestic suppliers? They tend to source the vast majority of these projects from suppliers in Canada because the Canadian suppliers are closer to the East Coast projects. And if you look, at the confidential pricing data, you'll see that these OEM's aren't sourcing from Canada on the basis of the lowest FOB price.

As said by Mr. Feldman earlier, if the FOB price were the key determining factor in OEM's purchasing decisions, the domestic industry would have made hardly any sales at all during the POI when, in

fact, they held the dominant share of the market until 2012 when their own capacity limitations left them unable to fully satisfy the explosive demand growth in anticipation of the PTC expiration.

The fact is, the closed pricing process leaves the domestic industry with an incomplete and skewed view of the marketplace competitive dynamic. This is compounded by the fact that Petitioners really have no idea, and they admitted as much this morning, what the OEM's are paying for freight and, therefore, what the OEM's total delivered costs are.

In the words of Mr. Cole from the conference, what's interesting about the bid process is it's not open so you don't know who you're bidding against. You don't get to see your prices compared to someone else's.

The fact that OEM's don't share prices with wind tower producers and that tower producers have no idea about delivery costs means that there's no mechanism for price suppression to occur.

Moreover, Petitioners' incomplete and skewed information has left them unable to identify any actual lost sales or revenues apart from their inaccurate contention regarding the Shepard's Flat project. Because Petitioners' explanation for the

Shepard's Flat project is flawed, so too is the rest of their price affects argument.

As noted in their own brief, this project alone accounted for a large portion of the increase in subject imports from 2010 to 2011 and a project that was awarded for non-price factors cannot recalibrate market pricing for wind towers. As shown at page 42 in Exhibit 7 to Respondents' prehearing brief, there was no price depression during the POI.

Another misrepresentation by Petitioners is their assertion that wind tower prices are, quote, frequently subject to intense renegotiation, end quote. The only evidence, the only evidence, they site in support of this assertion is a public verification report from the DOC phase of this investigation which we will address in our posthearing submission.

In short, Petitioners have ignored staff's thorough analysis of the pricing data and presented no credible evidence to support their alternative world view.

With respect to volume effects, the domestic industry suffered no adverse volume affects by reason of subject imports. Domestic producers held a dominant and increasing market share over the POI

until part year 2012.

While the market share data for 2009 and 2010 are redacted from the final phase prehearing report, the data provided in the public version of the preliminary Staff Report show that the domestic industry increased its market share during each full year for which the Commission collected data, from 47.7 percent in 2008 to 55.6 percent in 2009, to 60.5 percent in 2010 and, based on the public prehearing report, to 61.6 percent in 2011.

However, unable to meet the surge in demand caused by the impending expiration of the PTC, the domestic industry's market share dropped to 38.6 percent in part year 2012. This drop in market share was entirely illusory, however, as the market simply grew beyond the domestic industry's ability to supply it.

Domestic producers production problems and lack of available capacity were thoroughly documented over the period when the domestic industry supposedly lost market share.

Respondents' prehearing brief and, frankly, the Staff Report as well provide numerous citations from questionnaire responses regarding domestic producers supply difficulties including late

deliveries results in millions of dollars of liquidated damages and refusals of orders in part year 2012.

As shown in the prehearing report at 2-3 and 2-4, these problems were wide spread across nearly all domestic producers including all Petitioners, Broadwind, DMI, Katana, and Trinity, and from a majority of purchasers, not just GE and Siemens.

Moreover, virtually all, that is seven of nine, purchasers reported delivery issues for wind towers that resulted in additional expenses or lost revenue for the purchasers.

Petitioners prehearing brief was over 100 pages long with over 700 pages of accompanying exhibits. Nowhere among this voluminous submission was any evidence offered to rebut or even provide further context regarding purchasers' allegations.

Thus, the Commission should read this striking omission as tacit confirmation. Mr. Smith testified that Broadwind had never turned down an unreasonable request but, when pressed, admitted that this included turning down business because of a lack of available capacity at the required time. This is precisely the corroboration of what purchasers' said in their questionnaires.

But despite all of the difficulties that OEM's had experienced with U.S. producers, the purchasers worked hard and, as you heard earlier from Mr. Hazel, at significant expense to qualify the additional domestic facilities over the course of the POI. See Respondents prehearing brief at pages 34 to 35 and Exhibit 6.

Qualification is a legitimate constraint on the available capacity of U.S. producers that may have limited their ability to fully take advantage of the demand spike in 2012 and, given that it must be done for each tower model at each facility, limited the U.S. producers' ability to participate in particular wind farm projects.

Ironically, while Petitioners' prehearing brief completely omits any discussion of domestic capacity constraints, it includes extensive discussion about excluding a substantial amount of domestic capacity from the Commission's analysis, that is, the capacity of Vestas'.

Petitioners, contrary to their position in the preliminary investigation, now oppose Vestas' inclusion in the domestic industry. Vestas has become a significant producer of the subject merchandise, and this is a sign of industry health.

Petitioners' characterization of Vestas as an increasingly reliant on subject imports is misleading and, frankly, wrong which we will address in detail in our posthearing brief.

In Exhibit 2 to Petitioners' prehearing brief which they site as evidence supporting the notion that Vestas is, quote, relying on outsourcing its production needs, end quote, Vestas states in the very first line, the new Vestas operating model is designed to maintain Vestas' global footprint and increase customer proximity which remains one of Vestas' greatest strengths.

This is consistent with Vestas' strategy of investing in the U.S. assets to serve its customers here and a sign of increased investment in the domestic wind tower industry overall.

Now, we understand that the Commission may have some misgivings regarding Vestas' financial data given potential transfer pricing issues with its parent company, and so on, and their refusal to be verified by the Commission staff, but even if the Commission decides to disregard Vestas' financial data for these reasons, they should include its trade data for analyzing volume effects. Any potential transfer pricing issues would not impact the volume data.

For related reasons, separating the market share analysis between the merchant market and internal markets would lead the Commission to miss an important trend, the discussion of which requires confidential information that we'll get to in our posthearing brief.

Finally, the seasonality of the U.S. wind tower market is an important condition of competition that helps to explain U.S. producers capacity constraints at various times during the calendar year. This is discussed in detail at Respondents' prehearing brief pages 19 to 21 in Exhibit 2

While virtually all of the data relating to this issue are confidential, we note that the pubic prehearing report at 2-4 quotes one U.S. producer who reported it has been unable to supply wind towers, quote, in situations when short-term requirements have exceeded the sustainable capacity that it has had in place at the time, end quote. This is a perfect summation of the effect that seasonality has had on the U.S. producer's ability to supply the market.

I believe also this morning Mr. DeFrancesco noted that there are data in the Staff Report that show that there's no seasonality in the production. Those are grouped in six month increments, and we

believe that if you look at -- the six months on each side includes a little bit of the peak period, so it doesn't really help you understand or explain seasonality. The Respondents provided monthly production data. We think you should ask the domestic producers to do the same.

So given the absence of adverse price affects and volume affects by reason of subject imports, the domestic industry cannot be said to be suffering any adverse impact by reason of subject imports.

As discussed in Respondents' prehearing brief, pages 49 to 53, and Exhibits 9 through 11, a few non-recurring charges unrelated to subject imports have massed a substantial improvement in domestic industry financial performance in 2012.

This morning, Mr. Cole mentioned the complexity and associated inefficiencies associated with ramping up and down his facilities to make many different kinds of towers, but that's the nature of the product. It's not a commodity. Sure, it would be easier for everyone if you could just build one type of tower and crank them out at high volume and get the manufacturing efficiencies, but that's not really the way this market works.

The chief evidence Petitioners present in support of their injury is the exit from the industry from a number of producers and/or the closure or repurposing of certain facilities to manufacture products other than wind towers. However much Petitioners argue to the Commission that these changes are the result of subject imports, their public statements tell a different story. See slide 3.

When discussing the reasons behind the decision to put DMI up for sale in late 2012, DMI's senior vice president of corporate communications listed, number one, the expiration of the PTC; number two, lack of a predictable national energy policy; and number three, low natural gas prices, not imports.

Katana Summit in its September 2012 press release announcing it was looking for a buyer mentioned only the PTC expiration as the cause for its troubles, not imports. Trinity's decision to convert some of its production to rail car products was blamed on the lack of demand in the market place, not imports.

Mr. Pickard this morning said that these companies provided questionnaire responses and that the Commission can look at those for the real impact, but the Commission might also ask why these stories

are different at all. Blaming imports in a press release wouldn't have required the disclosure of confidential information, so why didn't they do it?

As far as non-Petitioner exits go, the Staff Report specifically mentions Hirschfeld Energy Systems ending wind tower production in 2012 to the expiration of the PTC, not imports. Likewise, SIAG Aerisyn filed for bankruptcy following a similar filing by its German parent company. It's not related to imports in the United States.

Now, with little or no wind tower projects in 2013 due to the expiration of the PTC, it's unsurprising that many producers are exiting the industry, especially considering the testimony of domestic producers this morning that that's why they got into the industry.

As can be seen in the Staff Report as Figure 2-1, the lapsing of the PTC in the year 2000, 2002, and 2004 caused wind turbine installations to drop substantially, and unlike in 2004 when the PTC expired then and the weighted average wind power price was on the low end of national wholesale prices as can be seen in Staff Report Figure 2-3, the average wind energy power price in 2011 is significantly above the national wholesale power price suggesting that the

drop off in projects could be more severe in 2013 than in prior years. This is the result of decade low natural gas prices which Petitioners somewhat surprisingly argue is a complement to wind tower demand.

Nevertheless, this drop in future demand has nothing to do with subject imports, and according to questionnaire data compiled in the confidential prehearing report, Tables 3-5 and 7-9, this downturn in demand has had a far more substantial impact on future subject import volume than on future domestic shipments.

For that reason and for many more outlined in Respondents' prehearing brief, the domestic industry is not threatened with injury by reason of subject imports. Thank you.

MR. MARSHAK: Good afternoon. I'm Ned Marshak of Grunfeld Desiderio. I'd like to very briefly reply to several issues raised by Petitioners from the perspective of our law firm's clients, Wind Tower Exporters to the United States and China and CS Wind Vietnam. First, this case is about the impact on the U.S. industry of wind towers exported from China and Vietnam. It is not about conditions of competition within China, and it is not about wind

tower production capacity and capacity utilization within China.

The vast majority of wind towers produced in China stay in China. Only a handful of Chinese wind tower producers export wind towers to the United States. Only three Chinese producers and one Vietnamese producer exported significant quantities of wind towers to the United States during the period of investigations, and these are the only companies qualified by the OEMs which dominate the U.S. market to produce wind towers for exportation to our country.

The Commission should focus on the business operations of these four companies to evaluate whether the domestic industry was materially injured by reason of subject imports during the POI or whether is a threat of material injury in the imminent future. Second, if the Commission concludes that the 2012 spike in subject imports did not materially injure our domestic industry, in our opinion, you cannot reasonably conclude that subject imports constitute a threat of material injury in the imminent future.

The four qualified Chinese and Vietnamese exporters had the capacity and ability to meet their customers requirements in 2012. The Commission will decide if this spike was injurious. If the Commission

decides in our favor, as we believe it should, these qualified exporters do not pose a threat of material injury in the future. In 2013, U.S. demand will decline. Our exports also declined.

We will not change the manner in which we conduct business with our clients, their dealings with their customers and the fact that our clients only produce towers to fill firm orders to meet their OEMs' customers' requirements. In short, this case is about present injury. If the Commission decides the 2012 spike did not result in present material injury, it should not conclude that there is a threat.

Third, contrary to Petitioners' claim, qualified Chinese and Vietnamese exporters do not produce an export regardless of price, do not maintain inventory in the absence of firm orders, and did not increase shipments to the U.S. in 2011, 2012 because they were offering low FOB prices. As you have heard today, and as the documents and the records confirm, subject shipments increased because demand spiked to meet expiration of the PTC.

OEMs purchased towers from China and Vietnam because the location of these facilities and the inability of domestic producers to meet OEM requirements. Selecting a wind tower producer in

certain respects is like buying a house. Location, location, location. Qualified Chinese and Vietnamese exporters have constructed production facilities adjacent to strategically located deep water ports. They are not burdened with inland freight costs in China and Vietnam.

They are perfected situated to ship towers to West Coast and Gulf Coast ports in the United States, to Brazil, to India, to Mexico and the West Coast of Canada, to Thailand. In short, the third countries, which even Petitioners have acknowledged will experience increased demand for wind towers in the future. What these exporters are not ideally situated to do is to produce wind towers which must be shipped long distances within China or to installation sites in the middle of the United States.

This fact has been graphically established in the maps presented today by Mr. Dougan. OEM customers only asked our client to produce towers for shipment to the Midwest when they had no other choice. When domestic producers were unable or unwilling to meet our customers needs. Finally, Petitioners claim that our client's success in selling towers to the United States is based on the fact that we're offering towers at extraordinarily low FOB prices arrived at

after intensive price negotiations and renegotiations.

These specific claims, based on the public version of a Department of Commerce report are not accurate. In our confidential posthearing brief, we will submit additional documents supporting this fact. As a simple example, one of our clients, an OEM, entered into a framework agreement in which the OEM was required to pay significant liquidated damages if it had failed to order a specified quantity of towers. There was a specified period of time since our client had reserved capacity for this OEM. In fact, the OEM failed to meet its goal, and it paid the price.

