

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:
CRYSTALLINE SILICON PHOTOVOLTAIC CELLS
AND MODULES FROM CHINA

) Investigation Nos.:
) 701-TA-481 AND 731-TA-1190
) (REVIEW)

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UNITED STATES OF AMERICA
BEFORE THE
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
CRYSTALLINE SILICON PHOTOVOLTAIC) 701-TA-481 AND
CELLS AND MODULES FROM CHINA) 731-TA-1190 (REVIEW)

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

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

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman David S. Johanson (presiding)

5 Commissioner Rhonda K. Schmidtlein

6 Commissioner Irving A. Williamson

7 Commissioner Meredith M. Broadbent

8 Commissioner Jason E. Kearns

9

10

11

12 Staff Present:

13 William R. Bishop, Supervisory Hearings and Information

14 Officer

15 Sharon Bellamy, Records Management Specialist

16 Tyrell Burch, Program Support Specialist

17

18 Mary Messer, Investigator

19 Andrew David, International Trade Analyst

20 John VerWey, International Trade Analyst

21 James Horne, International Economist

22 Joanna Lo, Accountant/Auditor

23 Jane Dempsey, Attorney-Advisor

24 Craig Thomsen, Supervisory Investigator

25

1 APPEARANCES:

2 Embassy Appearance

3 The Embassy of Indonesia

4 Washington, DC

5 Reza Pahlevi Chairul, Commercial Attache

6

7 Opening Remarks:

8 In Support of Continuation of Orders (Laura El-Sabaawi,

9 Wiley Rein LLP)

10 In Opposition to Continuation of Orders (Jonathan T. Stoel,

11 Hogan Lovells US LLP)

12

13 In Support of the Continuation of Antidumping and

14 Countervailing Duty Orders:

15 Wiley Rein LLP

16 Washington, DC

17 on behalf of

18 SolarWorld Americas Inc.

19 John Boken, Chief Executive Officer, SolarWorld

20 Americas Inc.

21 Dr. Seth T. Kaplan, President, International Economic

22 Research LLC

23 Andrew Szamosszegi, Principal, Capital Trade, Inc.

24 Timothy C. Brightbill, Laura El-Sabaawi and Usha

25 Neelakantan - Of Counsel

1 APPEARANCES (Continued):

2 TradeWins LLC

3 Washington, DC

4 on behalf

5 SunPower Manufacturing Oregon, LLC ("SPMOR")

6 Thomas Starrs, SPMOR

7 John R. Magnus and Sheridan S. McKinney - Of Counsel

8

9 In Opposition to the Continuation of Antidumping and

10 Countervailing Duty Orders:

11 Hogan Lovells US LLP

12 Washington, DC

13 on behalf of

14 Canadian Solar Inc.

15 Canadian Solar International, Ltd.

16 Canadian Solar Manufacturing (Changshu), Inc.

17 Canadian Solar Manufacturing (Luoyang), Inc.

18 Canadian Solar (USA), Inc.

19 (collectively "Canadian Solar")

20 Vincent Ambrose, Senior Director and General Manager

21 Sales, North America, Module System Solutions Business,

22 Canadian Solar (USA), Inc.

23 Michael Arndt, Managing Director of Development

24 Vince Plaxico, Managing Director, Project Finance,

25 Recurrent Energy LLC

1 APPEARANCES (Continued):

2 Virinder Singh, Director, Regulatory & Legislative
3 Affairs, Head of U.S. Government Affairs, EDF Renewable
4 Energy

5 Hamilton Davis, Director of Regulatory Affairs,
6 Southern Current LLC

7 Hewitt Strange, Director of Government Affairs, Cypress
8 Creek Renewables

9 James P. Dougan, Vice President, Economic Consulting
10 Services

11 Jonathan T. Stoel, Craig A. Lewis and Nicholas R.
12 Sparks - Of Counsel

13

14 Rebuttal/Closing Remarks:

15 In Support of Continuation of Orders (Timothy C. Brightbill,
16 Wiley Rein LLP)

17 In Opposition to Continuation to Orders (Jonathan T. Stoel,
18 Hogan Lovells US LLP)

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9:33 a.m.

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

CHAIRMAN JOHANSON: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation Nos. 701-TA-481 701-TA-1190 Review involving Crystalline Silicon Photovoltaic Cells and Modules from China.

The purpose of these investigations is to determine whether revocation of the Countervailing Duty Order and Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells and Modules from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Schedule setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the Public Distribution Table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the Public Distribution Table.

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed with the Secretary. Speakers are reminded not to refer in their remarks or

1 answers to questions to business proprietary information.
2 Please speak clearly into the microphones and state your
3 name for the record for the benefit of the court reporter.

4 If you will be submitting documents that contain
5 information you wish classified as business confidential
6 your requests should comply with Commission Rule 201.6. Mr.
7 Secretary, are there any preliminary matters?

8 MR. BISHOP: Mr. Chairman, I would note that all
9 witnesses for today's hearing have been sworn in. There are
10 no other preliminary matters.

11 CHAIRMAN JOHANSON: Very well. Let us begin with
12 the Embassy Witness.

13 MR. BISHOP: Our Embassy Witness is Reza Pahlevi
14 Chairul, Commercial Attach with the Embassy of Indonesia.

15 STATEMENT OF ATTACHE REZA PAHLEVI CHAIRUL

16 MR. CHAIRUL: Good morning Chairman Johanson,
17 Commissioners. My name is Reza Pahlevi Chairul, Commercial
18 Attach at the Indonesian Embassy in Washington, D.C. and I
19 would like to thank the U.S. ITC for allowing us to be
20 present at this hearing today.

21 At this hearing I wish to raise some points
22 regarding Indonesians for your consideration. With regard
23 to the solar panel industry, like the United States
24 Indonesia also supports the utilizations of renewable
25 energy.

1 Strategically located on the equator, Indonesia
2 is blessed with abundance of solar energy. Therefore,
3 Indonesia is currently developing the industry to increase
4 its capability to harness the clean energy from the sun.
5 Indonesia strongly believes that the green energy including
6 solar is the future.

7 Indonesia also acknowledges the growing market of
8 solar panels and its components in the U.S. We also
9 understand the United States' position in this regard.
10 Indonesia believes that fair trade practice is of the utmost
11 importance to balance import with domestic production
12 capacity.

13 Looking at the trade data we believe that
14 Indonesian export of solar panels is negligible in
15 comparison with export from other producing countries.
16 During the last five years, Indonesia export share of solar
17 cell, alternator, generator and batteries to the U.S. were
18 at 0.11 percent. Indonesia's largest export was 11.2
19 million U.S. dollars of DC generator in 2014 and 9.3 million
20 U.S. dollars export of solar cells in 2017. That accounts
21 for 0.6 and 0.4 percent of U.S. market share respectively.
22

23 Exports of solar panels and its component from
24 Indonesia originated from three companies in review, namely
25 P.T. Canadian Solar Indonesia, P.T. Land Industry Prozero

1 and P.T. Sky Energy Indonesia. The Government of Indonesia
2 has clarified the parties under review and helped with the
3 investigation from the U.S. Government.

4 We confirm that those companies are running their
5 own production facilities and created a jump in employment
6 in Indonesia with operations as follows. P.T. Canadian
7 Indonesia has not exported any solar panels as a component
8 to the U.S. P.T. Land Industry Procerro focuses primarily in
9 manufacturing of railway signals. It produces solar panel
10 on request from imported components from China, but mainly
11 for domestic market and is not intended for export,
12 especially to the U.S.

13 P.T. Sky Energy Indonesia is the only Indonesian
14 exporter of solar panel components to the U.S. However, its
15 export to the U.S. is relatively very small in comparison to
16 competitors from other countries. Furthermore, they stated
17 that the models used in their products are not sourced from
18 china.

19 The government of Indonesia believes that the
20 U.S. Import of solar panels and its components from
21 Indonesia is minuscule and there is no evidence of increased
22 import of the product under investigations. We believe that
23 our solar panel export during the period of investigation
24 was de minimis and should be excluded from the review.
25 Thank you for your consideration.

1 CHAIRMAN JOHANSON: Do any Commissioners have
2 questions for Mr. Chairul? It appears there are none. We
3 thank you, Mr. Chairul for appearing here today. Thank you.

4 MR. BISHOP: Mr. Chairman, we will now continue
5 with opening remarks. Opening remarks on behalf of those in
6 support of continuation of the orders will be given by Laura
7 El-Sabaawi of Wiley Rein. Ms. El-Sabaawi, you have five
8 minutes.

9 OPENING STATEMENT OF MS. EL-SABAAWI

10 MS. EL-SABAAWI: Good morning, Chairman Johanson
11 and Members of the Commission. I am Laura El-Sabaawi,
12 Counsel for the Petitioner SolarWorld Americas Inc.

13 The Domestic Industry is here today to ask you to
14 maintain the critical antidumping and countervailing duty
15 orders on Crystalline Silicon Photovoltaic Cells and Modules
16 from China. After years of efforts to combat unfairly
17 traded imports in the U.S. Market, the domestic solar
18 manufacturing industry is finally poised for recovery.

19 In recent years, nearly 30 U.S. solar facilities
20 were shut down and thousands of American jobs were lost.
21 But SolarWorld Americas has survived the years of import
22 crisis and its assets have recently been acquired, which
23 will allow it to continue U.S. production operations for
24 years to come.

25 Many other companies have recently announced new

1 investments in solar production facilities in the United
2 States as well. For example, Jinko Solar, Hanwha Q Cells
3 and LG Electronics all have plans to start U.S.
4 Manufacturing operations for solar products.

5 This is exactly what the antidumping and
6 countervailing duty orders under review today were intended
7 to do and the continuation is vital to the burgeoning
8 recovery in the industry. Without these orders, there is no
9 doubt that unfairly traded imports from China will once
10 again surge into the U.S. Market injuring and potentially
11 destroying the U.S. solar manufacturing industry once and
12 for all.

13 We are here today to ask you not to let this
14 happen. Imports, and especially imports from China subject
15 to these orders devastated the U.S. solar industry before
16 trade relief was imposed. Massive volumes of sales were
17 lost, prices crashed and U.S. solar producers were decimated
18 in the wake of these imports.

19 It took these AD/CVD orders along with the Solar
20 II AD/CVD orders and recent section 201 Safeguard Remedies
21 to give the solar industry its first real opportunity for
22 recovery in years. The section 201 remedies recently put
23 forth by the Commission will play an important role in
24 facilitating this comeback, but those remedies alone are not
25 sufficient to keep Subject Imports at bay.

1 The safeguard tariffs are limited in duration,
2 will decline in each year and do not apply at all to the 1st
3 2.5 gigawatts of cells imported annually. The AD/CVD orders
4 under review here are fundamental to effective trade relief
5 for the domestic solar industry and should be maintained.
6 The vast majority of the Chinese solar industry is not even
7 represented here today, demonstrating the fundamental
8 weakness of their case.

9 If the orders were to be revoked there would be a
10 significant increase in the volume of Chinese solar imports
11 into the U.S. Market. Chinese solar producers had more than
12 41 gigawatts of unused capacity last year, which is several
13 times more than all of annual U.S. apparent consumption and
14 the Chinese Government has significant reduced solar
15 installation incentives in China causing demand in that
16 market to decline this year and making Chinese producers
17 even more reliant on exports.

18 Given the vulnerable state of the domestic solar
19 industry, even a small increase in Chinese Imports into the
20 U.S. Market would be highly injurious. The surge that would
21 undoubtedly result would be devastating. Revocation of the
22 orders would also cause substantial negative price effects
23 in the U.S. Solar Market.

24 In the original investigation the Commission
25 found that Chinese solar imports pervasively undersold the

1 domestic like product and they have largely continued to do
2 so. Yet, the underselling and price effects of Chinese
3 Imports would have been much more severe in the absence of
4 the AD/CVD orders.

5 If the orders went away Chinese Imports would
6 again undercut U.S. Producers and tank pricing in the
7 market. in fact, the Department of Commerce has found that
8 dumping from China would be likely to recur at rates up to
9 250 percent. These high volumes of unfairly priced Chinese
10 solar imports would have a severe adverse impact on the
11 Domestic Industry.

12 In the original investigation, the Commission
13 found that despite growing demand the U.S. Industry's
14 financial performance was very poor and deteriorating
15 because of imports. It made similar findings regarding the
16 industry's trade and financial indicators in the Solar II
17 case and the Safeguard investigation.

18 In fact, 28 solar manufacturers in the United
19 States went bankrupt or terminated operations between
20 January 2012 and the first half of 2018. Were Chinese
21 Imports to once again surge into the U.S. Market as they
22 would in the event of revocation, they would cripple U.S.
23 Cell and Module producers just when they have a real chance
24 at recovery.

25 The Domestic Solar Industry simply may not

1 survive revocation. Therefore, on behalf of SolarWorld
2 Americas and the U.S. Solar Industry, we ask the Commission
3 to find that revocation of the AD/CVD orders on solar cells
4 and modules from china would likely lead to the continuation
5 or recurrence of material injury to the Domestic Industry
6 and to keep the orders in place for another five years.

7 Thank you.

8 MR. BISHOP: Thank you, Ms. El-Sabaawi. Opening
9 remarks on behalf of those in opposition to continuation of
10 the orders will be given by Jonathan T. Stoel of Hogan
11 Lovells. Mr. Stoel, you have five minutes.

12 OPENING STATEMENT OF JONATHAN T. STOEL

13 MR. STOEL: Good morning, Chairman Johanson,
14 Commissioners and Staff, I hope you had a good Thanksgiving
15 weekend. I am Jonathan Stoel of Hogan Lovells representing
16 the respondents.

17 In keeping with the Thanksgiving holiday, I want
18 to open today's hearing by talking about ham and gravy. I
19 intentionally mentioned ham--and not turkey--because the
20 Commission is confronted in this sunset review with several
21 fundamental changes since your original investigations.
22 Each change favors the revocation of the anti-dumping and
23 countervailing duty orders on solar cells and modules
24 imported from China.

25 First, the dominant market for solar products

1 today is the China market. China's solar energy market has
2 exploded since the Commission's original investigations.

3 Chinese demand for solar products in 2017 was 53
4 gigawatts, or more than ten times the demand in 2012. In
5 fact, China's 2017 solar installations were far larger than
6 the next four markets--India, the United States, Europe and
7 Japan--combined. Importantly, for the Commission's analysis
8 in this sunset review, China's demand for solar products in
9 the foreseeable future will remain very strong -- Chinese
10 solar installations are projected to be approximately 40
11 gigawatts in 2018 and 2019.

12 Second, several other markets have emerged for
13 Chinese producers since the Commission's original
14 investigations. For example, India has become the second
15 largest destination for solar modules manufactured in China.
16 There is also strong demand for solar products in Southeast
17 Asia, Japan, Australia and South America. Furthermore, at
18 the end of August, 2018, the European Commission terminated
19 its trade restrictions on imports of solar products from
20 China. As a result, for the first time since December,
21 2013, the significant and growing European market for solar
22 products is now open to exports from China.

23 Third, the Chinese solar industry's manufacturing
24 operations and its export orientation have evolved since
25 your original investigations. Chinese manufacturers have

1 expanded their domestic operations in order to meet the
2 booming Chinese demand for CSPV products. In addition,
3 Chinese producers have globalized their manufacturing
4 operations to match the expanded demand footprint for their
5 products.

6 Finally, the role of Chinese imports in the U.S.
7 market has diminished significantly since 2015. Today,
8 South Korea and Malaysia are the largest sources of solar
9 cells and modules in the U.S. market. On the other hand,
10 imports from China account for a very small portion of the
11 solar panels that are deployed in the United States. In
12 2017, Chinese imports were less than 45% of their 2015
13 level, and they would have been immaterial absent the
14 effects of the Section 201 safeguard. Moreover, in year
15 2018, to date, Chinese imports accounted for less than 2% of
16 all imports of these products.

17 In sum, U.S. consumers of solar products no
18 longer rely on, nor require, imports from China to meet
19 their needs. As a consequence, any volume effects from
20 Chinese exports of CSPV products will continue to be de
21 minimis.

22 Let me now turn to the gravy. The market for
23 U.S. solar energy is strong today, as solar has become
24 increasingly price-competitive with other available sources
25 of energy. In 2012, only 9% of new electricity generating

1 capacity in the United States was solar, compared with 55%
2 in Q1 2018. U.S. installations of CSPV products peaked at
3 roughly 16 gigawatts in 2016 and then retreated to 10.5
4 gigawatts in 2017 due to uncertainty over the Section 201
5 safeguard and the Investment Tax credit. U.S. demand is
6 expected to be stable this year and then to increase
7 moderately in 2019 and 2020 as the industry adjusts to the
8 effects of the Section 201 safeguard tariff.

9 The gravy is even thicker for U.S. solar cell and
10 module manufacturers. This is because, leaving aside the
11 AD/CVD orders under review, the U.S. manufacturing industry
12 is protected by four separate import restraints: (1) the
13 30% ad valorem Section 201 safeguard tariff on all U.S.
14 imports; (2) the 25% ad valorem Section 301 tariff on
15 imports from China; (3) the AD/CVD orders imposed on solar
16 modules assembled in China and comprising third-country
17 cells; and (4) the AD order on solar products from Taiwan.
18 It is particularly important to the Commission's analysis
19 here that, for the foreseeable future, the Section 301
20 tariff means that exports from China will be at a very
21 significant competitive disadvantage with imports from other
22 sources.

23 These trade restraints will continue to provide
24 substantial protection to the U.S. industry manufacturing
25 solar products, causing higher prices in the U.S. market,

1 encouraging demand for U.S.-manufactured solar products, and
2 contributing to new investments and restructuring in the
3 U.S. solar manufacturing industry. You need look no further
4 than SunPower's acquisition of SolarWorld's Oregon
5 production facilities to see the gravy thickening.

6 In sum, the changes evident in the Commission's
7 record mean that the AD/CVD orders under review should be
8 revoked. Thank you.

9 MR. BISHOP: Thank you, Mr. Stoel. Will the
10 panel in support of the continuation of the anti-dumping and
11 countervailing duty orders please come forward and be
12 seated? Mr. Chairman, this panel has sixty minutes for
13 their direct testimony.

14 You may begin when you're ready.

15 STATEMENT OF TIMOTHY C. BRIGHTBILL

16 MR. BRIGHTBILL: Thank you. Chairman Johanson,
17 Commission, Staff, I'm Tim Brightbill for Wiley Rein, on
18 behalf of the domestic industry. I want to thank you for
19 your hard work on this investigation. We know how busy you
20 are. And I just want to begin by reviewing some of the key
21 facts and data from this investigation.

22 The good news is that the Commission has
23 investigated this industry now four times in the last seven
24 years. So much of what we cover today should sound very
25 familiar and is well-documented in the pre-hearing report.

1 Addressing the current state of the domestic
2 industry, as mentioned in the opening statement, the
3 industry has lost twenty-eight solar-cell and module
4 producers since 2012--these were documented in the Staff
5 Report, Tables 3-1 and 3-2--due to bankruptcy or closure.
6 Commission also recently concluded that the domestic
7 industry is seriously injured and suffering from
8 significant overall impairment. This is despite growing
9 demand for solar power. All of the industry's performance
10 indicators have declined significantly, including in 2017
11 and interim 2018. There is no question that the U.S. solar
12 manufacturing industry is vulnerable and injured.

13 There have been new investments in solar
14 manufacturing with these orders in place and the Section 201
15 tariffs. The domestic industry has a real opportunity for
16 recovery here that it has not had. There had been
17 announcements of more than four and a half gigawatts of new
18 cell and module capacity that is expected to come online in
19 the United States. These are some of the new capacity
20 announcements from a variety of companies and a variety of
21 locations nationwide. So this is something that has changed
22 and is a potential bright spot for the industry. But all of
23 this would be quickly threatened by revocation of the
24 orders.

25 Turning to conditions of competition, since 2012,

1 demand in the United States has increased and is expected to
2 continue to increase. I would note that a large amount of
3 the Staff Report data is business-proprietary, so we're
4 using some other sources, but the Staff Report is very
5 similar in terms of many of the things we're gonna show you
6 in this presentation.

7 So U.S. demand is strong, but the projections for
8 2018 and 2019 are fairly flat. This is not a market that
9 can readily absorb multiple gigawatts of dumped and
10 subsidized imports from China. Meanwhile, demand in China
11 has grown, but declined very sharply in 2018, as you can see
12 here. Note the scale here of gigawatts. The decline in
13 China is roughly the size of the entire U.S. solar market.
14 And you just heard Mr. Stoel say that demand is going to
15 stay at 10 gigawatts lower in China for 2018 and 2019.
16 That is a huge amount of available capacity to go into the
17 rest of the world.

18 Speaking of global overcapacity, the Commission
19 is very familiar with this phenomenon. You've seen it in
20 industry after industry where China's state policies and
21 subsidies lead directly to massive overcapacity and to
22 dumping with extremely harmful effects on U.S. industries.
23 Again, this has been well-documented in all four of your
24 investigations. China is by far the largest contributor to
25 this overcapacity and yet, Chinese producers continue to

1 increase their capacities, despite this oversupply.

2 Here again, you see Chinese overcapacity. The
3 Chinese capacity is equal to all, or exceeds all global
4 solar installations. Another way to consider this is that
5 China's overcapacity is several times larger than the entire
6 U.S. market.

7 Other conditions of competition, again, this will
8 sound familiar. Prices is a very important factor in
9 purchasing decisions, as demonstrated by this Staff Report
10 and prior Staff Reports. The U.S. market is very
11 attractive. It is growing. Even though U.S. prices have
12 declined, they're higher than prices in China, they're
13 higher than prices in the rest of the world. Competition in
14 this market is based on price-per-watt, as you're
15 well-aware.

16 With regard to the Section 201 remedies. These
17 were announced in January, 2018, and became effective in
18 February, 2018. With regard to sales, first of all, you've
19 got a two and a half gigawatt tariff rate quota on cells.
20 All of the cell imports under that threshold come in
21 tariff-free.

22 As we updated this as of yesterday, only 23.5% of
23 the quota had been filled for 2018. So no solar cells that
24 have come into the United States this year have paid the
25 tariff, not even close. Tariffs do apply on cells above the

1 quota level, and on modules, as you know, the tariffs are
2 30% in the first year. They decreased by five percentage
3 points each year and will reach 15% in the fourth year.

4 That being said, the tariffs are temporary. They
5 can be terminated early. There will be a midpoint review.
6 They can be not un-extended. And I would also note that, to
7 some extent, the effects of the tariffs have been blunted by
8 the decline in module prices that has occurred this year as
9 a result of the change in the Chinese government incentives.
10 It caused demand to crash.

11 A leading industry source predicts a 34% decline
12 in module prices this year. You will recall that the
13 domestic industry during the safeguards investigation asked
14 for a tariff based on cents per watt, rather than a
15 percentage tariff, precisely for that reason.

16 I'd also note that the Commission, in sunset
17 reviews, addressed the combination of dumping and 201 duties
18 before, and has found that tariffs like this can work
19 together to help stabilize the domestic market. We think
20 that's exactly the situation that exists here.

21 There are also Section 301 tariffs. They took
22 effect much more recently, 25% tariffs put in place as of
23 August of this year. I would just note that these tariffs
24 are very uncertain. They're set by the President, they can
25 be revoked by the President at any time. Companies can

1 request exclusions to them. The tariff levels are subject
2 to change and their duration is very uncertain.

3 So turning to the factors that you need to look
4 at for the sunset review, the likely volume effects upon
5 revocation, Chinese imports have remained at substantial
6 levels throughout your Period of Review. Despite the
7 antidumping and countervailing duties in place, U.S. prices
8 are higher than alternative markets. Chinese producers will
9 need an outlet for their massive overcapacity, and they do
10 face trade barriers in many of their other alternative
11 markets.

12 China has demonstrated an ability to ship very
13 large volumes in short amounts of time. They demonstrated
14 that during the 201 investigation last year. And, as
15 mentioned, the 201 tariffs would have limited effects if the
16 Orders were revoked on their own.

17 With regard to price effects, subject imports
18 have continued to undersell the domestic product even with
19 the Orders in effect. And importers and purchasers reported
20 in their questionnaires that they anticipate that prices
21 would fall if the Orders are revoked. So that's also in
22 your staff report.

23 And the Commerce Department expects dumping
24 margins as high as 250 percent, and also substantial subsidy
25 margins. That's what it found in its expedited reviews.

1 And just to illustrate the underselling that
2 Genusee continued underselling by China, which is the lower
3 blue line, despite antidumping and countervailing duties in
4 place. This is throughout the Period of Review.

5 Another way to look at this is Average Unit
6 Values for cells and modules. Those domestic AUVs fell
7 substantially for both cells and modules. It's further
8 confirmation of what would happen if the Orders were
9 revoked.

10 In terms of impact, the Commission has twice
11 found unanimously that imports from China have caused
12 material injury to the domestic industry. That was in 2012
13 and 2015. And of course there was the solar 201 finding
14 just last year.

15 The U.S. industry is highly vulnerable and
16 susceptible to material injury. There is now a real
17 opportunity for recovery, but even a modest volume of dumped
18 and subsidized imports would harm U.S. producers.

19 So again the U.S. industry has an opportunity to
20 recover. These Orders are critical to allow those
21 investments to take hold. Otherwise, significant volumes of
22 dumped and subsidized imports would surge into the market
23 and revocation would harm U.S. manufacturing.

24 I'll stop there and turn now to our domestic
25 industry witnesses, starting with John Boken, the CEO of

1 SolarWorld Americas.

2 STATEMENT OF JOHN BOKEN

3 MR. BOKEN: Good morning. I am John Boken, CEO
4 of SolarWorld Americas, Inc. For the last decade,
5 SolarWorld has been the largest solar manufacturer in North
6 America, with more than 40 years of experience in the
7 industry.

8 While this is my first time before the
9 Commission, SolarWorld has appeared here before seeking
10 relief from dumped and subsidized solar imports from China
11 and other countries.

12 I do appreciate the opportunity to be here today
13 to explain why the antidumping and countervailing duties
14 Orders on Solar Cells and Modules from China remain
15 absolutely critical for the U.S. solar industry.

16 I will start by noting that I am not a solar
17 industry expert. My experience is in restructuring and
18 turning around companies in a variety of industries. I was
19 hired as an advisor to SolarWorld in October of 2017, which
20 is right around the time that this Commission recommended
21 relief for the domestic industry in the Solar Safeguards
22 case.

23 I then became a board member of SolarWorld in
24 January of 2018, and became CEO effective May 14th of this
25 year.

1 I have worked on more than 75 corporate
2 restructurings throughout my career in a variety of
3 industries. I have certainly seen my share of troubled
4 companies and distressed industries. However, I can say
5 with certainty that I personally have never seen a situation
6 where imports from China and other countries have had such a
7 significant negative impact on an entire domestic industry
8 as they have had in this industry, solar cells and modules.

9 These should be boom times for the domestic solar
10 industry. The United States is installing solar energy at
11 an impressive rate. We are in the midst of a solar green
12 technology revolution. SolarWorld prepared very carefully
13 for this explosion in demand, spending tens of millions of
14 dollars to expand and upgrade its production facilities, and
15 was poised to take advantage of the growth in the U.S.
16 market.

17 I understand that several Commissioners, and many
18 members of their staff, have had the opportunity to tour the
19 facilities in Hillsboro, Oregon, as part of prior
20 investigations, and have seen these investments in action.

21 Among other steps, we have added a new 72-cell
22 module production line, built an extensive installer
23 network, and invested in cutting-edge monocrystalline
24 capability--the exact kind of solar cells that the market is
25 strongly demanding.

1 To assure customers that solar power is an
2 intelligent investment, SolarWorld was the first company in
3 the industry to offer a 25-year, and then a 30-year warranty
4 on our products. We have done everything possible to
5 establish ourselves as the industry leader in the United
6 States.

7 But--at least until trade relief was imposed--we
8 were unable to reap the benefits of our investments because
9 of unfairly traded imports. For example, I mentioned the
10 new investment in the Hillsboro facility to produce 72-cell
11 modules. Even with demand in the U.S. surging, we were
12 never able to operate this production line at anywhere near
13 full capacity. Import volumes have been too high and
14 prices are simply too low for us to compete.

15 The import surge resulted from the severe global
16 overcapacity in solar manufacturing, principally centered in
17 China and heavily subsidized by the Chinese Government.
18 Chinese overcapacity and the surge in U.S. imports led to a
19 total collapse in U.S. solar prices in recent years. Solar
20 prices have now become completely--or totally decoupled from
21 raw material costs as producers in China tried frantically
22 to keep all this capacity in production.

23 SolarWorld struggled for years to compete with
24 unfair imports, especially those from Chinese producers.
25 The company's former corporate parent, SolarWorld AG in

1 Germany, had to file for insolvency as a result of these
2 market pressures.

3 Even one of the oldest and most respected solar
4 producers in the world cannot compete with the Chinese
5 Government in a global race to the bottom. But these trade
6 remedy orders, as well as another set of orders in the Solar
7 II case and recent safeguard duties, were instrumental in
8 SolarWorld Americas' survival. Without these Orders, the
9 volumes of Chinese imports would have been significantly
10 higher, and their prices would have been substantially
11 lower.

12 And now with the discipline of the Orders in
13 place, the manufacturing assets of SolarWorld were acquired
14 in October--less than two months ago--and are now known as
15 SunPower Manufacturing Oregon, who you will also hear from
16 today.

17 SunPower is in the process of upgrading the
18 Hillsboro, Oregon, facility and is transferring production
19 equipment from Mexico to the United States. I am extremely
20 encouraged by the level of activity and investment going on
21 right now as we speak. With continuing trade relief, this
22 acquisition will allow SunPower Manufacturing Oregon to
23 continue manufacturing solar products in the United States.

24 I can tell you that while it will not be easy,
25 these domestic solar manufacturing operations have a real

1 opportunity not just to survive but to re-emerge as an
2 industry and global leader.

3 A variety of other companies have also recently
4 announced investments in new U.S. solar and module
5 manufacturing facilities. For example, new module
6 production facilities are being planned in Alabama, Florida,
7 and Georgia, as well as capacity expansions in Texas and a
8 shuttered plant restarting in Minnesota.

9 We are seeing the beginning of a real recovery
10 for this important 21st Century industry, but if these
11 orders were revoked, Chinese solar imports would likely
12 overtake the U.S. market once again and any chance for
13 industry recovery would be destroyed.

14 Indeed, while recovery is on the horizon, the
15 domestic industry remains highly vulnerable to injury if the
16 Orders are revoked. While the Orders have allowed
17 SolarWorld Americas to get through this difficult period,
18 the Hillsboro manufacturing operations remain in a
19 precarious state.

20 Without these Orders, there will be nothing to
21 stop Chinese producers from sending higher volumes of dumped
22 and subsidized solar products to the United States. While
23 Chinese cell and module producers have massive excess
24 capacities, the Chinese Government is reducing installation
25 incentives and slowing solar demand in China.

1 At the same time, the U.S. solar market is one of
2 the most attractive markets in the world. If the
3 antidumping and countervailing duty Orders were revoked, it
4 is highly likely that Chinese producers would immediately
5 increase their shipments here, and U.S. imports from China
6 would skyrocket.

7 Given current market conditions, any increase in
8 Chinese solar imports would immediately impact the Hillsboro
9 operations and quickly devastate the industry once again.

10 The solar safeguard duties imposed this February,
11 while helpful and also extremely important for the domestic
12 industry, are not sufficient alone to prevent a renewed
13 surge in Chinese solar imports. The safeguard tariffs are
14 in place for a limited amount of time and will decrease by
15 five percentage points each year.

16 The first 2.5 gigawatts of solar cells annually
17 are completely exempt from the tariffs. In other words, the
18 only trade relief that we have on solar cells is the
19 antidumping and countervailing duty cases. While the
20 safeguard remedies are helpful, they do not give our
21 industry the same level of relief as the antidumping and
22 countervailing duty Orders under review. These Orders are
23 fundamental aspects of the trade relief benefitting U.S.
24 solar producers.

25 As a result, on behalf of SolarWorld Americas I

1 urge the Commission to leave in place the antidumping and
2 countervailing duty orders on solar cells and modules from
3 China. Together, we can help ensure the recovery of the
4 U.S. solar manufacturing industry. Thank you.