If a tower manufacturer's X factory price was the driving force in its sales to this OEM, the OEM would have purchased additional towers from the manufacturer to avoid the liquidated damage payments. It did not. Instead, the OEM decided to pay the damage and to source towers destined for certain areas in the United States from factories located closer to the installation site. The reason? Location, location, location. Our ex factory prices were not controlling factors in the OEM sourcing decision.

To summarize, Chinese and Vietnamese exports did increase during the POI, most notably in 2012, but this increase was not caused by decision by Chinese

and Vietnam exporters to ship towers to the United States as claimed by Petitioners regardless of price or demand. To the contrary, OEMs had no choice but to look offshore for towers to meet the spike of 2012 after domestic producers were unable or unwilling to fill orders.

The OEMs looked to Chinese and Vietnam to fill this void because the strategic location of the Chinese and Vietnamese production facilities and the fact that they knew that these particular Chinese and Vietnamese vendors, by reason of prior qualification and experience, were ready, willing and able to produce and deliver first quality wind towers to the United States on a timely basis. The X factory price of the towers was not the reason for the OEM sourcing decisions.

This being the case, any material injury experienced by domestic wind tower producers was not by reason of exports from China and Vietnam. Thank you.

MR. FELDMAN: That concludes our presentation, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you very much, and I express an appreciation to all the witnesses for coming to present their testimony today. This

afternoon, we'll begin questioning with Commissioner Aranoff.

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Welcome to the afternoon panel. We appreciate your being here today. This is a question for either Mr. Hazel or Mr. Revak. How much of an out-of-pocket cost is there to Siemens when you qualify a new supplier for wind towers?

MR. HAZEL: The cost of a qualification ranges from $250,000 to $500,000. We have to involve several experts in that process that have to travel typically from headquarters in Denmark. We have developed some of that expertise locally in the states, but it's an expensive and time-consuming process.

COMMISSIONER ARANOFF: And you do that on a plant-by-plant basis, right?

MR. HAZEL: It's plant by plant and also design by design, and as presented, I believe, this morning, there's a reduced consideration of only the design changes when you go design by design, but plant by plant is definitely done on a whole basis, holistic basis.

COMMISSIONER ARANOFF: So if someone new enters the U.S. industry, and they set up a plant, how

do they qualify? They have no production history that you can look at. You can kind of kick the tires on their equipment, right?

MR. HAZEL: That's correct. We would come with experts. Again, we're the design agency, so we understand the makeup of a tower. We understand the manufacturing processes and the equipment that are necessary to create that tower, so certainly we would validate that this was a concern that had a financial health, we would validate the new business concern had the equipment necessary to perform the necessary functions to complete the tower.

We would validate they had the right personnel either in their personnel plan or on board in order to perform the necessary quality functions and so on, welding functions, and then we would initiate a process to validate their performance of creating a tower to a first article inspection process. There is, and contrary to what you heard this morning, then there is a risk of failure or at very best delay in that process whereby you may have to circle back and do rework, and so it's not a fixed process with a guaranteed outcome.

COMMISSIONER ARANOFF: Okay. Now, there obviously are some instances that you address in your

brief where you talk about problems with domestic supply, and I understood you to be referring specifically to timeliness of performance in most, if not all, of those. Are there instances where you've actually had a serious quality issue with the domestic product, the tower just didn't meet specifications, didn't work?

MR. HAZEL: No, typically not, but the reason for the delay is really inconsequential to project. A delay is still a delay, and the impact is pretty much the same, so we have had instances of late delivery. We have had instances where we've had to move delivery schedules around at our expense in order to meet project needs, so yes, there had been those, but quality wise, because of the extensive qualification process we go through, and because we have onsite personnel at the plants when they're producing the towers and overseeing the process, we've avoided significant quality problems.

COMMISSIONER ARANOFF: Now, you have choices around the world for supply, and you've laid out how you prioritize, but one of the things that you have to be doing as a supply chain manager is you're weighing the risk, and I guess in some ways you might say a closer producer bears fewer risks, but on the other

hand, I think we were talking this morning about the fact that the domestic industry includes a number of players that are relatively new, not global scale, where most of the foreign suppliers are larger companies that are more global in their footprint.

How does that factor into weighing whether you're going to have a domestic versus a foreign source of supply when you're looking at the risk that the towers are not going to show up on time?

MR. HAZEL: Again, because of the knowledge that we have of the manufacturing process, we can assess, and again, I think you heard it from Mr. Smith this morning, there's a specified time, six to nine months or so, and it's not a first-time opportunity in the industry, so we sort of know the timeframe that it will take. With the assessment of the equipment and the expertise and the financial health and the quality system of a company, we can determine fairly well what that timeframe is and what the risks are involved in that.

Again, part of the $250,000 to $500,000 is risk mitigation on that. We do an up-front process to decide do we want to spend the $250,000 to $500,000 to get the supplier qualified, will there be enough business benefit by virtue of that new capacity in its

particular location to make it have a business case for us.

COMMISSIONER ARANOFF: Okay. I asked some questions this morning about the relationship between arranging for the transportation as opposed to the timing of setting the price on the tower itself, and I think the testimony this morning was that OEMs treat those as two separate transactions. They're not done by the same people in the OEM who don't talk to each other, and the companies that provide the transportation services are a completely different set of suppliers from the companies that supply the towers, so how much of that do you agree with, and how much of that do you think that's not accurate?

MR. HAZEL: Thank you for putting it that way. The only thing that I would agree with is that the companies that provide transportation services are different than the companies that build towers. Other than that, it's complete contrary to our experience. It's very much a coordinated decision.

COMMISSIONER ARANOFF: So you're responsible for both buying the tower and buying the logistics?

MR. HAZEL: And securing the logistics, correct.

COMMISSIONER ARANOFF: Temporally, are you

agreeing on the price of the tower first and then arranging the logistics because once you know where the tower's coming from, you kind of have an idea what the logistics are going to be, or do you go out for both prices before you make a commitment? How does that work?

MR. HAZEL: We would go out for both. We do a market survey, and the market survey is basically two components. One is the cost of the tower from the different suppliers. The other is the cost of the transportation and the different transportation modes available to different prospective project sites. That gives us, more or less, a portfolio-type of a document of available solutions in our marketplace for the potential project sites that may arise in the near future.

We base a market forecast on where those project sites will be. That gives us that portfolio and allows us then to provide preliminary bids into the process of securing the wind turbine contract. As that contract gets refined and closer to reality, we would validate all of that information including the capacity available. As you might imagine, the contracts sometimes take a little bit longer to close or a little bit shorter to close.

The capacity windows need to be validated regularly, so we have that portfolio. We use that. We validate it. Once we get the contract for the wind turbine, then we will place the subsequent contract for the tower with hopefully the preferred supplier that we validated the available capacity with as we went through the process.

COMMISSIONER ARANOFF: Okay. Now, your testimony today has been that you have this closed bidding process, and so I wanted just to try and understand that a little bit. The domestic producers' testimony was well, okay, it's true that we're not told and don't see the prices that other people might be bidding, but our suppliers tend to give us either hints, you need to be lower in order to meet this Asian competition or your price is too high or sometimes that there's a price target that you don't even get to bid if you don't commit that you're going to hit this price target.

Is that true, or when you say closed bidding, do you really mean the supplier gives a price, you make no comments on it all, and you just pick?

MR. HAZEL: We don't collect bids, so we'll start there, but we do have a confidentiality

agreement that's in place before we would start any negotiation or any interaction with a supplier to provide them with the confidential or intellectual property and such. That's a two-way confidentiality agreement that we both will share and sign. That bounds us and keeps us from sharing any information about any other supplier with them, so that we simply do not do. It is our policy, practice, and we put that into effect with the confidentiality agreement.

There is a sanity check in the marketplace, as you might imagine. If a supplier came to me and said it was going to cost a million dollars for a tower, and I know that they shouldn't cost that, obviously, I wouldn't go back and get feedback. There is a sanity check, and that sanity check again is based on our detailed understanding of all of the hours that it takes in every process in order to create our design, so I have a pretty good idea what the price should be based on the hours.

We do and have given feedback sometimes on a discussion of how many hours a particular step would take. We would further engage with them if their hours were less or more, rather, than our expectation on how we can work together to reduce that investment in time at your factory to produce something that in

our experience says should take less, and we would, if necessary, do different changes in design to try to address that with them to try to help them be as efficient as they can be.

COMMISSIONER ARANOFF: Okay. I appreciate those answers. I've got lots more questions, but my time is up. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Okay. Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman, and I thank all of you for being here today to help us to understand these issues. I want to begin with some question about pricing that I also put to the panel earlier today, maybe not in quite the same, but the same general idea. First of all, did the OEMs in this case fail to provide with the information that we need to analyze whether there's overselling or underselling?

MR. HAZEL: I can't speak for any other OEM but my own, but we made an absolute best effort to comply with every request.

MR. DOUGAN: This is Jim Dougan from ECS, and not having knowledge of these companies' internal record keeping of course, but I think there is voluminous data available on which the Commission can

make their assessment, and most particularly the comparisons of the delivered price for the same tower for the same project. You know that it's the same location. You know that it's pretty much the exact same tower. It is the exact same tower, and so a comparison of what it costs to get those towers to the site, I think, would be a very valuable way of assessing the underselling.

COMMISSIONER PINKERT: I think that one of the things that the Petitioner panel was referring to in this regard was bid data, whether we got all the bid data that we need in order to analyze overselling or underselling?

MR. FELDMAN: Mr. Pinkert, if I may? As you heard in the testimony, bid data is a terminology not very applicable at least to Siemens because it doesn't collect bids. It doesn't entertain competition as to price. The purchase process, as described by Mr. Hazel, is serial. Never has a contract for towers not gone to a facility that was qualified, had capacity and was nearest the project site, so in the end, the nearest facility gets the contract.

The towers are bought from them, and it's not based on driving down a price. There are no bids. There's no price shared with them from anyone else.

The only collection of prices is quotations for market sanity and to have some sense of what something should cost. Remember, all the costs of goods are passed through. We pay the steel price. We pay the flanges and so on, so it's really a question of conversion, which is a labor cost, and that involves what's required to make the tower.

That's the discussion that's engaged in, and Mr. Hazel is prepared to redesign the tower, if necessary, so that the final price is one that will correspond in some fashion to the quotation given upstream where the competition was to get the contract because that's locked in. That's not changeable, and there's an estimate in that contract as to what the tower should cost. If the towers are going to come in at a very different price, it won't be a feasible project, but we're not in the business of driving down the price.

There's not enough at stake in that in the overall picture of the cost of the project. The solution is in design adjustment, maybe a little less steel, maybe the paint will be applied in a different way, but it will be done in a cooperative fashion so that the facility that is going to get the contract for the towers will get the contract for the towers,

so when you ask for bid data. We don't have bid data.

What you see on our spreadsheet in a couple of instances is prices from more than one company, but it turned out the reason that that happens is because the first company didn't deliver the towers, and then Siemens had to go to somebody else and buy, and so there was more than one set of towers and therefore more than one set of prices on that project, but those weren't collected simultaneously. They weren't bidding against each other for the purpose of supplying that project.

COMMISSIONER PINKERT: Understood. Mr. Dougan, do you want to take a whack at that question as well since you had answered the earlier question?

MR. DOUGAN: I thought I already answered. Did you have a second question? I'm not --

COMMISSIONER PINKERT: The followup was I thought they were referring to bid data earlier today when they were suggesting that the OEMs had not provided sufficient information on the underselling, overselling issue.

MR. DOUGAN: On that one, as to what the OEMs collect and don't collect, I would have to defer to them on their responses. I was working with the data that were provided.

COMMISSIONER PINKERT: Okay. Now, the next thing is can the OEMs provide us with the framework agreements or long-term agreements that they're operating under?

MR. FELDMAN: Again, if I may? There are framework agreements, but Siemens has had no long-term supply agreements in the United States. There are no such agreements. There are other OEMs, as you heard this morning, with Trinity. We have never had an agreement with Trinity. We have no framework agreement. We've never bought a tower from Trinity. We've tried, but we've never succeeded, so we're not the right party, and this was a handicap you this morning as well.

It would be difficult to say that Trinity and Broadwind are representative of the industry. We don't pretend to be representative of the industry. We're just the folks who showed up. Woody Allen said that's 90 percent of the game, right? We're here, and we do represent about half, but there's another half out there we don't speak for. We have no such agreements to supply guaranteed agreements.

MR. DOUGAN: Commissioner Pinker, I'm sorry, I just thought of something in response to your earlier question, which is what the data do show that

have been provided is that like the staff says, in the aggregate, the OEMs are paying a premium for the imports. If they're using import prices as a means of leveraging down other bids, they're doing a really bad job at it because in aggregate, they paid a very substantial premium to use the imports.

I think that tells you kind of what you need to know about price comparisons, whatever sort of market reality or sanity checks that they did beforehand, I'm not sure what additional contacts that would provide.

COMMISSIONER PINKERT: Is there anybody on this panel that can provide us with framework agreements or long-term supply agreements?

MR. MARSHAK: The Chinese respondents wills supply you with any agreements that we have with any of our customers.

COMMISSIONER PINKERT: Thank you. Now, this is a question that is not addressed to a particular OEM, but rather is an attempt to get some gauge of the entire market. Maybe nobody can do that for us, but I'm going to ask the question anyway. Earlier today, you heard testimony of the panel that this made-to-order concept is not as prevalent as the Respondents may wish to have us believe that they're producing

more -- I don't want to use the word "commodity" as a precise description, but more of a commodity-type product.

Do we have a sense of what percentage of this market as a whole is in the made-to-order category versus a more commodity-type of production?

MR. FELDMAN: I'd like to just introduce, and I think Mr. Revak is probably the right person to really address your question, but what you were hearing this morning, I think, was testimony about an alternative model for operating in the wind power industry, which is characteristic of another OEM and not us, so if there indeed is some movement toward a minimization of the number of models, a commoditization ultimately of the towers, that's not happening here so much, and those who could answer your question aren't here at the table.

Mr. Revak, who deals with these differences and the uniqueness of the towers, can then address your question, but for our part of the industry.

COMMISSIONER PINKERT: Understood. That's why I asked the question the way I did because I understand that a particular OEM may not be able to give us the full picture on this.

MR. REVAK: Just generally, we look at every

project is different. Every project is unique, and every project is in a different location, different site, different wind conditions, and part of the analysis we do is to analyze the layout of the wind farm, the wind regime, the loads that go onto the turbine, and as a result of that, we develop a specific bill of material that is used for each of the projects, and there are differences in towers. There's difference in seismic requirements. There's difference in hurricane requirements, so there are differences in towers.

What we do though is also to look at minimizing the amount of different designs we have. We could actually design a new tower for every turbine location on a wind farm because the loads and the design is different. Now, that would be time consuming, expensive to do, so we do try to minimize that by trying to apply known designs, known specifications for towers and manage the bills of materials so that those towers will be applicable on maybe a different project, but there are unique differences to every project.

MR. MARSHAK: As far as the Chinese Respondents go, we don't build towers on spec. We're not going to build a tower unless we get a firm order

from an OEM to build a particular tower to the OEM specification.

COMMISSIONER PINKERT: Thank you. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman, and I would also like to thank all the witnesses for appearing here today. There's been a great deal of emphasis on supply, but nothing has been said today about non-subject imports. Why did imports from China and Vietnam increase so much as imports from other countries declined sharply? In other words, how are imports from China and Vietnam able to replace some of the import volume from country sources that are not alleged to be dumping or to have received actionable subsidies?

MR. DOUGAN: Commissioner Johanson, this is Jim Dougan from ECS. At least in part one of the explanations is if you look at the distribution of the projects geographically over time from 2008 through 2011, you'll see that earlier in the period in 2008, and this is all based on the appendix of projects that the staff compiled in the staff report, so there's good information there, if you look at the

distribution geographically over time, you'll see that in 2008, say, there were a greater proportion of projects in the Eastern part of the United States, and those were services largely, if not almost entirely, from Canada, and that would be the non-subject imports.

As the more projects were being built on the West Coast and fewer on the East Coast, Canada would not be a good alternative for the West Coast, so the volume of imports from Canada would decline, and the volume of imports from the Asian countries would increase.

MR. MARSHAK: One other reason is the Vietnamese and Chinese imports probably took market share from imports, I don't know if it's confidential or not, from another supplier country, and the other supplier country was selling to an OEM who really doesn't have that many turbines in the United States anymore, so I think in one year, you have a lot of towers from another country going to an OEM, and those just disappear from the market because the OEM is not making turbines in the United States, so there's a bid shift there.

MR. FELDMAN: And, Commissioner, if I may, just amend the answer a little bit. As some non-

subject imports started to disappear, there were some quality issues with them, and so there were some preferences expressed in the market over quality as to where towers were coming from as to other non-subject imports.

COMMISSIONER JOHANSON: Could you perhaps detail what some of the quality issues were, and I don't know if this is confidential or --

MR. FELDMAN: We'll include it in the posthearing brief.

COMMISSIONER JOHANSON: Okay. Because I've read articles about some quality issues in like *The New York Times*, but it did not pertain to wind towers as other components. I didn't know if there's other public information out there you might know of?

MR. FELDMAN: Not offhand.

COMMISSIONER JOHANSON: Okay. Well, thank you for your response. This is a question for Mr. Hazel. Did Siemens purchase imports from non-subject sources during the period of investigation?

MR. HAZEL: Yes.

COMMISSIONER JOHANSON: You did? Okay. So there are other qualified producers in third countries?

MR. HAZEL: Yes.

COMMISSIONER JOHANSON: Okay. Have you shifted purchases away from non-subject sources during the period of investigation that you can recall?

MR. HAZEL: No, we have not. We continue to use the same decision model, which would be the closest available qualified capacity would be our preference, and then we would increase the reach, if you will, to find that closest available qualified capacity within the production window that we needed to satisfy the project.

COMMISSIONER JOHANSON: Okay. Do you happen to know how non-subject prices compare with subject and domestic prices? I know you say you purchase basically on the basis of location, but do you happen to know prices?

MR. HAZEL: Yes. Again, that's a little bit sort of a broader --

COMMISSIONER JOHANSON: Right. Right.

MR. HAZEL: But generally speaking, on a fully-delivered basis, they are competitive within a range. Within a certain range, they remain competitive. It's just a question of in this case we had some quality issues and found capacity elsewhere.

COMMISSIONER JOHANSON: Okay. Thank you. This question might be best answered by Mr. Dougan, or

at least you touched up on this when you spoke a few minutes ago. One of the witnesses this morning stated that transportation costs are an afterthought of purchasers. Would you mind commenting on that?

MR. DOUGAN: Yes. Sure. I can't imagine how that would be the case given how substantial they are and what the contribution is to the overall delivered cost, and like I said, it sort of raises the question if it's an afterthought, why they buy any domestic towers at all and why they would source East Coast projects from Canada as opposed to from the subject imports.

I can't speak for him, but I think it could only potentially be an afterthought in the sense that well, if you have a framework agreement where you have an idea about what the FOB price might be for a certain type of tower at a certain level of capacity for next year or the year after that, we don't yet know where that tower is going to be sent. We don't necessarily have a contract for a project and know precisely where we want to send those towers.

In that sense, delivery costs aren't negotiated with the wind tower producer up front. That much is known. That's done with the logistics producer, but it's not an afterthought. It is very

much part of the decision about how to source a particular project.

COMMISSIONER JOHANSON: At what point in the process -- I'm sorry, Mr. Hazel. Go ahead.

MR. HAZEL: If I may? If you look at the tower as a delivered product, the largest unspecified variable cost in our decisionmaking is the transportation. To suggest that it becomes unimportant would make absolutely no sense.

COMMISSIONER JOHANSON: At what point in the process do you begin to evaluate transportation costs?

MR. HAZEL: When we provide inputs to a customer bid at the project level, at the wind turbine level.

MR. REVAK: And I can just add another comment. I mean, we have a very stringent analysis where when we look at a project response on our fee, we collect all the costs, and transportation is a key part of that. We collect it for all our products that we build ourselves, towers, transportation, implementation cost.

All those aspects go into the analysis, and we cannot bid or make an offer to a customer without finalizing that analysis and looking at all those details and seeking approval not only at Kevin and my

level, but at our management level above us and even up to the Board of Siemens AG in some cases.

COMMISSIONER JOHANSON: Okay. Thank you for your response. One of the witnesses this morning mentioned that he believed that grid parity had been reached. According to the brief of CS Wind, this is at page 14, the memo states, "The record low natural gas prices make it difficult for wind energy project to achieve grid parity. Would you all mind speaking for a moment on grid parity, and in particular what is happening due to natural gas?

MR. DOUGAN: This is Jim Dougan. I could let the industry witnesses answer. Just real quickly, the answer from the witness this morning, as I understood it, was perhaps a lot more narrow than that. The question was is there anywhere within the United States that has achieved grid parity, and the answer is yet, and that's probably true in particularly high-wind locations.

Grid parity as a whole for the United States against natural gas, I mean, that's just not the case, and the staff report data show that's the case, so in a particular location, we have the staff report at Figure 2-3 shows that's not really the case. There may be particular locations where that's so, but

certainly not so, and certainly not because of the decade low natural gas prices.

COMMISSIONER JOHANSON: Okay. I apparently misunderstood what I heard this morning, and if I could turn back for a moment to the issue of non-subject imports, do you all happen to know what is happening with Korea and Indonesia? I believe they're producers as well.

MR. HAZEL: I'm only familiar with Korea, and I'm only familiar with a single supplier in Korea, and --

MR. FELDMAN: And that's what we'll take up in the post hearing. I don't want to let him wander off into violations of confidentiality.

COMMISSIONER JOHANSON: I understand. I know that it's public that they ship. I don't know --

MR. FELDMAN: Right. I'm not sure which part is public, so we'll answer that in the posthearing brief.

COMMISSIONER JOHANSON: Okay. Thank you. I'd like to pose one question which I brought up this morning with the Respondents. It appears to me that the market for wind towers in the United States exhibits what could be called perhaps a boom-bust cycle. Could you all maybe describe how that impacts

market and how that would impact U.S. suppliers and as purchasers?

MR. REVAK: I can start first.

COMMISSIONER JOHANSON: Is it accurate to state that it's a boom-bust?

MR. REVAK: I would say it is, yes.

COMMISSIONER JOHANSON: Okay.

MR. REVAK: I mean, as many people have talked about today, one of the key drivers is the production tax credit or the investment tax credit, and the expiration of that over time, and it's expired or a threat of expiration has occurred over time, and during those periods where it looks like it's going to be expired, the market in wind has dropped between 73 and 93 percent the following year, so that's the situation we're entering right now in 2012 with the pending expiration.

The market, as a result, is looking very bleak for 2013, and then from a supplier standpoint, and Kevin can comment a little bit more in details, but clearly the lack of a policy that goes forward for a long time doesn't allow a manufacturers' OEMs to really commit to the investment they're making in terms of manufacturing facilities, and so it impacts that. I mentioned earlier, Siemens has had a

reduction in workforce as a result of the pending expiration and market downturn.

The industry though as a whole is pushing very hard with innovation in terms of technology, in terms of products, in terms of manufacturing innovation to reduce the cost. I mean, the goal is long term, to reach parity. We're not there yet. I mean, the PTC as a result, as you can tell by the falling off of the capacity following the expiration of the PTC, it demonstrates that we're not quite at parity on a continental U.S. basis, so there is a significant impact.

MR. FELDMAN: This goes --

COMMISSIONER JOHANSON: Yes, if you could answer briefly, too? My time has expired. Thank you.

MR. FELDMAN: Thank you. I'm sorry, but this goes to the question of the exiting from the market of the tower manufacturers, and as Mr. Revak just suggested, we've seen this before. This is a movie that's played before. When the government incentive disappeared, the manufacturers of towers disappeared, and as you've heard this morning, they can convert, and they can make their factories do something else, and they say they can ramp up and start producing towers again in six months or nine

months, and so they can make this change.

The turbine manufacturers can't do that as easily, and they're much more committed to R&D, so they're the ones trying innovate to bring the overall cost down to achieve grid parity, and they testified, they intend to stay in this business and do that, but they've laid off 615 workers, 200 contractors in the anticipation, expectation that in 2013 there aren't many contracts for building and installing turbines.

COMMISSIONER JOHANSON: All right. Thank you for your responses. My time has well expired.

CHAIRMAN WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you. Let's see. Mr. Dougan had a chart here which was a bar chart, and I had some questions for Mr. Hazel and Mr. Dougan and Mr. Revak. Just trying to understand, we had some talk this morning, Shepherds Flat really loomed large in the market here, and I know that this is a GE product, and GE, for whatever reason, similar to Tuesday, is not here to kind of give us some information, but if you could help me sort of understand the order of magnitude of this one project.

I mean, we're looking at a graph that 2011 to the first six months of 2012, subject imports have

increased three times, and that's really the crux of some of the issues that we're dealing with. How much of that is due to this one project? Can we tell?

MR. DOUGAN: This is Jim Dougan from ECS. Just so you know, the 2012 numbers in the chart are annualized, so from full year to 2011, that's not the first six months of 2012, so the subject import volume for the first six months of 2012 would be, within some seasonality, but roughly speaking it would be in the neighborhood of about 1,200, 1,250. I think it's public that the Shepherds Flat number of wind towers is 300 and something, 340 wind towers in that neighborhood.

The consumption numbers are based on shipments as opposed to production and maybe installation, so a lot of that -- let's say it's 340 towers probably showed up partially in 2011 and partially in 2012, but it's 340 towers in that ball park for let's say 2011. Let's say all of it was 2011.

COMMISSIONER BROADBENT: Mr. Hazel, could you talk a little bit about the Shepherds Flat project and how it fits into the industry and whether it represents sort an aberration of how the business is going, or would you say it's indicating some changes?

MR. HAZEL: I would not consider myself qualified to do that. Perhaps, Mr. Revak has a better feel for it as a market influence.

MR. REVAK: Again, it's GE project. We're not familiar with the details of it. As we've indicated, I think when you look at the ability and where towers and delivered tower costs are competitive, we've shown and testified that when you're in coastal markets or island markets away from kind of the sweet spot, it's much more favorable when you look at import versus the domestic supply, and that's driven by the cost to transport those towers, domestic towers, to locations on the coastal or on island locations like Hawaii and Puerto Rico.