5 STATEMENT OF THOMAS STARRS

6 MR. STARRS: Good morning, Chairman Johanson,
7 Commissioners, and Staff. My name is Tom Starrs, and I am a
8 member of the Management Board of SunPower Manufacturing
9 Oregon, LLC. I am grateful for the opportunity to appear
10 before the Commission today. Thank you for having me.

11 SunPower Manufacturing Oregon has existed for
12 only a couple of months. It is the entity created to
13 operate the manufacturing assets in Hillsboro, Oregon, that
14 SunPower Corporation recently acquired from SolarWorld
15 Americas.

16 The Hillsboro facility is part of SunPower's
17 investment in American manufacturing. I want to emphasize
18 that, although I work for SunPower Corporation and have
19 other professional responsibilities such as serving on the
20 Board of our National Trade Association, I am here today on
21 behalf of our new manufacturing entity and not in either of
22 those other roles.

23 We filed prehearing submission, and my brief
24 testimony will track it closely.

25 In due course, the manufacturing activity at

1 Hillsboro will evolve under new ownership. The Commission's
2 sunset determination, however, must focus on the situation
3 as it exists today, which is, in all pertinent respects, as
4 it has been during the five years of Solar One Import
5 Relief.

6 At present, the same SolarWorld branded products
7 are still being made on the same equipment by substantially
8 the same workforce. The economic drivers affecting this
9 business are substantially similar to what they have been
10 over the last five years. And remedial measures that offset
11 the dumping and subsidization of crystalline silicon
12 photovoltaic products originating in China remain necessary
13 to prevent the business from experiencing material injury.

14 We are excited to be now part of the domestic
15 CSPC solar manufacturing industry. The government cares
16 about the health of the industry, and we're glad that it
17 does. Our intention is to make production at Hillsboro
18 viable and sustainable without the need for AD CBD relief.

19 Today, however, for Hillsboro--and we believe
20 also for the U.S. industry more broadly--the AD CBD relief
21 remains necessary. In this sunset review, the record
22 evidence on likely volumes, price effects, and overall
23 impacts of subject imports clearly points to an affirmative
24 determination.

25 Thank you for your attention, and I look forward

1 to your questions.

2 STATEMENT OF DR. SETH KAPLAN

3 MR. KAPLAN: Good morning, I'm Seth Kaplan of
4 International Economic Research, on behalf of Solar World,
5 to analyze the economics of this industry; particularly,
6 with respect to the revocation.

7 My presentation is divided into three parts.
8 The first looks at why we're even here today. The second
9 reviews the conditions of competition the Commission has
10 found in past investigations and in the current
11 investigation. And finally, I'll trace through the effects
12 of those conditions on revocation.

13 The reason we're here today is that China has an
14 industrial policy which has targeted renewable energy and
15 solar energy, in particular. The government has targeted
16 the solar industry since at least 2007. The development of
17 the industry in China was not organic. The technology was
18 obtained both legally and illegally from other countries and
19 the government over this time period has continuously
20 intervened to keep the Chinese industry viable, which has
21 resulted in massive over capacity.

22 First, with respect to their industrial policy
23 -- I'm pointing it at the screen rather than the computer,
24 so that has now been solved.

25 In all three of the most recent five-year plans,

1 the solar industry has been highlighted as an industry which
2 is important to the government. In the 2006 to '10 plan, it
3 said that we will give priority to research in developing
4 high-performance, low-cost solar photovoltaic cells and
5 technologies to use them in 2011 and identified solar as
6 strategic emerging industry. In 2016, it said we will
7 continue to give impetus to the development of wind and
8 voltaic power.

9 What is this? This has resulted in the massive
10 expansion of the Chinese industry. I've kept the gigawatts
11 confidential since it came from a confidential report, but
12 your own record shows a massive expansion in the Chinese
13 industry. China's newest goal is made in China 2025 where
14 it did mention green energy as something to target, but it
15 also mentioned that manufacturing, as a whole, is the pillar
16 of the economy, the foundation of the country, the tool of
17 transformation, the basis of prosperity.

18 You've seen this in other industries. This
19 industry is no different, except now the targets are the
20 most advanced industries and technologies in the world.
21 This is a continuation of the program began before 2006 and
22 it's continuing at least through the next seven years.

23 Let me now turn to the conditions of
24 competition. Subject imports and the domestic-like product
25 are highly fungible and compete on price. The Commission

1 has found this repeated times. There's significant access
2 and divertible capacity in China. The U.S. is an attractive
3 market. There are no viable third countries to absorb
4 Chinese excess capacity. And as stated, the U.S. industry
5 has organized and re-organized and is posed for growth with
6 new entrance.

7 In fact, the conditions of competition is much
8 like the actual analysis that occurs and so some of this
9 will be repeated as we move to injury and the effects of
10 revocation. And what we see is the domestic industry is
11 vulnerable, that there's massive excess and divertible
12 capacity, that the United States is the preferred market,
13 both because of its large and increasing demand and higher
14 prices and that other U.S. trade actions do not remove
15 domestic vulnerability.

16 With respect to our vulnerability, the financial
17 performance was poor even over the period of review. The
18 industry is just beginning to recover due to the 201 remedy
19 and the Order in combination. The currency devaluation in
20 China and increasing input costs exacerbate the domestic
21 vulnerability. As I'm sure you've read in the paper, the
22 Yuan has depreciated significantly, which has offset some of
23 the 201 duties and has affected the dumping Orders as well
24 and such that the safeguards in Section 301 do not remove
25 the domestic vulnerability from subject imports.

1 Domestic performance over the POI demonstrates
2 this. Twenty-eight firms went bankrupt or were terminated
3 since 2012 and all the performance indicia have declined and
4 that sales value, capacity utilization, production,
5 operating profits and employment, every measure of domestic
6 profitability was negative in 2017 and the first half of
7 2018.

8 Nonetheless, the industry is now starting to
9 reinvest and turn around. The baby is in the crib, as it
10 were, as you shall see from the new entrance to this
11 industry and the effects of the combination of the safeguard
12 actions and the dumping action.

13 Recent investment would be rendered uneconomic,
14 however, if these Orders were revoked. And there are these
15 new facilities and expansion of existing facilities and
16 restart of facilities exactly what the Commission
17 anticipated when they put the 201s on top of the existing
18 Orders from China. This is time to let these companies
19 succeed after the imports have destroyed 28 other companies.

20 Other U.S. trade actions do not remove the
21 domestic vulnerability. Section 301 is discretionary and
22 temporary and it seems to be under continual negotiation;
23 whereas, if this action, if it were taken, would extend the
24 Orders for another five years with certainty one with annual
25 reviews. Similarly, with global safeguards are subject to

1 review and potential revocation.

2 I've testified, I think, in four of the six
3 safeguard actions, including broom corn brooms and wheat
4 gluten and others and there is no certainty of the existence
5 and continued existence of the Orders and further, they
6 decline every year. And given what's going on with the
7 exchange rate and other issues, there is great concerns that
8 those alone would not be effective and I hold that
9 agreement. They are two actions that work together and the
10 foundation of those actions is the dumping Orders. Further,
11 safeguards on cells is not currently binding and as such the
12 Solar I and II Orders are the only effective action
13 currently facing the cells.

14 Respondents acknowledge adequate supply in the
15 AD and CVD Orders. These were in their declaration. The
16 anti-dumping and countervailing duty orders on imported
17 solar cells and modules from China do not impact material
18 impact recurrence current and future business operations.
19 And solar -- Canadian Solar System tends to continue
20 sourcing to the U.S. market from locations other than
21 China, so the two participants here today said they could
22 deal with this. We need both of these to remain competitive
23 and to grow the industry.

24 Now, let's turn to capacity. There's
25 significant excess in divertible capacity in China, 34

1 gigawatts of excess capacity. The U.S. industry puts in
2 about 12 a year. More than three times the volume of total
3 U.S. solar installations in 2017, more than a third of
4 global solar installations in 2017, they have enough
5 capacity to have supplied more than 80 percent of the cells
6 and all of the modules for every solar installation on Earth
7 in 2017. They are enormous. The excess capacity is
8 enormous. Their demand is large, but the excess capacity
9 swamps the rest of the world.

10 So, in spite of their increase in demand,
11 they've over built and over built -- and you've seen this in
12 manufacturing industries again and again in China. You saw
13 this graph in the 201 investigation. The red circle that is
14 China has gotten bigger since then. It dominates the world
15 market all because of industrial policy. Their policy is
16 export oriented. While they have increased internal
17 consumption, they still have enormous amounts of excess
18 capacity and are building it well beyond their internal
19 consumption.

20 The government has reduced supply side supports,
21 which has increased their excess capacity, reduction of
22 those supports only exacerbate the global supply glut. And
23 in '18 the government in China reduced solar fees and
24 tariffs and kept new distributed solar projects and employed
25 cap quotas that were exhausted within the first five months

1 of the year, once again, massive excess capacity many times
2 U.S. consumption.

3 The installations in China declined in 2018, as
4 shown in the graphs, and those declines, as was pointed out
5 by Mr. Brightbill, are in excess of U.S. demand. That is on
6 top of the already existing excess capacity, which was three
7 times U.S. capacity. So, the question is are they three
8 times bigger or four times bigger than total U.S.
9 consumption -- massive capacity.

10 Third country import restraints exacerbate this.
11 Anti-dumping duties in Canada, anti-dumping duties in
12 Turkey, and safeguards duties in India, the country they
13 pointed at as the release valve for this excess capacity.
14 In fact, it is not. Take a look at the supply demand
15 balance on a country-by-country basis. You could see China
16 has massive excess capacity and the other countries they
17 point to many of them have excess capacity as well. Who has
18 excess demand -- India, Japan, Turkey, and the United
19 States? Where is it going to go? Well, Canada has orders.
20 India has orders. Turkey has orders and the U.S. has
21 orders.

22 If you remove the orders it is Japan and the
23 United States that are the only markets, other than small
24 excess -- only other markets that need it. So, you know
25 reenacting my 201, you see that those are the potential

1 sources to absorb that excess capacity. You notice that
2 altogether they're not anywhere near the Chinese excess
3 supply, but, in fact, those are closed off to them. If the
4 "X" was removed from the United States, it would be the
5 single largest place in the world with demand to absorb that
6 massive Chinese excess capacity.

7 How about future excess capacity? What does
8 this say -- the stock market says about the future? Well,
9 the prices of these stocks have declined. They see what
10 future excess capacity is going to bring in terms of
11 earnings and that is going to look like the U.S. companies
12 that are starting if the relief is not continued, future
13 excess capacity trouble at publicly-owned Chinese firms.
14 Luayang Green Energy indicates financial distress. They
15 need outlets. They need revenue.

16 And as the Commission has noted in many past
17 investigations when firms are stressed they need cash and
18 when they need cash they sell product and when they sell
19 product for cash they don't care about the price. They've
20 got to move the volume. They've got to keep the place open.
21 They've got to get cash on hand to support their continued
22 operations.

23 Finally, I want to return to capacity. I want
24 you to note that the current review there were a lot of
25 subject foreign producers that did not respond. The record

1 is incomplete with respect to the Commission's
2 questionnaires of foreign excess capacity. The staff
3 reported that, as it always does, the responses, but read
4 the text. They tell you what percent of actual capacity
5 they think is covered by the questionnaire responses and it
6 is not a pretty sight.

7 The Commission was disked by the industry. They
8 said, no, when they got their questionnaire responses when
9 they even said yes in the 201 a while ago. You should take
10 this into account. Further, when you look at Respondents'
11 briefs and economic submissions, note that they use the
12 numbers that are -- often use the numbers that are radically
13 undercounted. I don't understand why they do this. The
14 staff themselves said it's radically undercounted, so use
15 the reported numbers, use the third party numbers.

16 I have a Thanksgiving story. I have a
17 two-year-old great niece and she plays the game all the kids
18 play. She covers her eyes. I'm not there. She opens them
19 and a huge smile, suddenly I'm there, but she knows that I'm
20 there all along. The idea of reporting capacity based on
21 nine responses instead of the industry makes me think that
22 they that when they cover their eyes they really do
23 disappear. This capacity is gone forever. It exists. It
24 is in your report. It is extensive and it is the
25 foundation for your previous opinions. Please look at the

1 staff report and please look at the third-party numbers to
2 understand the excess capacity.

3 Now, is the U.S. a highly attractive market?

4 Yes, large market, forecasted growth, high prices, and with
5 revocation these factors will incentivize the imports.

6 Quickly, the United States is the world's second
7 largest market, accounting for 11 percent of installations.
8 Demand is expected to be strong with 23 gigawatts in the
9 pipeline. Firms responding to Commission questionnaires
10 expect increase demand to continue. We are the target.
11 U.S. installations are expanding. This is a good market for
12 the Chinese. U.S. high prices are attractive. As you could
13 see from the blue line, which is the U.S. module prices,
14 they remain above the global blended module price and the
15 Chinese tier one price. Once again, demand and higher
16 prices we are the target. Those price differentials will
17 collapse should the Orders be revoked.

18 Substantial underselling, even with the margins
19 -- your own staff report show significant imports over the
20 period of review and underselling by the Chinese with the
21 Orders in place. Imagine if the Orders were not in place.
22 Those margins would increase. The devaluation of the China
23 Yuan further incentivizes exports to the United States.
24 That Yuan is not a free float. The devaluation in the Yuan
25 was planned by the Chinese Government and central bank and

1 it has affected the competitiveness of Chinese products and
2 it has undermined the actions taken by the Commission, which
3 would be further undermined should the revocation occur.

4 Subject imports were significant during the
5 period of review. And finally, the excess capacity has lead
6 to surges. This is the first and second half of 2017. This
7 is not an internal combustion car. There is no lag. This
8 is an electric vehicle. You step on the accelerator and the
9 torque is there and off it goes. In half a year, they
10 increased imports from 3.8 percent of imports to 22 percent
11 of imports, from 88 to 1,382 megawatts. Should the Orders
12 be revoked you could expect a very, very quick response from
13 the Chinese industry, the type of response that resulted in
14 the bankruptcy and closures of 28 companies during the
15 previous period.

16 Our conclusion is that the products are highly
17 substitutable, that the subject producers have both the
18 capacity and incentive to send it to the United States.
19 They have significant excess capacity and the United States
20 is a large, attractive market with higher prices. The
21 arbitrage will occur. The Commission has adopted this
22 methodology for many years now and the economics are sound.
23 Excess capacity abroad and low prices in the United States
24 is a recipe for disaster should the Order be removed. It is
25 still vulnerable. The industry is just recovering and the

1 global safeguard actions and the 301 actions do not prevent
2 a recurrence of material injury. That concludes my
3 presentation. Thank you.

4 MR. BRIGHTBILL: That concludes the domestic
5 industry presentations, so we'll hold any time left for
6 rebuttal and we're happy to answer questions. Thank you.

7 CHAIRMAN JOHANSON: Thank you all for appearing
8 here today. We will begin Commissioner questions, with
9 Commissioner Schmidtlein.

10 COMMISSIONER SCHMIDTLEIN: Okay, thank you very
11 much. I'd like to thank all the witnesses for being here
12 today. As you mentioned, we have had several hearings on
13 solar products, so we're somewhat familiar with it. So, I'm
14 going to jump right in with a question and probably this is
15 for you, Mr. Brightbill, or anyone on the panel if you so
16 think is more appropriate. How does the Commission find
17 that competition is based on price, which is what you argue?
18 And that barriers in other countries will limit imports
19 into those countries for the Chinese, but the 201 and the
20 301 tariffs, which this year equal an additional 55 percent
21 on solar products coming into the United States will not
22 deter imports from China in terms of volume and will not
23 affect the price?

24 MR. BRIGHTBILL: Sure, I can start and would be
25 happy to have the industry witnesses answer as well.

1 I think the point that we're making with regard
2 to the 201 and 301 tariffs is that these things are
3 complementary. The anti-dumping and countervailing duties
4 are very important to this industry. The safeguards duties
5 are also very important to this industry, but the
6 fundamental differences are some of the things that we
7 started to highlight in the presentations. And in
8 particular, the temporary nature of 201 and 301 duties as
9 opposed to the anti-dumping and countervailing duties which,
10 if extended, rather than revoked the industry can count on
11 for a longer period of time.

12 So, again, on the 201 front you have no tariffs
13 that are currently applied to cells because the amount of
14 cells coming in is well below the quota. There is going to
15 be a decline by 5 percentage points every year, so as of
16 February the 201 duties will be down to 25 percent and again
17 it won't even apply to cells at all. These are temporary.
18 There will be a mid-term review conducted here by the
19 Commission and we've also see again that the 201 duties are
20 limited, to some extent, because they're on a percentage
21 basis with pricing falling and with the currency effects
22 are less than were expected.

23 Similarly, on 301, temporary in nature, if
24 anyone thinks they can predict what this President and this
25 Administration will do with regard to the 301 tariffs that's

1 certainly not something that the industry can count on.
2 Companies can request exclusions from the 301 tariffs and so
3 I think those are some of the main points and some of the
4 reasons why the emphasis has to be on the AD/CVD duties.

5 COMMISSIONER SCHMIDTLEIN: So, in a sunset
6 review we're looking at the reasonably foreseeable future,
7 right? And right now we have the 201 that's in place for
8 four years. We know what it is. As you said, there is a
9 mid-term review. It hasn't been conducted yet, but as it
10 stands today that's in place and we know what the schedule
11 is. The 301 is in place, right? The proclamation indicates
12 that it's four years, I think, and will continue unless a
13 U.S. industry requests that it be terminated, absent other
14 action by the President, as you mentioned is discretionary,
15 right? So, as of today it's in place under the terms of
16 the proclamation for at least four years, right?

17 So, if we're looking at the reasonably
18 foreseeable future for us to not take those tariffs into
19 account what would we say? What would we say in the opinion
20 that even though these things are in place -- I mean what's
21 the best evidence on the record, in other words, that these
22 things are not going to be in place in the reasonable
23 foreseeable future?

24 MR. BOKEN: Commissioner, to add one thought as
25 it relates to the 301 and then Mr. Brightbill can answer the

1 question that the 301 is a bit of a double-edged sword. In
2 the solar manufacturing industry while there are duties on
3 imports there are also duties imposed on some of our
4 imported raw materials and products and so I wouldn't go so
5 far as to say they absolutely offset each other, but it's
6 unclear that the 301 provides any net benefit. If anything,
7 it certainly does increase the cost of our manufacturing of
8 the product here in the U.S.

9 MR. BRIGHTBILL: I would just as far as what you
10 would say for the reasonably foreseeable future I think on
11 Section 301 we're in uncharted territory as far as these
12 tariffs and actions. We don't know what's going to happen
13 with this President and this Administration and it's not
14 something that the industry can count on by itself when it's
15 making these investments.

16 As far as the 201 duties, I would just point, as
17 we did our brief, as to what you've addressed in sunset
18 reviews like the plate case in 2003 where you had
19 overlapping AD/CVD duties and 201 duties and you found that
20 the temporary relief afforded 201 on imported steel products
21 would provide some restraint, but it's going to be reduced,
22 scheduled to be further reduced, and therefore the
23 restraining effects will diminish considerably in the
24 reasonably foreseeable future. We think that the same thing
25 applies to this situation.

1 COMMISSIONER SCHMIDTLEIN: So, in your
2 experience -- and maybe one of the industry witnesses can
3 speak to this and we'll certainly ask the Respondents' panel
4 as well -- the tariffs are not going to affect the price of
5 imports coming in? So, let's say it doesn't deter the
6 volume. Is your argument that it's not going to have any
7 effect on the price of imports from China?

8 MR. BRIGHTBILL: Well, I think for that you look
9 at what's happened with the AD/CVD Orders in place where
10 underselling is continued. We don't know of Chinese
11 producers are absorbing tariffs. To some extent, they
12 probably are. Would they absorb these to the same extent?
13 I don't know that you have to forecast, as a Commission,
14 exactly what the price effects will be going forward. But
15 you can find and should find that the AD/CVD Orders are
16 important and the safeguard duties are important and that
17 taking away you know as soon as next February the combined
18 AD/CVD duties will be greater than the safeguard duties and
19 particularly, in a case where there are no duties whatsoever
20 on solar cells. So, I think those are the findings that you
21 can and should make.

22 MR. BOKEN: Just one or two thought to add. I
23 will say that our experience in over 2018 since the 201 has
24 been in place prices have decreased somewhat and that's too
25 small of a test period for me to make any final conclusions

1 on the effectiveness of 201, but it think the evidence so
2 far suggests that it hasn't resulted in the ability to
3 maintain or allow for improved prices. It's gone in the
4 other direction.

5 Now, a lot of other factors come into play. Mr.
6 Kaplan went through what's happening with China capacity and
7 their policy and that certainly we saw an impact on pricing
8 when they made some policy decisions about their fee-in
9 tariffs, so it's undetermined at this point, but I think at
10 the evidence at this moment shows that pricing has decreased
11 somewhat from when the 201 Orders were put in place.

12 COMMISSIONER SCHMIDTLEIN: But the volume from
13 China has gone down in the interim, so are those price
14 decreases -- are you saying those are the result of
15 something else?

16 MR. BOKEN: I'm hesitant to apply it to any
17 particular factor. And Mr. Kaplan would know better than me
18 about the last half. Maybe that data isn't in yet on 2018
19 on Chinese imports and so we're kind of dealing with a
20 real-time environment here.

21 COMMISSIONER SCHMIDTLEIN: Right.

22 MR. BOKEN: Where prices have decreased and we
23 don't have enough external data on Chinese imports to know
24 how much is attributable to that in the last six months.

25 COMMISSIONER SCHMIDTLEIN: In the last six

1 months, but the first six months when the 201 went in place
2 in February, right, and so we're looking at up until the end
3 of June and we see volume having dropped off from China by a
4 fair amount.

5 Mr. Kaplan, do you want to address -- is that a
6 result of the 201?

7 DR. KAPLAN: The press has reported that there
8 was a massive influx at the end of '17 to rush to the border
9 in anticipation of a potential 201, so that overstocked the
10 market. The prices were really low. They undersold. When
11 the market sorts itself out there's no question that the
12 decline in Chinese capacity usage because of their removal
13 of their tariffs and price supports internally are going to
14 suppress prices, including Chinese prices. So, you can
15 anticipate Chinese prices will fall significantly based on
16 the increased amount of excess capacity due to the actions
17 in third markets and due to their own excess capacity that
18 they'll decline in the exchange rate.

19 You know I would say the other part of your
20 forward-looking nature should anticipate what the Chinese
21 have done and will do based on what's happened with their
22 internal demand, the amount of excess capacity they build
23 out, what's happened to their exchange rate and that's why
24 there's a belief among all the executives in this industry
25 that are here today and the other new startups that without

1 these Orders prices would fall.

2 The Commission's own record said there would be
3 a significant price decline should the Orders be revoked, so
4 all the experts feel that the channels that would drive
5 these prices lower are present and I've just gone over some
6 of them. Is that helpful?

7 COMMISSIONER SCHMIDTLEIN: Thank you.

8 MR. SZAMASSZEGI: Just very quickly, the other
9 thing you have on the record is that we have AD margins fro
10 a large part of China that are prohibitive, so that's
11 something to keep in mind. If those go away, the actual
12 reduction of protection is going to be quite large.
13 Probably larger than what you're getting out of 301. And as
14 Mr. Boken said, the 301 is a double-edged sword because
15 input costs will rise.

16 COMMISSIONER SCHMIDTLEIN: Okay, I appreciate
17 that and we'll come back to that in my second round.
18 Thanks.

19 CHAIRMAN JOHANSON: Commissioner Kearns.

20 COMMISSIONER KEARNS: Yes, thank you for all the
21 witnesses for being here today and we appreciate your
22 testimony.

23 To pick up on a question that Commissioner
24 Schmidtlein asked, I mean when talking about the 201
25 tariffs, the 301 tariffs, and I'm hearing you all say we

1 can't rely on that because it's temporary. The 301 is
2 uncertainly. There's a 2.5 gigawatt exemption for cells.
3 301 is a double-edged sword. I don't hear anyone saying
4 that the tariffs are insufficient to address unfairly
5 traded imports from China. Is that your view? I mean if
6 the 201 tariffs were permanent, if 301 were permanent, if
7 there were no exemption is it your view that that would be
8 sufficient? Because I'm trying to figure out should we be
9 looking at dumping margins and comparing it to price
10 undercutting in the pricing data and so forth, but I don't
11 hear you all arguing that. I hear you all just saying
12 there's kind of too many holes in the 201 and 301 remedies
13 for us to rely on that to protect the U.S. industry from
14 unfairly traded imports.

15 MR. BRIGHTBILL: I'll start. I mean, yeah, our
16 view is that, yeah, the 201 tariffs are declining and are
17 temporary in nature. The 301 tariffs are even less -- we're
18 even less able to rely on them. If you're saying that their
19 would be -- I'll give some the thought to the question of
20 whether or not if these other things were permanent what
21 affect that would have, but we view the remedies that are in
22 place today as complementary and we view the AD/CVD duties
23 as the foundation of the relief and I think that's the way
24 the industry views it. It's what these investments were
25 based on. And maybe Mr. Starrs can address that. He was

1 going to do it in the prior question, but that's our view.

2 MR. STARRS: I just want to reiterate a couple
3 of points following up on prior comments. With respect to
4 building on what Mr. Boken said, I think the market dynamics
5 are complicated, but fundamentally, what we're seeing as
6 domestic producers and competitors is prices are declining.
7 So, there are probably a myriad of reasons for that, but
8 that's the fundamental competitive truth that we're facing.

9 And to reinforce something that Mr. Kaplan said,
10 I do think that the influx of imports in 2017 and the second
11 half of 2017, in particular, almost certainly explains, in
12 part, the lower level of imports in 2018 since the data seem
13 to clearly suggest that there was inventorying of those
14 imports to carryover into the period of 201 proclamation
15 being put in place.

16 And to reinforce what Mr. Brightbill just said,
17 you know I'm not the expert in this area, of course, but it
18 seems to me that the anti-dumping duties are really
19 targeting something substantially different. They're
20 targeting China specifically because of the improper dumping
21 and subsidization associated with the Chinese producers
22 specifically and that's different from the intention
23 certainly of the 201 safeguard action. Okay.

24 COMMISSIONER KEARNS: Thank you. Mr. Kaplan?

25 MR. KAPLAN: Thank you, Commissioner. I think

1 the first point is, is when we were here for the 201 we
2 asked for a higher duty than was ultimately put in place.
3 So as a group we thought that the duties that were put in
4 place should be greater than they were for effective relief
5 for the existing industry at the time, which you see has now
6 changed hands--something I said would happen if the tariffs
7 were not at the higher level.

8 They are operating, though, and they are moving
9 equipment here, and other people are entering. So there is
10 that vulnerability. We've seen the knife edge cut the wrong
11 way in some cases, already, given who the participants were
12 here, how long ago were we here? These are different
13 executives. So that's the first point.

14 Even with the 201 and the Orders in place, you
15 did have reorganization of the industry. It is hopefully
16 coming around.

17 Second, the exchange rate has undercut some of
18 that relief, and the kind of eating of the costs in China,
19 which often uses their industry as a jobs program and as a
20 political tool rather than a profit-maximizing firm basis,
21 has been shown by repeated interventions of China when the
22 market has collapsed worldwide. They reorganized the
23 Chinese industry twice. They intervened in the polysilicon
24 market.

25 So the notion that you're looking at a 25 percent

1 tariff on top of a competitive U.S. firm in a capitalist
2 environment with shareholders that are footing the bill
3 should the company go under and no government intervention,
4 is really not the appropriate way to analyze it. I tried to
5 in the first part of the report talk about the importance of
6 this industry to the Chinese Government and its operation.

7 I think Mr. Szamosszegi's point about the amount
8 of Chinese industry covered by the Dumping Orders at a
9 prohibitive level means that the Dumping Orders went away;
10 that suddenly a significant amount of additional capacity
11 that is now restricted from entering the market with 200
12 percent duties will now be subject to duties at a much lower
13 level.

14 I think Mr. Brightbill's point that an ad valorem
15 tariff on a declining price means a smaller actual duty,
16 right? Ten percent on a dollar is ten cents. Ten percent
17 on a quarter is two-and-a-half centers. And that natural
18 decline is occurring. And the way the market functions, it
19 seems to be that that absolute price difference is
20 significant. That is, its shrinking creates further
21 vulnerability to the domestic industry.

22 Given what's happened and the way they've
23 behaved, you can imagine how nervous everyone would be if
24 something that might be removed in several months was
25 removed. If something that has been put out for negotiation

1 for removal in the 301, even though it hurts input costs
2 already, what would that do to new investment? What would
3 that do to investors in a nascent industry that's trying to
4 rebuild after a 201.

5 Our view is, once again, they're complementary
6 and that both are needed, and that vulnerability to the
7 industry indicates that without them you will not get the
8 result you want.

9 COMMISSIONER KEARNS: Okay, thank you.

10 MR. KAPLAN: Thank you.

11 COMMISSIONER KEARNS: And you all have focused a
12 lot on imports from China in the second half of 2017 and how
13 they increased and were inventoried in expectation of the
14 201 relief.

15 What about the first half of 2017? It looks to
16 me like imports from China were at their lowest level in at
17 least four years, and a tiny fraction of what they were the
18 year before. Why were imports from China as low as they
19 were in the first half of 2017?

20 MR. BOKEN: John Boken from SolarWorld. I think
21 that's a direct result of your prior comment. The term that
22 was used, I believe, was that product was front-loaded in
23 late 2017 in advance of a potentially adverse outcome on the
24 201. And there was only so much capacity to hold that
25 inventory in the distribution channels. So that it took a

1 while for that product to work its way through the market
2 such that in 2017--or, excuse me, early 2018, there was not
3 as much demand to be satisfied.

4 COMMISSIONER KEARNS: I'm sorry, I don't know if
5 I was clear, but the first half of 2017 imports from China
6 were very low relative to I think I might have said 2017,
7 but relative to 2016. So why--there's a big increase in
8 inventory in the second half of 2017, but imports before
9 that were really low from China.

10 MR. BOKEN: Sorry, I had the years wrong, so I'll
11 let Tom answer that one. Thanks.

12 MR. STARRS: This is Tom Starrs from SunPower
13 Manufacturing Oregon. I'm partially speculating, but my
14 best guess as to the cause for that reduction in imports in
15 the first half of 2017 is essentially a spillover effect
16 from 2016, which was a very, very large year for the U.S.
17 solar industry. As I think we've touched on previously, and
18 I'm sure the staff is well aware, the 2016 was--the market
19 was driven by other factors--in particular, the anticipated
20 expiration of what I like to call the other ITC, the
21 Investment Tax Credit on solar. Because that credit was
22 expected to expire at the end of 2016, there was a whole lot
23 of market growth, essentially projects installed in 2016.

24 As it turned out, the Investment Tax Credit was
25 extended. But that's still, because of the lag effects,

1 that still resulted in many, many projects being built in
2 2016, and there's been a significant market slowdown
3 especially in the first half of 2017.

4 COMMISSIONER KEARNS: Okay, thank you. Maybe
5 posthearing you guys can speak more to this. I take the
6 point. You made me--your answer, Mr. Starrs, made me take a
7 look at nonsubject sources. And you do see a big drop from
8 2016 to 2017 for nonsubject, but my quick look at this
9 suggests maybe not nearly as much as you do with China. So
10 any other thoughts you have on that.

11 I'm sorry?

12 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
13 Just to illustrate Mr. Starr's point, you see the surge in
14 demand at the end of 2016 in the United States. And we'd
15 also note, there is some seasonality to installations in
16 solar. So it's not surprising that the first quarter, or
17 the first half would typically be lower than the second half
18 of the year, the fourth quarter in particular, but we can do
19 some more on all of that in the posthearing brief.

20 COMMISSIONER KEARNS: Okay, thank you.

21 CHAIRMAN JOHANSON: I would again like to thank
22 you all for appearing here today. I have learned lots about
23 solar products in the past few years, so it's good to see
24 you.

25 You have argued that because 2.5 gigawatts of

1 CSPV cells are exempted from Section 201 tariffs, the
2 constraining effect on imports of cells are limited. How
3 is it likely, however, that 2.5 gigawatts of CPVS--CSPV
4 cells would be imported from China upon revocation of the
5 Orders?