MR. DOUGAN: And, Commissioner, if I could just add something? What this chart is kind of showing or attempting to show, and again, there's some issues with confidentiality and this being an annualized number, but essentially it's saying that from the first six months of 2012 at an annualized rate, the U.S. producers are producing as much as they've produced and shipped at any point in the POI, and they're telling people they can't do any more.

They're turning people away, but because of the PTC expiration, demand just spiked. Those towers

had to come from somewhere, and that's the reason. This isn't all about Shepherds Flat here. This probably says more about the domestic producers' inability to supply than it does about the reasons for more imports coming in.

MR. FELDMAN: Commissioner, if I may? We submitted two maps, only one of which we could distribute today. The other one includes the GE data and the rest of the industry. That map will show in even greater relief the distribution of towers geographically, and it includes the Shepherds Flat compliment, so that map may be particularly helpful to you in answering your question.

COMMISSIONER BROADBENT: Yes, that would be helpful. That would be good. Okay. Mr. Feldman, I just wanted to probe you a little further on something that you said this morning, and you were working with Mr. Hazel in your response, I think, but you were saying sort of that the closest qualified producer gets your sale independent of price, and it just seems to me hard to believe.

MR. FELDMAN: We're not asking you to suspend credibility, and it is effectively independent of price in the sense that Mr. Hazel described to you what we know about price, so there is a sanity check.

We're not going to buy towers at some price that's inconceivable for concluding our responsibilities to our customers, but having said that, the proof of the statement is that we almost invariably, and perhaps invariably, buy the towers from the nearest qualified facility that can supply the capacity when needed in the end, notwithstanding whatever negotiations take place, whatever other discussion there may be.

In the end, price can not be the determining factor. The determining factors have to be geography, capacity, quality, reliability. Now, it's a business, and that's why you're raising the question, I think, the way you're raising it. It's a business, and these folks are supposed to make money, and prices are how money is determined, but when this represents only 15 to 20 percent of the overall cost and diminishing, and the largest single variable cost over which there's some control is the transportation because much of the tower costs we have no control over.

The costs of the materials are passed through to us. We pay for the steel whatever it is, so in that small dimension where we might have some impact the quibbling to wind up having to go four or five hundred miles down the road for an alternative supplier makes no sense. In that respect, the price

is not determining the purchase.

COMMISSIONER BROADBENT: In this morning's testimony, Mr. Smith of Broadwind discussed a shift from these framework agreements during most of the period of investigation to an increased use of target pricing on a spot basis and competitive bidding processes. Is this a shift that's going to continue would you say?

MR. REVAK: As we talked about, and Kevin commented on as well, I mean, we are not in a position, we don't do frameworks. All of our purchases have been on a spot basis.

COMMISSIONER BROADBENT: But just in the overall market?

MR. REVAK: From the overall market, I can only speak for what we're doing. I can give you a comment based on the potential PTC expiration and what's happening in the tower industry, but let me just finish the discussion, that little bit of a discussion, around what Kevin had already testified which was that we buy things on a spot basis. We have confidentiality agreements. We don't give targets. We don't do that. That's not part of the way we conduct our business.

In terms of what we're looking at now with

the consolidation on the tower side, we are looking at it because we want to buy local towers. We want to buy American towers. We want to buy towers close to projects. We are now evaluating framework agreements, and that's to go forward to see if we can have capacity with the limited number of suppliers and the need and the cost to have those suppliers close to where we believe the wind farms are going to be.

If we don't do that, then we have no choice but to import towers, and in those locations, the cost to do that is going to be prohibitive, going to drive up the cost of the wind farm. It's going to make our price non-competitive to serve our customers, and it may make our customers non-competitive in the power market, so they will, in the end, lose. The project may never get built by the owner. It may never get built by an equipment manufacturer and will never be supplied towers from the tower manufacturers.

COMMISSIONER BROADBENT: Okay. Are there domestic preferences that make working with the U.S. suppliers more preferable to imports?

MR. HAZEL: Yes. As I previously testified, the whole solving problems in the same time zone, in the same language with shorter supply chains, shorter distances, less complex delivery systems, not to speak

of less costly, just less complex, all of that gives a distinct preference to a local source.

COMMISSIONER BROADBENT: But I'm talking about a Buy America requirement or some sort of a policy preference in U.S. law that makes it better to deal with U.S. suppliers?

MR. HAZEL: Not that I'm aware of.

COMMISSIONER BROADBENT: Okay. Thank you.

CHAIRMAN WILLIAMSON: Thank you. Just kind of following on the last series of questions, if, Mr. Hazel, you're bidding on a contract, I understand you want the closest qualified supplier, but yet you've said you've had sometimes to go off shore where you may be talking about shipping costs, taking the example Mr. Dougan of $100,000 versus $25,000, how do you take that into account in your bids? I mean, when you make your bid to a customer, it seems you would have to expect that if you have go offshore, the FOB price is going to be a lot lower than what the domestic's going to be.

MR. FELDMAN: Let me give you an initial answer in which I'd ask you to take our map out again. We're buying offshore for only two reasons. The first is determined entirely by geography, and it's a question of ocean freight. It's a question of it

being must less expensive to put a tower, especially of these dimensions, on a ship and send it than to try and send it across the Rocky Mountains because without Ameron in Southern California, and until January 2012, we had not other options of qualified suppliers on the West Coast of the United States.

If we were to participate in any Pacific Coast projects, the only choices were Ameron in Southern California, and as you can see from our map, we bought a lot from Ameron in Southern California, but as you move up the coast, we've had to go Asia for towers because the ocean freight is much less expensive, and the logistics and risks are enormously reduced from trying to get towers across the Rocky Mountains.

The only other time in which we buy offshore is when our domestic suppliers have failed to deliver, and you can also see from our that that hasn't happened that often. There aren't very many. The red spikes that populate the middle of this map are the domestic towers. There aren't a lot of purchases made for foreign towers in the heartland, and that's only been, and we've detailed these in our spreadsheet and in our brief, to cover when domestic suppliers have failed us. It's the only time we go offshore.

Now, Mike or Kevin perhaps can say a little bit more about the freight differences, the transportation differences, but those are the driving considerations when we consider buying offshore.

CHAIRMAN WILLIAMSON: Have those figures been more likely been in the last year or so?

MR. FELDMAN: I'm sorry?

CHAIRMAN WILLIAMSON: Have the figures been more frequent?

MR. FELDMAN: No. We've catalogued them, and again, I come into our brief, which was heavily bracketed, not so much for us. If the Petitioners and others would say we don't mind, we'd be happy to make a lot of it public, but pages 25 to 36.

CHAIRMAN WILLIAMSON: Okay. Okay. Fine.

MR. FELDMAN: A lot of these figures are 2010, 2011.

CHAIRMAN WILLIAMSON: Okay.

MR. REVAK: I mean, generally, I described a little bit the process, and, Kevin, as we respond to a bid, we understand where the best source of tower is, and we understand the capacity, so we try to base our bids --

CHAIRMAN WILLIAMSON: No, I understand that. I understand. Let me pose the question then.

MR. REVAK: Okay.

CHAIRMAN WILLIAMSON: If you're bidding in the Northwest nowadays --

MR. REVAK: Yes.

CHAIRMAN WILLIAMSON: The closest place you might go is maybe across the Pacific it sounds like?

MR. FELDMAN: We qualified Katana in Washington State earlier in 2012. If they were still in business --

CHAIRMAN WILLIAMSON: Yes, I was going to say that, but they're gone now.

MR. FELDMAN: Yes, but they're gone, but that option, which hadn't been open to us until then because the previous time when it was considered for qualification, there were only two employees in the plant, but once it was staffed, and we could qualify it, that's what we tried to do, and we would turn there, but it's not an option anymore.

CHAIRMAN WILLIAMSON: Okay. Okay. So those other times, where you have the red in the middle of the country, there must have been hell to pay in terms of --

MR. FELDMAN: Yes, the red's domestic.

CHAIRMAN WILLIAMSON: Yes.

MR. FELDMAN: And we very deliberately did

not have the non-market economies in the middle of the country.

CHAIRMAN WILLIAMSON: Okay.

MR. FELDMAN: But you're right. Those times when it wasn't red were interesting.

CHAIRMAN WILLIAMSON: Okay. You don't want to be there. Okay. How important is IP in your designs? Isn't a wind tower like a telephone pole? I know it's a lot more complicated than that, but --

MR. HAZEL: No, sir. It's a good bit more complicated than that, and just as a simple explanation, if you consider a wind turbine on top of the tower, the wind turbine has the blades that are rotating to different gusts of wind, so the wind is gusting occasionally and so on. Well, here's your tower, and the tower is swaying continuously, and there's a vibration that happens continuously.

CHAIRMAN WILLIAMSON: Okay.

MR. HAZEL: So you have this rotationary force that's giving a torque on the tower top. You have the compression for the weight. It's 85 tons of a cell sitting on top of the tower, and you have the tower in a dynamic mode all the time to make sure that structure will be secure for the 20- to 25-year life of the product is a very special IP, which we guard

very carefully.

CHAIRMAN WILLIAMSON: Okay. Are there a category of say towers that are garden variety, that might have a special IP?

MR. HAZEL: Not to our knowledge. Again, there are codes and standards that need to be satisfied and all of those forces I just described would apply to everyone's turbines. Ours are unique because we have a different blade length. We have a different cell design. We have different considerations than some of the other OEMs, so each OEM will have their own considerations, but the codes and standards would apply to all.

CHAIRMAN WILLIAMSON: Okay. So as long as your predictory design meets those codes and standards --

MR. HAZEL: They all have a degree of complexity, some more than others, and all different.

CHAIRMAN WILLIAMSON: Yes. Is this why you say that towers should be considered separate domestic-like products, or each one should be considered?

MR. FELDMAN: It's one of several reasons.

CHAIRMAN WILLIAMSON: What are the others?

MR. FELDMAN: Thank you. I never thought

you'd ask. You heard in the contrast between business models. You have an almost emerging one theory that Mr. Pearson was inquiring about is that this is an industry that's bifurcating in some ways. We at Siemens are seeing more contracts that are related to the special and unique custom designs that we do, and somebody else, not here, is seeing more of a progressing commoditization perhaps of their designs.

When you asked, for example, about channels of distribution, the distribution for Siemens, there is none. We buy directly. Nothing is delivered to anybody else. There are no channels except direct delivery to us. Now, that's not true necessarily of everyone in the industry. That is, they take direct supply, but we buy project by project as you've been hearing.

That's not always the case with others, and all of our towers are unique, traded only by us, and as was suggested earlier this afternoon, when we commission the manufacturer of a tower, we virtually take over the plant. It's our tower. We send someone there to monitor the manufacturer. It becomes peculiarly our own, and our towers are not interchangeable, not with another product, not with any other OEM. They're not substitutable. We can't

move them from one project to another except by chance.

There may be an occasion, it has happened, when the same tower is used in more than one place, but that's not the norm, so in all those respects, the towers are doing the same thing. They're holding up turbines, but ours are not like anyone else's, and if you were to distinguish between companies, or distinguish within the industry as it's evolving, then it's a distinct like product.

CHAIRMAN WILLIAMSON: And domestic manufacturers can produce those towers to meet your specs.

MR. FELDMAN: Only when they're qualified, and when they do it we in effect take over the factory for our towers. We have a monitor there. It's done with the protection of our intellectual property in that factory. It's just that we're not in the steel business.

CHAIRMAN WILLIAMSON: Thank you for that clarification.

Does Siemens have any worldwide supply contracts? With some of the OEMs doing that? And if it's confidential and you want to do it post hearing, that's fine.

MR. FELDMAN: Siemens in the United States has no such contracts. The rest would be subject to the APO and we can answer your question in the posthearing brief.

CHAIRMAN WILLIAMSON: I would be appreciative to understand what role they might be playing and is that role changing.

MR. FELDMAN: There's an indication on our spreadsheet, so if you want an answer faster than we can write the posthearing brief you can start there.

CHAIRMAN WILLIAMSON: Okay. Thank you.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

Allow me also to offer my welcome to all of you. It gets to be kind of a long day but we're in pretty good shape here in mid-afternoon yet. So hang in there a bit longer.

In response to the Chairman's comment about the engineering features, one of the useful things about the trip that some of us were able to take to Broadwind was we get to see the towers in sections and it reminded me in my younger day when I was quite impressionable I spent a certain amount of time working 60 feet, 20 meters or thereabouts up in the

air. You get kind of used to that. But I found myself thinking what would it be like at 100 meters? That may be a whole different experience, which if anyone wants to take me up a tower some time, I'd probably be willing to try it, but as long as I get to come back down.

MR. HAZEL: We'd be more than happy to host you.

COMMISSIONER PEARSON: Do some of them have elevators?

MR. HAZEL: Some do, but most not in the United States.

COMMISSIONER PEARSON: I could use the exercise I think.

MR. HAZEL: You'd have to take a safety briefing first.

COMMISSIONER PEARSON: Yes, and wear a hard hat and all that good stuff.

A question perhaps for you, Mr. Hazel or Mr. Revak. There seems to have been a trend over several years to using somewhat taller towers. Are there engineering or economic issues that prevent making towers ever taller?