6 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. So
7 your question is how likely is it that that volume of cells
8 would come in?

9 CHAIRMAN JOHANSON: Right.

10 MR. BRIGHTBILL: Well, I think if you look at--
11 Tim Brightbill, again--if you look at the new investments
12 going on in the United States, the vast majority of those
13 are for module production, not for cell production. So I
14 think there is going to be demand for cells, and some of the
15 question is where will that demand be supplied from?

16 So I think the duties on cells are an important
17 part of relief, and it's only available under the AD and CVD
18 cases.

19 MR. STARRS: Tom Starrs from SunPower
20 Manufacturing Oregon. Just building on what Mr. Brightbill
21 said, I think we heard earlier from Seth and from Mr.
22 Brightbill that there's been a surge of announcements of
23 investments in module manufacturing, in particular. Those
24 facilities are either just now breaking ground, basically,
25 or somewhere in the stages of construction. So right now

1 they are not demanding any cells as part of their production
2 process, but that will shift very quickly in the ensuing
3 months, and certainly into 2019. So the demand for those
4 cells is likely to increase dramatically. And 2.5 gigawatts
5 is a lot of head room, but I think we just saw and have seen
6 that there's about over 4 gigawatts, about 4-1/2 gigawatts
7 of new capacity. Most of that is in modular assembly.

8 So I think it is reasonable to expect that the
9 Chinese cell manufacturers would be eager to try to capture
10 a significant share of that in the event that these duties
11 were lifted.

12 CHAIRMAN JOHANSON: Mr. Kaplan?

13 MR. KAPLAN: Yes, Commissioner, the remedy was--
14 in the 201, was a crafted remedy. And the reason that there
15 was a cell exclusion is because there were existing module
16 facilities in the United States that needed feedstock. And
17 those module facilities at the time I believe were, with new
18 ones coming on line, were going to be greater than U.S. cell
19 capacity. So the idea was to create some space for the
20 module producers to not face the 201 relief until a certain
21 limit.

22 But with the Orders in place, that meant
23 something about the prices of these cells. They couldn't be
24 the Chinese prices. And if you're going to have U.S. cell
25 production, as well as U.S. module production, you're going

1 to need the duties on both. Because otherwise, what you'll
2 get is a U.S. module industry that just simply assembles
3 Chinese cells. So if the Orders are removed, it does not
4 bode well for U.S. cell production, which the Commission
5 itself recognized is kind of the high tech, more of the
6 high tech aspect of it, and what's driving the cost down.

7 So the two-and-a-half, let's make sure that the
8 module guys are not under-supplied, but limited to
9 two-and-a-half to make sure that the cell people start, or
10 potentially gain ground in the United States. That would be
11 completely undercut if you have companies that have 239
12 percent margin suddenly having zero margin.

13 I hope that helps.

14 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. I
15 think it just also underscores the point we made earlier
16 that the dumping and countervailing duties have a different
17 purpose from the 201 relief to address unfair trade. And
18 certainly what exists for China in terms of overcapacity
19 equally applies to cells and to modules in terms of the
20 overcapacity, in terms of the underselling, all of those
21 trends are similar.

22 CHAIRMAN JOHANSON: We've read about the
23 impending investments, or ongoing investments in modules.
24 How much investment is being targeted towards, or do you
25 think will be targeted towards the production of cells?

1 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. At
2 least one of the capacity announcements listed mentioned
3 cells, and it's a significant amount of investment. So we
4 think there is some, but you're right, the majority has been
5 for modules rather than for cells.

6 CHAIRMAN JOHANSON: Yes, Mr. Szamosszegi?

7 MR. SZAMOSSZEGI: Yes. Andrew Szamosszegi from
8 Capital Trade. Just in addition to that, I think we know
9 that the facility in Buffalo, from public sources, is
10 increasing its production of cells, has been since the 201.
11 So they may end up being the bigger producer of cells than
12 any of these companies here. So that's something to
13 consider in addition to these new facilities, that other
14 facility which is relatively new.

15 CHAIRMAN JOHANSON: Thanks, Mr. Szamosszegi. I
16 was wondering, why did the domestic industry's performance
17 indicators decline during the Period of Review, despite the
18 Orders being in place, and despite favorable demand
19 conditions?

20 MR. BRIGHTBILL: This is Tim Brightbill, Wiley
21 Rein. I can start, and then maybe Mr. Boken can comment.
22 There was a period in--this industry can be profitable.
23 This industry can compete. And there was a time, if you
24 look carefully at domestic industry performance, and
25 particularly SolarWorld's performance, after the Solar I and

1 II cases, but before the Safeguards Duties, where it was
2 profitable, it was competing, it was growing. So it is
3 possible, and we think it would be possible again in the
4 future.

5 MR. BOKEN: Yes, John Boken, SolarWorld. 2015,
6 2016 were profitable years for SolarWorld during the Review
7 Period. As we turned into 2017--and this was prior to my
8 time--but the external, the price market decreased
9 substantially, flipping SolarWorld from being a
10 cash-generator to being a cash-user, and that put some
11 strain on its parent company in Germany. They did not have
12 the capital to infuse into SolarWorld. And so it started a
13 bit of a vicious cycle in 2017 that gave rise to pursuing
14 the safeguards action.

15 MR. KAPLAN: Commissioner, I think this kind of
16 highlights the point of why both are needed. When the first
17 ones were put in place, the companies became profitable.
18 And then facilities were relocated, or built in other
19 countries that weren't under Order, and I recall the
20 Commission asking why don't you bring another case? And
21 someone said, well, you know, there's so many potential
22 sources that we'll bring the 201.

23 And now, after the harm to the industry, the 201
24 is now in place on top of the dumping Orders, and you're
25 starting to see investment again. So you see injury caused

1 by the Orders, which you found. You saw relief from that
2 injury by the companies becoming profitable with the Dumping
3 Orders in place. You saw expansion of facilities to other
4 countries with Chinese investment, a 201, and now the 201 is
5 starting to see benefits as the domestic industry is
6 starting to expand.

7 And I think that whole timeline tells you why
8 both the AD/CVD is the foundation of the relief, and the 201
9 is built on top of that, given the new facility that we're
10 trying to fund.

11 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. If
12 we could just go to slide 16 briefly, it shows even during
13 this period where SolarWorld was managing to do alright,
14 this is the underselling by China. It shows during the
15 period you're talking about, 2015-2016, the underselling
16 margin sort of widened. So, you know, clearly that's going
17 to have an effect on some parts of the domestic industry.
18 And it's my view that there was just continued underselling
19 by China even with the duties in place, as duties were
20 being absorbed.

21 CHAIRMAN JOHANSON: Alright, thank you for your
22 comments. My time is about to expire.

23 Commissioner Williamson?

24 COMMISSIONER WILLIAMSON: Thank you very much,
25 and I too want to express appreciation to all the witnesses.

1 Just quickly, we've talked about the 301 and the-
2 -what about the--Mr. Boken, what about the impact of the 232
3 duties on steel and aluminum? Has that had an adverse
4 impact on you?

5 We've heard from some of the other people on that
6 score. So I was just curious.

7 MR. BOKEN: Not particularly. I'm sorry--John
8 Boken, SolarWorld. The steel and aluminum are not
9 significant component parts of our modules. There is some
10 aluminum in there, but not enough that the duties on those
11 imports have had a material impact.

12 COMMISSIONER WILLIAMSON: Okay, thank you.
13 You're one of the first ones that had a negative response to
14 that question. Mr. Starrs, I was just curious. Who is
15 SunPower? What's their background?

16 MR. STARRS: Well, this Commission heard from our
17 CEO, Tom Werner, during the 201 investigation. He was here
18 as a witness for a couple of the hearings. SunPower's U.S.
19 company was formed in 1985, actually by a Stanford professor
20 who cultivated an interest in solar technology and came up
21 with a really innovative solar cell.

22 I won't bore you with the details, but they're
23 actually kind of relevant to some of the proceedings,
24 especially the 201 proceeding. That cell is really
25 technically distinctive. It had all the metal on the back

1 of the cell, but left more room on the front of the cell to
2 absorb sunlight. That and other innovations made it the
3 highest efficiency cell produced globally at any scale.

4 Over time, the company grew and expanded and
5 diversified, so over time, we've become one of the most
6 diversified companies in the solar industry. So we
7 manufacture not only cells and modules, but we also
8 manufacture other key components, the racking systems for
9 example. Some of the power electronics that are used to
10 convert the DC electricity to the AC. Even some of the
11 monitoring equipment.

12 And we sell those modules and those complete
13 solar power systems into pretty much to all the major
14 markets, market segments, residential, commercial rooftop,
15 larger industrial ground mount systems and utility scale
16 power plants all over the world. So we're a global company.
17 So we're U.S.-based, but really, truly a global company
18 doing business on every continent in the world except --
19 actually, even Antarctica, because some of the solar panels
20 powering Antarctica research stations are sun-powered
21 modules.

22 MR. BRIGHTBILL: I was just gonna point out, too,
23 SunPower has great R&D capabilities. So for an industry
24 like this, that's sort of at the cutting edge of high-tech
25 and renewable energy, I think it's very exciting the

1 opportunities now that SunPower has acquired SolarWorld's
2 assets and is doing this R&D in the United States at the
3 same time.

4 COMMISSIONER WILLIAMSON: That was gonna be my
5 next question. What impact will the acquisition of
6 SolarWorld have on the production of cells in the United
7 States going forward?

8 MR. STARRS: Well, we --

9 COMMISSIONER WILLIAMSON: And if you can get some
10 time frames, even, that'd be helpful.

11 MR. STARRS: Sure, sure. First of all, this is a
12 brand-new acquisition for us, so we closed the transaction,
13 I think, on October 1st, so it's only been a few weeks. So
14 we're still really formulating our plans. What we've said
15 publicly is that there's a good fit between the equipment
16 that's already at Hillsboro and another line of our
17 products. Not the one I just referenced.

18 But what we call our P-series for Performance
19 Series products, which are a more conventional front contact
20 module, it still is actually distinctive. It uses a
21 technology we were sort of first to market on a commercial
22 scale with a new technology that essentially cuts up the
23 cells, puts them into -- essentially glues them into strips
24 and then shingles them, one over the other, over the face of
25 the module.

1 So you can't, for example, count the number of
2 cells in our modules because we've sort of cut them up and
3 sliced them and put them together again in a way that covers
4 the whole area of the module. So it turns out that the
5 technology at Hillsboro's pretty well suited for that. We
6 are having to ship in other equipment to make our P-series
7 modules at Hillsboro. That equipment is coming from our
8 previous manufacturing facility in Mexico.

9 That equipment, in fact, the picture that you're
10 seeing there on the screen is the picture of that equipment
11 that's just arrived at the Hillsboro location from our
12 Mexico module-assembly facility. And we're expecting to be
13 producing modules from that facility by the end of the year
14 for sure.

15 COMMISSIONER WILLIAMSON: Okay. Good. So is it
16 a matter of--and I don't know how much you can say about
17 this at this point--is it a matter of SunPower products
18 replacing SolarWorld products or an evolution of something?

19 MR. STARRS: There are limits to what I can say
20 comfortably, but what we have said publicly is that we're
21 going to be -- I've said in my opening statement that right
22 now, that facility is still producing SolarWorld's modules.
23 But we're going to shift over, essentially all of the module
24 production at Hillsboro to this P-series technology, which
25 is a more -- it still uses the same four components, but is

1 a higher-efficiency, higher-performing module.

2 COMMISSIONER WILLIAMSON: Okay, thank you. Does
3 the domestic industry have enough self-capacity to support
4 the domestic module production and if it does not, what are
5 the chances for investment and cell production that would
6 lead to that result?

7 MR. BRIGHTBILL: I can start. There's not enough
8 domestic cell capacity to supply the entire U.S. market. Of
9 course, that's not required, but there's significant excess
10 capacity among U.S. producers. There is capacity that's
11 either new or coming online, as we talked about.

12 And I think what you see in the investments that
13 have been announced, is an effort to sort of start slowly
14 and see if the market remains strong and supports the
15 investment, and then there would be additional opportunity
16 to further invest in cell manufacturing. And at least have
17 more of that demand covered by U.S. supply rather than the
18 rest of the world. United States certainly has the
19 technology that everybody wants, which is the
20 monocrystalline and the more sophisticated products that Mr.
21 Starrs was talking about.

22 COMMISSIONER WILLIAMSON: Okay. Now was some of
23 the existing production equipment in the idled facilities
24 possibly be brought on-hand if there's a possibility of
25 increased cell production?

1 MR. STARRS: The one word answer is yes. I mean
2 there is equipment that's still in the United States that's
3 capable of producing cells. This equipment can be become
4 obsolete relatively quickly, so that's kind of a constant
5 challenge and a consideration. But yeah, it's not hard to
6 move this equipment around and even to update the equipment
7 as necessary to meet current conditions.

8 MR. BRIGHTBILL: One of the companies that is not
9 here today, of course, was Suniva, which focused on cell
10 manufacturing to a large extent. And I don't have a lot of
11 detail, but I know that their equipment has been looked at
12 and it's still current enough -- my understand as a lawyer
13 is that it would be possible to use that -- that's one
14 example of equipment that could be deployed if the market
15 conditions were right. That could be deployed or
16 purchased.

17 COMMISSIONER WILLIAMSON: Okay. And one last
18 question along this line. How important is the development
19 of cell technology, of cell production in the U.S. to the
20 overall competitiveness of the U.S. solar industry in the
21 global market?

22 MR. BRIGHTBILL: As the Commission has found and
23 the Commerce Department, to some extent, I mean a lot of the
24 innovation -- there's innovation, there's R&D on both the
25 cell and module side, so both are important. But the

1 importance of the remedies is that, I think, in order for
2 the industry to compete and innovate, it would be ideal if
3 United States was able to lead on both, and not just be a
4 module assembler.

5 United States has been responsible for a lot of
6 the innovations that have happened over the last ten years,
7 over the last forty years in solar, and so for that to
8 happen, I think it would be important on both cell and
9 module fronts.

10 COMMISSIONER WILLIAMSON: Okay.

11 MR. STARRS: If I could add something? I'd like
12 to concur with what Tim said. I think the additional thing
13 to recognize is that the economics of domestic cell
14 manufacturing are more challenging than the economics of
15 domestic module manufacturing. And a lot of that is tied
16 really to economies of scale.

17 I'm an old-timer in this industry, so I remember
18 when a 10 megawatt facility, a facility making 10 megawatts
19 of cells or modules per year was a big facility, and now the
20 facilities are typically a 1,000 megawatts or even more,
21 approaching 2,000 megawatts. It's a huge scale economies.
22 Cells have a lot of different inputs to their process, just
23 like modules have some inputs.

24 And one of the challenges we face is that we
25 don't have the same economies of scale in some of the inputs

1 to the cell production in this country. Which to me is a
2 reason to continue supporting some of these domestic
3 measures because it really will take some time, I think.
4 And I think frankly the industry is waiting and seeing what
5 the long-term market dynamics are before making the more
6 substantial commitment to cell manufacturing in this
7 country.

8 COMMISSIONER WILLIAMSON: Okay. And I guess in
9 the 201 remedies, we didn't really do much in terms of
10 support for the domestic industry outside of tariffs, is
11 that correct? And would that have helped?

12 MR. BRIGHTBILL: That's correct. The ultimate
13 remedy proclaimed was an ad valorem tariff, yes.

14 COMMISSIONER WILLIAMSON: Okay.

15 MR. BRIGHTBILL: And a tariff rate quota on cells
16 which, and of course, has never been filled yet.

17 COMMISSIONER WILLIAMSON: I was just remembering
18 our report. Okay, thank you.

19 CHAIRMAN JOHANSON: Commissioner Broadbent?

20 COMMISSIONER BROADBENT: Thank you very much.
21 Mr. Boken, SolarWorld has a long history of telling us that
22 substantially U.S. investments and CSPV manufacturing are
23 just kind of right around the corner, as long as whatever
24 investigation we're doing goes affirmative and has the right
25 outcome.

1 In 2014, CSPV2 investigations on China and
2 Taiwan, only a few years after receiving these orders, Mr.
3 Dulani of SolarWorld stated that U.S. producers have
4 announced some manufacturing expansions in the near future,
5 and other companies are becoming interested in manufacturing
6 in the United States. Yet these improvements depend on a
7 positive outcome in this case. And that was in 2014.

8 In one of the hearings for the 2017 safeguard
9 case, Mr. Stein, CEO of SolarWorld at that point, stated
10 that a tariff will allow SolarWorld and other U.S. producers
11 to expand the production and capacity and will encourage
12 investments by others. He then reported depressed reports
13 of a number of future investments in the United States. He
14 envisioned a future of five to six CSPV producers each with
15 one gigawatt or more of integrated cell and module capacity.

16 And then 2018 SolarWorld is once again asserting
17 that other companies were just about to invest substantially
18 in U.S. CSPV manufacturing. Your Slide Number 5 points to
19 some of the same company announcements that you referred to
20 just a year ago.

21 But our Staff Report indicates that the industry
22 still looks more or less the same, if not, smaller with all
23 of these layering of tariffs in place. The industry's
24 market share has only continued to decline, even as the U.S.
25 market has shrunk. SolarWorld is still the only large

1 integrated producer in the United States.

2 So I guess the question is how much relief does
3 this industry need before it actually starts to become a
4 substantial supplier in the U.S. Market?

5 MR. BOKEN: Well, I can't -- this is John Boken
6 from SolarWorld, I can't pin a number on it. As you've
7 cited various testimony that was provided in previous
8 hearings as of course every one of those it sounds like some
9 people were projecting out an expectation that there would
10 be some normalcy in the pricing and import markets and that
11 repeatedly, as we saw in some of the graphs and information
12 Mr. Kaplan went over, the Chinese in particular employed a
13 strategy that was not particularly viewed as rational from
14 the U.S. Manufacturer standpoint.

15 So I can understand how the executives at that
16 time were hoping for and expecting that the measures and
17 safeguards that were put in place would be matched by a
18 rational response from the parties that would seek to have
19 that coupling between what the cost is of producing the
20 product and generating a margin. When that didn't happen of
21 course the industry went into reactive mode and further
22 suffered.

23 The way I see it, maybe being the most objective
24 of the people at the table here, not having a lifetime of
25 experience in the solar industry, is from what I've learned

1 is the AD/CVD measures are a building block in the industry.

2 If people can have some confidence that that
3 building block is in place and supplemented of course by the
4 201 and as I mentioned earlier the 301 which is kind of
5 difficult to see if that has any particular benefit, then
6 you have a reason for people and these other parties to
7 start thinking about investing and taking the announcement
8 to actually the next step of putting capital into this
9 industry.

10 Look, it's without question the industry is
11 vulnerable. We talked about how many manufacturers have
12 exited the business and I would say involuntarily for the
13 most part over the last five years because of the external
14 pressures so it's going to take a while.

15 That's why when the testimony heard from the
16 various parties here we've continued to talk about the
17 AD/CVD orders as being a foundational building block and if
18 we can have some confidence that that is in place then we
19 can start to talk about other measures, whether they are 201
20 or 301 or other actions that can again seek to attract
21 investment and capital because that's the next step that
22 his industry needs.

23 Once it has that confidence, then people can
24 start putting money in and you'll see hopefully a
25 resurrection of the industry. I wouldn't sit here and

1 pretend that the maintenance of these orders would
2 immediately turn around this industry. There is still a lot
3 of work to do and there are parties like Sunpower
4 Manufacturing Oregon who are looking at this optimistically
5 and thinking about how they can invest.

6 Mr. Starnes talked about the money that they've
7 spent to bring equipment up from Mexico to the Hillsboro
8 facility. I'm under no predisposition that by maintaining
9 these that we flip a switch and the industry turns around.
10 There is a lot more work to do. But this is a foundational
11 building block based on how I view it to give the industry a
12 chance at thriving going forward and meeting this growing
13 demand in the United States.

14 MR. KAPLAN: Commissioner, Seth Kaplan.

15 MR. MAGNUS: Quick addendum; John Magnus for
16 Sunpower Manufacturing, Oregon. The comments may sound
17 similar but the context I would submit, are a little bit
18 different. In particular, this context is a little bit
19 different being a sunset review.

20 So there is one question, to vote affirmative is
21 the industry going to bloom? And there is another question
22 that is negative; is the industry going to get another
23 helping of material injury? So this isn't a safeguard
24 determination. This is a sunset determination and so
25 whether or not there is a credible case to be made that the

1 industry is just about to bloom, the sunset determination --
2 our view is it is supposed to be affirmative. Revoking the
3 order would yield another helping of material injury.

4 COMMISSIONER BROADBENT: Right, but I think on
5 that as Commissioner Schmidlein pointed out in the
6 reasonably foreseeable future we've got three other layers
7 of tariffs on this product.

8 MR. MAGNUS: And on that, glad you've brought
9 that back up. I think what happened here and maybe without
10 really tying a ribbon around it, but I think the panel sort
11 of rose to the challenge of that question that Commissioner
12 Kearns brought up the first time, ten points of safeguard
13 tariff or ten points or 301 tariff isn't the same as ten
14 points of antidumping duty. It isn't the same because of
15 the dynamic effect over time because if it's a safeguard
16 tariff or if it's an advalorem 301 duty and the price falls
17 the protective effect falls.

18 If it's an antidumping duty and the price falls
19 your antidumping duty is liable to grow and it's geared to
20 basically deliver the same protective effect over time which
21 is completely not the case with 301 tariffs and 201 tariffs
22 so it isn't the same and you can't just kind of pile them up
23 and say "this is apples and apples". It doesn't work that
24 way.

25 COMMISSIONER BROADBENT: That being said, okay.

1 We have purpose subsidies. We've got ITC. We've got the
2 renewable portfolio standards. We have four major tariff
3 programs on this product that has been going on for ten
4 years. Where are we? We're not doing well and there's not
5 really much of it in this overlay and wraps in different
6 government support programs has helped. It's just cost.

7 MR. KAPLAN: Commissioner, in fact the
8 profitability of the industry and the profitability of the
9 precursor companies that are here today shows that it was
10 effective, the dumping orders were effective and then what
11 you saw was the building of new facilities by China and
12 other places that both executives testified were
13 unwarranted on capitalist grounds, on price and profit
14 grounds but were nonetheless built by China and other
15 countries which undermined the duties that were being
16 affected.

17 I think if there was no profits throughout I
18 think your point would be well taken but there were profits
19 after the second order. The underselling margins shrunk,
20 the industry became profitable and then everyone starts
21 saying okay, maybe we should build more facilities and make
22 an announcement. The facilities were built in Asia, by
23 China precipitating the 201. So now we have the 201 and
24 now the industry is starting to get a little better again.

25 Is it at the point it was after the first two

1 orders when the U.S. Industry was profitable? No. But the
2 distance between them in time was shorter and you need time
3 for these existing companies to now grow but I wanted to
4 dispute your earlier point that there was no effective
5 relief. There was effective relief until China started
6 building facilities in Asia.

7 The 201 on top of the dumping orders,
8 complementary has helped and now the Domestic Industry is
9 starting again. We anticipate if this relief stays in place
10 we will get further growth. We're not sure what China is
11 going to do.

12 MS. EL-SABAAWI: This is Laura El-Sabaawi from
13 Wiley Rein. Just to follow up on that, it's come a little
14 bit further now than just our projections and statements and
15 anticipations of further growth. With the combination of
16 the remedies in place we do have short form announcements
17 and plans for new facilities now as you see reflected in
18 table 3-3 of the Staff Report so the growth is really
19 happening now and the facilities are being built. So it is
20 working.

21 MR. STARRS: Tom Starrs, Sunpower Manufacturing,
22 Oregon. I want to reiterate what Ms. El-Sabaawi just said.
23 I was going to touch on this.

24 I think Commissioner Broadbent, to your point, I
25 think there's a difference in the most recent announcements,

1 a lot of the companies that rose but failed that we've
2 discussed previously during the last decade or so, a lot of
3 those were innovative startups, not all of them but many of
4 them were innovative startups that faced that challenge.
5 Most of the announcements that we are seeing now are from
6 major, established, global players who are making for the
7 first time and in most cases, the decision to invest at
8 scale in the U.S. So I don't think I've ever seen
9 other than Tesla's facility in Buffalo, which is a gigawatt
10 facility, I don't have a list in front of me, but I think at
11 least two, maybe three of the projects that have been
12 announced just in the last nine months or so are at a
13 gigawatt scale. That's unprecedented in the U.S. and they
14 are all by very credible, well-backed, well-financed
15 companies.

16 COMMISSIONER BROADBENT: So your testimony is
17 it's much different right now than it was in the earlier
18 proceedings. Optimistic outlook? Okay. Thanks.

19 CHAIRMAN JOHANSON: Commission Schmidtlein?

20 COMMISSIONER SCHMIDTLEIN: Okay, thank you. So I
21 want to come back to Mr. Magnus' point because I do think
22 that is a fair point. So this is a question that I was also
23 going to put to the Respondents Panel, which is the effect
24 of an antidumping CVD order in terms of the price discipline
25 given the administrative review that comes along with that

1 versus an avalorum tariff like a 201 or a 301.

2 That's one question that comes to mind and
3 thinking about that we did not talk about that in the
4 tapered roller bearing sunset review from China recently
5 which is another case that we have considered in light of
6 the 301 tariffs.

7 If we were to say that the 201s and the 301s are
8 not sufficient in this case because or aren't going to have
9 a sufficient impact in terms of deterring imports due to the
10 different nature of the tariffs, would the Commission then
11 essentially in every, at least I guess with these current
12 Commissioners we'd be saying that in every case going
13 forward? Does that mean are there other factors in this
14 case that we would also look at?

15 So in other words are we putting ourselves into a
16 box here? Is that going to be the rule going forward? Of
17 course, new Commissioners can always put down different
18 rules but every case just to be generous but --
19 essentially wiping away 201s and 301s if we take that.

20 MR. MAGNUS: A very limited answer. I don't
21 believe that we are asking you to legislate.

22 COMMISSIONER SCHMIDTLEIN: No, but you know what
23 I'm saying, to be consistent.

24 MR. MAGNUS: Or have some sort of a, you know,
25 unified field theory about this. We think that in this

1 case, on the record that you've compiled, the 301 and 201
2 tariffs do not do the work of the anti-dumping relief, and
3 do not make the anti-dumping relief unnecessary in this
4 case. And there could be a case where it would be harder.
5 We don't think it's particularly hard in this case.

6 COMMISSIONER SCHMIDTLEIN: Okay. Can you --

7 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.

8 COMMISSIONER SCHMIDTLEIN: Sure, go ahead.

9 MR. BRIGHTBILL: I would just concur with that
10 and also note it's particularly true. So because there are
11 administrative reviews that will adjust the dumping duties
12 and the countervailing duties, and the two of those adjust
13 in response to each other too in terms of export subsidy
14 levels and such, that that retrospective process means that
15 those duties will adjust and have a greater effect, as
16 opposed to the other types of duties that Dr. Kaplan talked
17 about, where you have currency effects and where you have
18 prices falling.

19 Another distinctive feature of this market is
20 generally it does continue to innovate and solar prices fall
21 for a variety of reasons, including dumping and subsidies.
22 So it's another reason why this can be distinguished perhaps
23 from other cases going forward.

24 COMMISSIONER SCHMIDTLEIN: Dr. Kaplan.

25 DR. KAPLAN: Commissioner and Chairman.

1 COMMISSIONER SCHMIDTLEIN: Thank you, but not
2 anymore.

3 DR. KAPLAN: Oh no. I promoted you.

4 COMMISSIONER SCHMIDTLEIN: I know.

5 DR. KAPLAN: There's a variety of conditions of
6 competition that differ among the industries you've looked
7 at. Mr. Brightbill talked about this industry, where
8 technology in the semiconductor industries causes prices to
9 decline over time, and creates a unique feature about the ad
10 valorem transmission to a specific number or tariff.

11 But there's also issues regarding the excess
12 capacity and the commitments of that capacity in foreign
13 countries. There's issues regarding previous price
14 behavior. There's issues regarding the vulnerability of the
15 domestic industry, is that when you look at these in
16 combination that you may or may not find that jointly they
17 are necessary or not.

18 So we'll brief this, both as an economic and
19 legal matter in the post-hearing. But I think -- I think
20 our first impressions and our discussions of this is that
21 you're not boxed in.

22 COMMISSIONER SCHMIDTLEIN: Not that I'm
23 suggesting that would be a bad thing, but I'm just -- we
24 didn't -- we didn't -- we did not talk about this in the
25 last case. I don't think the argument was made in that

1 regard maybe. So but I do think it is a fair point in terms
2 of how an AD/CVD operates. Okay. So a couple of other
3 questions that I had, and you alluded to this, the
4 capacity.

5 Can you -- can someone on the panel speak to
6 what the current status is in China of the incentives for
7 domestic installation there? So there was the information
8 about the feed-in tariff and that that had been revoked, and
9 a cap had been put on domestic installations. But there's
10 now been some information put on the record that just very
11 recently this month that that was reversed, and that
12 industry numbers believe this is going to, you know,
13 regenerate some demand in China for Chinese modules and
14 cells.

15 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. I
16 mean there was a cap put in place by the government of
17 China, and then there was an allowing of projects that had
18 been undertaken to sort of continue. But as Dr. Kaplan
19 pointed out, that was filled like within the first five
20 months of 2018.

21 So the forecasts that we're aware of are that
22 demand is down -- that installations will be down
23 significantly in China for all of 2018, down by close to I
24 believe it's eight to ten gigawatts, and that's roughly the
25 size of the U.S. market. Mr. Stoel in his opening

1 presentation said that's likely to continue into 2019. So
2 we could give you some more information on if there had been
3 any recent changes to that, but what we know is that the
4 number of installations declined significantly, and is most
5 likely to stay down for the reasonably foreseeable future,
6 from the earlier period.

7 COMMISSIONER SCHMIDTLEIN: Mr. Starrs.

8 MR. STARRS: Tom Starrs from SunPower
9 Manufacturing Oregon. Reiterating what Mr. Brightbill said,
10 first of all I'm also not aware of any recent announcement,
11 and it's my job to track those announcements, so I really
12 should be aware of it is there is one. But I haven't heard
13 of any significant reversal. There had been rumors of a
14 reversal down the pike, but I certainly didn't pick up on
15 any material announcement on this case in this last, you
16 know, day or two.

17 COMMISSIONER SCHMIDTLEIN: Well it was in
18 November is the information they've put on the record, from
19 what I looked back through here. So it was pretty recent,
20 but not in the last day or two.

21 MR. STARRS: Okay. Well, I know there -- I
22 pretty regularly see speculation about further changes in
23 China's policy regime and subsidy regime for solar, but I
24 haven't heard of anything actually being publicly announced
25 by the government, which is ultimately the only thing that

1 counts. Again, I could be wrong so --

2 COMMISSIONER SCHMIDTLEIN: Okay, all right.

3 Well if you could look into that and respond with anything
4 in the post-hearing.

5 MR. STARRS: And beyond that, just reiterating
6 that our own analysis suggests that the market, as we've
7 noted, declined. The China market will have declined about
8 ten gigawatts between 2017 and 2018, and we don't expect it
9 to be rebuild to that level in the foreseeable -- basically
10 roughly over the next five year time frame.

11 COMMISSIONER SCHMIDTLEIN: Okay.

12 MR. STARRS: So it's down and it will stay down
13 basically.

14 MS. EL-SABAAWI: This is Laura El-Sabaawi from
15 Wiley Rein. I think what you're referring to is an article
16 that was put in with Canadian Solar's brief from November
17 2nd, and what it says is that China's National Energy
18 Administration announced that it could raise the 2020 target
19 for solar capacity. So I think that no decision has been
20 made on that. We will look at that further for
21 post-hearing, but it's -- it is just, I think a rumor, like
22 Tom said.

23 DR. KAPLAN: Also in context, it's -- there's so
24 much excess capacity that while this is significant and it's
25 25 percent of the, you know, excess capacity. It's whether

1 the excess capacity is three or four times bigger than the
2 U.S. market. So I think the evidence does not show it's
3 been -- it's been reinstated, but even if it were, it's
4 20-20 and even if it were, it doesn't eliminate the enormous
5 overhang that already exists. Thank you.

6 COMMISSIONER SCHMIDTLEIN: Okay, all right.
7 Another question for Mr. Szamosszegi. You alluded to the
8 high anti-dumping rate that is the PRC-wide rate I believe
9 that's over 200 percent. Do you all have any information as
10 to how much capacity in China would be subject to that rate?
11 There's a lot of individual rates obviously that are much
12 lower than that.

13 But it seems to me that you're relying on that
14 rate to argue that it's a prohibitive rate, and if that goes
15 away, that's going to be a problem. But how much, how much
16 is really subject to that rate that's coming into the United
17 States, or would be coming into the United States?

18 MR. SZAMOSSZEGI: We can look at that bottom up,
19 right, because there are certain producers who are large and
20 have decided that they're really going to absorb the tariff
21 or put it on their financial statement and say this is how
22 much we're liable for, and they just still send it. But
23 those are not the only producers in China, and so we would
24 have to go and build it bottom up, to answer your question
25 specifically, and we can try to do that for post-hearing.

1 COMMISSIONER SCHMIDTLEIN: Okay.

2 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. We
3 can try and do that. I can just say in terms of the number
4 of companies, it is significant because as reviews go on,
5 fewer Chinese companies total participate in those reviews
6 and keep the lower rate, so more companies end up getting a
7 China-wide rate.

8 COMMISSIONER SCHMIDTLEIN: Okay, all right.
9 Thank you. My time is up.

10 CHAIRMAN JOHANSON: Commissioner Kearns.

11 COMMISSIONER KEARNS: Thank you. You all have
12 argued that the 2.5 gigawatt exemption, the fact that it
13 hasn't been filled, you know, that that essentially means
14 that right now the 201 remedy has not applied to cells. So
15 you need, you need an anti-dumping countervailing duty order
16 to remain in place with respect to cells.

17 But doesn't this argument kind of cut the other
18 way. I mean as I understand it, didn't the Commission in
19 crafting the 201 remedy essentially say, recognize that we
20 need to import some quantity, 2.5 gigawatts of cells, to
21 enable U.S. module production here in the United States, and
22 we haven't been able to meet that.

23 So is that really an argument for leaving the
24 order in place or for removing the order, because -- and
25 especially when we look at how almost it seems to me, and

1 again we don't have the numbers here, but when you look at
2 the list of new plants and new expansions, it's almost all
3 in modules. So how should we be looking at that 2.5
4 gigawatt exemption?

5 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
6 No, it is an argument for leaving the orders in place,
7 because you see all of these new investments on modules even
8 predicated on the fact that there will be these -- the
9 assumption that the duties would remain in place. So again,
10 the dumping duties are and the countervailing duties are
11 there to address unfair trade, that unfair trade has
12 continued during your period of review, which is why the
13 duties should remain in place.

14 The ultimate goal, as I mentioned earlier, would
15 be to have new investments on both sides of the equation,
16 including cell, which is where a lot of the R&D and
17 innovation occurs. If we want to make these products more
18 efficient and generate more watts on a rooftop, the best way
19 to do that is to have investment in both cell and module,
20 which would require leaving the duties in place rather than
21 revoking them.

22 COMMISSIONER KEARNS: Thank you. Switching
23 subjects, the Respondents in essence seem to be arguing that
24 the quote-unquote "reasonable foreseeable time," at least in
25 this case, is two years.

1 What do you all -- what's your view on that?
2 How do you respond to that argument and should we take into
3 account the fact that we have sunset reviews every five
4 years? Is that relevant to determining sort of what a
5 reasonable foreseeable future, how long of a period we
6 should be considering?

7 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. I
8 might think about it some more for the post-hearing brief.
9 But I don't necessarily object to looking at a two year
10 period, and I think the U.S. industry would be further
11 injured within that reasonably foreseeable time if the
12 orders were revoked, both with regard to cells and modules.
13 So and I think that time frame is roughly consistent with
14 what you've done in the past on sunset reviews.

15 DR. KAPLAN: Commissioner, I think it's also
16 consistent with your last question because it takes time to
17 build stuff, and you know, the entry of new module producers
18 from major deep pocketed companies, those things can't be
19 built overnight. So part of the reasons you haven't seen it
20 filled is because there was uncertainty about the future,
21 and then the lag in obtaining financing, making decisions
22 and building stuff.

23 So it can't be six months or something like
24 that. It has to extend out, and in the context of the new
25 investments that have already been announced from

1 established companies, the time frame needs to extend out at
2 least until the expected construction and operation of those
3 facilities.

4 MS. EL-SABAAWI: This is Laura El-Sabaawi from
5 Wiley Rein. Just to build on that, the statute also says
6 that the Commission shall consider that the effects of
7 revocation or termination may not be imminent, but may
8 manifest themselves only over a longer period of time.

9 So I think it's appropriate, you know, to look
10 at a longer period of time as well, and whether you look at
11 a two year period or a slightly longer period of time, I
12 think the evidence is clear that, you know, the revocation
13 would result in material injury.

14 COMMISSIONER KEARNS: Okay, thank you. Another
15 question based on the Respondents' brief concerning global
16 price comparisons. Respondents argue that the global price
17 comparisons don't mean anything because Section 201 remedy
18 increased the U.S. price.

19 That's why we're seeing higher prices in the
20 U.S. relative to other markets. As I understand that's
21 their argument on page 83. What do you all think of that
22 argument, and just more generally, how would you -- how
23 should we look at the U.S. prices versus prices of AUVs
24 around the world?

25 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. I

1 think the staff report does a good job documenting sort of
2 federal and state incentives, and showing that while it's
3 created demand, it's not created explicit demand and there's
4 nothing on the horizon that is a game-changer, and that
5 state incentives are a mixed bag, some increasing, others
6 decreasing.

7 So I think that's -- the staff has pulled that
8 together from the questionnaire responses that demand will
9 be steady, but there's nothing huge out there on the horizon
10 with the exception of the investment tax credit that Mr.
11 Starrs mentioned.

12 COMMISSIONER WILLIAMSON: Okay, thank you.
13 Bankability, as we discussed in several phases, is an
14 important factor in utility sales. How has bankability been
15 affected by the repeated waves of imports and the frequent
16 changes in the composition of the domestic industry? This
17 goes back to some of our previous hearings.

18 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
19 You're right. We did talk about that previously, and even
20 then the U.S. producers were on the lists as bankable
21 clients, at least the major ones are. So we probably should
22 address that in the post-hearing brief, unless anybody has
23 any knowledge. But I would think that if you're looking at
24 the U.S. industry going forward and these announcements, I
25 would think that SunPower is certainly, you know, that's an

1 exciting investment and opportunity.

2 If you look at companies like Jinko and LG and
3 Hanwha Q Cells, you know, I think those are all big names,
4 solid names. And so again, we'll address it in the
5 post-hearing brief.

6 COMMISSIONER WILLIAMSON: So bankability might
7 be less of an issue for them? It would be important -- it
8 would be useful to address it post-hearing because --

9 MR. BRIGHTBILL: We'll do that.

10 COMMISSIONER WILLIAMSON: Because it's come up
11 so often in the past.

12 MR. BRIGHTBILL: We'll do that. Thank you.

13 COMMISSIONER WILLIAMSON: Yeah, okay. And how
14 large is -- yeah. How large is the utility market relative
15 to the entire CSPV market, and has -- and how has this
16 changed? Another subject that's come up in the past.

17 MR. STARRS: Tom Starrs for SunPower
18 Manufacturing Oregon. I'm trying to keep this really
19 simple. The utility scale market grew really dramatically
20 through 2016. It used to be a much smaller part of the
21 total market, and then grew to be a really -- by far the
22 single largest part of the market, looking at sort of a
23 simple three segment approach, residential, commercial and
24 power plants.

25 And in going forward, it's expected to sort of

1 maintain -- when you look at the growth over the next five
2 years, it's expected to be pretty steady across those three
3 major segments.

4 The only segment that grows disproportionately
5 is a relatively small segment, and actually in response to
6 your prior question about changes in policy, if you look at
7 the breakdown of the U.S. market forecast, the one that's
8 expected to grow dramatically, meaning double digit growth
9 rates, is the market for new homes, solar included in new
10 homes and new construction.

11 And the major driver there, there are other
12 drivers, but the major driver there is that California just
13 in the last legislative session passed a law requiring solar
14 power, solar photovoltaic systems on new homes, all new
15 homes starting I think in 2020. So that's expected to be a
16 major driver going forward for that particular market.

17 But otherwise the growth is pretty comparable
18 across residential, commercial and utility scale, and the
19 overall share of the -- let's see if I have some numbers for
20 you. The overall share of the utility market is still a
21 majority of basically more than 50 percent over that time
22 frame.

23 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
24 The domestic industry supplies all of those segments, as it
25 has in the past.

1 COMMISSIONER WILLIAMSON: That wasn't my next
2 question, okay. And they're expected to be competitive --
3 oh, I'm sorry. And the new investments, are they expected
4 to be competitive in all three, all of the segments too?

5 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
6 Yes, that's true, and it's, you know, it's competition based
7 on price per watt. So whether it's utility or commercial or
8 residential, and in particular, you know, the domestic
9 products with the high technology and the monocrystalline
10 are well-suited to environments where space is constrained,
11 including residential and commercial. But they compete in
12 all three segments.

13 COMMISSIONER WILLIAMSON: Okay, thank you. Do
14 prices in one segment, say the utility scale, affect prices
15 in other segments?

16 MR. BRIGHTBILL: Tim Brightbill. I can start,
17 but the industry should respond. I mean prices set by the
18 imports, and particularly the Chinese imports, you see this
19 in terms of the staff report data as to who our price
20 leaders, and you see aggressive pricing in all of these
21 segments, and it's led by dumped and subsidized imports.

22 MR. BOKEN: John Boken from Solar World. In our
23 experience at Solar World, we haven't seen a material
24 difference in pricing across the segments, and not one
25 segment's pricing influencing another. It's really an

1 overall market price and as Mr. Brightbill referenced, it's
2 the price per watt that is really what the driver is. But
3 across segments, we haven't seen much differentiation
4 between the three.

5 COMMISSIONER WILLIAMSON: Okay, thank you.

6 MR. STARRS: And Tom Starrs from SunPower
7 Manufacturing Oregon. I generally concur. I'll make the
8 additional point that, you know, there are economies of
9 scale on the procurement side as well.

10 So a utility scale power plant developer that's
11 building a 500 megawatt power plant is going to get better
12 pricing on modules than a small residential installer that's
13 doing say, you know, 500 kilowatts of business over the
14 course of a whole year.

15 So there's those sorts of scale economies that
16 matter, but in general I agree with the rest of the
17 panelists, that module pricing really doesn't vary
18 materially from one to the other segment.

19 COMMISSIONER WILLIAMSON: Okay, thank you.
20 Commissioner Kearns raised the question of the EU
21 terminating its orders or its constraints on solar panels.
22 Do you know what drove that, or why did they decide to do
23 it? Is it one of the things they sort of basically gave up
24 on production of cells and modules, and was more concerned
25 about supplying the market?

1 MR. BRIGHTBILL: I'm sorry, Commissioner. Could
2 you repeat the question? Who are you referring to?

3 COMMISSIONER WILLIAMSON: The EU, the EU
4 measures and why they, you know, stopped them.

5 MR. BRIGHTBILL: Oh. We can address that
6 somewhat in the post-hearing, but there was -- unfortunately
7 there wasn't much of a domestic manufacturing segment left
8 to salvage. So I think that played a role in the decision.
9 But I think you have some information in the staff report on
10 that as well, and we can try and provide some more, unless
11 anyone on the panel has knowledge.

12 COMMISSIONER WILLIAMSON: Good. Okay, thank
13 you. The other question I had, kind of big, big quick
14 question. You've shown where there's been sort of so much
15 Chinese controlled investment in other markets, and that's
16 one of the reasons why you said you do the global safeguard.
17 How should we -- are they so dominant and this affects the
18 competition? How should we take this into account here?

19 In other words, it's almost like is this
20 becoming a competition policy question that they can really
21 somewhat control the global, the global price because
22 they're invested in so many different places and control
23 production in so many different places? Or is that too big
24 a question for this morning?

25 MR. BRIGHTBILL: Yeah, Tim Brightbill, Wiley

1 Rein. I haven't thought about that. I'm definitely not a
2 competition or antitrust lawyer. We can give that some
3 thought. I mean --

4 COMMISSIONER WILLIAMSON: Only if it's relevant
5 to how we should assess this situation.

6 MR. BRIGHTBILL: I think it's certainly a
7 condition of competition, the sort of dominance of Chinese
8 companies and Chinese-owned companies around the world. But
9 again, what's relevant to you is, is there a domestic
10 industry here, which there clearly is.

11 If the orders are revoked, will there be harm or
12 injury recurring to the industry, which I think is just made
13 all the more obvious by the sort of monolithic nature of the
14 Chinese government and the numerous Chinese producers,
15 whether in China or Chinese-owned and controlled in third
16 countries.

17 COMMISSIONER WILLIAMSON: Okay. That's kind of
18 what I was wondering about, the vulnerability question.

19 DR. KAPLAN: And Commissioner, I think that that
20 does go to vulnerability. I think it also goes to
21 Commissioner Schmidtlein's earlier question about the
22 interaction between dumping orders and 201s, when you have a
23 country that has facilities in its own country, but it also
24 owns facilities in other countries.

25 So given the way multi-nationals operate and can

1 switch production between locations, that condition of
2 competition is something we'll flesh out, and why both
3 remedies are -- should continue.

4 COMMISSIONER WILLIAMSON: Okay, okay. Thank you
5 for those answers. I have no further questions.

6 CHAIRMAN JOHANSON: Commissioner Broadbent.

7 COMMISSIONER BROADBENT: Okay. Mr. Boken, on
8 page one, I-57 of the prehearing report, there's a statement
9 regarding the U.S. producer coverage that we received with
10 respect to module production.

11 This is not a particularly high number,
12 suggesting there's a lack of domestic industry interest in
13 these reviews. To what extent does the entire U.S. industry
14 support these orders, and why didn't we receive a greater
15 number of U.S. producer questionnaire responses?

16 MR. BRIGHTBILL: It's Tim Brightbill from Wiley
17 Rein. That number is confidential, so I'm not sure Mr.
18 Boken can respond to that.

19 COMMISSIONER BROADBENT: But we know it's a low
20 number, and I'm just --

21 MR. BRIGHTBILL: I think I'll have to look at
22 the data, but the industry, I think a number of producers
23 indicated interest in continuation of the orders, as well as
24 the adverse effects that would result from revocation. I
25 think that's in the narratives as well. So that's what I

1 would state in response.

2 COMMISSIONER BROADBENT: Wait. I didn't quite
3 follow you. You said it's a low number, right? You're
4 agreeing with me it's a low number I hope?

5 (Pause.)

6 COMMISSIONER BROADBENT: We just didn't receive
7 very many U.S. producer questionnaires, and I'm just
8 wondering how much domestic, how much support is there out
9 there among the domestic industry.

10 MR. BRIGHTBILL: I guess I would disagree with
11 that characterization. If you look at Table I-7, in terms
12 of the number of producers and also their share of cell and
13 module production, it supports. I think it's -- there's
14 strong support for continuation.

15 MR. SZAMOSSZEGI: If you -- Andrew Szamosszegi
16 from Capital Trade. If you look on page I-56 at the very
17 bottom there, it gives a different, different number that
18 shows a higher level of support.

19 But I also think that, you know, some of the
20 firms listed on here are not really major producers, and if
21 you -- and as Tim said, if you look at Table I-7 on the
22 right there, and add together all the numbers that say
23 support as a percentage, if you add those percentages
24 together, you get a different number than the number that's
25 in the text, it appears to me.

1 So it seems like there's broad support for
2 continuation of the order.

3 COMMISSIONER BROADBENT: Okay. Mr. Starrs,
4 SunPower of course testified against the safeguard when we
5 did that proceeding. Can you talk a little bit about your
6 thinking as these measures went into effect and what you,
7 how your company adapted and what some of the dynamics are
8 in your decision to purchase the solar power facility?

9 MR. STARRS: Sure. So reminding everyone,
10 myself included, that I'm here on behalf of SunPower
11 Manufacturing Oregon, but of course I do work for SunPower,
12 so I'm happy to address that question. I think, you know,
13 our -- first of all, we stayed out of the Solar 1 and Solar
14 2 proceedings, the previous proceedings, because frankly we
15 didn't have that much stake in the matter.

16 We as you know, we have never manufactured or
17 during that period we were not manufacturing in China, and
18 we manufactured primarily elsewhere in Asia. So the effects
19 for us were remote enough that we chose not to actively
20 participate in that. It was different for us when the
21 safeguard action started, and to be blunt, we thought that
22 the safeguard case was over-broad in its product coverage,
23 including as it did our distinctive proprietary what we call
24 our IBC, inter-digitated backed contact products.

25 And as you know, the history since then proved

1 us correct or at least the administration concluded that we
2 are correct, since we sought and were granted an exclusion
3 for those products. So that's -- that was really the core
4 issue for us in taking the position we took on the safeguard
5 action.

6 COMMISSIONER BROADBENT: Okay, thank you. Mr.
7 Brightbill, how should the Commission take into account its
8 own findings in its supplemental report on unforeseen
9 developments during the Section 201 safeguard? This is what
10 the administration had asked us to report on, in which we
11 stated, which the Commission stated that increased imports
12 were largely attributable to increased CSPV cell and module
13 capacity by Chinese producers, both within China and
14 globally.

15 Does this indicate that Chinese imports, if
16 allowed to continue to trade at dumped and subsidized
17 prices, will do additional harm to the domestic industry?
18 Or does the analysis that the over-supply problem, which has
19 its roots in China, is nonetheless a global issue caused by
20 multi-national companies with investments in many countries?

21 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. I
22 think there are elements of both of those that may be
23 correct. So I think I'd like to -- and I haven't looked at
24 the unforeseen, the supplemental analysis of the unforeseen
25 elements for some time. So if you don't mind, I think I'll

1 look at it and give you a more complete response in the
2 post-hearing brief.

3 COMMISSIONER BROADBENT: Yeah. I appreciate
4 that. How should the Commission contend with
5 non-attribution in this review, given that the vast majority
6 of the market is comprised of non-subject imports, and then
7 the continued large share of imports from China and the fact
8 that the domestic industry does not appear to have
9 benefitted in terms of financial performance, market share
10 or output from these orders? Would revocation result in the
11 domestic industry being materially injured in a way that is
12 not already occurring?

13 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. We
14 do think it would result in injury, continuation in a way
15 that's -- and amplification in a way that's not already
16 occurring, and we think the basis for that is in the staff
17 report, where you compare U.S. product to subject imports,
18 to non-subject imports and find that they are highly
19 comparable, except on the issue of price.

20 It's reflected in the underselling data that you
21 did, which take into account U.S. versus China, and
22 separately account for non-subject imports. So you have --
23 we think you have multiple ways of distinguishing Chinese
24 imports from the non-subject imports and the fact that the
25 Chinese imports would cause material injury to continue or

1 recur.

2 COMMISSIONER BROADBENT: Mr. Boken, according to
3 the prehearing report on page II-11, one purchaser noted
4 that several suppliers in developing countries that are
5 excluded from safeguard remedies have started exporting
6 additional volumes to the United States.

7 Have you observed this trend and if so, which
8 countries have increased their exports here? Are
9 established CSPV producers starting to invest in these
10 developing country markets in order to export here?

11 MR. BOKEN: So from the Solar World standpoint,
12 I don't have any specific data that tells me who exactly is
13 importing and which other countries have increased their
14 imports. We in our environment, we are responding to what
15 the market price is. I'm sure we can do a little bit of
16 internal research with our sales team and maybe speak with
17 their -- with our distribution channel to find out where
18 some of those products are coming from. But right now, I
19 don't have any data to be able to answer that question
20 intelligently.

21 COMMISSIONER BROADBENT: Mr. Starrs, do you have
22 any perspective on that, and the question really related to
23 several suppliers in developing countries excluded from the
24 safeguard remedies are starting to export additional volumes
25 to the U.S. Have you observed this trend?

1 MR. STARRS: It's Tom Starrs from SunPower
2 Manufacturing Oregon. Let me take just one sec to read the
3 relevant language. The short answer is I don't have any
4 independent knowledge. I think it's been a while since I
5 reviewed the list of countries that were excluded from the
6 safeguard action, according -- and I'm allowed to refer to
7 this Tim or not?

8 MR. BRIGHTBILL: Yes, that's public.

9 MR. STARRS: Okay. I mean according to what
10 Tim's showing me, that includes India, Turkey and South
11 Africa. The other one that's not mentioned there that I do
12 recall is Brazil I think was excluded. I may be wrong about
13 that, but the bottom line is I haven't heard anything from
14 SunPower's sales teams, either in the U.S. or around the
15 world, about a significant increase in imports from those
16 particular countries. But then again, I haven't asked. So
17 it's possible that there's some intelligence even within my
18 company that I'm not aware of on that front.

19 COMMISSIONER BROADBENT: Okay. Thank you very
20 much.

21 CHAIRMAN JOHANSON: Commissioner Schmidtlein.

22 COMMISSIONER SCHMIDTLEIN: Okay. I have a few
23 questions for the post-hearing, and maybe a few that you can
24 answer now. Would you be able to put any information on the
25 record with regard to import volumes for the second half of

1 2018, any months since June?

2 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein. We
3 can use the imports, general import statistics that are
4 available to do that. So there's a little bit of a lag
5 there too, like a month or six weeks. But yes, we can put
6 that on the record.

7 COMMISSIONER SCHMIDTLEIN: Okay, and I know the
8 general import statistics would include thin film, right?
9 So that would make them a little --

10 MR. BRIGHTBILL: Yes, that's correct. The
11 tariff headings have changed somewhat recently, but I think
12 -- I think that's still true. But we can provide the best
13 we can do, yes.

14 COMMISSIONER SCHMIDTLEIN: Yeah. Okay, all
15 right. That would be helpful. Another question that has
16 been touched upon today, but I'm not sure directly asked is
17 the cause of the price declines over the POR. In your view,
18 what has caused the prices to decline? Is it the
19 improvement in efficiency and technology as the Respondents
20 argue at several points in their brief?

21 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
22 No, it's not just the improvements in technology. It is
23 expected for an industry like this, that there will be
24 improvements in technology that would lead to gradual price
25 declines.

1 But what we saw particularly in 2016, and
2 unfortunately again this year, was way out of line with
3 efficiency gains or technology improvements, and really was
4 led by China and policies to -- either the combination of
5 the over-capacity, the subsidies or decisions relating to
6 their feed-in tariffs and the resulting effects in the rest
7 of the world. It's pretty well documented both in 2016 and
8 more recently, and maybe the industry can comment too.

9 MR. STARRS: Typically, where we're seeing price
10 declines that are driven by technology, the first action is
11 that that technology reduces our bill of materials or our
12 costs, labor, some component, and then we are -- and then
13 others follow and there's a competitive dynamic in the
14 marketplace. What we've been experiencing over the last
15 several years has been, as I mentioned in my initial
16 testimony, a pricing pressure that's decoupled from what our
17 cost pool is.

18 So that that's external pricing pressure that's
19 really driven by mostly imports coming in and setting a
20 price at which they're willing to sell into the market, and
21 then our -- us forced to match that price because the
22 market is not willing to pay us a price that reflects a
23 reasonable margin on our product.

24 COMMISSIONER SCHMIDTLEIN: Mr. Kaplan.

25 DR. KAPLAN: I mean in the semiconductor

1 industry, as technology improves the price declines. This
2 is a semiconductor industry. So the question is, is the
3 declines, you know, proportional to the change in
4 technology, to the increase in efficiency. When the
5 Commission's faced with this, they look at whether there's a
6 cost-price squeeze, whether the profits are holding up as
7 technology improves efficiency and prices fall.

8 I think the one quote that came out of me in the
9 201 was the papers that the Respondents alleged that, you
10 know, falling prices by technology, a sign that there's no
11 effect of imports, or that you can't win relief because
12 technology causes prices to fall. I think my response was
13 that's nuts, and it's still the same point.

14 You know, in any semiconductor industry you look
15 at, there's an increase in efficiency as technology
16 improves. There's Moore's Law. It happens. So your charge
17 then is given that condition in competition, saying are
18 prices falling faster than they should be? Look at the
19 profit numbers. Look at cost-price squeezes in industries
20 where there isn't that kind of technology change. So it's
21 pretty straightforward and to me it's, you know, I don't get
22 the point. Yeah, it's a semiconductor industry. Prices
23 fall. So what? It's how much.

24 COMMISSIONER SCHMIDTLEIN: Okay. So is it your
25 position, then, that the not, you know, because obviously

1 we've got some fluctuation in subject tariff. The subject
2 goes down in the interim. Non-subject is still a strong
3 presence obviously in the market, that China, Chinese prices
4 are influencing the non-subject prices as well, which is
5 having an effect on the U.S. market, in addition to the
6 Chinese prices having a direct effect. Is that your --

7 DR. KAPLAN: I think the Commission's found this
8 is in every industry that China dominates. They talk about
9 world prices in steel and investigation after investigation,
10 given Chinese over-capacity generating those prices, and
11 then looking to see what the incentive would be if orders
12 were removed. Given that domination of imports from China
13 that's under order, and imports from other countries that
14 were under order.

15 COMMISSIONER SCHMIDTLEIN: I understand. But
16 I'm really looking -- the question, at least the way I
17 started it, was about what was happening looking back over
18 the POR. I mean I understand the analysis for a sunset
19 looking forward. But I just wanted to get your position on
20 what was causing the prices to go down looking back over the
21 POR, especially given that subject has gone down especially
22 in the interim.

23 I think I heard you say prices in the U.S. have
24 continued to go down in '18. So I'm just wanting, for the
25 record, just to get on the record, what is your position

1 with regard to what's happening with prices, and then the
2 second question is how does that occur, right? How did that
3 occur in the U.S. market, which is really a question of
4 price transmission?

5 MR. STARRS: Commissioner Schmidtlein, if I can
6 just jump in. I think the one thing that hasn't been said
7 yet that I think is relevant is beyond the POR and actually
8 looking back for 50 years there's abundant evidence in the
9 trade literature and in the academic literature that there's
10 a long-term and remarkably consistent reduction in the price
11 cost really CSPV products and that decline has been almost
12 consistently within a range of say 5 to 8 percent per year,
13 okay, and that continues to this day.

14 What that doesn't do is explain a price
15 reduction of 30 percent in one year, so there have to be
16 other market dynamics at play. You know I'm not an
17 economist, but my conclusion from that is that the obvious
18 answer is that there's a supply/demand imbalance that's
19 driven mostly by the overcapacity in the market that's
20 suppressing prices artificially.

21 COMMISSIONER SCHMIDTLEIN: Right. So, does
22 somebody want to address the subject versus non-subject
23 question then, given the volumes of subject versus
24 non-subject over the POR and into interim '18?

25 MR. STARRS: Well, again, I'm not an economist,

1 but my thought is that -- you know subject and non-subject
2 are interrelated in the sense that if there's that abundant
3 overcapacity is in place in China, then it -- you know even
4 the threat of that capacity being able to come online is a
5 factor in shaping the overall market dynamics, so if someone
6 ramped down production in a non-China producing country,
7 then the Chinese could, if it served their purposes, simply
8 ramp up their own domestic production to make up for it.
9 So, I think that's the dilemma that we're seeing with this
10 much overcapacity in the market is that they are sort of
11 fungible. And it's complicated, of course, additionally by
12 the fact that a lot of the production elsewhere in Asia is
13 actually controlled by the same Chinese producers, whether
14 it's in country or out-of-country.

15 COMMISSIONER SCHMIDTLEIN: Okay, Mr.
16 Szamoszegi, did you want to add something?

17 MR. SZAMOSSZEGI: In addition to that, because
18 that's all spot on, I would say there can be global macro
19 causes to changes in price and I think what you see in 2018
20 is the effect similar to what you saw right before the 201
21 investigation. You see a demand side event in China that
22 takes an already overcapacity situation in China and in the
23 rest of the world due to Chinese companies that makes that
24 even worse and drives prices down in China, in other
25 countries, and results in lower prices here.

1 DR. KAPLAN: Well, the transmission mechanism
2 has been directly through Chinese imports and through the
3 affect of Chinese excess capacity on world prices. And once
4 again, the Commission found in the original investigation
5 that they caused injury through prices and their effects and
6 they found them in 201 through all imports, including the
7 Chinese imports that the prices caused serious injury, so,
8 once again, why we need both and the link between them. I
9 hope that's helpful.

10 COMMISSIONER SCHMIDTLEIN: Okay, yes. Alright,
11 my time is up.

12 CHAIRMAN JOHANSON: Commissioner Kearns.

13 COMMISSIONER KEARNS: Just a couple of extra
14 questions. We've been talking about non-subject imports a
15 bit, but I don't think this question's been asked. How do
16 the prices of non-subject imports compare to domestic and
17 subject import prices? I mean I'm looking at AUVs in the
18 "C" Table. It looks like non-subject AUVs are significantly
19 lower than U.S. AUVs, but higher than subject import AUVs.
20 Is the same true with prices?

21 MR. BRIGHTBILL: Some of this may be
22 confidential, but I think, generally, what you're saying is
23 correct. And what is also reflected in terms of price
24 leadership in the report is that Chinese imports set the
25 price and are the lowest. Non-subject imports are lower.

1 It depends somewhat on which non-subject imports. And U.S.
2 prices are forced to follow that as set by China, but also
3 sort of reinforced by Chinese-owned production in third
4 countries as well.

5 COMMISSIONER KEARNS: Okay, thank you.

6 MR. SZAMOSSZEGI: Just quickly, the subject
7 imports during this period are subject to an Order as well,
8 so that shows how good a price.

9 COMMISSIONER KEARNS: Okay, thank you. And so I
10 think I know the answer to this question based on what you
11 said, Mr. Brightbill, but did non-subject imports pay any
12 role in pulling domestic prices down during the period of
13 review?

14 MR. BRIGHTBILL: I won't say that they played no
15 role, but the staff report documents who the price leaders
16 are and we think that's accurate and the basis for your
17 findings on price and price effects.

18 COMMISSIONER KEARNS: Okay, thank you.

19 Turning back to the issue of the 201 and the 301
20 tariffs, I know you all have said you will address these
21 issues more in your post-hearing brief, but just to make
22 sure we're clear could you also discuss all reviews and
23 original investigations in which the Commission has
24 considered the restraining effect of relief imposed under
25 other statutes -- you know 201, 301, 233 or any other

1 precedent that you think is relevant.

2 MR. BRIGHTBILL: We'll be happy to do that.

3 COMMISSIONER KEARNS: Okay, thank you.

4 And then just real quick, I wanted to touch on
5 your answers to Commissioner Schmidtlein's questions about
6 why prices have fallen and to what extent technology is the
7 reason versus Chinese policy, for example. But it seems to
8 me there's sort of a third category, right? I mean you all
9 have also talked about economies of scale and in that sense
10 you wouldn't see a cost price squeeze -- I mean if you all
11 aren't increasing your economies of scale, but subject
12 imports or non-subject imports are increasing their
13 economies of scale you would see prices go down as costs go
14 down in a way that you wouldn't see if the U.S. industry
15 were -- there's a technology that affects all of the players
16 equally, right? Is that right and is that what, to some
17 extent, may be happening here, given what you had said
18 earlier about the fact that -- I can't remember which
19 witness said it, but you know it used to be a big factor
20 would be -- was it 10 megawatts and now it's a thousand?
21 So, is that, to some extent, what's going on?

22 MR. BRIGHTBILL: Again, in my defense of Solar
23 World's CEO's past, Mr. Stein said part of the reason why he
24 was -- what his vision for the United States was five or six
25 producers at a gigawatt each was because that's where the

1 scale benefits occur. But what you have in China now is way
2 beyond that with producers that produce 4 gigawatts, 5
3 gigawatts, or more. So, at that point I would argue that
4 you're not seeing scale benefits. You're seeing something
5 else, which is what we flagged as the unfair trading
6 activity and so forth.

7 MR. STARRS: I would concur with Mr.
8 Brightbill's assessment and just add that when I talked
9 about those long-term latitudinal studies looking at cost
10 reduction over time and saying that that was around 3
11 percent per annum that included both innovation effects, but
12 also scale effects. So, again, you could see those scale
13 effects increase somewhat in any given year or two and that
14 they did roughly during -- probably most likely during the
15 early part of this decade, but that wouldn't explain again a
16 30 percent decline in pricing during a three or four or
17 six-month period, which is what we've seen.