MR. HAZEL: Actually, it's doable. What happens is, depending on the construction of the

tower, it gets more and more difficult to transport. As you go higher in a tubular steel tower such as the one you saw on your visit, you have to increase the diameter of the base or you have to increase the thickness of the steel in the base. As you do that, you then have some additional problems to solve. If you increase the steel, rolling it gets harder and the welds get harder. If you increase the diameter, transportation gets harder. So there are some practical limits not related to the capability to go taller, but the capability of getting it where you want it perhaps or what it might cost to get it where you want it and to construct it. So there are some practical limits.

What we see in the marketplace, and Mike could probably offer, but we see 80 and 100 meters as sort of the sizes of choice at the moment.

MR. REVAK: Again, as we talked abut before, each site is unique and the wind conditions allow, there's a condition in wind called wind sheer which means as you go taller the wind is actually stronger. So there's an incentive in certain markets to go higher. That is a trend in those markets to be higher, to go taller.

As Kevin said, when you look at technology

and the earlier discussions, there were questions on technology. The steel towers that you see and have seen up to 100 meters or so, they tend to be okay and competitive and you can make it work if you can address the manufacturing, the transports out of it. When you go higher, Siemens in Europe as an example, we've gone to taller concrete towers. We've gone to hybrid towers which have a steel base and a concrete top. We've gone --

MR. HAZEL: Other way around.

MR. REVAK: Yeah. Concrete base, steel top, all concrete, and we've also gone to a shell tower which is a little bit different construction. Not the rolled up plate, but individual pieces of an arc that are bolted together to go higher.

So there is that technology and innovation, and that's what Siemens is doing is to innovate, trying to manage if the industry and the requirements are to go taller, that we would have that ability to do that.

COMMISSIONER PEARSON: Would it be correct to assume that the requirements for towers erected off-shore would be, that they be higher because they've got to go down to the ocean floor and then up above the water?

MR. REVAK: I'm not an expert on off-shore, but there are, generally off-shore there's the foundation piece and that could be what they call mono-pile which is like a tower but driven into the sea bed. There's gravity based, there's other types of securing the bottom of the tower.

The actual tower from the top of the sea to the cell aren't necessarily longer, in fact they're shorter in most cases than on-shore. The reason because of that is when you're off-shore you don't have the land that creates turbulence that you have to account for.

COMMISSIONER PEARSON: With a taller one are you able to put a larger turbine, longer blades on it, or will the turbine size be roughly comparable over some range of tower heights?

MR. REVAK: The turbine size is comparable. As you go taller you do have the ability, because one of the restrictions on shorter towers is you've got the blade which has a rudder diameter, so if it's too close to the ground or has turbulence adjusted by like the trees or local geography, then it creates an issue for the turbine and turbine performance.

So as you go taller, you avoid that. You can also accommodate longer rotor diameters and things

like that.

COMMISSIONER PEARSON: Just out of curiosity, on a 100 meter tower that Siemens might design, what would be the expected movement laterally at the top in a wind situation? If that's not BPI.

MR. REVAK: I don't know. I would have no clue.

COMMISSIONER PEARSON: Several inches or --

MR. REVAK: Probably more than inches.

MR. HAZEL: I would say more than inches. Your trip to our turbine will be exciting.

(Laughter.)

COMMISSIONER PEARSON: Good.

I actually did have some questions that relate to the investigation, I just had to go through those other things for fun.

This morning with the domestic industry I spoke a little bit about claims for damages that are related to lateness and quality, et cetera. That was an issue that I believe your counsel had raised in the briefs.

Is there anything you can tell us about that here in public session or should this be dealt with just in posthearing? I'm curious to know what your experience has been with suppliers where you felt a

need to undertake some legal redress or money should exchange hands due to non-performance.

MR. HAZEL: We have had some instances of that with some of the Petitioners. By and large, we have come to a settlement arrangement with Petitioners on those instances.

MR. FELDMAN: There's been much more negotiation in this regard than over prices for towers. But we'll address it in the posthearing brief.

COMMISSIONER PEARSON: Okay, and also you probably can tell us the amounts of money that have been involved then in the posthearing. I'm just curious because I asked the domestic industry whether the claims had been large enough to contribute to the not terribly strong operating results that the domestic industry had experienced. So if you are able to shed light on that, by all means, do.

MR. FELDMAN: I'm not sure whether we can, but we will inquire to do so.

COMMISSIONER PEARSON: Thanks.

MR. DOUGAN: Commissioner Pearson, if I can -- Jim Dougan from ECS, if I can just add to that.

What's interesting is that despite these numerous types of difficulties and claims and

negotiations and settlements with the domestic producers and the absence of them with regard to the subject producers, they're still trying to buy as much as possible from the domestic producers. We'll leave it at that.

COMMISSIONER PEARSON: I got you.

Mr. Dougan, perhaps this question is for you.

This morning again we spoke about potential problems that the Petitioners believe exist with delivered cost information that had been provided by Respondents. Any thoughts on that?

MR. DOUGAN: I don't have any thoughts on that at the moment. I would want to look closely at the confidential data. They weren't really able to go into specific allegations so I'm not really able to go into specific responses. But my reaction is that of course they're attacking the delivery costs because they want you to look only at FOB prices. But it would have to be fairly substantial changes and they would have to be off by a fairly large amount to compensate for the very large premiums that these OEMs are paying for the imports on a delivered basis.

If indeed, and I don't know if this is true or not. Again, I've got to look more closely. If

indeed any of the freight costs were reported on a standard cost basis as opposed to some actual invoice from the freight forwarder, the variances on those standard costs for freight would have to be again, pretty huge, for the data provided to not provide a reasonable indication of what the delivered cost was.

COMMISSIONER PEARSON: Okay, thank you.

I had a couple more but I'm running out of time so I'll hold and catch them the next time around. Thanks.

CHAIRMAN WILLIAMSON: Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman.

I'm looking at the chart that Siemens gave us of locations, where you've placed towers and where they came from. Can anybody tell me about the one up in Maine? It says subject product up in Maine. That had to come all the way around through the Panama Canal which was what you told me doesn't happen.

MR. FELDMAN: I'm not sure we told you that didn't happen. I think that's what you heard this morning.

COMMISSIONER ARANOFF: I think I just heard that East Coast is usually supplied from Canada.

MR. FELDMAN: That's correct.

MR. REVAK: At the time, that project is a project I think we completed in 2011. At that point in time Siemens qualified manufacturers in Canada were not available to us, so bringing towers from the Midwest because of the transportation concerns and the logistics to go through the highly populated area of the U.S. and constraints on rail and tunnels and mountains, it was impractical to bring towers from the Midwest to there. So the solution we had, the two solutions would have been either bring them from Europe or bring them from Asia and for us we concluded that Asia was the best source.

COMMISSIONER ARANOFF: Why is it not viable, I'm just asking this, why isn't it viable to take towers from the Midwest and ship them through the Great Lakes and the St Lawrence and get them to the East Coast? Are there like locks that aren't wide enough?

MR. HAZEL: It's possible. The issue is any time you have a product of this size and weight and dimension, you have extra lifts involved. So if you take it from the manufacturer to the barge site, that's one lift onto a truck or a rail. There's another lift to get it onto the barge. Then another lift to get it off of the barge onto the subsequent

transport. Then you have to get it to the project site.

Each time you have to lift that product, it's an unscheduled or undesired event and it's costly. So just the logistical chain gets to be risky and expensive, let alone something that you just would try to avoid.

We'd rather have sort of an ocean transport, the port onto a truck, the truck to a project site. It's just simpler and less risky.

COMMISSIONER ARANOFF: That makes some sense.

You've talked a lot about innovation that's going on in the market for wind turbines and the idea that you've got to bring the cost down to get to grid parity, you've talked about that some.

What role do the tower manufacturers play in terms of innovation in the wind turbine market?

MR. HAZEL: They really don't. The design is ours, the intellectual property is ours, the development of the subsequent designs and the cost reductions in those designs are really headed by us. The consideration of alternative designs as Mr. Revak pointed out, that is being done by us, funded by us. Trials and prototypes being performed by us. The

domestic industry really is a build to print industry that is responding to a need to roll, weld and paint steel.

COMMISSIONER ARANOFF: Okay.

I was asking this morning about some of these alternative types of wind towers that are out in the market. Concrete, lattice nests, something called space frame. Are these some of the innovations that you're talking about to try and either take out cost or achieve greater height? And where are they in terms of viability in the market?

MR. HAZEL: A lattice tower isn't new. You've seen them I'm sure as you go from place to place. Maybe a cell phone tower or something would be a lattice tower. Or what you see for a high tension wire is a lattice tower. So it's a stick figure kind of an arrangement.

COMMISSIONER ARANOFF: So if I see a wind tower on a farm, that's what I'm seeing.

MR. HAZEL: That's a lattice tower. To take that lattice tower and scale it up to a utility size with an 85 ton turbine on the top of it. Is it viable? Yes. Is it desirable? Not necessarily.

It was characterized correctly this morning about lattice towers, that they are cheaper to buy but

much more expensive to construct. Then when you come back you have to tighten up the bolts sometimes so there's another maintenance cycle that is not desirable to our customers.

Each of the tower types that is being looked at has sort of pluses and minuses. At the current time with the current cost of steel, we see and the marketplace accepts that the tubular steel tower or 80 to 100 meter is the preferred solution. But being in the business and being in the business for the long haul and knowing that towers might go taller, we continue to look at alternatives that may be viable in future markets. Or if the current conditions change.

COMMISSIONER ARANOFF: Can you explain to me how concrete works? We're reading about concrete towers. Other than putting them down on the sea bed to hold up a metal tower.

MR. HAZEL: There are different methods. But prestressed concrete, again, you've seen it in road systems. They have a span of a bridge that shows up on the back of a truck and you put it down and it carries load.

We take that same concept and just turn it on its side and stack pieces next to each other in a conical or a circular shape, bind them together, and

place them one on top of the other and you begin to see the concept, how it works.

It's then capable of being flexible and carrying load, which are the things that we need.

COMMISSIONER ARANOFF: The technician has to climb up on the outside?

MR. HAZEL: No, you go up through the inside. It's hollow. There will be a series of platforms and ladders inside. So it looks very similar once it's fully constructed, but it's just a different way to accomplish the same task.

COMMISSIONER ARANOFF: I'm not sure I have any additional questions at this point, so I'm going to thank the panel, and Mr. Chairman I'll let you know if I think of another one when you come back around.

CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman.

Just as a follow-up to Commissioner Williamson's question. In answering his question about any volume commitments, could you provide any written understandings regarding volume commitments, if you have any, in the posthearing? This is for Siemens.

MR. FELDMAN: We'd be happy to, but they

don't exist. WE have no written volume commitments because we buy on the spot market project by project.

COMMISSIONER PINKERT: Okay, turning to an issue that is raised by the other side, does a customer base concentrated in the hands of only a few OEMs give them the ability to dictate price terms to suppliers?

MR. REVAK: I think as I mentioned in my testimony, I think there are a wide variety of OEMs that compete in the market we're in. GE obviously, and Siemens, but there are other customers. Companies like Vestas, Repower, Anarcon, Suzlon. So there are a number of OEMs so it's not per se -- There are a number of them.

I was counting this morning, probably 10 or 12 that are active in the market. So it's not limited in a few. And then I think on the opposite, what we said is there are very few domestic tower suppliers, particularly in the consolidation that's taking place, and in fact it's almost the opposite. The tower manufacturers have the ability to kind of, to determine what they want to charge for the towers, and we're stuck because our goal is to drive to deliver power at a competitive level to allow a customer to be successful in the market, so we're aimed at, that puts

us in a bind in terms of our ability to pass extra cost on a tower. The towers get more expensive because of limited capacity close to a site. All we have is the ability to raise our price. We raise our price, the IPP or the developer can't provide power at a competitive level and nobody wins. The project just doesn't go ahead.

MR. FELDMAN: The logic of the market is exactly the opposite. We are effectively price takers. We don't like to broadcast that obviously, but we're in a negotiating disadvantage because the geographic spread of the domestic tower manufacturers and now the consolidation of the industry and the elimination of a number of companies means there are not many places we can go for supply and when we can't make a deal with the first one for whatever reason, we're then 500 miles away to the next one. So we're doing everything we can to make the deal with the first one. We need to be closer to the site.

By contrast, we're competing ferociously for the right to do the project with other OEMs. So there, there's a heavy price negotiation and bidding for the site. Then we're locked in.

For example, the suggestion that we passed along ocean freight, we don't pass along ocean

freight. We don't pass along anything to our customer. But the tower manufacturers do pass on all their costs to us. The steel being the most important. We pay whatever the steel price is at the time we get the tower.

So the reality of the market is the geographic dispersal of the tower manufacturers and the consolidation of the industry means that we don't have a lot of choices where to go to get towers. And of course it's all derived demand as the staff identified in the first page of their report. So there aren't any orders for them unless we have orders, and we need orders, we're competing for the orders. Then we go to them wherever they're located, whoever is closest to the project we're likely to buy their towers.

MR. DOUGAN: This is Jim Dougan from ECS.

If the OEMs were dictating price to the wind tower producers, I find it hard to believe that they would be agreeing to escalation clauses and pass-throughs on the steel which is three-quarters of the cost of the tower.

If you were really truly had market power like that you'd never agree to an escalation cost for steel. You'd just say eat it.

COMMISSIONER PINKERT: You don't mean eat the steel.

(Laughter.)

MR. DOUGAN: No.

MR. FELDMAN: Absorb the cost.

MR. DOUGAN: Just to clarify.

COMMISSIONER PINKERT: Understood.