18 COMMISSIONER KEARNS: Okay.

19 MR. BRIGHTBILL: The pricing products also
20 reflect sort of the amount of innovation. You know modules
21 back five or six or seven years ago were 230/240 watt. Now
22 they're about 300 watt for the same size module, so I think
23 that reflects the sort of single-digit improvement and
24 efficiency that you see and the fact that the cost decline
25 or price declines have been far greater than those

1 efficiency gains.

2 COMMISSIONER KEARNS: Okay, thank you. I have
3 no further questions.

4 CHAIRMAN JOHANSON: Have recent declines in
5 consumption in the United States leveled off such that we
6 may expect to see continued upward trends going forward?

7 MR. BRIGHTBILL: Mr. Chairman, your question is
8 about demand?

9 CHAIRMAN JOHANSON: Right.

10 MR. BRIGHTBILL: I'll leave it to the industry
11 witnesses, but I think the projections are for demand to be
12 strong, but not sort of double-digit explosive growth in the
13 U.S., but I'll leave it to the experts on that.

14 MR. STARRS: I'll touch on that first and then
15 Mr. Boken can add anything if he wants to. The specific
16 figures that I've looked at internally from our company Mr.
17 Brightbill said it quite well. I would say the projections
18 are for increasing growth, but at less than the long-term
19 historical average. So, historically, this industry grew at
20 double-digit rates, sometimes 20, 30 percent annual growth.
21 The projections for the growth in the U.S. industry over the
22 next five years or so are on the order of about 4 percent, 5
23 percent, something like that, so growth, but less than the
24 historical level of growth.

25 DR. KAPLAN: We'll put in long-term forecast as

1 well from like the International Energy Agency. There's a
2 lot of folks out there doing it. As you could imagine --
3 given the most recent reports -- environmental reports you
4 know everybody's eyes are open and everyone is moving toward
5 renewable energy. So, the path will change, given certain
6 regulatory things, but it's on an upward trend and the
7 growth rates we'll put on the record from various
8 forecasts.

9 MR. BOKEN: I agree with Mr. Starrs. The growth
10 rates that I've seen in all of the segments are lower,
11 single digits, which is reflective of an industry that's not
12 -- I wouldn't say mature, but maturing, but with incentives
13 in place and opportunities for growth, so somewhere in that
14 3 to 5 percent range is what I've seen to expect in all
15 three segments in the coming years.

16 CHAIRMAN JOHANSON: I'm surprised it's not
17 higher. I would think every house from San Antonio to San
18 Diego would probably want one of these on their roofs. I
19 know my sister's thinking about getting them -- she's in San
20 Antonio -- because it's sunny all the time there.

21 MR. BOKEN: As Mr. Starrs had mentioned, in
22 California, where I'm from, with the new legislation in
23 place in 2020 all new homes that are built are required to
24 have solar, so you may see a spike in California in that
25 particular segment in new homes. But there's no doubt that

1 there are lots of installers out there marketing to folks in
2 the Southwest, in particular.

3 CHAIRMAN JOHANSON: Right. Okay, thank you.

4 What factor or factors caused the decline in
5 U.S. consumption of CSPV cells and modules in terms of both
6 kilowatts and dollars that began in 2017 and has continued
7 into interim 2018? You can see this in the staff reviews,
8 Table C-1.

9 MR. BRIGHTBILL: I'm sorry, Chairman, a decline
10 in?

11 CHAIRMAN JOHANSON: Consumption of CPV cells and
12 modules in terms of kilowatts and dollars.

13 MR. BRIGHTBILL: I can start. Again, I think
14 some of what was testified to earlier, was demand pulled
15 forward into 2016 by the threatened expiration of investment
16 tax credit. So, you saw an explosion or acceleration at the
17 very end of 2016 and then what's reflected after that is a
18 decline that's continued. But if you remove that sort of
19 aberrational year, you see the steady consumption or demand
20 trend upward.

21 CHAIRMAN JOHANSON: Thank you for your response.
22 And I have just one more question.

23 Canadian Solar argues that Chinese producers are
24 beginning to make investments in the United States to serve
25 the U.S. market and that this makes it unlikely that they

1 will import in volumes or at prices that would harm the
2 return on their investment. And they argue this at page 75
3 to 76 of their brief. Would such investments insulate the
4 domestic industry to any extent from continuation or
5 recurrence of injury?

6 MR. BRIGHTBILL: The answer is no. The
7 Commission has seen this in lots of other industries;
8 particularly, steel where there are foreign-owned companies
9 that have U.S. investments. And so, no, upon revocation
10 there's no evidence that these investments would necessarily
11 insulate from injury or that these Chinese-owned companies
12 wouldn't do whatever they would to profit maximize in the
13 best way possible for the company as a whole.

14 CHAIRMAN JOHANSON: Thank you, Mr. Brightbill.
15 And that ends my questions, unless anyone else wants to add
16 to that. Alright, I thank you all for appearing here today.
17 Commissioner Williamson? Commissioner Broadbent?

18 COMMISSIONER BROADBENT: Mr. Brightbill, for the
19 record, if you wouldn't mind just reiterating your arguments
20 on domestic-like product and the semi-finished product
21 analysis just so we have it within the context of this
22 investigation. I think that's all I've got. I'm pretty
23 much done here, so thank you. I want to thank all the
24 witnesses, really appreciated your testimony.

25 CHAIRMAN JOHANSON: Commissioner Schmidtlein?

1 COMMISSIONER SCHMIDTLEIN: Okay, I just had a
2 few questions that I think you could respond to in the
3 post-hearing that I'm not sure have been directly addressed
4 today.

5 First, could you respond to the Respondents'
6 argument that the AD/CVD Orders in Solar II should be
7 considered a barrier for subject imports? And if you'd like
8 to comment on it now, you could do or you could do it in the
9 post-hearing too.

10 MR. BRIGHTBILL: We'll comment in the
11 post-hearing, but the quick answer, of course, is Solar II
12 cases were necessitated by the loophole in the scope left in
13 Solar II. The duty margins are significantly higher in
14 Solar II, but the two Orders work together. Solar II isn't
15 really an independent barrier. It's just to ensure that
16 Chinese modules using non-Chinese cells don't take the place
17 of all Chinese product.

18 COMMISSIONER BROADBENT: Okay. Well, if you
19 could address that in the post-hearing as well and you may
20 want to look at their brief to see what they say
21 specifically.

22 Another argument, which is at page 85 of their
23 brief, is that the 201 and 301 tariffs will more than
24 compensate for the average margin of underselling that we
25 see in this case. And because of that we should find that

1 the volume and price affect of any future imports will be
2 insignificant.

3 DR. KAPLAN: That's nonsense. The gaps move
4 together. The question is whether the whole gap will shift
5 down. Like you get the 30 percent price decline the gaps
6 remain the same, even with Orders in place. So, if you said
7 what about the price of gold, it's the same everywhere in
8 the world. If someone tripled the amount of gold in the
9 market, the price of gold would decline. There'd be no
10 underselling and yet they cause price suppression, so
11 you're seeing the same thing here. It's silly economics to
12 say that.

13 COMMISSIONER SCHMIDTLEIN: Okay. Well, if you
14 could address that in the post-hearing. And I'm not sure
15 the Commission in looking at sunset reviews where there were
16 other trade remedies in place have specifically looked at
17 the margin of underselling and whether or not that was
18 comparable to the rate of the tariff that was also in place,
19 so Mr. Brightbill, I don't know whether you want to address
20 that, whether that's appropriate for the Commission to look
21 at, if that makes sense for the Commission to consider it.

22 MR. BRIGHTBILL: Would be happy to look at it
23 and comment on it further.

24 COMMISSIONER SCHMIDTLEIN: Okay. And then the
25 last argument this has to do with the non-subjects which I

1 think Commissioner Kearns was asking you about. But the
2 Respondents also argue that non-subjects have replaced
3 subjects in the U.S. market and therefore that would be the
4 expectation going forward, even if we revoked these Orders.
5 And that's at page -- around page 58 of their brief. So, if
6 you could respond to that argument and especially in light
7 of any of the volume information that you're able to put on
8 the record for 2018. In other words, what do we see
9 happening with volume from non-subject countries, which are
10 probably subject to the 201, after the 201 goes in place and
11 how does that impact the argument that what we would expect
12 to see if we revoke these Orders from non-subjects.

13 MR. BRIGHTBILL: We'll give that careful thought
14 and respond in the post-hearing brief.

15 COMMISSIONER SCHMIDTLEIN: Alright, thank you.
16 That's all I have.

17 CHAIRMAN JOHANSON: Commissioner Kearns?

18 COMMISSIONER KEARNS: Yes, just two quick
19 questions, one in connection with Commissioner Schmidtlein's
20 question about how we've looked at this in past cases,
21 underselling versus other relief. I think we gave some
22 thought to this in the tin mill products case we had earlier
23 this year. I think the circumstances there are a little bit
24 different than here in terms of the volume of subject
25 imports, but if you could make sure you include that in

1 your answer that'd be helpful.

2 And then the other thing is, just to clarify, I
3 think you all suggested that you expect U.S. demand to
4 increase 4 to 5 percent annually in the next few years. But
5 I think in your brief, on page 9, you say "Total U.S.
6 installed select capacity is expected to at least double
7 over the next five years and by 2023 the U.S. is projected
8 to install more than 14 gigawatts annually." So, if you
9 guys can just clarify that either now or post-hearing.

10 MR. BRIGHTBILL: We'll respond in post-hearing.

11 COMMISSIONER KEARNS: Okay, thanks. I have no
12 further questions.

13 CHAIRMAN JOHANSON: Do any Commissioners have
14 further questions? No Commissioners have further questions.

15 Does staff have any questions for this panel?

16 MR. THOMSON: We have no questions for this
17 panel. Thank you.

18 CHAIRMAN JOHANSON: Do Respondents have any
19 questions for this panel.

20 MR. STOEL: No.

21 CHAIRMAN JOHANSON: Respondents have no
22 question. Alright, with that, let's take a recess for
23 lunch. Let's come back here at 1:30. And I would like to
24 remind parties not to leave any proprietary information in
25 the room as the room is not secure. We'll see you back here

1 at 1:30.

2 (Whereupon, a lunch recess was taken, to
3 reconvene this same day.)

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

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

3 CHAIRMAN JOHANSON: Mr. Secretary, are there any
4 preliminary matters?

5 MR. BISHOP: Yes, Mr. Chairman. With your
6 permission, we will add Vince Plaxico, Managing Director of
7 Project Management with Recurrent Energy LLC.

8 I would also note that the panel in opposition to
9 the continuation of the Antidumping and Countervailing Duty
10 Orders have been seated. This panel has 60 minutes for
11 their direct testimony.

12 CHAIRMAN JOHANSON: Permission is granted.

13 MR. BISHOP: You may begin when you're ready.

14 STATEMENT OF JONATHAN T. STOEL

15 MR. STOEL: Good afternoon, Chairman Johanson,
16 Commissioners, and Staff. For the record, this is once
17 again Jonathan Stoel of Hogan Lovells. This afternoon we
18 have a strong panel of witnesses.

19 First we will have Vincent Ambrose from Canadian
20 Solar. Next will be representatives of four major U.S.
21 solar developers: Michael Arndt of Recurrent Energy;
22 Hamilton Davis from Southern Current; Virinder Singh from
23 EDF; and Hewitt Strange from Cypress Creek.

24 These developers will be followed by my partner
25 Craig Lewis of Hogan Lovells, and our last witness will be

1 our economist Jim Dougan of ECS.

2 Before turning over the rostrum to our
3 distinguished industry witnesses, I want to take one issue
4 off the table, and then set the table by focusing the
5 Commission on five key facts.

6 The issue I want to take off the table is the
7 relatively small involvement of the Chinese industry in this
8 proceeding. I can assure you that we actively sought the
9 participation from other producers and exporters, but they
10 declined, principally because they're not interested in the
11 U.S. market due to other existing trade restraints.

12 Fact number one: China's solar energy market is
13 by far the world's most important solar market and has grown
14 substantially since the Commission's original
15 investigations. China accounted for nearly 35 percent of
16 the growth in global installed capacity from 2009 to 2017,
17 and Chinese demand for CSPV product reached a record of 53
18 gigawatts just last year. That's more than half of global
19 demand.

20 In other words, the only question for the
21 foreseeable future is whether Chinese demand will plateau at
22 a high level such as 35 to 40 gigawatts annually, or return
23 to its peak of more than 50 gigawatts, or will leap even
24 further.

25 Regardless, it is not in dispute that the China

1 market has been and will remain for the foreseeable future
2 the principal focus of the Chinese industry manufacturing
3 solar products.

4 This fact was recently reaffirmed in early
5 November when President Xi met with the National Energy
6 Administration, or NEA, a development that was omitted
7 entirely from Petitioner's prehearing brief.

8 Fact number two: Demand in Asia for CSPV
9 products outside of China also has skyrocketed since the
10 Commission's original investigation. In fact, this 2009
11 demand in Asia, exclusive of China, has accounted for more
12 than 20 percent of the global growth in solar installations.

13 To focus the Commission on just one Asian market,
14 India has now surpassed the United States to become the
15 second largest market for solar products.

16 Moreover, due to India's 2022 renewable energy
17 target, Indian demand is expected to continue growing at a
18 rapid pace. Fast-growing Asian markets such as India, which
19 is the second largest customer for Chinese producers in
20 2017, are expected to remain the secondary focus of the
21 Chinese industry for the foreseeable future.

22 Fact number three: In September 2018, the
23 European Commission terminated its trade restraints on
24 Chinese solar products. This fact, which is never mentioned
25 in Petitioner's prehearing brief, means that Europe's market

1 for solar products, which remains one of the world's
2 largest, is now open to Chinese exports for the first time
3 since the end of 2013.

4 Moreover, according to SolarPower Europe,
5 European demand for CSVP products is expected to, quote,
6 "surge," unquote, in the foreseeable future.

7 Fact number four: Solar product imports from
8 China have played a declining role in the U.S. market since
9 2015. As you will hear from all of our witnesses, the
10 volume of Chinese solar exports to the United States is
11 minuscule today.

12 In 2018 year-to-date, imports from China
13 accounted for less than 2 percent of total U.S. imports.
14 With burgeoning demand for solar products in China and other
15 more attractive markets than the United States, it is
16 evident that Chinese producers will remain focused elsewhere
17 and not on the U.S. market.

18 Fact number five: Even if the AD/CVD Orders
19 under review are revoked, the U.S. industry will remain
20 heavily protected by trade measures for the foreseeable
21 future. As I explained this morning, there are four
22 separate restraints on imports that will remain in place if
23 the Commission were to focus--were to revoke the AD/CVD
24 Orders.

25 I will focus on just one: The 25 percent ad

1 valorem Section 301 tariff. It was surprising to me that
2 Petitioner's brief did not even mention this tariff in
3 covering this industry.

4 These restraints are important because, as
5 documented in the prehearing report and in our prehearing
6 brief, U.S. solar module manufacturers are opening new
7 production facilities and expanding their existing
8 operations.

9 These manufacturers are well positioned to take
10 advantage of strengthening U.S. demand in 2019 and 2020.
11 Moreover, as you've already heard this morning, SolarWorld
12 has been acquired by SunPower, which just publicly announced
13 its plans to provide a, quote, "deep pocket" to the
14 operation of SolarWorld's Oregon manufacturing facility.

15 On the other hand, for the foreseeable future
16 Chinese exports will face major headwinds--specifically, a
17 combined 55 percent ad valorem tariff through the Section
18 201 and 301 measures, even if these Orders under review are
19 revoked.

20 I ask that you keep these key facts in mind as I
21 turn it over to our industry witnesses.

22 STATEMENT OF VINCENT AMBROSE

23 MR. AMBROSE: Good afternoon, and thank you for
24 the opportunity to the Commission to appear before you
25 again. My name is Vincent Ambrose. I'm the General Manager

1 for Canadian Solar USA, Inc., which is a wholly owned
2 subsidiary of Canadian Solar. Inc., which was founded in
3 2001.

4 Canadian Solar is a globally integrated top-three
5 solar company that is headquartered in Ontario, Canada, and
6 has approximately 10,000 employees globally.

7 Canadian Solar is firmly committed to the U.S.
8 market for solar power. We have currently 200 employees in
9 the United States, and we've invested approximately
10 \$940 million here, including acquiring solar development
11 company Recurrent Energy LLC in 2015 for \$265 million.

12 Canadian Solar provides capital, technology, and
13 know-how to support the growth of the U.S. market for solar
14 products. While we were once upon a time a major supplier
15 of Chinese-origin cells and modules to the U.S. market, this
16 is no longer the case.

17 Our exports of these products to the United
18 States have dropped significantly since 2016, and Canadian
19 Solar publicly announced in February of 2018 that our
20 business strategy no longer involves sourcing cells and
21 modules from China to the U.S. market.

22 Let me give you some background to explain why
23 we've made these changes to our sourcing patterns.

24 First, the shift in Canadian solar sourcing for
25 the U.S. market reflects increased globalization of solar

1 cell and module production. Major solar manufacturers,
2 ourselves included, have diversified their manufacturing
3 locations in response to a variety of market factors,
4 including growing CSPV demand in third countries, logistics'
5 costs, and trade measures.

6 Since 2002, solar manufacturing has proliferated
7 throughout Asia and other regions. Like many other major
8 solar suppliers, Canadian Solar has responded to the same
9 incentives, and has invested in substantial manufacturing
10 facilities outside of China, including facilities in
11 Thailand, Brazil, and Vietnam.

12 As a result of this significant diversification
13 of production, the sources of solar cells and modules for
14 the U.S. market have also rebalanced away from China.
15 Today, South Korea and Malaysia are the largest sources of
16 solar cells and modules in the United States, with solar
17 products also being sourced from Vietnam, Singapore, Japan,
18 Taiwan, and Mexico. In fact, Chinese imports into the
19 United States have been declining since 2015, and today
20 account for a very small portion of the solar panels that
21 are deployed in the U.S. market.

22 Imports from China account for only 2 percent of
23 total imports in the first half of 2018. This sharp decline
24 occurred even before the President decided to impose a
25 separate 25 percent Section 301 tariff on imports of solar

1 cells and modules from China.

2 Consistent with these market changes, Canadian
3 Solar plans to source solar modules in the U.S. primarily
4 from its manufacturing locations outside of China,
5 principally from its facilities in Southeast Asia.

6 Canadian Solar's operations in China have been
7 redeployed to other markets, including, most importantly,
8 the huge and growing China home market, and other large and
9 growing regional markets throughout Asia.

10 Our decision to source for the U.S. market
11 outside of China is both consistent with Canadian Solar's
12 global investment decisions and our assessment of where the
13 best economic interests lie. To be direct, our assessment
14 of where--excuse me--our decision to source outside the U.S.
15 market for both China are consistent with our global
16 investment decisions.

17 Our manufacturing diversification, combined with
18 the impacts of Section 201 and Sections 301 tariffs, mean
19 that it's not commercially advantageous for Canadian Solar
20 to ship solar cells and modules from China to our U.S.
21 customers. This is not to suggest that we have shuttered
22 our Chinese manufacturing facilities. We have not.

23 However, we have been successful in repositioning
24 the marketing of our Chinese production to reflect the
25 rising growth in Chinese home market and regional demand for

1 solar products. Back in 2012, China was a comparatively
2 small market when compared to the United States and Europe.
3 China demand for solar has absolutely exploded since then,
4 and China is now by far the world's largest market for these
5 products, with plenty of room to grow.

6 But China is not the only local market with
7 substantial growth. Canadian Solar has also focused its
8 Chinese production capacities on meeting growing demand for
9 solar products in other markets, including Asia, Brazil, and
10 South Africa. Also, Europe is an attractive market for
11 solar module sales from China now that the EU trade measures
12 on China's solar cells and modules have been eliminated.

13 Canadian Solar and other Chinese producers are
14 looking to the EU market for future opportunities that are
15 unfettered by trade restriction.

16 I would like to conclude with a few general
17 comments on the future of the solar industry. At the time
18 of your original investigation, solar energy was not yet
19 price competitive with other available sources of energy
20 such as natural gas, coal, and wind power.

21 In many places in the world, including the United
22 States, there are relatively few utility scale projects as
23 solar development prices remained too high to compete with
24 other forms of energy. Today, solar is the fastest-growing
25 sector of the energy market in the United States, and is

1 expanding in a similar fashion around the world, as
2 countries seek to reduce their dependence on fossil fuels
3 and take advantage of long-term benefits of solar power.

4 As a high technology product, solar products are
5 subject to the continuous innovation and increased
6 efficiencies. This means that the per-unit cost of energy
7 associated with solar energy is likely to continue to fall,
8 making solar energy an increasingly cost competitive
9 alternative to other energy sources.

10 New solar energy currently accounts for
11 approximately half of all new energy generation capacity
12 additions in the United States. Solar has reached grid
13 parity in many U.S. sub markets, notwithstanding the
14 declining prices for natural gas due to the fracking boom.

15 Additionally, solar has won many all-source
16 utility run procurement processes in recent years, competing
17 against multiple forms of energy generation. Solar also
18 assumed one of the top positions in terms of installed
19 nameplate capacity in the U.S. over the past few years.

20 The same can be seen in other global markets. In
21 short, the prospects for growth and opportunity in the solar
22 sector are very strong. The expansion of foreign investment
23 in the U.S. solar energy, including from Canadian Solar, is
24 evidence of its bright future.

25 Canadian Solar welcomes the continued growth of

1 the U.S. solar sector, and will continue to act responsibly
2 in the market to support that goal. Thank you for your
3 attention. I would be pleased to answer any questions.

4 STATEMENT OF MICHAEL ARNDT

5 MR. ARNDT: Good afternoon and thank you for the
6 opportunity to appear before you today. My name is Michael
7 Arndt. I'm the Managing Director of Development and
8 Recurrent Energy and I work at our headquarters in San
9 Francisco. Recurrent is one of the largest solar
10 development companies in the United States. We are proud to
11 employ 90 individuals directly and we also indirectly
12 employ hundreds of other Americans, including builders,
13 engineers, consultants and other professionals.

14 In my role at Recurrent, I'm familiar with our
15 ongoing and plan contributions to America's energy grid as
16 well as the sourcing decisions that make our projects
17 possible. We have felt first-hand the affects of trade
18 measures on the health of the U.S. solar industry. In light
19 of our experience, I'm here today to ask that the Commission
20 -- to remove the AD/CVD Orders on imports of solar cells and
21 modules from China.

22 We are grateful for the Commission's attention
23 to our promising industry, but we are concerned that the
24 multiple, overlapping trade restrictions on imports of solar
25 products currently enforced will detract from the

1 development and employment of solar energy in the United
2 States. We remain optimist about both the future of solar
3 power and our role in the continued U.S. growth of solar
4 energy.

5 Between 2016 and 2018, Recurrent accounted for
6 1700 megawatts of U.S. solar projects, over \$3 billion in
7 third party investment, 370 construction jobs, and \$180
8 million added to state and local tax bases. We plan to
9 maintain our leadership in U.S. solar development. In 2019
10 and 2020, Recurrent plans to add over 1800 megawatts of
11 projects in California and Texas, over \$800 million in third
12 party investment, 200 construction jobs, and \$100 million
13 added to state and local tax bases.

14 Regrettably, we do not expect the two years to
15 match our previous output. This forecast drop is at least
16 partially, a consequence of the cumulated trade measures now
17 influencing the future of solar energy in the United States.
18 The cumulative U.S. trade measures have resulted in a market
19 uncertainty that dampens U.S. demand for utility scale solar
20 energy. Taken together, these barriers to trade have head
21 to reduced power procurement activities, fewer new
22 installations, delayed projects, lost revenue, and reduced
23 employment across all sectors of the domestic solar
24 industry.

25 More broadly, these effects limit new investment

1 in state and local economies and delay investment from the
2 financing community and capital markets. At the end of the
3 day, added costs associated with trade restrictions
4 ultimately translate into higher energy prices, which are
5 paid by end users and ratepayers. Because solar energy
6 competes with other forms of power generation, including
7 coal, nuclear, natural gas, and wind, investing to solar
8 due to all of these added costs associated with these trade
9 restrictions is less feasible and threatens the future of
10 U.S. solar growth.

11 Recurrent has acutely felt the affects of the
12 cumulated trade measure. Following the imposition of the
13 Section 201 measure this past year, for instance, several
14 projects that were initially intended for a 2019 commercial
15 operation date were pushed back to 2010. These delays
16 affected nearly 700 megawatts worth of projects, 1400
17 construction jobs, tens of millions of dollars in local tax
18 revenues, and over \$600 million in total project cost. Not
19 only were there project delays, but electricity customers
20 requested re-pricing and in some cases even put
21 solicitations on hold due to the inability of sellers to
22 offer firm pricing.

23 I'm here today to make these points even though
24 we do not rely on imports from China in our projects and
25 AD/CVD duties do not directly impact Recurrent's existing

1 and future business operations. Since the original
2 imposition of AD/CVD Orders in 2012 production of solar
3 products has expanded and diversified from China to several
4 new jurisdictions. In light of this market restructuring
5 and the emergence of new trade flows, like many U.S. solar
6 developers, Recurrent no longer sources a significant
7 portion of solar products from China. In fact, Recurrent
8 largely stopped using solar modules from China in 2017, even
9 before the Section 201 remedy came into effect.

10 Even though we do not rely on Chinese equipment
11 to build installations that power American cities and homes,
12 we ask the Commission to reevaluate the standing AD/CVD
13 Orders because the cumulative effect of trade measures has
14 created market uncertainties that slow down procurement and
15 make it more difficult for solar energy to reach parity.
16 These effects permeate the market, touching even solar
17 developers who do not use Chinese products.

18 For these reasons, we respectfully ask the
19 Commission to revoke the AD/CVD Orders. I'd be pleased to
20 answer any questions.

21 STATEMENT OF HAMILTON DAVIS

22 MR. DAVIS: Mr. Chairman, Commissioners, thank
23 you for the opportunity to testify before you today. My
24 name is Hamilton Davis and I am the Director of Regulatory
25 Affairs for Southern Current, LLC. Southern Current is a

1 Charleston, South Carolina based company with over 100
2 direct employees. We also indirectly employ hundreds more
3 through construction contractors and subcontractors.

4 Southern Current is one of the largest solar
5 development firms in the country with 400 megawatts of solar
6 PV plants placed in service to date. Our solar power
7 activities have translated into \$70 million in wages
8 generated from these projects in just South Carolina and
9 North Carolina alone. Looking ahead, we have over \$2
10 billion of investments across six dates planned between 2019
11 and 2022. These projects represent \$20 million in grid
12 improvements, \$280 million in new job wages, and \$212
13 million in new property tax revenues for local
14 jurisdictions.

15 As you know, solar energy must compete against
16 an array of other technologies to generate and sell power.
17 Even in the face of the natural gas fracking boon and
18 historically low natural prices, the solar industry has
19 continued to grow, innovate, and generate competitively
20 priced electric power. Unfortunately, the Section 201
21 tariff and additional trade barriers have created
22 uncertainty in the manufacturing supply chain as well as
23 price volatility. Trade restrictions like the Section 201
24 tariff negatively impact our industry's ability to compete
25 in many energy markets; especially, markets like the

1 Southeast where independent power producers are competing
2 against monopoly utilities.

3 Trade restrictions directly lead to reduced
4 orders, fewer installations, cancelled projects, lost
5 revenue, and reduced employment across all sectors of the
6 solar industry. As a consequence, Southern Current has had
7 to actively reexamine many of our projects. For example,
8 because of difficulties in procuring solar modules, Southern
9 Current was forced to delay or cancel over 100 megawatts of
10 projects in 2018. The fact is trade barriers are an
11 impediment to our ability to compete and supply solar energy
12 to the U.S. electricity market.

13 I also want to add that very few solar modules
14 today are being sourced from China for the U.S. utility
15 scale solar market. In 2017 and 2018, Southern Current
16 sources our modules from countries other than China and
17 therefore trade restrictions specific to China, the focus of
18 this hearing, are not currently relevant to our business
19 operations. Our team evaluates potential suppliers based on
20 product quality that must meet our technical specifications
21 as well as product availability.

22 Although price is a consideration in our
23 purchasing decisions, it's not a leading factor in module
24 procurement. Unfortunately, U.S. solar product
25 manufacturers have not been able to meet Southern Current's

1 combined technical standards and volume needs. To the
2 extent the domestic industry is able to meet these needs in
3 the future we are inclined to source more of our modules
4 domestically. Until then, we will continue to source large
5 volumes of high-quality products from the most viable
6 international vendors.

7 Southern Current respectfully asks that the
8 Commission carefully consider the facts presented in this
9 review and revoke the duties on imports of solar products
10 from China. We pledge to do our part in continuing to
11 support the growth of the solar industry in the United
12 States, the creation of American jobs, and the lowering of
13 electricity costs for customers. Thank you for
14 consideration of our comments.

15 STATEMENT OF VIRINDER SINGH

16 MR. SINGH: Good afternoon, Chairman Johanson,
17 Commissioners, and staff. My name is Virinder Singh and I
18 am Director of Regulatory and Legislative Affairs for EDF
19 Renewables. EDF Renewables or EDFR is a renewable energy
20 development and operations company headquartered in San
21 Diego, California. We employ 885 full-time employees in the
22 United States. We are one of the largest utility scale
23 renewable energy developers in the U.S. We installed 209
24 megawatts of solar voltaic generation projects in 2017 and
25 plan to install another 147 megawatts this year. These

1 projects are located across the country and employed
2 approximately 2,447 construction workers.

3 We've been able to pursue a vigorous development
4 strategy in the United States market without sourcing solar
5 modules from China. In fact, we have not sourced solar
6 products from China since 2012. Instead, procuring CSPV
7 modules from Malaysia, Singapore, Thailand, and Vietnam, as
8 well as -- and film modules from the United States. We have
9 no plans to source modules from China for our current
10 products and construction.

11 I do want to emphasize to the Commission that in
12 making our module sourcing decisions cost is not our primary
13 focus. As both a developer and operator of solar
14 photovoltaic generation projects, we focus on quality. We
15 evaluate whether a potential supplier as sufficient
16 availability of supply, has sufficient warranty provisions,
17 is bankable with sufficient credit, and can meet our
18 rigorous technical specifications. Over the past few years
19 and for the foreseeable future, we are able to source
20 modules based on these specifications outside of China.

21 Unfortunately, U.S.-based manufacturers of
22 crystalline modules have not been able to meet our demanding
23 standards for volume, warranty, bankability, and quality.
24 Suniva does not currently manufacture solar cells or
25 modules. And even when it was producing them, they were not

1 able to meet our quality and performance requirements.
2 Solar World had curtailed its operations and unable to meet
3 our requirements. We do not expect SunPower's acquisition
4 of Solar World's Oregon facility to change the status quo.

5 At present, we do not expect U.S. manufacturers
6 to be able to reach sufficient volume, quality, or product
7 innovation to meet our needs in the U.S. utility scale
8 market. Nevertheless, we will continue to actively monitor
9 the U.S. manufacturing landscape and we are open to
10 purchasing U.S.-assembled crystalline modules in the future.
11 Again, I am pleased to report the EDFR is sourcing
12 U.S.-made thin film modules from Ohio.

13 Turning to the future, our plans for
14 installation in 2019 and 2020 should well exceed what we
15 installed in 2017 and 2018. This is due to a strong U.S.
16 market for solar photovoltaic power generation and the fact
17 that solar energy has become cost competitive with other
18 forms of energy in certain key state markets. In
19 particular, I want to point out that the U.S. Department of
20 Treasury's revised guidance on the federal investment tax
21 credit will likely further fuel demand.

22 The guidance requires initial generation from
23 solar projects to be installed -- to occur prior to 2024 in
24 order to obtain the more significant levels prescribed in
25 the investment tax credit. This incentive policy is

1 forecasted to induce a spike in demand for solar generation
2 from off-takers who want to capture the value of the
3 investment tax credit. This means that the U.S. market
4 presents strong opportunity for U.S. manufacturers of solar
5 modules well into the next decade.

6 Thank you for your attention. I would be
7 pleased to answer any questions.

8 STATEMENT OF HEWITT STRANGE

9 MR. STRANGE: Good afternoon, Chairman Johanson,
10 Commissioners and Staff. My name is Hewitt Strange, and I'm
11 the Director of Government Affairs for Cypress Creek
12 Renewables.

13 We are a leading developer of ground-mounted,
14 utility-scale solar farms in the United States. We employ
15 approximately 500 people directly, as well as thousands of
16 indirect employees, largely construction workers that help
17 build our solar farms.

18 We installed the most megawatts of any solar
19 company in the United States in 2017 at 870 megawatts. We
20 are on pace in 2018 to lead the industry again. Generally,
21 we are optimistic about the future of solar energy in the
22 United States. In the long run, the economics will win out,
23 and in the long run, utility-scale solar is gonna be the
24 cheapest form of electricity in most markets. Of course, in
25 the long run, we're all dead.

1 In the meantime, the cumulative impact of tariffs
2 on crystalline silicone photovoltaic, CSPV solar panels has
3 contracted our 2018 installations by 17%, to an expected 720
4 megawatts. Prior to the President's imposition of
5 additional Section 201 and Section 301 tariffs earlier this
6 year, 2018 was expected to be yet another year of growth for
7 both Cypress Creek and the industry as a whole.
8 Regrettably, however, our installations are down roughly 40%
9 from our original planned investment for 2018 of just over
10 1.2 gigawatts.

11 In total, Cypress Creek has cancelled \$1.5
12 billion worth of investments planned for 2018 to 2020. We
13 view this slowdown as a result of the cumulative impact of
14 tariffs, which will end up costing roughly 11,000 full-time
15 equivalent American jobs, mostly in construction labor. Our
16 experience is reflected in the aggregate data for the
17 utility-scale industry. The second quarter of 2018 was down
18 12% year-over-year.

19 The industry's 2018 third quarter data will not
20 be officially published for another month or so. But
21 preliminary numbers indicate that utility-scale solar farm
22 construction will be down over 50% year-over-year and could
23 end up being the single worst quarter for utility-scale
24 solar in over five years. We expect the same kind of
25 year-over-year decline in the fourth quarter. These trends

1 are correlated with the overlapping tariffs impacting the
2 U.S. market today.

3 Cypress Creek has not sourced a single cell or
4 module from China in 2018. Almost all of our supply comes
5 from other Southeast Asian countries, which have developed
6 new solar manufacturing capacity over recent years.

7 U.S. CSPV manufacturers have never manufactured
8 the 1500-volt panel that is used in many utility-scale solar
9 farms today. This is in part because Suniva and SolarWorld,
10 which never produced 1500-volt panels, were instead focused
11 on panels largely for the residential and commercial
12 markets. It seems unlikely that domestic producers would
13 start producing 1500-volt panels, since residential panels
14 sell for much higher prices in the marketplace -- as much as
15 50% to 200% higher -- and earn much higher margins for
16 producers as a result.

17 However, even if they did, the total
18 manufacturing capacity in the United States capable of
19 producing 1500-volt panels accounts for less than 5% of the
20 solar farms installed in the United States in 2017. We are
21 not only open to sourcing from U.S. manufacturers, we have
22 tried to do so.

23 Following imposition of the 201 tariffs, we sent
24 an RFP to domestic producers seeking the 1500-volt panels we
25 use. In response, we received offers totally only 70

1 megawatts of 1500-volt panels for 2018. That's relative, of
2 course, to the 1.2 gigawatts we had hoped to build and the
3 720 megawatts we're gonna end up building in 2018.

4 This data is an important reminder that the solar
5 industry is not one industry. The residential market is an
6 entirely different business than the utility-scale industry
7 and uses entirely different panels. Residential panels are
8 differentiated by technologies, efficiencies and aesthetic
9 design concerns that sell at a wide range of prices.
10 There's also no substitute product for rooftop solar. The
11 homeowner cannot choose rooftop wind or rooftop natural gas.
12 On the other hand, the grid does not care. The grid wants
13 the cheapest electrons and does not differentiate the
14 electrons by whether they come from wind, solar, gas or
15 others.

16 This is not to say that the U.S. economy has not
17 benefitted from the growing solar industry and new solar
18 installations. As solar installations have become more
19 affordable in recent years -- and solar technology has
20 become more efficient and accessible -- the total number of
21 American solar manufacturing jobs increased by 58% over a
22 five-year period to over 38,000 jobs in 2016.

23 Many of these Americans manufacture the steel
24 racking and other metal equipment on which solar farms are
25 built -- in so doing, they support an extensive supply chain

1 of raw materials, including employing over 95% American
2 steel in many cases. I am confident that, notwithstanding
3 the procurement challenges posed by trade restrictions,
4 Cypress Creek's future projects will create many more
5 American jobs and grow the U.S. economy.

6 Thank you for your attention. I would be pleased
7 to answer any questions.

8 STATEMENT OF CRAIG A.LEWIS

9 MR. LEWIS: Good afternoon, and thank you for the
10 opportunity to appear before you today. For the record, I
11 am Craig Lewis of Hogan Lovells on behalf of Canadian Solar.

12 I would like to speak briefly on the
13 restructuring of the global solar market and re-orientation
14 of Chinese shipments since 2012, and why these changes make
15 it unrealistic to claim, as Petitioners do, that Chinese
16 imports are likely to "surge" into the United States if the
17 anti-dumping and countervailing duty orders on Chinese solar
18 products are lifted.

19 The Chinese solar industry has not stood still
20 since 2012. At least two major changes of relevance to the
21 U.S. market have occurred, and these changes are
22 functionally irreversible. First, demand for solar products
23 has skyrocketed in China, leading Chinese producers to
24 refocus a large share of their shipments on the large and
25 growing domestic market. As Mr. Dougan will explain, China

1 represented only 12% of solar installations globally in
2 2012. In 2017, China represented a majority, 54%, of all
3 solar installations worldwide. Consistent with this
4 dramatic growth in their home market, Chinese producers now
5 predominantly make domestic, not export, shipments.

6 Petitioner SolarWorld has sought to blunt these
7 facts by pointing to recent changes in the Chinese
8 government's feed-in tariff program -- the "FIT program."
9 They claim that the FIT program has been terminated and that
10 this signals an end to the growth and importance of the
11 Chinese market for Chinese producers. However, to
12 paraphrase Mark Twain, reports of the death of the FIT
13 program and decline in solar demand in China are greatly
14 exaggerated. Recent reports--and we've submitted these in
15 our prehearing brief--indicate that the initial decision to
16 remove the FIT has already been revised, and China now plans
17 and projects continued strong support for solar energy until
18 at least 2022.

19 Also, while there was a modest slowdown in
20 China's solar installations during the third quarter of
21 2018, the volume of installations in 2018 to date -- 34.5
22 gigawatts -- is still a massive number. This enormous
23 domestic demand for solar products continues to absorb a
24 very large share of Chinese production. In other words, a
25 moderate and temporary flattening of Chinese demand does not

1 mean that Chinese shipments have diminished in importance.

2 In fact, earlier this month, China's National
3 Energy Administration convened a meeting of the photovoltaic
4 industry, that was personally moderated by President Xi.
5 The NEA predicted that yet another 5.5 gigawatts of new
6 solar capacity will be installed in China by the end of
7 2018. State media reports referenced in our prehearing
8 brief also indicate that the 2022 installations target will
9 be revised from 210 gigawatts to in excess of 250 to 270
10 gigawatts. In short, the massive growth in demand for solar
11 installations in China that has occurred since 2012 has not
12 abated and will continue to draw the vast majority of
13 China's production for years to come.

14 At the same time that the importance of exports
15 to the Chinese industry has diminished, the composition and
16 direction of those exports has also radically changed.
17 Since 2012, the Chinese industry has successfully shifted
18 its exports away from the United States and the European
19 Union and towards regional markets in Asia. The precise
20 figures are reported in the Commission's prehearing Staff
21 Report and are confidential. However, the growth in the
22 share of Chinese exports that has been directed to other
23 Asian markets since 2012 is very large. The 2017 data show
24 that such exports currently predominant over exports to all
25 other markets.

1 Here again, Petitioner SolarWorld has sought to
2 diminish this development by pointing to India's recent
3 imposition of safeguard duties on solar products in
4 September of this year. But the continued application of
5 these safeguard measures remains significantly in doubt
6 because the measures are subject to a pending domestic legal
7 challenge by local solar developers and the safeguard duties
8 are also being challenged by Taiwan and Malaysia in the WTO.

9 Meanwhile, at the 2015 Paris climate summit,
10 India's prime minister Modi announced a target of generating
11 175 gigawatts of power from renewable sources by 2022. Out
12 of this, 100 gigawatts is slated to come from solar energy.
13 There is no evidence that this policy goal has changed. And
14 given the relatively small size of solar manufacturing in
15 India, a significant portion of this will have to be
16 supplied by imports, including imports from China.

17 Furthermore, Chinese producers have several other
18 available markets for the foreseeable future. For example,
19 the European Commission recently removed its trade
20 restraints on imports of solar products from China.
21 Accordingly, the European market is now "open for business"
22 to the Chinese industry for the first time since December
23 2013.

24 The dramatic pivot of Chinese producers to their
25 own domestic and other markets is an important and lasting

1 structural change to the Chinese solar industry and the
2 composition of Chinese industry shipments. In addition, the
3 other major structural change since 2012 is with respect to
4 the sourcing of solar products for the U.S. market.
5 Specifically, China has been almost completely eclipsed by
6 other sources such as those in Malaysia, Korea, Indonesia,
7 Vietnam and Taiwan.

8 Indeed, SolarWorld and Suniva, as U.S.
9 petitioners, built their arguments for safeguards relief
10 from the Commission on this very development. In their
11 submissions to the Commission during the safeguards
12 proceeding, Petitioners pointed to the growth in solar
13 capacity specifically in Korea, Malaysia, Indonesia,
14 Thailand and Vietnam. Petitioners noted that between 2014
15 and 2016, U.S. imports from Malaysia increased 67% and
16 overtook China as the largest source of imports. Imports
17 from Korea surged 827% over the same period.
18 Correspondingly, imports from China have slowed to a trickle
19 in 2017 and 2018.

20 SolarWorld now premises its claim for extended
21 protection under the anti-dumping and countervailing duty
22 orders on the theory that Chinese imports will flood back
23 into the U.S. market if the orders are released. In other
24 words, Petitioners are suggesting that nothing has changed
25 since 2012, and shipping patterns will snap back to their

1 2012 patterns as soon as the restraint of AD/CVD measures is
2 removed.

3 I have already mentioned the significant
4 structural changes in the Chinese and local regional markets
5 demonstrating that production and shipment patterns have
6 fundamentally changed since 2012. However, other factors
7 reinforce the conclusion that the current U.S. sourcing
8 patterns will not change within the foreseeable future.

9 First, Chinese capacity utilization is currently
10 high, leaving relatively little capacity to ship to the U.S.
11 market, even in the extraordinarily unlikely event that the
12 201 and 301 tariff barriers were to be terminated. As we've
13 shown in our prehearing brief and we'll reinforce in our
14 confidential post-hearing submission, Petitioners' estimates
15 of available capacity are greatly exaggerated.

16 Second, the nature of the investments that
17 underlie the shifts in production and sourcing demonstrates
18 the unlikelihood of a reversal of present U.S. sourcing
19 patterns. During the safeguard investigation, Petitioners
20 repeatedly criticized this realignment of sourcing patterns
21 as allegedly reflecting efforts by Chinese companies to
22 "circumvent" the anti-dumping and countervailing duty
23 orders by producing the products in nonsubject third
24 countries. Petitioners pointed out, for example, that Trina
25 and Canadian Solar have established manufacturing facilities

1 in Southeast Asia and Taiwan and complained that Chinese
2 producers are "ramping up third country operations
3 specifically to avoid U.S. trade remedies." (Petr's August
4 8, 2017, prehearing brief on injury at 83)

5 What Petitioners fail to acknowledge, however, is
6 that the expanded solar production in these third countries
7 represents significant brick and mortar investments in
8 production capacity. That production capacity and the
9 incentive to continue shipments from these third countries
10 does not go away if the anti-dumping and countervailing duty
11 orders are lifted. Particularly given the successful shift
12 in Chinese shipping patterns to the domestic Chinese market
13 and other Asian markets there is no reason for solar
14 companies with production assets in Malaysia, Korea,
15 Vietnam, Indonesia, or Thailand to shift their shipments
16 away from their third-country facilities.

17 Furthermore, Petitioners' contentions ignore a
18 fundamental fact. There is no economic incentive today and
19 in the foreseeable future to ship from China, instead of
20 from other established production facilities in third
21 countries. Indeed, the opposite is true. With Section 301
22 tariffs in place indefinitely, there is an insurmountable
23 economic disincentive to source from China over the existing
24 production assets in other third countries and this
25 disincentive will continue for the foreseeable future.

1 In summary, the evidence before the Commission
2 points to a fundamental change in conditions of competition
3 since 2012 that supports a negative determination. The
4 Chinese industry has pivoted away from the United States and
5 toward domestic and regional markets. That change has been
6 made irreversible by the fact that the same Chinese
7 companies and other suppliers have invested in manufacturing
8 capacity in third countries that is better positioned to
9 profitably serve the U.S. market. A return to large import
10 volumes from China would be economically disadvantageous and
11 is highly unlikely.

12 Thank you. I'd like to now turn it over to our
13 economist, Jim Dougan.

14 STATEMENT OF JIM DOUGAN

15 MR. DOUGAN: Good afternoon Commissioners and
16 staff. My name is Jim Dougan from ECS, appearing on behalf
17 of Respondents, and my testimony will focus on explaining
18 why, in the event of revocation, imports from China will not
19 enter the U.S. market in volumes or at prices that will lead
20 to a continuance or recurrence of injury to the domestic
21 industry.

22 First, it is important to note that Mr. Stoel
23 and Mr. Lewis have referred to, there have been changes in
24 demand and supply conditions since the original
25 investigation. China now represents a far larger share of

1 global PV consumption than it did during the POI, 54 percent
2 of global installations in 2017 compared to only 12 percent
3 in 2012.

4 Incidentally, the U.S. market had the same share
5 at 11 percent in 2012 and 2017. In 2012, Germany was the
6 largest solar market in the world, but by 2017 China had
7 taken its place and far surpassed it. This tremendous
8 growth means that the Chinese home market consumes a far
9 greater share of Chinese production than it during the
10 original investigation.

11 As shown in Slide 2, the data in the prehearing
12 report show that Chinese producers' shipments to the home
13 market increased several fold over the POR, and now
14 constitute a vast majority of the industry's total
15 shipments. While the data from this review are confidential
16 and have been removed from the axes on the graph, public
17 data from the 201 investigation provided in the prehearing
18 report show basically the same trend.

19 Moreover, Chinese producers' capacity
20 utilization increased significantly to very high levels over
21 the POR, and as discussed in Respondent's prehearing brief,
22 third party data sources indicate that even these figures
23 from the questionnaire data may be understated.

24 The growth in Chinese home market demand is
25 expected to continue, and China is projected to remain the

1 largest solar market in the world for the foreseeable
2 future. While Petitioners' brief makes many mentions of the
3 Chinese government's revision to its feed-in tariff policy
4 that occurred in May 2018, it conveniently omits any mention
5 of the fact that this change was reversed in November 2018,
6 after the release of the prehearing report but before the
7 filing of the prehearing briefs.

8 Thus while second half 2018 demand in China was
9 lower than it might otherwise have been, there are already
10 reports as summarized in our prehearing brief about how
11 demand is back on track in China. Contrary to Petitioners'
12 speculation, there will not be 20 to 30 gigawatts of
13 displaced Chinese home market shipments looking for a market
14 somewhere around the world.

15 Importantly, the evidence shows that there was
16 no measurable uptick whatsoever in U.S. imports from China
17 after the revision of the FIT policy in May. Demand in
18 third country export markets is also expected to remain
19 strong and growing for the foreseeable future. As shown in
20 Slide 3, again with the axes removed but the confidential
21 data appear in our brief, projected demand growth in these
22 markets in 2019, 2020 and 2021 is more than enough to offset
23 the temporary decline in shipments to the Chinese home
24 market.

25 Petitioners' brief, on the other hand, paints a

1 picture of declining demand in third country markets. This
2 prediction is contradicted by the forecasts that they
3 themselves put on the record as Exhibit 7 to their response
4 to the Notice of Institution, which shows increasing
5 installations in Europe, India and the rest of the world.

6 Nevertheless, they claim that solar demand in
7 Europe will stagnate or decline. Their brief entirely omits
8 any mention of Europe's elimination of the minimum import
9 price trade restrictions in September 2018, which is
10 expected to stimulate demand for solar installations.

11 Moreover, as shown at prehearing report Table
12 IV-11, no European countries were among China's top export
13 destinations in recent years. Therefore, there's room for
14 significant growth in Chinese exports to Europe to serve
15 this increasing demand. But regardless, it is very clear
16 that the growth in alternative export markets has led to a
17 refocusing of Chinese export destinations away from the
18 United States. This can be seen in the fact that U.S.
19 imports from China fell by 56 percent from 2015 to 2017, and
20 by 44 percent between interim 2017 and interim 2018.

21 Thus, there was a significant decline in imports
22 from China well before the imposition of the 201 tariffs.
23 Ironically, the full year 2017 figure would have been even
24 smaller if it were not for the impending imposition of the
25 201 tariffs. There was a brief spike in imports from China

1 in fourth quarter of 2017, which was a clear indication that
2 market participants felt that importing Chinese solar cells
3 and modules following the effective date of the tariff would
4 not be viable.

5 Absent this temporary spike, subject import
6 volume would have been tiny in 2017, and the decline from
7 the 2015 peak even more dramatic, as shown in Slide 5. In
8 Petitioners' brief, they point to the fourth quarter 2017
9 spike as indicative of how subject imports would rush into
10 the U.S. market if the orders are revoked.

11 But this logic is exactly backwards. Rather
12 than an increase in imports that occurred due to the
13 elimination of trade barriers, there was an increase in
14 imports that occurred due to the pending imposition of trade
15 barriers. The temporary spike in imports, not just from
16 China but from non-subject countries as well, and those were
17 much more significant, was due to the uncertainty in the
18 marketplace as to what form the 201 safeguard remedy would
19 take, and reasonable concern on the part of purchasers that
20 there would be shortages in supply.

21 If the fourth quarter of 2017 was indicative of
22 subject import behavior, with only one form of trade remedy
23 applied, then the first six months of 2017 would look like
24 the last four months. But as you can see from Slide 5, from
25 January to June the subject import levels were minuscule,

1 and as you can also see, they have fallen even further since
2 January of 2018.

3 As imports from China have declined, their
4 position in the U.S. market has been taken by non-subject
5 sources like Korea and Malaysia. This trend is a reflection
6 of the restructuring of global CSPV supply that has occurred
7 since the original investigation, as discussed by Mr. Lewis.

8 Moreover, their dominant place in the U.S.
9 market is almost certain to continue in the event of
10 revocation, because while these sources are subject to the
11 201 tariffs, as of August 2018 imports of solar cells and
12 modules from China are subject to an additional 25 percent
13 tariff under Section 201.

14 While the Petitioners' prehearing brief almost
15 entirely omits any discussion of the 301 tariffs, and this
16 morning they were characterized as too uncertain to rely
17 upon, they are a critical condition of competition for the
18 Commission's analysis in this review. The Section 201
19 tariffs have provided a significant disincentive for Chinese
20 producers to ship to the U.S. market in the first place, as
21 evidenced by the negligible imports in 2018 that I discussed
22 previously. The Section 301 tariffs will only amplify that
23 disincentive.

24 Petitioners' position is that the 30 percent 201
25 remedy alone is not sufficient to prevent significant

1 increases in the volume of imports from China. At the same
2 time, they argue that Chinese exports to Turkey and India
3 are likely to remain limited in the near future, because of
4 the imposition of anti-dumping duties of 27 percent, and
5 safeguard tariffs of 25 percent, respectively.

6 So 25 percent in Turkey and India is an
7 insurmountable barrier, but 30 percent in the United States
8 provides absolutely no impediment whatsoever, according to
9 their logic. But the inconsistency in these positions alone
10 is ultimately irrelevant, because imports from China are not
11 subject to the 201 tariff alone.

12 The presence of the Section 301 tariffs put
13 imports at China at a competitive disadvantage to
14 non-subject sources that have already basically entirely
15 replaced them in the U.S. market. In the event of
16 revocation of the AV/CVD orders, Chinese producers will not
17 have the ability to displace non-subject imports, and
18 regain their previous U.S. market share on the basis of
19 price.

20 As the Commission has acknowledged in previous
21 solar proceedings, electricity providers using renewable
22 energy sources seek to achieve grid parity with other
23 sources of electricity. Given that solar energy only
24 accounted for two percent of total generated electricity in
25 the United States in 2017, solar still has a long way to go

1 to displace conventional energy sources.

2 What's more, according to GTM Research, the
3 Section 201 tariffs alone may place solar projects at a
4 disadvantage relative to other renewable projects like wind,
5 which already has in many cases a lower localized cost of
6 electricity. In this competitive context, utility
7 developers and other solar customers would be reluctant to
8 pay an additional tariff for China sourced products, unless
9 they were significantly differentiated with respect to
10 technology or some other factor.

11 So the Section 301 tariff would likely be
12 prohibitive to further entry of imports from China. Even if
13 imports from China were able to overcome the aforementioned
14 disadvantages compared to other import supply sources, the
15 combined 201-301 tariffs would prevent any adverse price
16 effects on the domestic industry.

17 First, the combined AD/CVD margins based on most
18 current administrative review are in the 25 to 27 percent
19 range, which is roughly equivalent to the magnitude of the
20 301 tariff. As discussed above, the volume of imports from
21 China plummeted after the imposition of the 201 tariff, when
22 they would have been subject to that tariff in addition to
23 the AD/CVD duties. This severe decline in subject import
24 volume occurred even before the Section 301 tariffs were
25 announced.

1 Thus, even if the orders are revoked, imports
2 from China will face a similar level of combined tariffs,
3 and will therefore remain at the low levels observed thus
4 far in 2018. Second, even if additional imports from China
5 were to enter the U.S. market, the combined tariffs are more
6 than enough to compensate for any underselling observed on
7 the record of this review.

8 The average underselling margin of the POR was
9 far below the combined tariff rate. Moreover, it is not the
10 case that the underselling margins observed in the POR were
11 somehow understated because imports from China were subject
12 to the discipline of the orders. This morning Petitioners
13 claimed that underselling would have been even more severe
14 in the absence of the orders.

15 But during the original investigation, when
16 imports from China faced no trade barriers whatsoever, the
17 average underselling margin was lower than during the POR.
18 Thus, the evidence shows that the combined 201 and 301
19 tariffs would more than compensate for any potential
20 underselling by the imports from China.

21 Therefore, the Commission should conclude that
22 in the event of revocation, imports from China will not
23 enter the U.S. market at prices that are likely to cause a
24 recurrence or continuance of material injury to the domestic
25 industry within the reasonably foreseeable future. Thank

1 you.

2 MR. STOEL: Commissioner, Chairman Johanson,
3 that concludes our testimony.

4 CHAIRMAN JOHANSON: Thank you for your testimony
5 this afternoon. We will begin Commissioner questions with
6 Commissioner Kearns.

7 COMMISSIONER KEARNS: Great. Thank you all for
8 appearing before us today. We appreciate your testimony. I
9 wanted to start with Chinese capacity and production. Our
10 staff report cites sources indicating that in 2017, China
11 had excess capacity of almost 11 million gigawatts for cells
12 and 30 million gigawatts for modules. Do you agree with
13 these figures?

14 MR. DOUGAN: I think -- this is Jim Dougan from
15 ECS. I think the data presented in the staff report are
16 from reputable sources. We'll take a look at some other
17 sources, and we can -- I don't know if Mr. Lewis or Mr.
18 Stoel has done some additional research. But I don't know
19 if you want to say anything further on that point.

20 MR. STOEL: I think Commissioner Kearns,
21 Jonathan Stoel for the record. We had -- we had also put on
22 the record, and apologies for the size of our brief and all
23 the exhibits, but we had also put on the record various
24 reports I think suggestive that those numbers are a bit
25 higher than we agree with. But we'll look at that

1 post-hearing and comment on that.

2 COMMISSIONER KEARNS: Okay, thank you. Also,
3 why should the Commission find that Chinese capacity
4 utilization is high when so much of the industry failed to
5 provide capacity and production data to the Commission?

6 MR. DOUGAN: This is Jim Dougan from ECS. We
7 mention in our brief that the coverage was better in the 201
8 and it shows similar trends in terms of capacity utilization
9 and the increase in utilization, despite the increase in
10 overall capacity. We also put some information on the
11 record from a third party source that I can't discuss
12 publicly, but shows that the utilization rate of their
13 shipments, the capacity numbers, they had evidence on a
14 monthly or quarterly basis that indicated that it was
15 definitely at the high end of some of the numbers that were
16 appearing among the questionnaire responses.

17 So even if the absolute amount of capacity that
18 was reported in the questionnaires is not reflective of the
19 total because you only got fewer questions, the utilization
20 rates we think are representative of what's actually
21 appearing.

22 COMMISSIONER KEARNS: Okay, thank you.

23 MR. STOEL: Commissioner Kearns, this is
24 Jonathan Stoel. I also wanted to add that as I said in my
25 opening remarks for this afternoon, we did actually ask

1 additional producers and exporters to respond, and the
2 candid response is that they're not interested in the U.S.
3 market because you have a 55 percent tariff notwithstanding
4 these particular orders. You heard some comments this
5 morning that, you know, suggested there was some nefarious
6 intent.

7 I can assure you that we did our best to get as
8 many responses as we could. It's in our interest to give
9 you the full information. As I said earlier, we supplied a
10 huge amount of information with our prehearing brief,
11 probably because we wanted to make sure the Commission had
12 as full a record before it as it did.

13 Also as Mr. Dougan, I think the 201, fortunately
14 for all of us, captured a very large percentage of the
15 Chinese industry, and so you had that data. I did want to
16 comment that when you're talking about capacity utilization
17 and the change, because I think it's really important that
18 we understand that in a sunset review, part of your mission
19 is to look at what's changed.

20 Capacity utilization during the original
21 investigation was much, much lower than it is today, and the
22 trends are all, as Mr. Dougan said, very clear that capacity
23 utilization has been going up, up and up. Similarly home
24 market shipments of the Chinese industry, as Mr. Lewis
25 testified, now more than half of their total shipments.

1 There have been dramatic changes in the way the
2 Chinese industry has operated and what it's planning on
3 doing in the future, and that's one of the key tenets of
4 this investigation.

5 COMMISSIONER KEARNS: Okay, thank you. That's
6 actually a good segue to my next question about Chinese
7 demand. As you point out on page 62 of your brief, we have
8 to take the decline that we've seen in the Chinese -- in
9 Chinese demand in context. But I guess my question is, I
10 mean I think we're looking at a decline of 8.5 gigawatts.

11 I mean how does that compare to the U.S. market?
12 I mean isn't that a pretty big drop in not relative -- maybe
13 you would say not relative to the overall Chinese market of
14 I guess 43 gigawatts, but if there's 8.5 gigawatts of slack,
15 I guess, in the Chinese market, isn't that something that we
16 should take into account, as relative to the size of the
17 U.S. market as being significant?

18 MR. STOEL: Commissioner Kearns, I think it
19 certainly is something you have to take into account. I
20 think as part of this investigation, you have to do a
21 holistic analysis. I think a couple of things just to make
22 a few points, and I invite Mr. Lewis and Mr. Dougan to add
23 to this.

24 You know one is what you said is very important,
25 you know. Remember that we're talking about a peak in the

1 U.S. market of 16 gigawatts. So the fact that in China we
2 now are talking regularly about 40 gigawatts, just to give
3 you a sense of the size of demand. We cannot overstate how
4 big that is. Obviously there was sort of a peak year, just
5 like we had in ITC that caused a peak.

6 They had certain incentives that caused a peak
7 in 2017. It's not surprising that from any peak you have
8 sort of a leveling off. The second thing is though what's
9 the effect of that leveling off, and here you have a number
10 of different things to consider. One as we talked about and
11 the other side is not even mentioned, you have the end of
12 the MIP in Europe, so you have an entirely new market that's
13 opening to Chinese exporters that wasn't there in the
14 recent future.

15 There was some talk I think about European
16 demand, you know, going down. There's a PV Magazine article
17 from just last month, talking about a 40 percent increase in
18 European demand as a result of the elimination of the MIP.
19 I think this goes to show you that as you heard from some of
20 the developers, if you don't have trade restraints, you're
21 going to see increased demand. So that's what a lot of
22 people are forecasting for the European market.

23 Also there's been a doom and gloom scenario
24 about India. That's no offense, but that just doesn't make
25 any sense. India has been one of the true success stories

1 for the solar market. It's gone from nothing to almost ten
2 gigawatts in a very short period of time, and depending on
3 which forecasts you look at, you're talking about growth in
4 very short term to as many as 20 megawatts.

5 So and there's been talk about the effects of
6 the safeguard. But as of today there is a forecast for very
7 continuous, strong exports from China to the Indian market,
8 which is growing at a huge pace. So yes, there is a
9 leveling off of demand in China, but that has to be kept in
10 the context of a very different global market that's going
11 to soak up a lot of that demand.

12 And then very importantly, I think actually
13 Commissioner Kearns, you were the one who was leading the
14 charge on this in your questions this morning. You have to
15 look at the comparative advantages of what's happening in
16 different markets. The fact is with the 301 and the 201,
17 Chinese producers are going to be at a major disadvantage,
18 25 percent compared to any other exports to the United
19 States.

20 That's true whether you're talking about solar
21 cells, because you and Commissioner Johanson were asking
22 questions about solar cells. Only China is going to have a
23 tariff on solar cells. All other countries will be able to
24 export to the U.S. market, up to the 2.5 gigawatt exception
25 without any restraints.

1 China will have a restraint. Why would you buy
2 it from China with the 25 percent restraint, when you can
3 buy it from other countries with no restraints. Similarly,
4 when you compare a 55 percent tariff to a 30 percent tariff.
5 These are meaningful differences. I think there's been,
6 with all due respect to my opponents on the other side,
7 there's been a shifting of the burden here.

8 When you look forward in your counter-factual
9 analysis, you have to violate what's going to happen that
10 would change the status quo. The status quo today is there
11 are no exports from China to the United States. That's
12 basically been true for two years, with the exception of a
13 very narrow spike that Mr. Dougan talked about.

14 You have to look at what's going to change that
15 would cause that to happen? With the 55 percent tariff,
16 that's not likely. I don't think that's probable as your
17 analysis requires.

18 COMMISSIONER KEARNS: Thank you, and that's also
19 a good segue to my next question. I take Mr. Dougan's point
20 a moment ago about how to look at the second half of 2017,
21 right before the 201 tariffs went into force. But isn't it
22 right that the point remains during that period, when
23 imports from China were subject to duties obviously at
24 ranges by the producers, but anti-dumping/countervailing
25 duties that range from --

1 I don't know, call it 30 percent somewhere, you
2 know, very much ballpark, anti-dumping and countervailing
3 duties, they were nevertheless able to have quite a big
4 increase in imports into the United States, despite those
5 anti-dumping and countervailing duties because they wanted
6 to get in before the 201.

7 Wouldn't that somewhat suggest that if we
8 eliminate a different kind of 30 percent duties, those on
9 anti-dumping and countervailing duties and only had in place
10 let's say 201 and also 301, that that -- that there would
11 still be the ability to greatly increase imports?

12 MR. DOUGAN: This is Jim Dougan, and first of
13 all I think that there's a -- there's a -- there has to be a
14 recognition that what happened in the fourth quarter of 2017
15 wasn't normal supply and demand conditions in the
16 marketplace. It was definitely, you know, sort of on the
17 eve of a global safeguard being applied and the players in
18 the market had no idea what it was going to be, what the
19 remedy that was suggested by Petitioners and what they
20 wanted, the 78 cents a watt, was basically going to cause
21 severe, potentially severe harm to the industry.

22 People had no idea really what was going to
23 happen. Now the Commission ended up crafting a remedy that
24 I suppose was more workable, as some of the developer
25 parties have said today. But at that time, no one knew what

1 was going to happen.