I have one other question and then I'm going to provide a little bit of clarification for the posthearing.

I asked this question earlier today of the Petitioners. Even though the parties appear to agree on this point having to do with cumulation for purposes of threat, I'd like you to take a look at Vietnam and China again to tell me whether the pricing data shows substantial differences between the two countries, and if so, then how does that play into the decision about whether to cumulate for threat purposes? You can comment on it now or you can wait until the posthearing.

MR. DOUGAN: With respect to the pricing data I think it's best wait until the posthearing.

COMMISSIONER PINKERT: Finally, I understood your answer, Mr. Feldman, on the volume commitment question. I just want to clarify for purposes of the

posthearing, it's not necessarily volume commitments in the United States that I'm concerned about, but any volume commitments either in the United States or globally that you could provide written documentation on, I would appreciate it if you would do that for the posthearing.

MR. FELDMAN: We'll be happy to do that, Commissioner. Again, not only is there a confidentiality involved, but Siemens in the United States has no such agreements. So the manner in which these operate we'll explain in the posthearing brief, but I have a feeling it's not going to be exactly what you're looking for.

COMMISSIONER PINKERT: Okay. Again, I'm not just looking for an explanation, but if you have any documentation.

MR. FELDMAN: I understand.

COMMISSIONER PINKERT: Thank you. And with that I have no further questions.

I appreciate the information that you supplied today.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman.

A few years ago I was in Iowa and visited a plant that produced blades for windmills. I think it was a plant that might have been owned by one of the companies that is represented at the table here today.

From what I recall, one reason that the plant was located in Iowa was because that was close to the customer and the blades are very long and difficult to ship. I know they're not as heavy as the wind towers, but apparently, once again, they were located in Iowa because that is where the customer was.

Do you know if the United States is importing large quantities of blades to let's say the West Coast? Or where they are being sourced? I don't know if that's proprietary or not.

MR. HAZEL: I can answer for our own. The rest of the industry will have to respond for themselves.

But for us, we make our blades in Fort Madison, Iowa.

COMMISSIONER JOHANSON: That must have been the plant I visited then.

MR. HAZEL: I'm glad you were there. We're quite proud of that. Unfortunately, as Mike referenced, it was one of the places hardest hit by

the downturn and the reduction in force.

But that being said, it was one of our early moves into this market to address the whole issue of transportation costs. We were bringing blades in from Denmark and again, that kind of transportation, three times for every turbine for something that is that large, that long, like you said, perhaps not so heavy but still difficult to move, is the kind of thing that very early we understood had to get closer in order to be more competitive.

We did that in 2006, 2007. Mike was heavily involved in that.

We subsequently moved the cell production also domestically for exactly the same reasons. And that is in Hutchison, Kansas. Also centrally located. The third part, of course, is towers, and again, as we've testified many times, we try to get the towers as close as possible to the project site and that allows us to attempt to optimize our total transportation inbound to a project.

COMMISSIONER JOHANSON: Do you know if blades are being imported to the West Coast as opposed to being purchased domestically? Once again, I don't know if that is proprietary or not. You might not even know this off the top of your head.

MR. HAZEL: For us, for Siemens, it would be an unusual event. We would like to very much source from Fort Madison given the investment we have there.

COMMISSIONER JOHANSON: Okay.

I might ask the staff to look into this perhaps a bit during the posthearing period. Thank you.

This morning I asked the domestic producers if they know if purchasers prefer to source all their wind towers for a specific project from one producer. Do you have a response to that?

MR. HAZEL: Yes, it was in my testimony. We would very much prefer to do that. Sometimes it can't be done. The size and scope of a project, as was mentioned, I believe, by one of the Commissioners, there may be a risk consideration in doing so.

COMMISSIONER JOHANSON: That's why I brought that up this morning. I was wondering if you could maybe address that.

MR. HAZEL: Again, looking at the available capacity, the performance of a particular supplier in a particular period of time, you may be overly taxing or expecting to have too much of a success-based schedule when a supplier would offer you capacity for a particular project, so you might then decide to risk

mitigate by splitting that.

There are advantages to keeping it in once place as well. From a supply perspective I would much prefer to have one facility where I had to dispatch my people; one facility where I had to qualify; one facility where I had to maintain schedule control and so on.

So there is a balance and it depends on the particulars of the situation. But all things being equal, I would prefer to source one project from one supplier completely if I had the opportunity.

COMMISSIONER JOHANSON: Do any of you know if there are instances in which both domestic and imported towers have been used on the same wind farm?

MR. HAZEL: Yes.

MR. FELDMAN: You'll find it on our spreadsheet and I made reference to it earlier, but not by name.

COMMISSIONER JOHANSON: Thank you.

The staff report includes a figure, Figure 2-1, that illustrates the declines in wind turbine installation that have taken place when the production tax credit has been allowed to lapse. We do not have information, though, on what happens on the exit of wind tower producers as opposed to numbers of

installations from the industry when the credit has lapsed.

Do you all happen to have any information on that, or perhaps that would best be addressed by the Petitioners.

MR. REVAK: I don't know the details about people exiting the business. Obviously there's been a lot of, particularly this year, a lot of public announcements about reductions in work force by many OEMs. I think it's a question that has to be asked of the tower producers.

COMMISSIONER JOHANSON: Okay. Perhaps I could ask them now or in the posthearing brief. I don't know if this is proper to ask them, but -- posthearing, okay. I'm kind of new at this still.

Well, I guess it's been over a year now, about a year and six days since I was confirmed I think it is.

Anyway, that was my old excuse so I guess I can't use that much longer.

(Laughter.)

COMMISSIONER PEARSON: Commissioner Johanson, I have to confess I feel like using that excuse still from time to time.

(Laughter.)

COMMISSIONER JOHANSON: Well, you can't use that any more.

I think my questions have been answered. I thank you all for appearing here today.

I have no more questions.

CHAIRMAN WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you.

I have a question about the blue chart here. In Iowa we have 129 towers from Vietnam and China. How would they have gotten there?

MR. FELDMAN: That's the unnamed project that was done for cover, but perhaps Kevin can explain how we got them there, but we got them there at great expense and great difficulty, but we didn't have a choice.

MR. HAZEL: More or less as outlined in the chart that was displayed earlier, by ocean, then by rail and then by truck.

COMMISSIONER BROADBENT: So up from?

MR. HAZEL: Up from ports in Texas.

COMMISSIONER BROADBENT: In Texas. So it goes into the Texas port and then it goes on rail, not the Mississippi River, huh?

MR. HAZEL: I don't recall the specifics on

all of those shipments, but that would be the preferred method. Any other would be even worse for us because it would be more overland transport by truck, and that would have involved more cost.

COMMISSIONER BROADBENT: I get the feeling this wasn't a great experience.

MR. HAZEL: You would be correct.

COMMISSIONER BROADBENT: For Siemens, how many Chinese or Vietnamese manufacturers have you qualified?

MR. HAZEL: One. One in each.

COMMISSIONER BROADBENT: One in each country.

What kind of a process was that like?

MR. HAZEL: Exactly the same process as we use for the domestic suppliers. It's the same product, same controls, same oversight, same design. So all of the same processes would apply. We send people to the site, we do a quality system check. We do an equipment verification. We do an expertise verification. Do you have the people you need to do the job that's necessary? We do a first article inspection. Typically it's a little bit of a misnomer. First article really means several towers' worth of first product. Then we periodically

oversight, again, the processes as they continue the production. Exactly the same process we do with the domestic suppliers.

COMMISSIONER BROADBENT: Do you have to do anything different because of the intellectual property that you need to protect?

MR. HAZEL: We have controls in place, but generally speaking it's about the same as we have with the domestic suppliers.

COMMISSIONER BROADBENT: Mr. Feldman, your argument that the Commission should reconsider our like product definition. I'm not sure I completely got your argument.

You appear to be claiming that the products sold to Siemens should be a separate domestic like product because they're designed expressly for Siemens and not interchangeable with other wind towers.

Are you saying that we should create a separate like product for your purchases of customer designed products? Have we ever done this before?

MR. FELDMAN: Yes, and I don't think so. But there are a number of peculiar things in this case and one of the peculiarities is that our business model, our conduct of our business appears to be different and becoming more different perhaps than

others in the industry. Such that, for example, it has not been easy for the Commission to do price comparisons with us because we don't take bids. We can't give you bid data in the sense that you would normally use them for the reasons that we've been describing this afternoon. That's not true of some other OEMs.

Our process of purchase, the nature of our business appears to be different. And within the context of ours, the evidence of record is quite clear that we're buying subject towers either under duress in the example that you just raised in Iowa; or because of the geography on the Pacific Coast or in Hawaii or Puerto Rico, and that's the only conditions under which we buy these towers.

So when it comes to measuring whether there is injury, you can see from our map in the heartland that it would be impossible to ascribe injury to us with respect to lost sales or reduced viability of the domestic industry in building towers near their facilities.

Now on the model of another OEM, the purchases are made in a different way. That does enable you to make those comparisons.

We think, as Mr. Dougan has pointed out, we

think that the outcome of that analysis with those comparisons is still that there's no injury, and as you just inquired as to threat, we have one foreign supplier in China's qualified; one in Vietnam. Given the time it would take to qualify anyone else, which we've not started or taken an interest in. The imminent part of the injury requirement would make it as remote as any case I've encountered.

So our story is a story that's somewhat segregable. You can read it distinctly. We think the aggregate data will get you to the same place. But if you as a Commission think that the aggregate data won't get you to the same place then we think you should distinguish our product.

COMMISSIONER BROADBENT: Back on the threat issue that you mentioned, are you saying we ought to look differently at the large capacity levels that we see in China? Are they not live for purposes of a threat? Because most of them have not been qualified.

MR. FELDMAN: With some hesitation, and showing my age, one of my mentors in college in the earlier days of the Vietnam War, said that we would never have gotten involved in the conflict had we only turned the map upside down. Because as we saw the map of China, the perception was that all of those people

in that mass were going to flow down into the peninsula. And if we only turned the map upside down, no one would have thought they'd float up and we wouldn't have gotten involved in the war. That was Hans Morgenthau, a famous scholar of international affairs.

We still tend sometimes to do the same thing with respect to trade. There may be a lot of Chinese out there, and there may even be a lot of people making towers. We don't know. But for us, for our business, there are only two qualified suppliers. One in China, one in Vietnam.

So no matter what the rest of China is about, as to our capacity to buy towers and secure towers, let alone that we only buy them on the basis of custom orders. There's no big supply out there. There's no inventory out there. The rest of china is irrelevant to our story.

MR. MARSHAK: I think that's true for the entire U.S. industry. I think what Mr. Feldman said for Siemens is true for everybody else. There are only four qualified suppliers, three in China, one in Vietnam. You may have capacity in China, but they're building for China. Qualified suppliers for the U.S. OEMs, they sell for export. They don't sell into the

Chinese market. They don't really care what's happening in the Chinese market.

So as far as threat, as far as the Chinese industry, we believe that you're looking at just these four companies who have been qualified by the OEMs in the United States and that's the industry you have to look at in China and Vietnam.

COMMISSIONER BROADBENT: How many manufacturers are represented in that 1250 number that Mr. Dougan, that's what we're talking about in 2011 right? An annualized --

MR. DOUGAN: The 2012 annualized --

COMMISSIONER BROADBENT: Yes, so estimating --

MR. MARSHAK: As far as exports to the United States?

COMMISSIONER BROADBENT: How many different manufacturers in the --

MR. MARSHAK: I think it's confidential, but I would say the vast, vast, vast, vast majority are four companies. Virtually all are four companies -- three in China and one in Vietnam, and I think there are two other companies that may have a minimal, minimal number of exports to the United States. We think that's what you have to look at when you're

looking to Chinese industry. These companies who have been qualified. Everybody else it would take a long, long time for them ever to ship to the United States if they want to.

COMMISSIONER BROADBENT: Can you talk to me a little bit about what the Chinese market is for their own consumption of wind towers domestically?

MR. MARSHAK: It's very, very large. We really haven't got into it. I believe we've given you an exhibit. I believe it's a public exhibit where we describe from the Chinese perspective what's going on in the Chinese home market and what they believe the market is for wind towers. But again, we believe that's totally separate from this case.

But we've given you documents as to what I believe it is. I think it's the largest market in the world. It's a question as to whether the growth is declining. I don't think anybody's going to say that they're not going to be building a lot more wind towers, a lot more wind turbines in China for the foreseeable future, for the long term future. The growth may be slowing down a little bit from phenomenal growth in the past, but it's still growing and it's still very, very large demand in China for wind energy.

MR. DOUGAN: One other thing to consider with respect to the number of other wind tower producers in China is that the ones who are qualified, they're basically on the beach. That allows them to obviate a lot of the logistical issues with getting these large things over land. You may have wind tower producers who are in the hinterlands producing for wind farms in China, but they're not going to export those things because they'd have to truck them over inland in China and that's not going to be any more logistically easy than doing it in the United States.

COMMISSIONER BROADBENT: Sorry. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: I was wondering, I'm not sure what to make of the 2012 data. This is very much, people were trying to get projects done. Had to get the PTC before it expired. Should we maybe just ignore that data here?

MR. DOUGAN: Ignore what data?

CHAIRMAN WILLIAMSON: The volume data, the import data. 2012 was kind of a special case, wasn't it? This is when everybody was trying to do things to beat PTC. Maybe late 2011. I'm just trying to think what to make of it.