2 So there was a spike in -- a temporary spike in
3 imports from China, but as well as a much larger spike in
4 imports from other sources, and it was very temporary. It
5 basically disappeared as soon as it occurred, and the import
6 levels have been basically at nil ever since.

7 So that was in response to a very different kind
8 of -- I'm not even sure what to call it, a supply shock or
9 demand shock. But it was some sort of exogenous factor with
10 regard to the conditions of the marketplace that's unlikely
11 to be impeded. I think your red light is flashing. I have
12 a slide to give you some context about the size of the
13 increase in imports from China relative to the increase in
14 imports from everywhere else at that time. Maybe we can go
15 back to it in your next round of questions. But I don't
16 want to --

17 COMMISSIONER KEARNS: Okay, that's great.

18 MR. DOUGAN: We can talk more about this later.

19 COMMISSIONER KEARNS: Thank you, and
20 post-hearing brief too if you want to include that.

21 MR. DOUGAN: Absolutely.

22 COMMISSIONER KEARNS: Thank you.

23 CHAIRMAN JOHANSON: Thank you again to all of
24 you appearing this afternoon. My first question dovetails
25 off of one of Commissioner Kearns'. Canadian Solar argues

1 that imports from China currently play a small role in the
2 U.S. market. But does this not demonstrate the
3 effectiveness of the orders?

4 MR. STOEL: Commissioner Johanson, Jonathan
5 Stoel for the record. I think what is suggests is a couple
6 of things. One is that certainly we would acknowledge that
7 the orders had an effect. But I would also point out that
8 it's part of a broader phenomenon of the restructuring of
9 the U.S. industry, as well as the Chinese industry.

10 Most importantly from the U.S. side, as you saw
11 and I think, I don't know if we could put it up Jillian, the
12 slide from Mr. Dougan, really since -- and it was also in my
13 opening statement, if you really -- if you look at 2015,
14 clearly there's been a dramatic decline in China.

15 But has there been a stoppage of imports of CSPV
16 products? The answer is clearly no. In fact, as you all
17 crafted your moderate recommendations in 201 process, you
18 clearly acknowledge that actually no, there had been a major
19 increase in imports from various countries. So China was
20 clearly declining, and today as Mr. Dougan has testified, is
21 completely out of the market.

22 That's because of both changes in sourcing
23 patterns in the United States, but also changes in Chinese
24 industry behavior. As I said, before when you looked at
25 this industry in 2012, it was very much an export oriented

1 industry. Today that's not true. It's a home market
2 oriented industry. It also was focused heavily on the
3 United States at that time. Today, no. It's focused on
4 Southeast Asia and other more regional markets.

5 So there have been very, very systematic
6 dramatic changes. Can we say that the AV/CVD orders did not
7 have to do with that? I think that would not be true. But
8 I think when you look forward in the counter-factual
9 analysis that you all are required to do under the law, with
10 the 25 percent tariff explicitly on China and a 30 percent
11 tariff on all imports, it makes it very unlikely that this
12 paradigm is going to shift.

13 I think this paradigm is going to continue, and
14 frankly as Mr. Lewis said, there are a lot of structural
15 reasons for why that's going to continue, not just the
16 tariffs themselves.

17 CHAIRMAN JOHANSON: Thanks, Mr. Stoel.
18 Considering the domestic industry's financial performance
19 during the Period of Review, why should the Commission not
20 find it in a vulnerable position to the continuation or
21 recurrence of material injury?

22 MR. DOUGAN: Chairman Johanson, there's a couple
23 of things for that. One is I think that from a looking
24 forward perspective, the industry that you're going to have,
25 that is going to basically exist for the foreseeable future,

1 is quite a different one that existed in the period between
2 2012 and 2017. There's different players, there's new
3 entrants, there's new ownership.

4 Suniva's basically not a player anymore. Solar
5 World is now. They have been purchased by SunPower, who had
6 deep pockets and is investing in it. Companies that were
7 basically just starting their operations at the very end of
8 the POR have now been in business for a little bit longer.

9 But they weren't in business in 2012. There are
10 some new entrants who were experiencing start-up costs and
11 had poor financial results having nothing to do with
12 imports, but having to do with ramping up their facilities.

13 And then you've got all of these new entrants
14 coming in, I think we and Petitioners agree about all of the
15 announcements of new entrants to the market and new
16 investment in the marketplace. So the domestic solar
17 industry, the module and cell industry that is going to be
18 in operation for the next two years, is different even from
19 the industry that's been in operation for the last two
20 years.

21 So that's one thing to take into consideration
22 when you're looking at the historical financial data. This
23 isn't the same set of companies moving along or moving
24 forward under the same conditions of competition in the same
25 fashion.

1 The other is are they, are they vulnerable to
2 injury, a recurrence of injury by subject imports, and our
3 position is that imports, the import volumes will not
4 increase if the AD and CVD orders are lifted. There is
5 going to be no causation or no possibility of causation,
6 because they are hindered by the existence of these other
7 trade barriers.

8 MR. STOEL: Chairman Johanson, Jonathan Stoel
9 for the record. I just want to add, you know, a couple of
10 very I think helpful points. One is you have before you the
11 U.S. solar industry. We are here, Canadian Solar is a major
12 investor, a billion dollars in the United States. You have
13 a number of developers.

14 We all want the U.S. solar industry, including
15 the manufacturing sector, to do well. We're not here to
16 seek anybody's demise. Unfortunately I think during the
17 Period of Review, as the Petitioners said this morning,
18 there were a number of companies that were not successful,
19 and this was discussed, I think, ad nauseam in the 201.

20 But I think as Mr. Dougan said, moving forward
21 we and the Petitioners in this case agree. We think Solar
22 World's in a much better place because of the SunPower's
23 acquisition. Suniva is not part of the U.S. industry and is
24 in bankruptcy and all its equipment has been sold, and it's
25 basically being held for possible settlement purposes.

1 But there are a number of new entrants. There's
2 a Heliene, there's a Seraphim, there's a Hanwha. There are
3 a number of entrants that are coming into the U.S. market,
4 and they're not vulnerable. They see the U.S. market
5 because of the safeguard tariff that you and the President
6 decided to install, not because of the Chinese measures
7 which have been in place since 2012, as a place where they
8 can be successful.

9 I would like to invite the developer companies
10 before you, the witnesses, to comment if they want about
11 their views on U.S. manufacturers. You heard some of that
12 in their testimony. But I know that some of them have been
13 contacting, you know, U.S. manufacturers for possible
14 purchases.

15 MR. SINGH: Vrinder Singh, EDF Renewables. I
16 think for us as utility scale developers, and I'll speak for
17 my company, as was discussed earlier today, we are the
18 largest segment in the solar industry in the United States.
19 So selling to us presumably would be an important route for
20 U.S. manufacturers.

21 However, there hasn't been sufficient quantity
22 nor product specification quality to serve our market
23 adequately, as was discussed by Hewitt Strange earlier. We
24 are open to buying from the United States in the crystalline
25 market. We do find SunPower to be a highly reputable

1 company, and a lot of the recently announced new entrants
2 into the U.S. market are also reputable in our minds.

3 So we do see room for optimism, that the U.S.
4 market will continue to mature. Whether it will be able to
5 market to the utility scale segment is probably a managerial
6 choice for those operating U.S. facilities and outside the
7 scope of my conjecture.

8 But there is room for optimism given the recent
9 announcements. We need to see the plants actually
10 installed, and we need to see the products oriented towards
11 the utility scale segment, in order for U.S. manufacturing
12 to get sizeable market share in the largest segment, solar
13 segment in the U.S. market.

14 MR. LEWIS: Craig Lewis from Hogan Lovells. I'd
15 just like to add to this. I agree with the point about
16 optimism for the industry and the announced investments are
17 an obvious indication of that. But going back to your
18 question about vulnerability, I think it is important to
19 recognize that the flip side of that vulnerability is that
20 it raises the question of causation.

21 This industry, the domestic industry, has
22 received every form of protection that it's requested--
23 antidumping duties, countervailing duties, 201 duties, and
24 now 301 duties--and the question, I think this was raised in
25 the line of questioning from Commissioner Broadbent, is then

1 why hasn't this industry's performance done better than it
2 has?

3 And I don't think we heard a satisfactory answer
4 to that from the panel earlier today.

5 CHAIRMAN JOHANSON: Thank you for your responses.
6 Considering its substantial capacity, does it matter that
7 China has the largest CSPV market in the world? And isn't
8 it still exporting the majority of its CSPV modules?

9 In other words, doesn't China have to rely on its
10 exports as an outlet for its increasing capacity and
11 production?

12 MR. STOEL: Chairman, Jonathan Stoel for the
13 record. I think there are a coupler of points in your
14 question. One is--to answer your question directly--at
15 least in 2017, more than half of China's module production
16 went to its home market. That was a huge shift from what
17 happened in your original investigation.

18 But there's no question that China supplies
19 modules to other markets. I think, as Mr. Ambrose has
20 testified this morning, the question is are those markets
21 favorable for its products? Clearly India, which has
22 become the second largest market for China, is a favorable
23 market. There are others where, as we said in our
24 declarations to our brief, Europe is looking to be an
25 attractive market with the end of VMIP.

1 But all the companies here before you have
2 testified they're not buying from China today, and for the
3 foreseeable future they don't see the United States as an
4 attractive market for Chinese exports.

5 And when you look at a 55 percent tariff, I think
6 the answer is pretty self-explanatory, combined with the
7 fact that there are other players in the market. If this
8 were a situation where it was U.S. versus China, that might
9 be the kind of situation where you would say, yeah, you'd
10 buy from China. But there are lots of other players in the
11 market. Korea is the biggest exporter to the United States
12 today. Why wouldn't you buy from Korea as opposed to from
13 China if you have a 25 percent advantage buying from Korea?
14 You would clearly buy from Korea.

15 So I think you have to look at the issue
16 holistically, not simply look at China in the abstract.

17 MR. DOUGAN: And, Chairman Johanson, Jim Dougan,
18 if I can also point out, the data in the staff report are
19 proprietary, and of course to some degree reflect the fewer
20 number of responses that you received in this proceeding as
21 opposed to the 201.

22 But the 201 data on cell and module producers in
23 China are--at least some of it's public, and that did show a
24 majority of total module shipments going to the home market
25 by the end of the POR, or POI, I guess. It was about 60

1 percent, something in that neighborhood. So at least
2 according to the data from the 201, they still consumed the
3 majority of their shipments in the home market.

4 CHAIRMAN JOHANSON: Alright, thanks for your
5 answers. The red light is on, so we will now turn to
6 Commissioner Williamson.

7 COMMISSIONER WILLIAMSON: Thank you, Mr.
8 Chairman, and I too want to thank the witnesses for coming
9 today.

10 I have a question on demand in different segments
11 of the market. Do product requirements vary by market
12 segment--i.e., utility, residential, and nonresidential?
13 What product and company certifications are necessary to
14 supply the various market segments? And are there barriers
15 to entry for any of these segments?

16 MR. AMBROSE: Vincent Ambrose, Canadian Solar,
17 for the record. So to answer your question: Yes, there are
18 very different product requirements by segment. Primarily
19 look at it in the residential, commercial, and utility
20 segment. From a technological standpoint, power output and
21 size has a tendency to vary by segment.

22 From a certification standpoint, that also has a
23 tendency to vary. Where a residential application would have
24 to run at 1,000 volts or less, a utility could run at 1,500
25 volts and require a different certification. So each

1 product segment has its own barriers of technology and
2 segmentation of product requirements.

3 COMMISSIONER WILLIAMSON: Okay. Are there
4 barriers to entry? Are the barriers different in each
5 segment?

6 MR. AMBROSE: I would say yes, some manufacturers
7 have different types of technology that lend themselves to a
8 segment, more so than others. So we heard from the SunPower
9 organization today. Their product lends itself more towards
10 a high-efficiency product, as they mentioned in their IBC
11 product technology, which is more of a residential and
12 commercial application.

13 You can actually look to their utility
14 development activities. They've actually ceased and halted
15 them because the product that they offered really was not
16 cost competitive in that utility segment. So there are
17 differentiations

18 COMMISSIONER WILLIAMSON: Are any of the start-up
19 companies we've been talking about in the utility segment
20 have the capability of selling into that market?

21 MR. STRANGE: I can speak to that in a somewhat
22 limited way--

23 COMMISSIONER WILLIAMSON: Mr. Strange?

24 MR. STRANGE: Yes, I'm sorry, Hewitt Strange,
25 Cypress Creek. We believe that the Jinko Plant that is

1 scheduled for operation in Florida is going to manufacture
2 some utility-scale modules, largely, but we understand that
3 those are largely under sole-source contract to a utility
4 that is able to rate-base their own self-build
5 installations. So it isn't as price sensitive as the
6 independent developers that are here today.

7 COMMISSIONER WILLIAMSON: What do you mean? They
8 sort of have a monopoly market and they can charge whatever
9 they want?

10 MR. STRANGE: I'm sorry, so a utility in a
11 regulated market like in Florida can go to the Commission
12 and say, you know, if they're building something on their
13 own, can go to the Commission and say, you know, we're
14 building this. This is what it costs. And then, you know,
15 they get a 10 percent rate of return on top of that.

16 COMMISSIONER WILLIAMSON: So there's no public
17 advocate to say, wait a minute, they didn't--

18 (Laughter.)

19 MR. STRANGE: Well if they

20 COMMISSIONER WILLIAMSON: If they didn't
21 competitively compete that contract.

22 MR. STRANGE: Right. The Commission is supposed
23 to be the public advocate, but the rate-based installations
24 in Florida, you know, are rate-based at \$1.75 a watt. So
25 that's the cost they're allowed to recover, plus their 10

1 percent.

2 But, you know, the rest of us are building under
3 \$1 a watt in most markets. So, you know, if we get to build
4 at \$1.75 a watt, we'd be able to support a higher panel
5 price, as well.

6 COMMISSIONER WILLIAMSON: What is the size of the
7 utility segment relative to other segments of the U.S.
8 market? And has this changed since the original
9 determination? And then after your last answer, maybe what
10 is the size of the utility segment of--I guess I'd say, the
11 more competitive versus the rate-based segment?

12 MR. STRANGE: Yes, sir. So, you know, you have
13 regulated markets where you have a vertically integrated
14 utility that basically controls, you know, generation and
15 distribution for that state. And then you have deregulated
16 markets where, you know, you have multiple competitors. You
17 know, Texas would be the clear example for that where the
18 utilities--you can't own generation and transmission. And
19 so there's a sort of purely competitive generation market.

20 But most of us operate in both kinds of markets.
21 So when we operate in Texas, you know, we're competing
22 purely on price against all forms of generation. When we're
23 building in regulated markets, what we have to do is, the
24 Commission determines for the utility what they call their
25 avoided cost. So that's theoretically the cheapest that the

1 utility could go out and build new generation for itself.

2 And under PURPA, which gives us access to those
3 regulated markets, we basically have to beat the utility's
4 avoided costs.

5 So, for example, in South Carolina--you know, the
6 Carolinas are our original markets, both of which are PURPA
7 markets, and avoided cost in South Carolina now is \$2.09 a
8 kilowatt hour, which we can't meet with current panel
9 pricing. Avoided cost used to be \$3.04, which required
10 basically a 35 cent panel. Avoided cost was lowered to
11 \$2.09, so we're no longer building solar farms in South
12 Carolina as a result.

13 COMMISSIONER WILLIAMSON: Any--I guess getting
14 back to the relative size of the utility market to the other
15 segments, and also that fragmented utility market--any
16 estimates of size? And the reason why I'm asking all these
17 questions, I'm trying to get of course to the question of
18 can the domestics compete in this market, or why they can't.

19 MR. STRANGE: Right. Just on size, I believe in
20 2016 the utility scale--and I apologize, I don't have the
21 exact figures in front of me, but I believe in 2016 the
22 utility scale market was 10 gigawatts compared to 16
23 gigawatts in the total market. In '17 I believe it was a
24 higher--you know, it went down to 8 gigawatts, roughly, of
25 utility scale generation of like an 11 gigawatt overall

1 market. So even though installations went down, they were
2 up as a percentage.

3 This year, you know, utility scale installations
4 have contracted sharply. In the third quarter, you know,
5 we're waiting on the officially published data, but it's
6 possible that utility scale installations will actually come
7 in under residential installations for the first time in as
8 long as anybody can remember.

9 COMMISSIONER WILLIAMSON: Do you want to say why?
10 Why this change? And is it a temporary one, or--

11 MR. STRANGE: Yeah, I mean so there's definitely,
12 you know, the cumulative impact of tariffs that have, you
13 know, raised our cost of building even as the prices for
14 electricity continue to decline. So we're just, you know,
15 we as the largest utility-scale installer, are building
16 significantly less solar farms. That's borne out in the
17 aggregate data where 2018 is going to contract pretty
18 significantly relative to 2017.

19 COMMISSIONER WILLIAMSON: So would you say
20 tariffs have had a more adverse effect on the utility, in
21 the utility market than in others?

22 MR. STRANGE: Oh, absolutely. The residential
23 market has basically been, you know, been the same number
24 for six straight quarters, you know, give or take 10
25 megawatts. But--so the residential market is very

1 consistent quarter to quarter. The utility scale market has
2 definitely contracted since imposition of the tariffs.

3 COMMISSIONER WILLIAMSON: Okay. What--so what
4 are the reasons why the domestics have not been able--the
5 domestic module cell producers have not, you feel have not
6 been able to compete in the utility market? Is it because
7 they don't make the right product? Or what we sometimes
8 hear is that they just don't make the product at the price
9 that the purchasers want to pay for it, especially when they
10 have alternative sources.

11 MR. STRANGE: As best as we can tell, there's
12 never been a 1500 volt module manufactured in the U.S.,
13 which is what most utility-scale developers are now using.
14 So they have never made the product for our market. And it
15 makes sense. I mean, you know, they can make bigger margins
16 on residential panels. So why would they devote
17 manufacturing capacity to utility-scale panels when they can
18 make more margin in the residential market?

19 COMMISSIONER WILLIAMSON: I assume the
20 Petitioners would say they've never made them because of the
21 unfair pricing of the dumped imports. What is your response
22 to that, if they were to say that?

23 MR. STRANGE: Well, I can't really speculate on
24 their management decisions, per se, but they were always
25 focused on the residential market. So, you know, going

1 back, whatever, five years or longer, they've always been
2 selling into that market.

3 And I mean I do know a couple of developers that
4 wanted to purchase domestic modules for utility-scale
5 projects and did so with 1000-volt modules and, you know,
6 had some problems with those panels, which I think was well
7 documented in the 201 proceeding.

8 But basically it's just the product has never
9 been their focus.

10 COMMISSIONER WILLIAMSON: Okay. Mr. Strange,
11 thank you very much for those answers. Thank you.

12 CHAIRMAN JOHANSON: Commissioner Broadbent?

13 COMMISSIONER BROADBENT: I want to thank all the
14 witnesses for this good attendance and representation. We
15 appreciate you making the effort to come and be with us
16 today.

17 I think I'll start with Mr. Dougan. SolarWorld--
18 this is on price effects--SolarWorld refers to the Chinese
19 Government's decisions in mid-2018 to cap future solar
20 projects and reduce solar feed-in tariffs, leading to a
21 substantial decline in Chinese demand in 2018.

22 Can you discuss how these Chinese decisions have
23 affected U.S. prices for modules, despite the presence of
24 the AD CVD Orders and the safeguard tariffs? Have any
25 price effects occurred directly as a result of the Chinese

1 import competition? Or have price effects occurred
2 indirectly through other imports?

3 MR. DOUGAN: I mean I don't think that we -- I
4 can answer this more in post-hearing, but I'm not sure I
5 would agree with the fact that there have been price effects
6 as a direct consequence of this. And have prices declined
7 in 2018, yes. They also increased significantly in 2017,
8 which is at odds with the trends that you've seen and the
9 reason for that is the impending 201. I mean that wasn't
10 due to necessarily to supply and demand factors. So, it's
11 been declining from a higher place than it might otherwise
12 have been, but there's a couple of things that contribute
13 to that.

14 One it's not that one -- given that 40 years of
15 history of declining solar prices that you would've expected
16 that if prices increased in response to the impending 201 or
17 in response to the tariff that they would stay at that
18 level. They were bound to decline and they have and that is
19 in part because of the technological advances, which that
20 progress has continued. The other is -- what we didn't hear
21 about also this morning was raw material costs. And if you
22 at page 5-2 and 5-3 of the staff report, Figures 5-1 and
23 5-2, on the left-hand page of Figure 5-1 you've got the
24 prices of poly silicon ingots and wafers right, the main raw
25 material input and on the right-hand page, you've got

1 Figure 5-2, which is module and cell prices and those trends
2 are very similar.

3 And so, partly, what you're seeing in a decline
4 in prices in 2018 is attributable to that as well. So,
5 given the absolutely minuscule Chinese participation in the
6 U.S. market, I mean we're probably below 2 percent of
7 imports, let alone, 2 percent of consumption in 2018.
8 That's not a direct effect of imports from China. I mean
9 that effect has to be coming from other factors.

10 MR. STOEL: Commissioner Broadbent, just a
11 couple of things. We've talking a lot about 2 percent and
12 sometimes numbers are misleading. Just to give a reminder,
13 2 percent is \$18 million in the context of it's an enormous
14 market and so we're talking about a very, very small amount
15 of Chinese product. A product, by the way, effectively
16 January 23 was subject to the 30 percent tariff as well the
17 AD/CVD as well as the Solar II measures, which I think
18 clearly have an impact. And then also effectively in
19 August you had a 25 percent tariff, so very, very
20 significant restraints.

21 To Mr. Dougan's point about cost, I would really
22 encourage the Commission to look at Figure 5-1, which is
23 page 5-2 of your report -- of your staff's report. There
24 was some insinuation this morning that prices mysteriously
25 dropped by 30 percent because of China. I think if you look

1 at the figure you'll see declines of 25 and 30 percent, not
2 because of some mysterious decision by China. It's because
3 of declines in raw material costs and your staff -- your
4 staff makes the very good point that that's 75 percent of
5 the cost of a solar module.

6 So, when you're looking at whether they causing
7 major, precipitous price wings, it's not because of
8 decisions by Chinese producers. It's because of changes in
9 the cost structure and also technological innovations that
10 we've talked about in all the different solar proceedings,
11 so I think you really have to look at the facts. Some of
12 the claims that were levied this morning simply are not
13 true.

14 COMMISSIONER BROADBENT: But Mr. Stoel, I mean
15 what do you make of all these Chinese Government policy
16 decisions on solar to reduce -- you know to cap the number
17 of solar projects and to reduce solar fee-in tariffs and
18 then start them up again? I mean what are you seeing that --
19 you're seeing that our market is not affected by that?

20 MR. STOEL: I think that clearly China has gone
21 backwards and forwards on how much it wants to encourage
22 solar. But I would say one thing has been very constant
23 they want to encourage solar for their own reasons. I can't
24 speculate why they do, but people have been talking about
25 the revisions of the FIT tariff as if it's an all-becoming

1 thing. It's one factor in their policy and it caused
2 certain revisions in the projections, but if you look at
3 what happened, as we explain in our brief, in November the
4 same folks that were projecting major declines all of a
5 sudden increased their projections. So, you can look at
6 market. You can look at HIS. You can look at various stock
7 reports. They're all have swung back the other way, so I
8 don't think it's fair to say that this one event has caused
9 a major decline in what's going to happen in China.

10 I think what's fair to say is that, overall,
11 their policy is encouraging Chinese demand. And as Mr.
12 Lewis testified this morning, that and other factors have
13 caused major restructuring in the Chinese industry since you
14 looked at it back in 2012.

15 COMMISSIONER BROADBENT: I mean it's such a huge
16 market and sort of the decline in the fee-in tariffs seems
17 like it would have some affect and to say that we should not
18 really look at it seems --

19 MR. STOEL: No, Commissioner Broadbent, I think
20 we completely agree you have to look at it, but I think you
21 have to look at it in the context of other programs as well.
22 And as we documented in our brief, just in earlier this
23 month there was another shift that according to
24 prognosticators essentially evened out the shift that
25 happened earlier this year. So, I think we completely agree

1 with you that you need to look at it, but I think you have
2 to look at it in the context of a broader situation.

3 MR. LEWIS: Commissioner Broadbent, if I might
4 add just a little bit to that. First, I think it's
5 documented and I think it's Exhibit 7 in our prehearing
6 brief. We include a number of articles that give a detailed
7 explanation of the policy discussions that have taken place
8 in China and this is in the context of the 13th five-year
9 plan, 2016 to 2020. And they're being halfway through that
10 period there was a reevaluation of what they target should
11 be for solar installations in China and it's worth pointing
12 out a few important statistics just to give you an
13 indication of the size of demand and why I think the
14 downturn is temporary and somewhat exaggerated in its
15 importance.

16 Originally, the target for that program was 105
17 gigawatts additional capacity. That was exceeded halfway
18 through the five-year period to 165, so the projection was
19 greatly understated. And in the context of this
20 reevaluation -- sort of the mid-term evaluation of the
21 policy the projections were revised, and we've document
22 this, that the range of revision is anywhere from 210 at the
23 low end to 250 to 270 gigawatts. So, that's in the context
24 of high level -- highest level support by the Chinese
25 Government. As I mentioned, President Jinping was at the

1 meeting where this was discussed, so I think the continued
2 growth and demand in China it pretty well established and
3 it's reflected in the market reports that Mr. Stoel
4 mentioned.

5 Just one other second point too is even if there
6 was an -- and I hope I'm not misunderstanding what you were
7 describing, but an indirect negative impact on the U.S.
8 industry by virtue of demand declines in China in which I
9 don't think there's evidence of, as Mr. Dougan said, my
10 understanding, legally speaking, is that the injury that's
11 cognizable under the statute is injury caused by unfairly
12 traded imports. So, it has to be the imports that are
13 causing that and so I think there is, in my view, a
14 potential question to be considered as to whether that
15 really should be recognized by the Commission as a factor.

16 COMMISSIONER BROADBENT: Okay. Let's see, Mr.
17 Dougan, the chart on page 72 of Canadian Solar's prehearing
18 brief is pretty striking because it shows a strong increase
19 in imports from China following the filing of the safeguard
20 petition and the ITC's recommendation and then a
21 considerable drop off when the tariffs are imposed. Is this
22 a sign, potentially, that the Chinese industry is aggressive
23 and it has an ability to ramp up exports to the U.S. almost
24 overnight?

25 MR. DOUGAN: This is similar to Commissioner

1 Kearn's question from earlier and my response then -- I'll
2 give you the same response now is that this was a one-off.
3 This was not a response to a normal supply and demand
4 conditions in the U.S. market. This was kind of a panic,
5 frankly, I think amongst the marketplace as to what form the
6 201 remedy was going to take and whether any supply would be
7 available.

8 You know these are folks who are in the utility
9 segment and knowing that the domestic producers can't supply
10 them and they've got projects on the way that they have to
11 build out. And if they can't get supply, well, they have to
12 get some now. And if I can -- Jonathan, can I show the
13 other slide? Gillian, if you could put up the other
14 presentation.

15 So, this isn't in my original presentation, but
16 I can submit the slide. So, this is basically the chart
17 that appears on page 72 or 73, right?

18 COMMISSIONER BROADBENT: Yes.

19 MR. DOUGAN: Well, to put that in context look
20 at the next slide. That's all the other sources' imports.
21 The minimum monthly quantity from all other non-subject
22 sources is basically the same or higher than the maximum
23 from China and the China basically went away even more
24 quickly. And if you look at the seven months before that
25 and the nine months since, there's basically been nothing.

1 This is not evidence of an aggressive market posture towards
2 the -- by the Chinese producers to the U.S. This is a
3 response to basically panic buying is what it looks like
4 from my point of view.

5 And apart from a two or three-month period, they
6 played an extraordinarily tiny role in the U.S. market.
7 Even in the first seven months of 2017 only the AD/CVD Order
8 is in place, not even with the 301 in place.

9 COMMISSIONER BROADBENT: Okay, thank you.

10 CHAIRMAN JOHANSON: Commissioner Schmidtlein?

11 COMMISSIONER SCHMIDTLEIN: Okay, thank you very
12 much.

13 I'd like to also thank the witnesses for being
14 today. I know at least of a couple of you have flown in
15 from the West Coast. I think I heard that you are located
16 in California, San Diego and maybe somewhere else.

17 So, one question that struck me especially
18 listening to the testimony of the developers, given that I
19 think all of you said you don't currently use Chinese
20 subject product and you are not planning to change your
21 business strategy to import Chinese subject product
22 regardless of what happens with this case, right?
23 Regardless of whether we keep the duties in place or whether
24 this particular AD/CVD Order is lifted and so it occurred to
25 me and I don't say this with any sarcasm, but why are you

1 here then? Because if you're not changing your business
2 strategy regardless of whether the Commission lifts that
3 Order and you're sourcing from other countries that aren't
4 subject to this AD/CVD Order and aren't subject to the 301,
5 why did you fly all the way across the country to be here?

6 MR. STOEL: Commissioner Schmidtlein, just a
7 couple of things to start and then I'll invite the companies
8 to weigh in. I think one thing is what I said to start off,
9 which is we committed to you when you put on your notice for
10 the five-year review to give you a full response and we
11 wanted to give you a full picture of the market. I think
12 purchasers as a key, as I always call them when I talk to
13 witnesses before the hearing, that they're third-party
14 validators.

15 They're telling you what's actually happening
16 out there. You're hearing from the Petitioners. You're
17 hearing from Respondents. So, we wanted to give you a full
18 picture of the market and I think it's very important that
19 you hear it from them and understand what's going on.

20 Secondly, obviously, with an event like the 201,
21 there've been a lot of changes in the marketplace that,
22 frankly, they're uniquely position to tell you about. And a
23 third thing I think is, and I alluded to this earlier when I
24 talked about the MIP. We understand that you have a job to
25 do, but I think it's also pretty clear that when you look at

1 this industry, solar, when you look at India, when you look
2 at the U.S., and you look at the EU, trade protectionism the
3 jury is out whether it works for this industry and it's
4 important that you understand that, yes, there are some
5 benefits to trade protectionism on this industry, but
6 unfortunately, there are also some negative consequences.

7 And so even all the companies here today are not
8 planning on importing from China, it's important that you
9 understand that there consequences of having these multiple
10 layers of trade barriers. And as I've pointed out to you in
11 the European context, which I remember Commissioner
12 Williamson said to me when we had the silicon metal case he
13 said you know it's really interesting to me that Canada
14 decided against imposing measures. Maybe you remember that,
15 Commissioner. I thought that was very important point.

16 Well, here another major market has decided that
17 trade protectionism in this industry doesn't work and what
18 is the industry saying? Forty percent growth in demand will
19 happen.

20 COMMISSIONER SCHMIDTLEIN: Mr. Stoel, we're not
21 here to revisit the 201. And of course, we don't have
22 anything to do with 301.

23 MR. STOEL: No.

24 COMMISSIONER SCHMIDTLEIN: So, what we have to
25 look at is this particular AD/CVD Order. And so what I'm

1 trying to understand is -- and Mr. Arndt, I think you
2 alluded to this a little bit, maybe in your testimony, and
3 maybe you're going to pick up on this, is that there's --
4 you said something to the effect of the effects of this
5 Order permeate the market and affect developers who don't
6 currently use Chinese products. Something like that,
7 right? And so I assume that there's some answer here that
8 involves the AD/CVD on these products, right, because, of
9 course, we have Solar II. That's a different scope, but
10 these particular -- the scope of this particular Order how
11 does the -- how do the duties on these particular products
12 permeate the market in the United States? Can you expand on
13 that a little bit?

14 MR. ARNDT: Yes, I can give a brief explanation.
15 I think from our perspective any time there are tariffs or
16 duties on products it makes it harder to predict the future
17 and raises costs on the products that we deliver to
18 utilities and our customers. And I think as we look to the
19 market and look at the different mix of duties and tariffs
20 that we see and we just want to show what the market --

21 COMMISSIONER SCHMIDTLEIN: Well, let's focus on
22 these duties, okay, because I know we've got a lot of duties
23 involved in this industry, but let's focus on these
24 particular -- these AD/CVD duties that apply to these
25 particular products. So, is it your view these particular

1 duties are raising the prices of the imports from the other
2 countries that you're using and therefore having to raise
3 the price of your delivered product?