MR. HAZEL: If I may, clearly the ITC and

the PTC expiration, those two effects have had a huge pull forward effect on what the market demand would be. There was a rush to complete. So orders that may have been generated over a longer period of time were pushed into 2012. I think that's a fairly clear statement.

What to make of that then is, it was a very unusual year as you point out, and did create some very unusual sort of patterns in the marketplace perhaps with respect to why we're here today on towers.

I do believe, we just saw a very unusual event where capacity in the domestic industry was unprepared to fulfill it. Now we're about to face another unusual event which is the aftermath of that.

MR. DOUGAN: As I understand reading the preliminary determination, it was made affirmatively on the basis that there was a reasonable indication of threat given the likely increase in imports that was to occur in 2012. The ones that had already been arranged to take on these projects. So on that basis I would think you'd have to consider what actually happened in 2012. And the fact that injury didn't happen by reason of subject imports because of the capacity constraints and the rejections and all the

other things that happened with the domestic producers, I think that has to be weighed.

It was an unusual year in many respects, but I think the Commission must consider the data.

CHAIRMAN WILLIAMSON: Do you think the domestic industry is vulnerable if the subsidies are not renewed?

MR. FELDMAN: Our wind operation is certainly vulnerable, and that's why we've lost 615 employees. The wind power industry is vulnerable without the production tax credit. But it's the production tax credit that has created the vulnerability. It has nothing to do with imports.

CHAIRMAN WILLIAMSON: Domestic producers are also vulnerable.

MR. FELDMAN: -- towers are vulnerable in that there aren't any orders and there aren't any orders for us either, but that vulnerability, again, has nothing to do with imports. If there were demand for towers in Mid-America the domestic manufacturers will get those contracts. They're not under any threat from anyone except the absence of the subsidy that's been keeping the industry going. There's no vulnerability related in any fashion to the imports. Indeed, --

CHAIRMAN WILLIAMSON: I see the distinction.

MR. FELDMAN: We're all vulnerable if no one is ordering our product.

MR. DOUGAN: Again, 2013 will not be a good year for anyone in this industry, but the relevant question, I think, is is the industry vulnerable to injury by reason of subject imports? I think the answer to that question is no. The data in the staff report show that to the extent that this downturn in demand for 2013 has been borne by anybody, it's been borne by anything coming from the imports. The domestic producers have some business coming which makes sense if that's where the projects are.

CHAIRMAN WILLIAMSON: What if the subsidies are continued at some point --

MR. FELDMAN: If the subsidies are continued then there's no vulnerability at all. To the contrary, the diminished industry will be a near monopoly and they should have a grand year in the second half of 2013.

CHAIRMAN WILLIAMSON: As well as the OEMs.

MR. FELDMAN: And certainly the OEMs should be, we will be able to fill orders.

CHAIRMAN WILLIAMSON: Do any of the projects last more than one year? I was thinking about this

question of long term contract, or medium term contracts. So I was wondering, are towers often delivered over say more than one season or one year? I know it depends on the size of the project.

MR. REVAK: On occasion they do transition over a year. We'll have projects that started in 2011, were commissioned and built, finalized in the beginning of '12, and we have a project that's extending into '13 that we started in '12. So there are those occasions, but generally -- It's driven by the economics. Most economics are driven by completion by the end of the year in the U.S.. Most people target that. That's why you see the lumpiness in the marketplace of when a project's being built, when turbines are delivered, when towers need to be delivered to support an end of the year commercial date.

CHAIRMAN WILLIAMSON: Thank you.

I think that's all my questions.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

This morning I spoke with the domestic industry about a comment in the staff report that showed up in the public version, pages 225 and 227.

These have to do with quality of product and qualification. We had seven of nine responding purchasers reporting problems with the quality of domestic wind towers and the companies mentioned by name included Broadwind and Trinity. But of course I have no idea whether Siemens was one of those seven purchasers who reported a problem.

But if you are able to say something now, by all means do so. Otherwise, for purposes of the posthearing, if Siemens had those concerns could we learn more about them please?

MR. FELDMAN: We'll be happy to address that.

COMMISSIONER PEARSON: The same question would apply on page 227 where the issue has to do with certification or qualification of U.S. producers. Here it was five of nine responding purchasers reporting that they had had problems certifying domestic producers.

Again, Trinity and Broadwind were two of the firms that were mentioned. Once again, no idea whether Siemens might have been one of those purchasers. But if you have something you could tell us in the posthearing, please do so.

MR. FELDMAN: And we did refer in our

testimony today to problems qualifying one of the Katana facilities, which we put on the public record today.

COMMISSIONER PEARSON: Okay.

You probably have clarified this already, but do we have on the record the instances during the POI in which Siemens has been told that a domestic firm could not produce an order that it was seeking to get filled?

MR. FELDMAN: Pages 25 to 36. I think that's the right range in our brief. All of which is bracketed. But which provides the largest piece of our brief and is all stories addressed directly to your question.

COMMISSIONER PEARSON: Thanks.

One last question along these lines. Do you have a sense of whether a shortage of steel plate has played a role in some of the instances in which domestic tower manufacturers might have said they're unable to meet an order request?

MR. FELDMAN: Same pages. You'll find a specific reference to at least one such instance.

COMMISSIONER PEARSON: Good, thank you.

This is easy. A last question, if I may.

Assume for the moment that we find only one

domestic like product. Siemens has really told us a great deal today about its purchasing and pricing practices, and I thank you for that, but the reality of course is that Siemens is not the only purchaser.

Assume for a moment that other purchasers' practices tend to be closer to what the domestic industry has told us they are. How should we interpret the record as a whole?

MR. FELDMAN: I think Mr. Dougan should answer this question because he's examined the aggregate data in ways that we have not. And as I tried to suggest but perhaps not with the finest articulation, I think the aggregate data will lead you to the same conclusion. I'm just suggesting that were it not to lead you to that conclusion then you ought to reconsider Siemens' situation under those circumstances.

But we think that the aggregate stories still get you to the same place. The story here is still a geographic story. The domestic industry has done just fine where it is located and not so fine where it's not located. Foreign towers have been purchased for specific reasons that have nothing to do with price. We have overpaid or oversold in buying towers because we've had to cover. The aggregate data

do show that they're not undersold. There's no pricing comparison that leads you to any lost sales. There are no specific examples offered by the Petitioners of underselling. There's an allegation of underselling but no specific instances. There's no real competition going on in the tower world. The real competition is going on upstream.

But I'd yield to Mr. Dougan as to the analyst of the aggregate data.

MR. DOUGAN: There are some -- This is again based mostly on highly confidential stuff, but there is some evidence in the public staff report where the price comparisons for GE, the other main OEM who has a slightly different sourcing model, they too in nearly all comparisons of the 24 projects for which they source from both subject imports and domestic supply, paid more for the subject import. And in aggregate, paid a very substantial premium to have them.

Again, that raises the question. GE's in the business to make money. Why would they do that?

If Petitioners' story is true, then that wouldn't have happened. GE would not have paid that much money to source subject imports if their whole model was revolved around getting the very cheapest price they possibly could.

I can't speak for GE and I can't get into confidential information, but the public record tends to support what these folks say even if the sourcing model is different.

COMMISSIONER PEARSON: Thanks. Obviously if there's anything more we should know in the posthearing, go ahead and clarify it for us.

Mr. Marshak, did you have a comment that you wished to add a few minutes ago?

MR. MARSHAK: No. The only comment I wanted to add is for all our customers we should find that there's no material injury and no threat. Siemens and everybody else. We want a win for everybody.

COMMISSIONER PEARSON: I can appreciate that.

I have no further questions, Mr. Chairman. So allow me to thank all of you for hanging in there with us through the afternoon.

CHAIRMAN WILLIAMSON: Commissioner Aranoff?

Do any members of the panel have any questions? I just have one real quick one. Both for Mr. Feldman and Mr. Marshak.

What is your position on Petitioners' argument that Vestas towers should be excluded from the domestic industry?

MR. FELDMAN: I'm mystified by it, so I'd leave someone else to try to answer that question.

MR. MARSHAK: Absolutely not. If you look at the confidential record, you look at your criteria, in every single case the record confirms that Vestas should be part of the domestic industry. I think we touched on that very, very briefly in our prehearing brief. We'll touch on it more in our posthearing brief, but for every single criteria that the Commission normally uses, whether a company like Vestas should be part of the domestic industry it comes out on the side of including them as part of the domestic industry.

CHAIRMAN WILLIAMSON: Okay.

Thank you for that answer.

If the Commissioners don't have any other questions, does staff have any further questions?

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

CHAIRMAN WILLIAMSON: Do Petitioners have any questions for this panel?

MR. PICKARD: No, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. In that case I guess we're ready for closing statements.

Petitioners have 30 minutes of direct testimony and 5 in closing for a total of 35. Respondents have 15 minutes direct, and 5 closing, for a total of 20. As we usually do, we can combine those times unless anybody objects. You don't have to take it all.

I want to thank this panel for their testimony.

MR. FELDMAN: Thank you, Mr. Chairman.

(Pause.)

CHAIRMAN WILLIAMSON: You may begin when you're ready.

MR. PICKARD: Thank you, Mr. Chairman. For the record, this is Dan Pickard.

I'd like to start off first by expressing our thanks to the Commission and particularly for the staff. As I think everybody would agree, this is a particularly complex investigation and I think the staff has done an extraordinary job in regard to the investigation that was conducted.

What I think we'd like to do is first off with my assurances that we will not be taking all 35 minutes. Unless there's an objection.

Mr. DeFrancesco has got some rebuttal points, and then I will briefly sum up.

MR. DeFRANCESCO: Thank you.

I'd like to echo Mr. Pickard's comments thanking the Commission and the staff for their hard work in this case.

Just to sum up a few key points. What you just heard in the previous panel is that the primary respondents in this case have told you that they are export platforms whose sole purpose is to supply wind towers on a global basis. They have sourcing contracts with some of the larger OEMs. On that basis, in fact I direct you to our public prehearing brief, Exhibit 21. this exhibit is an excerpt from CS Wind's web site. On it in 2007 CS Wind says that it signed a five year wind tower purchasing agreement with Siemens Wind Power; in 2010, CS Wind signed a four year wind tower purchasing agreement with Siemens Power; in 2011 CS Wind states that it signed an umbrella trading agreement with Siemens Wind Power. This is in Exhibit 21 of our prehearing brief.

What you've heard here today is again, as our panel talked about, it is a shift in the market around about the time of Shepherds Flat where the OEMs have used subject pricing to leverage down the domestic prices and have switched their base load volumes to the subject imports. You can see that in

these purchasing agreements. You see that in the purchasing patterns. You see that in the market shares and the underselling.

What you see is the domestic industry losing market share and losing volume over this period. You see prices being suppressed and depressed. At the same time the market share of the subject imports exploding over the period.

You also heard that they're essentially sourcing the towers first and figuring out where they go later. What we've talked about earlier, about the standard cost of the delivery is evidence of that. First they purchase the tower, they apply some sort of standard or estimate as to where they want to put them, but that's not what they actually paid for the freight to get it there. Once the tower is purchased it's months, six months, nine months, a year before it's actually shipped. So the freight may differ and it may differ significantly.

But basically the negotiations on price and the negotiations on how many towers and from whom to buy them from takes place at the FOB level.

With that, I'll turn it over to Mr. Pickard.

MR. PICKARD: My initial observation is that the volume and impact alone in this case would just

find affirmative determination. The question was raised, what do you do with 2011, 2012 data? I would suggest it is the most recent, the most relevant and most probative information in regard to whether there is injury or threat on boot day.

And what's that data show you? It shows there's been a 200 percent increase, 193 percent to be precise, increase in the volume of subject imports over the interim period. Subject imports took 20 percent market share away from the domestic producers. And as a direct result, the health of the domestic industry deteriorated.

Numerous companies went out of business. Half of the members of this coalition. And over the period of investigation the domestic industry went from an operating profit to an operating loss.

On those facts alone, either based on common sense or under the relevant statute that we just find affirmative determination.

Where there's been most disagreement appears to be in regard to price. I think there are some real questions in regard to credibility. I'd like to come to that in a minute, but there's just one or two things I'd like to touch on first.

One is a simple observation in regard to

quality. There have been some allegations made in regard to quality and I would simply make the observation that to the extent that Siemens has had complaints about that, Trinity has not sold them one tower, nor has Broadwind ever been disqualified from a project. And when really asked directly in regard to quality problems or if they were more along the lines of delays which quite frankly happen with any U.S. or foreign manufacturer, the witness indicated that it's Typically not a quality issue.

What we've essentially been talking about is that as a result of Shepherds Flat there's been a fundamental switch from base load with the U.S. industry moving to Chinese and Vietnamese producers. Consequently, U.S. producers getting more drips and drabs.

The question was asked a couple of times in regard to supply agreements, and as usual, Rob is one step ahead of me in that when the question was asked repeatedly, are there supply agreements, either the answer was well no, there aren't any supply agreements with a U.S. entity or there were no supply agreements. Maybe that was just a misunderstanding because it's pretty clear that CS Wind's public web site talks about their supply agreement with Siemens.

I think it's important because it goes to one of the fundamental contentions. As far as the movement from the OEMs sourcing predominantly from China and Vietnam at the cost to the U.S. industry.

I would make one other observation and then really kind of get into the heart of the matter in terms of price.

I was thinking about who's not here today? I think this is also going to go to the issue of credibility. There are three groups of people who aren't here today. first off, there are no direct witnesses from the foreign producers so they can't be asked questions directly in regard to their credibility, but there certainly could be reasons for that.

We had two out of the three major OEMs are not present today. I think there are legitimate questions in regard to their full compliance with this investigation, not the least of which I'm going to do with the data.

Last, and certainly not least, the other people who aren't here today are two of my original clients and a lot of the other U.S. producers who in their confidential submissions to the Commission indicated that their businesses were threatened and

were on the verge of going out of business as a direct result of subject imports.

That gets us to price. And really, two fundamentally different arguments. We have essentially suggested while this is a complex case, this is an industry like most industries in that people try to get goods at the lowest price and try and maximize their profits. And along those lines you've heard direct testimony in regard to price negotiations. Sometimes it happens in the spot market with a series of negotiations going on. Sometimes you've heard of it really being more of a volume effect. When the subject import prices were so cheap, certain OEMs chose not to honor their volume commitments. And purchase from Vietnam. That is a result of these negotiations and Shepherds Flat being arguably Exhibit A. It has led to price depression in the U.S. and there are escalation costs in regard, in some contracts in regard to steel and phalanges.

Other costs are not so protected, and consequently, the price depression by imports has led to price suppression in regard to those increasing cost of goods sold.

So essentially the domestic industry showed up today to say that this market functions mostly like

most normal markets.

The opposite side where essentially extreme statements that price has no role in this marketplace whatsoever. When asked directly about whether there were price negotiations, I don't think there was a direct response. There was a remark in regard to well, we have certain sanity checks. Or possibly that we would engage with them as to certain issues as to cost.

Mr. Feldman said they don't entertain competition as to price. But the brief is even more extreme. On page 52 of Siemens' brief they say, "None of these purchases" purchases done subject to import purchases at the cost of domestic product. "None of these purchase decisions had been based on price."

Even more extreme, page 37, "Price played no role in the orders for towers in 2011 to 2012." I think that is an extraordinary claim lacking credibility.

I think it's so extreme I'd like to just repeat it. The domestic industry has alleged that there's price competition going on, and like most markets, and that has moved down price. That has contributed to material injury.

The other story that you've heard,

explicitly as stated, that price has no role whatsoever. And to the extent that helpful bid data, bid data that was collected in the preliminary phase, would have cast light on this, to the extent that you're missing it, it's a failure from certain Respondents to fully cooperate with this investigation.

To sum up, there's no doubt that volume has increased over the period of investigation, both absolutely and by market share.

There is missing price data, but in regards to credibility as far as how this market works, you've heard today, as far as specific examples, as far as Shepherds Flat, extreme measures that the domestic industry was willing to go to in order to get that business and being rejected. And we know it went to China based on price and other price data that's collected in the confidential version of our prehearing brief. And obviously we'll be following up with in our posthearing brief.

And we know there's been a significant impact on the domestic producer. There are closed companies, and the industry in the aggregate is posting a loss.

And in regard to threat, this injury

occurred when there was the PTC in effect. Everybody would agree that, we heard from Respondents this afternoon. In the absence of the PTC this is going to be a more vulnerable industry.

I would point out that the statute doesn't say that you have to be more vulnerable by reason of subject imports. It's this vulnerability, it's an important condition of competition. And with this decreased market, the domestic industry is even more vulnerable to a modest increase in subject imports. But even if the PTC should come back, first off, There are going to be delays in new wind farms being commissioned, getting their financing approved, and that is going to keep the domestic industry in a vulnerable state.

And the injurious impact of imports is going to be even further magnified in that down market. But even when the PTC comes back there's no reason to believe that the current trend won't continue. Subject imports will continue to undersell the domestically produced product and the U.S. producers will continue to lose market share.

So we respectfully submit the domestic industry is both today currently materially injured and threatened with further material injury.

Thank you.

CHAIRMAN WILLIAMSON: Thank you.

You may begin when you're ready.

MR. SCHUTZMAN: Good afternoon again. Max. Schutzman for the Foreign Respondents. Mr. Feldman and I will share the time.

Just a word following up on what Mr. Pickard mentioned about the non-appearance at this hearing of two of the three major OEMs, Vestas and GE. While they may not have appeared at the hearing, they certainly have cooperated fully with the Commission in terms of responding to the questionnaires extensively and I think the Commission will decide this case based upon the record evidence, and the record evidence includes those questionnaire responses. So the fact that the 800 pound gorilla in this industry chose not to, for whatever reason, appear at this hearing is not determinative in any way.

In fact GE and Siemens have provided sufficient evidence on this record, even the public record, to rebut much of the incorrect and/or misleading statements that we've heard from Petitioners and that we've seen in their briefs.

I will focus principally on the issues of conditions of competition that we've heard during the

course of this hearing. I apologize if I'm repeating what others have said, but I just feel that these points do bear repeating.

Number one, Petitioners say the FOB foreign port price of imported towers is or should be the relevant comparative for the Commission's pricing analysis. What does Siemens say? What does GE say? They say not true.

The delivered cost is the critical component, and this makes perfect sense as we've heard. Since transportation costs are the responsibility of the purchaser, not the tower producer, and not the public utility for whom the turbines are being constructed. And they represent an immense expenditure.

Siemens confirms, contrary to Petitioners' allegations, that there is no pass-through to the turbine buyer of transportation costs. The FOB foreign port price is therefore not a relevant factor in the Commission's underselling analysis.

It is most assuredly not just a logistics issue. When the cost of moving one tower overland can extend into the six figures, this is not just a logistics issue.

Number two, in that regard Petitioners say

imports are substantially underselling domestically produced wind towers. What does GE say? What does Siemens say? They say not true.

GE confirmed, and we've heard this during the course of this hearing, that in 24 project comparisons we purchased towers from both domestic and Chinese sources, the delivered cost of the Chinese tower was higher in nearly all instances. The same was true for Siemens. The delivered prices were higher in the majority of those comparable cases. That is what the Commission must look at.

Petitioners say there is intense price competition among tower producers for the turbine builders' business. Siemens says huh uh, not at all. As Mr. Feldman and the Siemens witnesses quite cogently stated, tower producers are not aware of the prices tendered by other tower suppliers for given projects, and more importantly, Siemens does not even solicit competing bids.

The blind bid process precludes price competition.

Petitioners say they possess ample capacity to supply turbine builders' needs during the POI. Staff report says not true. The majority of purchases reported an inability to secure capacity from domestic

producers and the lack of capacity extends across the gamut of domestic production. From Broadwind to DMI to Martimer Hirschfeld, to Katana Summit to Trinity. And U.S. producers confirmed this to the staff.

Petitioners say production issues were not a problem for them during the POI. GE and Siemens say this is also not true. Both reported problems with domestic production. During the POI that resulted in an inability to meet scheduled shipments and in certain cases presented them with the absolute requirement to purchase off-shore.

Petitioners claim to have suffered lost sales and revenue during the POI as a result of low priced imports. Not true says the staff report which notes there was insufficient data to allow the staff to investigate these allegations.

Petitioners claim a number of domestic producers exited the business due to intense price competition from imports. The record evidence, however, is contrary. The sole reasons for this were the expiration of the PTC and historically low natural gas prices.

Finally, Petitioners say they are threatened with material injury in 2013 and thereafter by increasing imports of subject merchandise from China

and Vietnam. But all parties agree that as a result of the elimination of the PTC, the ITC and low gas prices, U.S. demand for towers in 2013 will be substantially below 2012 levels; and in 2014 demand will also substantially suffer.

To be sure, our Chinese clients and our Vietnamese client, to our knowledge, have no wind tower orders for U.S. delivery in 3013. Let me repeat that. They have no orders on their books for U.S. delivery in 2013.

Given the lengthy lead times between completion of a utility contract and the delivery of the necessary towers for the projects by definition, there can be no imminent threat of material injury from Chinese and Vietnamese wind towers.

Thank you.

MR. FELDMAN: Let me thank the staff again and the Commission.

But it comes to this. I've been doing this for a 25 years and I think this is the first time I've effectively been called a liar at a hearing. I've been told that what I said was not credible and effectively not true, so I do take some offense.

What we said was true and credible and we presented evidence to support it. No purchasing

decisions were made on the basis of price. Delivered cost and all of the associated transportation and logistics involved, yes. Price, especially FOB price, never.

There has been no injury in this case because over the course of the POI the domestic tower manufacturers sold more towers year over year throughout the POI. And indeed, Commissioner Broadbent involved some of the critical statistics in her first intervention today.

So Trinity has a contract problem, which is not a trade question, and that dominated the presentation we heard this morning.

Nor can there be any threat. Chairman Williamson asked us whether there is vulnerability. If there are no orders I guess we're all vulnerable. It's a question of why we're vulnerable. We're vulnerable because there are no orders. There are no orders because we've not achieved grid parity and the production tax credit's gone, at least for the moment, and the natural gas prices plummeted, so we're not competitive in wind power going into 2013.

But that vulnerability doesn't translate into any threat from foreign imports. To the contrary, there are no orders for them, there's no

inventory, they can't enter the market. They won't enter the market. There's nothing imminent. There's no injury. There's no threat of injury. There can't be. It's in the nature of the business that there can't be

Our Exhibits 16 and 17 of our brief display the history of the expiration of subsidies, of incentives. That history shows an exit from the industry. That's when there weren't any imports of any consequence. Imports have nothing to do with the fact that they made a calculation early in 2012 that chances were the production tax credit wouldn't be extended, therefore chances were there wouldn't be orders in 2013, and they didn't want to be maintaining factories in which there would be no business so they left.

We stayed in the business, and then we couldn't get towers from them. Even when we couldn't get towers from them, they still sold out at maximum capacity so that they sold more towers than ever before. They complained they lost market share only because the market got big, not because foreign imports displaced them.

You've been asking about-- They raised an issue about bid data and I think we've explained this

in some detail. There are no bid data because it's not the way we conduct our business. And the misapprehension of that perhaps at the preliminary phase was because you could see particularly in one project in Iowa, more than one price. I hope we've now clarified why that was the case. An American tower producer failed to deliver and we had to cover. So there was a sequence of prices obtained from more than one producer, but not at the same time and not on a competitive basis.

They raised the question again about the supply agreement. There is a supply agreement with the Danish parent of Siemens for global supply. The American divisions of Siemens are not subject to that agreement. We, the American divisions, do not have a supply agreement globally, nor do we have a supply agreement with anyone in the United States. We're not subject to that agreement. That is a Siemens agreement signed in Denmark for global supply. We have no obligations in the United States to buy anything under that supply agreement and that will be explained in further detail in the posthearing brief. But since this seemed to be so important to Petitioners in their rebuttal, I felt it necessary to take that extra step and explain it more now.

Broadwind testified that if there were an order then their facility in South Dakota would suddenly become viable. They didn't explain how or why. Where would the orders come from? It will be viable only if anybody wants to buy towers for some wind protection in the vicinity of Brandon, South Dakota. Otherwise it's not relevant. There aren't orders in 2013.

So a countervailing duty order, an antidumping order, will have no impact whatsoever on whether the Brandon, South Dakota facility of Broadwind is viable. That's at least, at best, misleading. We will be interested to read, perhaps, in their posthearing brief how it will be that the Brandon, South Dakota, facility sill become viable if there were antidumping or countervailing duty orders on Vietnamese or Chinese towers.

I'd like to conclude on a lighter note. There's currently a production of My Fair Lady at Arena Stage. It's a little controversial because Asians have been cast in the cockney roles as Eliza and Alfred P. Doolittle. Some critics in particular the Washington Post critic, says there's no place for Asians in this very English musical. And some folks here apparently think there's no place for Chinese and

Vietnamese towers in the United States. Yet the Chinese and Vietnamese do Americans no harm, nor do they threaten anyone. To the contrary, without them we'd have a lot less electricity powered by the wind, certainly on the coast.

So I'd ask you with a nod to Rex Harrison to think about it this way with reference to our map. Domestic towers stay mainly on the plain; and where's that blasted plain? Not Maine, not Maine. Domestic towers are not made on the coast, so foreign towers are ordered there the most while domestic towers stay mainly on the plain.

Foreign towers always arrive by boat, while domestic towers rarely ever float. Domestic towers should mainly move by train, but all too often they have to move by truck. By truck they need to stay mainly on the plain. They don't cross mountains, even with a little bit of luck. Geography's to blame. That's why domestic towers stay mainly on the plain.

Thank you all very much.

CHAIRMAN WILLIAMSON: Thank you.

I want to thank all the witnesses for your participation in the hearing today.

Posthearing briefs, statements responsive to questions, and requests of the Commission and

corrections to the transcript must be filed by December 20, 2012.

Closing of the record and final release of data to parties is January 11, 2013.

Final comments are due January 15, 2013.

With that, this hearing is adjourned.

(Whereupon, at 4:41 p.m., the hearing in the above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Utility Scale Wind Towers from China & Vietnam

INVESTIGATION NO.: 701-TA-486, 731-TA-1195-1196

HEARING DATE: December 13, 2012

LOCATION: Washington, D.C.

NATURE OF HEARING:Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: December 13, 2012

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Rebecca McCrary
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Gabriel Gheorghiu
Signature of Court Reporter