4 MR. ARNDT: I think to give you a full answer on
5 that we'd have to talk to our folks in procurement and get
6 back to you in the post-hearing brief.

7 COMMISSIONER SCHMIDTLEIN: Okay. Anybody else
8 would like to -- do you have anything else you'd like to add
9 in terms of expanding on your statement about the effects
10 permeating the market?

11 MR. SINGH: Virinder Singh, EDF Renewables.

12 COMMISSIONER SCHMIDTLEIN: I'm sorry. I was
13 still talking to Mr. Arndt.

14 MR. ARNDT: I'm sorry. No, nothing at this
15 time.

16 COMMISSIONER SCHMIDTLEIN: Okay, alright.

17 MR. SINGH: I think just at one level we want to
18 make sure the Commission is as educated as possible from
19 folks on the ground seeing how things are playing out
20 commercially. We stand by everything that we said here. We
21 want to make sure the Commission is hearing from others when
22 you're also hearing arguments from one side that China poses
23 this enormous specter over the United States manufacturing
24 industry. And we are a company that buys American in terms
25 of thin film. And as we have filed on the 201 case we have

1 combed the United States to look for suppliers for product
2 for our projects here and we have not been able to find it.

3 We just want to make sure that you get to hear
4 our on-the-ground experiences as what we're really seeing
5 out there. And we don't find the problem to be Chinese
6 imports in terms of finding product from manufacturers here.
7 There's other factors at play and we just wanted to make
8 sure that you are aware of that.

9 COMMISSIONER SCHMIDTLEIN: Do you see an effect
10 in the market from the AD/CVD duties that's at issue in this
11 case?

12 MR. SINGH: Well, I'll just follow my testimony.
13 Since 2012, ironically or not so ironically, we have not
14 been sourcing modules from China. When the Commission, the
15 Administration--whichever Administration it is--issues
16 tariffs or duties, it gets translated into the phrase
17 "regulatory risk" for us when we're making procurement
18 decisions.

19 So, insofar as the AD/CVD duties created
20 regulatory risk sourcing from China, you saw behaviors from
21 suppliers in adjusting their supply chains and procurement
22 decisions from entities such as ours pursuant to that. So
23 in that sense, it was relevant at the time it was issued.

24 We thought it was important to be able to testify
25 under oath here that we have no plans to buy from China in

1 the reasonable future in the time going forward that you are
2 likely to be focused on, we are not planning to buy from
3 China.

4 COMMISSIONER SCHMIDTLEIN: You buy from other
5 nonsubject countries?

6 MR. SINGH: That's correct.

7 COMMISSIONER SCHMIDTLEIN: So do you think that
8 the orders on China have had an effect on the prices from
9 those countries?

10 MR. SINGH: I cannot speak to that. All I can
11 speak to is, we've stopped buying from China in 2012 and
12 we've been buying from other countries. We buy modules, we
13 don't buy cells. We don't manufacture, we rely on suppliers
14 to sell us product and our selection for manufacturers very
15 much grew since 2012 to other nonsubject countries, so you
16 can probably connect the 2012 decision with that trend that
17 happened in 2012.

18 Today, just looking down, going forward, we are
19 not buying from China. We're not buying modules from China
20 and we are currently, actually very actively trying to
21 figure out our sourcing strategy for 2019-2020 and going
22 forward because of the investment tax credit window that
23 we're facing up to 2023 and we are not looking at Chinese
24 source modules as a part of that process, too.

25 COMMISSIONER SCHMIDTLEIN: And that wouldn't

1 change if the order was revoked? Is that right?

2 MR. SINGH: I would say that, at this point, in
3 terms of module sourcing.

4 COMMISSIONER SCHMIDTLEIN: But cells, you're
5 saying potentially? Or --

6 MR. SINGH: We do not buy cells. I can only
7 speak to modules.

8 COMMISSIONER SCHMIDTLEIN: Okay. So there's --

9 MR. SINGH: We don't install cells. We install
10 modules --

11 COMMISSIONER SCHMIDTLEIN: Okay. So when you
12 were just making the point with modules, but you're not
13 talking about anything else anyway?

14 MR. SINGH: Right. That's --

15 COMMISSIONER SCHMIDTLEIN: Okay.

16 MR. SINGH: We can only talk to modules, but the
17 people we're talking with right now are not sourcing from
18 China.

19 COMMISSIONER SCHMIDTLEIN: Okay. Yes? I'm
20 sorry. I can't, for the light, I can't see your name.

21 MR. PLAXICO: Vince Plaxico from Recurrent
22 Energy.

23 COMMISSIONER SCHMIDTLEIN: Sure.

24 MR. PLAXICO: Managing Director and Project
25 Finance. Maybe it'd help if I step back and explain our

1 business model a little bit, and the impact. So we need
2 three things in our business to make it work. We need
3 equipment, finance and then the knowledge of what the
4 developers do.

5 I lead the finance piece, and as you can imagine,
6 when we're developing projects, we even exit those in the
7 future and it's really important that we have a big broad
8 investor base that will want to purchase the projects, so we
9 can take those proceeds and put them back into our
10 development pipeline and continue.

11 To your direct question of, what are these
12 tariffs impacting specific to AD/CVD? To me, when investors
13 look at different markets, they are analyzing everything
14 from political to financial returns, etcetera. And so when
15 you have a lot of tariffs that may be stacking, including
16 this, that, for us, isn't going to be necessary in the
17 future, it adds complexity to that analysis.

18 So we've sold projects to domestic investors.
19 We've sold them to international investors. And what I
20 would worry about is, in the future, when we want to sell a
21 project, the investor's not interested in the space for the
22 pure fact that there's too much complexity, which adds to
23 the risk and for us, what that means is, we're not able to
24 build these projects, create jobs in California for some
25 union workers that are doing the construction on the

1 ground.

2 COMMISSIONER SCHMIDTLEIN: So you, in your
3 company, if the order was revoked, you would not be looking
4 to source anything from China?

5 MR. PLAXICO: That's correct. Well, from
6 Recurrent Energy, the same company that Mike Arndt testified
7 to.

8 COMMISSIONER SCHMIDTLEIN: Okay, all right,
9 great. Thank you. All right. My time is expired, so we
10 can come back to any other witnesses who'd like to speak on
11 that in the next round.

12 CHAIRMAN JOHANSON: Commissioner Kearns.

13 COMMISSIONER KEARNS: Thank you. So I wanted to
14 turn back to Mr. Dougan and give you a chance to respond if
15 you haven't already. I think you did with Commissioner
16 Broadbent, the second half of 2017, I think you've fully
17 answered that with the chart that you had, but feel free to
18 answer that.

19 At the same time, though, I wanted to ask you
20 about the first half of 2017 and why those imports from
21 China are as low as they are. I asked the same question of
22 petitioners and they pointed out how much demand had
23 declined from 2016 to 2017, but I was looking more closely
24 at the numbers and I still don't understand what's going on
25 with China. Because if you look, I'm gonna avoid talking

1 about total U.S. demand since that's proprietary.

2 So as sort of a surrogate, I'm looking at
3 nonsubject imports in 2016. They were about five times what
4 they were in the first half of 2017, suggesting some decline
5 in demand. If you look at subject imports though in 2016,
6 they were about twenty-seven times higher--more than that,
7 actually--than they were in the first half of 2017. Why
8 were imports from China so low in the first half of 2017
9 when they were, you know, so much higher in 2016 and
10 before?

11 MR. DOUGAN: Well I think --

12 COMMISSIONER KEARNS: Was it because of the
13 dumping and CVD duty margins? Did they change dramatically
14 or what?

15 MR. DOUGAN: Not to my knowledge. And we can
16 look at that again. But my understanding is, and perhaps
17 Mr. Ambrose can talk about this, but this is a manifestation
18 of a trend that continues -- I mean, they were down from
19 2015 to 2016 and then from 2016 again to 2017, pretty
20 dramatically. 2016 was much bigger than '17, but it was
21 still down from a peak in 2015.

22 And this is a manifestation of this restructuring
23 of supply that we were talking about, about companies that,
24 you know, to some degree, even Chinese-owned companies,
25 deciding to source to the U.S. market from destinations

1 other than China. So the need to supply the U.S. market
2 from China was diminished.

3 So that, I think is part of the explanation, but
4 it's definitely -- I mean as you point out, it's not a
5 function of demand in the United States in '17 being less
6 than '16, because the composition of imports -- I mean it's
7 precisely what you said, right? It went from -- I guess
8 China was 21.2% of total imports in 2016 and they were 3.8%
9 in first half of 2017.

10 So that's not explained by seasonality or demand
11 or anything like that. It's just the composition of the
12 imports. So I think that that is a large -- it's basically
13 rebalancing of supply sources globally and a continuation of
14 a trend that began a few years before that. I don't know if
15 anyone else here wants to speak to that.

16 COMMISSIONER KEARNS: Let me just -- before they
17 do though -- I would like to hear more. But I mean I just
18 don't see a trend here. I'm seeing -- you're right. There's
19 a decline from 2015 to 2016 before the decline to 2017. But
20 just magnitudes are different when you look at that first
21 half of 2017, it's like -- and then, hmm -- and I don't
22 know, and maybe it's post-hearing brief. I don't know if
23 this is one or two Chinese producers that moved everything
24 out of China or what? But it's really strange to me how
25 much of a drop there is there.

1 MR. DOUGAN: It's pretty significant. I don't
2 have a specific answer for you right now, so I don't want to
3 speculate. I have some ideas, but I don't want to say
4 anything that I can't back up. So we can look at it more
5 for post-hearing. Unless some of the other folks here can
6 contribute.

7 MR. AMBROSE: I can talk to that. Vincent
8 Ambrose, Canadian Solar. So what you're seeing in those big
9 drops from '15 to '16 is the supply chain was reorganizing
10 around the Solar2 AD/CVD rates. It took a little over a
11 year to reorganize the supply chain outside of China, and it
12 really came into effect late '15, most of '16. Again you
13 saw '17 drop as well. You wouldn't have seen a spike in the
14 second half of '17 if it wasn't for the C201 which caused
15 panic buying by U.S. customers.

16 COMMISSIONER KEARNS: Okay, thank you. And just
17 one comment in relation to this. Maybe this is actually a
18 question, too. But we've been talking about how miniscule
19 2% imports are, but it is important to note, that just a
20 couple of years ago, despite being covered by anti-dumping
21 and countervailing duty orders, Chinese imports represented,
22 I think, Mr. Dougan, you said 22% of -- was that imports or
23 --

24 MR. DOUGAN: Of imports.

25 COMMISSIONER KEARNS: Yeah. Okay. And that's

1 pretty significant, I would say, given that they were
2 covered by the order and, you know, I guess with the
3 exception of Taiwan, no other countries weren't subject to
4 orders.

5 MR. DOUGAN: You know, I think what I would say
6 to that is, there was, as observed over this POR, a
7 significant rebalancing of global supply sources. And the
8 way that the U.S. market was served, largely, admittedly in
9 response to the original AD/CVD orders, right? And we're
10 talking about 20%, 25%, 30% margins. So we saw global
11 restricting of supply, change in the markets that were
12 supplying the U.S. market because of that level of AD/CVD.

13 And yet, somehow, a 30% 201 and an additional 25%
14 301 are deemed by petitioners to have absolutely no effect
15 and provide no impediment to supplying the U.S. market when
16 they were willing to restructure global operation in
17 response to, basically, a lower level of AD/CVD. So are we
18 saying that there hasn't been an impact of the orders? No,
19 we're not.

20 But that impact has been felt in the
21 restructuring which isn't going to basically hit the reset
22 button and go back to 2012. Those investments have been
23 made and then it's particularly not going to be reversed
24 when -- even if the orders are revoked, even if the 25% or
25 27% AD/CVD goes away, you've got now this 30% and the other

1 25%. I mean if these folks are rebalancing and
2 restructuring their global operations in response to that
3 original thing, the idea that somehow no one will pay
4 attention to a 55% tariff, just doesn't seem credible to me.

5 COMMISSIONER KEARNS: Okay, thank you. Switching
6 subjects here, I want to talk about, you know, the 201 and
7 how we should consider those tariffs. Didn't the
8 Commission, in recommending the remedy it recommended in
9 201, assume a volume of Chinese imports that had the AD/CVD
10 order essentially baked in? Wouldn't the 201 remedy likely
11 have looked a lot different if imports from China were not
12 covered by the order?

13 MR. STOEL: Commissioner Kearns, I think I said
14 at the time of the 201 recommendations and the President's
15 decision, the Solar1 orders were in effect as were Solar2.
16 I think what we've said here though is if you looked at the
17 combined effect going forward of the 30% and the 25%, you're
18 not gonna see a resumption of shipments.

19 And I think, to some of your questions this
20 morning, I think it's a very similar situation to what you
21 had today under the AD/CVD. And if you look at the first
22 half of 2018, you just didn't see any shipments from China,
23 very, very small. And I think that's exactly what we expect
24 will happen in the future.

25 So I agree with you that the Commission did

1 consider the AD/CVD to have been in effect. But at that
2 time, of course, the 301 was not in place. So I think what
3 we would say is, essentially I don't think you could say
4 it's a one-for-one. You know, there's a lot of talk this
5 morning about prices always going down, so maybe the AD/CVD
6 has more effect, the less effect, maybe the prices go up as
7 they did in the U.S. market temporarily.

8 So I don't think we can say which one will be
9 more effective. But I think they can be viewed as being on
10 par. And if you look at the recent history, there's been no
11 shipments from China, and that's what we expect in the
12 future.

13 COMMISSIONER KEARNS: Okay, thank you. So I
14 wanted to talk more about prices in the U.S. market versus
15 other markets. Petitioners' brief, looking at Pages 30 and
16 31, provides data indicating that U.S. prices for cells and
17 modules have generally been higher in the U.S. than in China
18 or China's other export markets. Do you agree that the
19 United States is an attractively-priced market?

20 MR. STOEL: I think it is an attractively-priced
21 market. But it's attractively-priced market for the
22 significant reason that it's a protected market. So the
23 201, as you saw in the chart in our brief, clearly had a
24 spike in the prices. Obviously I think the 301, if there
25 were no AD/CVD, would continue to keep China out and so

1 would cause a spike. So I think there are reasons why the
2 U.S. market is attractive from a pricing standpoint.

3 But I think you have already significant measures
4 in place that keep imports out and will continue to keep the
5 market at relatively high prices. I think the downside
6 which you've heard from the developers are that in always
7 have a higher price has adverse effects on demand. And that
8 has to be counterbalanced. There are positives on the
9 pricing side, but there are significant negative
10 consequences that you've heard from the developers today.
11 And I invite them to comment on that.

12 COMMISSIONER KEARNS: Well, actually, before you
13 do, I mean, just -- is that actually something that we --
14 this is a legal question. Is that something that we are
15 allowed to consider anyway? I mean, how does that factor in
16 to determining whether or not, you know if the order is
17 revoked, whether or not the U.S. industry will be materially
18 injured again? I mean, isn't that what we need to look at?
19 So what am I supposed to do, I mean, if it turns out you're
20 right, that duties decreased demand?

21 MR. STOEL: Well, I think the important point
22 here that I think you've heard from all the developers is,
23 because of the relatively moderate measures that were
24 ultimately applied in the 301, you had, as I think Mr.
25 Dougan referenced in response to the question of why was

1 there the spike, right? At 78 cents per watt, I think it
2 would've been, you know, a significant adverse consequence.

3 Instead, because of the relatively moderate
4 recommendations that you all had, you have, basically not as
5 much increase in demand as the industry would hope, but you
6 still have a flattening and then a growth. And that I think
7 to your question about, what's the legal effect, I think
8 having a bright future for U.S. demand is a positive

9 Obviously, as I said earlier, we want U.S.
10 manufacturers to do well. We also want, frankly, U.S.
11 developers and others in the industry to do well, too. So I
12 think it's in everybody's interest to have demand growth.

13 Unfortunately, because of the tariffs, they
14 haven't been as strong as folks would like, but they also
15 haven't had the -- as I said, the doomsday scenario that
16 some people had feared.

17 COMMISSIONER KEARNS: Okay, thank you. My time's
18 up.

19 CHAIRMAN JOHANSON: Canadian Solar has argued
20 that the orders in CSPV2 provide additional protection to
21 the U.S. industry and this is the prehearing brief at Page
22 13 to 14. But don't these orders cover different types of
23 products from China, specifically Chinese CSPV modules using
24 cells from third countries? How would the CSPV2 orders
25 provide an additional layer of protection from imports of

1 the subject merchandise at issue in these reviews?

2 MR. STOEL: Chairman Johanson, Jonathan Stoel for
3 the record. The way in which the Solar2 orders provides
4 protection to the U.S. industry is, I think, somewhat
5 complicated, but let me explain.

6 Throughout the period of review and today and in
7 the future, there is significantly more Chinese solar module
8 capacity than Chinese solar cells. That's the reason why
9 there was the Solar2 case, which was, you had imports of
10 cells from other sources that came into China and they were
11 exported to the United States. If these particular orders
12 are removed, those type of shipments will not be made and
13 the U.S. market will be protected as a result of those
14 Solar2 orders.

15 In other words, if the solar module industry is a
16 100 in China, then the solar cell industry is only 70. It's
17 really only the solar cell industry that you have to look
18 at. And I think that's important for a couple of reasons.
19 One, your Staff Report says that there have not been solar
20 cell exports from China to the United States in any
21 significant volume, and we don't expect that to change.

22 I think there was some question this morning
23 about, well, maybe for solar module manufacturers, it would
24 be good to have exports from solar cells. It has not
25 happened. The other thing to look at is that solar cell

1 capacity in China, capacity utilization is very, very high.
2 And that's a really important point, because since that
3 excess solar module capacity, beyond the solar cell
4 capacity, is not gonna be free due to the Solar2. You
5 really have to look at the volume of solar cells in China.
6 And those capacity utilization figures have always been
7 extremely high and continue to be today. I hope that
8 answers your question.

9 CHAIRMAN JOHANSON: It does. Thank you, Mr.
10 Stoel. How does the price of solar cells -- pardon me, I
11 think that's already been asked. Let me ask a different
12 one. How likely is it that if the orders were revoked,
13 subject imports from China would replace nonsubject imports
14 which are also covered by the Section 201 safeguard
15 measures?

16 MR. DOUGAN: Chairman Johanson, Jim Dougan. Our
17 position is that the typical argument that's made in these
18 types of sunset reviews is -- okay, well, during the period
19 of review, nonsubject sources replaced subject sources
20 because of the orders, but so if you lift the orders, the
21 subject sources are gonna go back to their same old
22 behavior. They're gonna use price to regain their previous
23 market share.

24 And we say that that can't happen here, and it
25 won't happen here. And that's a consequence of the

1 additional -- for a number of factors. One, because of a
2 rebalancing of supply and the refocus on different export
3 markets that are available to Chinese exporters. But the
4 other being the Section 301 which puts them at a
5 disadvantage relative to other solar sources that are gonna
6 be exporting to the United States.

7 And that differential, you know, again, we heard
8 talk this morning about, oh, well, you know, the level goes
9 up and down, and it's impacted by -- if the price goes down,
10 the ad valorem means less in absolute dollars and so on.
11 Even so. The Chinese suppliers will be at a disadvantage
12 relative to the other suppliers who are already now 98, 99%
13 of imports.

14 And so for the Chinese producers to come back at
15 any significant volume is beyond the basically de minimis
16 level that they're at now. They would either have to have
17 some kind of competitive advantage with regard to
18 differentiated technology, and we're not sure that's the
19 case. Or they would have to have, you know, competitive or
20 lower prices, and because of the 301, they're not gonna be
21 able to do that.

22 MR. LEWIS: If I might add to that. And maybe
23 this is going back a little bit to the question about
24 whether prices in the U.S. market are particularly
25 attractive relative to other markets, what I wanted to add

1 to that, and I think this does go to your question is, it
2 really depends on where you stand on that question.

3 For an exporter from China, if there are higher
4 prices in the U.S. market, that has to be considered in the
5 context of the fact that you have to pay 50% of 55% in
6 additional duties, it's taking right out of your revenue on
7 those transactions. And so if you're looking at going
8 directly to your question of why wouldn't Chinese products
9 flood back into the U.S. market, certainly as long as the
10 201 and the 301 duties are in place, and we have to assume
11 that they will be for the foreseeable future, other markets
12 aren't--with a few exceptions--aren't subject to anything
13 like that kind of a revenue hit, so are, by definition, more
14 attractive, even if they're lower-priced normally speaking.
15 So it just doesn't make sense to me the Chinese producers
16 would shift their production to a market with a lower
17 profitability.

18 CHAIRMAN JOHANSON: Thank you. Mr. Plaxico?

19 MR. PLAXICO: Just like to make a quick point
20 about the investment community. If I were to be marketing
21 and selling a project that used components from China, I
22 think the investors would look at that as a higher risk
23 investment and then to us, that decreases our ability to
24 make profit and plug it into our platform.

25 So I think there's a built-in support from an

1 outside community that drives a lot of our business and our
2 ability to succeed, to make sure that, as we already
3 mentioned in our testimony, that we wouldn't be procuring
4 from China.

5 CHAIRMAN JOHANSON: So again, Mr. Plaxico, so the
6 Chinese product would be a higher risk as opposed to --

7 MR. PLAXICO: Sourcing from a place that didn't
8 have as high tariffs.

9 CHAIRMAN JOHANSON: Okay. Any other --

10 MR. PLAXICO: Or past tariffs.

11 CHAIRMAN JOHANSON: Mr. Plaxico, is this you with
12 Recurrent Energy, is that correct? Is this your picture
13 here?

14 MR. PLAXICO: It is.

15 CHAIRMAN JOHANSON: Where is that? I'm curious.

16 MR. PLAXICO: That's in California.

17 CHAIRMAN JOHANSON: Whereabouts?

18 MR. PLAXICO: That's probably Southern
19 California. It's either Barren Ridge or Victor Phelan.

20 CHAIRMAN JOHANSON: Okay. That's a big project.

21 MR. PLAXICO: Appreciate that.

22 CHAIRMAN JOHANSON: That's a lot of land out
23 there. You could probably build some more. No, it's a very
24 impressive picture.

25 MR. PLAXICO: Thank you.

1 CHAIRMAN JOHANSON: I have another question here.
2 SolarWorld takes the position that foreign producers have no
3 comparative advantage in the cost of production for solar
4 products. They argue this at Page 33 of their brief. How
5 do y'all respond to this?

6 MR. AMBROSE: I think you have to look at
7 economies of scale when you take a look at cost structures
8 for solar products. Quite honestly, the U.S. domestic
9 market is never kept up on a scale basis to support the
10 growth, not only domestically, but even the opportunity to
11 sell internationally.

12 I think that you've seen in both China and other
13 Southeast Asian countries is a development of scale, not
14 only by single manufacturing facility, but also the
15 suppliers around those facilities. Not only in size and
16 scope and scale, but also in distance from our manufacturing
17 facility. So I would disagree that foreign producers don't
18 have a cost advantage, simply because of size and scale,
19 compared to what we see domestically.

20 MR. DOUGAN: Chairman Johanson, Jim Dougan. If I
21 can add, it's proprietary, so I can't get into it at length,
22 but maybe I could speak more candidly in a post-hearing
23 submission. But there are, even in the recent POR, examples
24 of U.S. producers who entered the market, couldn't get a
25 particular technology to work.

1 It had nothing to do with competition. They
2 wanted to pursue a particular technology, couldn't get it to
3 work, and then had to basically exit the market, or exit
4 some aspect of production. So now, does that happen in
5 China? I'm sure it happens all the time. But relative to
6 the number of U.S. producers, that's probably a more
7 significant occurrence than it might have been in a larger
8 industry.

9 CHAIRMAN JOHANSON: Thank you, Mr. Dougan. That
10 concludes my questions, at least for now. Commissioner
11 Williamson.

12 COMMISSIONER WILLIAMSON: Thank you, Mr.
13 Chairman. Canadian Solar, you argue that CSPV cells and
14 modules are distinct products and completely different. You
15 also argued that solar modules assembly and cell production
16 are fundamentally distinct businesses. This is at your
17 prehearing brief Page 15.

18 How should the Commission consider the market and
19 industry for CSPV cells to be distinct from CSPV modules
20 without treating these as separate domestic like products?
21 Do you view cell production as more or less affected by
22 these orders? Do you view cell production to be more or
23 less affected by these orders than module production or vice
24 versa? What's most effective out of the orders? Or which
25 of the two products? And I guess, from that I'll figure out

1 whether your subsequent articles apply to modules or cells.

2 MR. STOEL: Commissioner Williamson, Jonathan
3 Stoel for the record. We actually wrestled with your
4 question quite a bit ourselves as we drafted our brief. As
5 you know, the Commission has previously looked at whether
6 cells and modules should be considered separate domestic
7 like products.

8 To be candid, we reviewed your earlier decisions
9 and found that it was very difficult to make the argument
10 they should be considered separate domestic like products.
11 However, I think it's clear that different conditions of
12 competition affect them for the main reason that the
13 purchasers of these products are very different.

14 For cells, as I think Mr. Singh testified
15 earlier, really the people who are purchasing cells are sole
16 module manufacturers. For people who are purchasing solar
17 modules, it's a residential purchaser or whether it's a
18 Michael Arndt for a utility, completely different markets
19 and different uses for the product.

20 I think in terms of the, where the Commission and
21 where the President has gone, I think there's been a clear
22 focus on trying to build up solar module manufacturers in
23 the United States. That's why you recommended the 2.5
24 gigawatt exception for solar cells that come into the United
25 States. And historically, there have been very few exports

1 of solar cells to the United States. It's been mostly solar
2 modules.

3 So I think all those factors play into your
4 question. I think they do have to be looked at separately,
5 but at least for purposes of this review, we don't believe
6 they should be considered as separate domestic like product.

7 COMMISSIONER WILLIAMSON: Okay. And your
8 arguments about the domestic industry's capacity to meet its
9 purchasers, does that go more to the cell side or more to
10 the module side or to both?

11 MR. STOEL: I invite others to jump in. I think
12 they have to be looked at somewhere separately.
13 Historically, you know, there've only been two U.S. solar
14 cell manufacturers.

15 One is Suniva which has been in bankruptcy now
16 for eighteen months and I don't think anybody anticipates to
17 resume operations. The other one has been SolarWorld which
18 has had operations have not been large enough to satisfy all
19 of the solar module manufacturing demand in the United
20 States.

21 And then on a very different scale, obviously,
22 solar module demand in the United States has just taken off.
23 And so I wanted to answer your question earlier by saying,
24 the biggest thing for utility-scale purchasers is size.
25 None of the U.S. suppliers have been big enough to meet

1 their needs and to meet them regularly and with the
2 quantities that they need.

3 So perhaps Jinko with its new facility will
4 satisfy that niche in Florida, but at least to date, they
5 haven't been big enough and haven't been at the scale, as
6 Mr. Ambrose described it, to meet the needs of utility-scale
7 purchasers.

8 COMMISSIONER WILLIAMSON: Okay. Does anyone else
9 wanna add anything on this?

10 MR. STRANGE: I can add a little bit to that.
11 Hewitt Strange with Cypress Creek. Certainly the module
12 capacity just does not exist for our market, the
13 utility-scale market. I think, and I apologize. I used to
14 have all these numbers at the top of my head, but it's been
15 a while since we've been discussing this.

16 But I believe the total number of machines
17 currently available to operate in the U.S. that could
18 theoretically produce a utility-scale module is something
19 like 500 megawatts. Now they're not actually producing the
20 utility-scale modules, but that's the capacity that could
21 produce it if they chose to switch.

22 And 500 megawatts is obviously a fairly small
23 percentage, would've been 5% of the 10 gigawatts of
24 utility-scale demand before. So the capacity of module
25 production in the U.S. for the utility-scale market just

1 does not exist.

2 COMMISSIONER WILLIAMSON: Okay, thank you. So,
3 this is a different question. You mentioned the global
4 diversification of supply for CSDV products. How should
5 this global diversification affect the Commission's analysis
6 in these reviews and related to that today's solar is really
7 a multinational? A lot of the product that's coming from
8 non-subject product is produced by Chinese firms. And the
9 question -- Commissioner Schmidlein asked the question to
10 some of the developers why are you here and it occurred to
11 me does it make any difference to you whether or not the
12 product is coming from China or from a Chinese-owned firm
13 producing in Malaysia or someplace else?

14 MR. STOEL: Well, you asked a number of
15 questions there. Of course, I want to answer them. I mean
16 I guess I would start off oftentimes my associates tell me I
17 go in circles, so I'll go back to where I started.

18 One of the biggest changes before you is at the
19 time of the original investigations in 2012 China was
20 clearly the dominate player and really the only player. You
21 know that has clearly changed, so today, as you all know
22 very well from the 201 you have major producers outside of
23 China. Yes, some of them are owned by Chinese producers.
24 As Canadian Solar is headquartered in Canada, but I would
25 point out -- I was amused this morning to hear them keep

1 talking about China. Last time I checked, LG and Hanwha are
2 both Korean producers and Korea is the biggest source of
3 imports into the United States today.

4 So, they're a lot of companies shipping to the
5 United States of different origins and from different places
6 and I think that is, as you all find in your 201, which I
7 don't want to rehash today, is not going to stop. And I
8 think, though, the important thing, which Mr. Dougan has
9 explained, is really a question of comparative advantage.
10 We all believe that the 30 percent tariff is going to remain
11 in place or 25 percent decline in tariff, at least, and the
12 201 is going to remain in place.

13 There's going to be, though, another 25 percent
14 tariff on Chinese products. If you're already sourcing from
15 Korea, you don't face this additional 25 percent barrier,
16 why would you ship to China? If I go into a supermarket and
17 I see the same -- you know assuming all products are
18 fungible and I see a product that's \$1.25 and a product
19 that's \$1.00, I don't know about you, but I'm going to buy
20 the product that's \$1.00.

21 COMMISSIONER WILLIAMSON: But if you're also a
22 purchaser and you know that the company -- there may be a
23 difference price, but you know that the supplier could be
24 the same company in China or Malaysia. Now, I realize there
25 are other Asian suppliers there, but that does have an

1 affect on your purchasing decision because you're buying a
2 known product. It's just that they may have moved the
3 manufacturing facility.

4 MR. STOEL: Commissioner, I think that's a very
5 good point that I think we'll want to look at a little bit
6 more in our post-hearing submission because I think you're
7 asking an excellent question.

8 I guess I would make one comment, which is
9 ultimately, like any good, it comes down to quality and it
10 comes down to specifications and it comes down to whether
11 the product meets the needs of the customers. So, if you
12 believe that the product is one -- you're familiar with a
13 particular company and you believe that their products are
14 good, then I would assume that, yes, you'll buy from them.
15 And unfortunately, what you've heard from the developers
16 today is at least in the past the U.S. manufacturing
17 industry there's not been that comfort. Folks have not
18 wanted to buy from the U.S. We hope that's changing, but in
19 the past that's been the situation. Whereas, for some
20 suppliers, whether it's Korean suppliers or elsewhere, there
21 is comfort and that's where people buy from.

22 COMMISSIONER WILLIAMSON: Okay, that does go a
23 little bit to the vulnerability of the U.S. industry.

24 Just one other quick question, do you know if
25 the subject imports from China have been de minimis since

1 the 2001 remedies were imposed can such imports have
2 negative price effects and impact on the domestic industry
3 even at minimum volume? Is it appropriate for the
4 Commission to consider the global affect on prices caused by
5 the size of the industry in China and its excess capacity in
6 its review determination? These questions are all somewhat
7 related.

8 MR. STOEL: Commissioner Williamson, I think,
9 actually, Mr. Lewis answered your question a bit earlier,
10 which is I think from a legal standpoint we believe it's
11 something that's entering the U.S. market. I don't think
12 there can be sort of a generic sense that there's some price
13 effects of non-shipments. And I think, actually, you looked
14 at this recently in your aircraft case where I think you
15 questioned whether there could be impacts from something
16 where there wasn't a sale into the U.S. market. So, I
17 think you have to look at what's going on in the market.
18 Obviously, you have to look at it counterfactually. If
19 there were shipments to the United States what would be the
20 impact of that, but I think in terms of the actual effects,
21 you have to look at shipments to the U.S. market. You can't
22 conjecture about some broader trends, but let me ask Mr.
23 Dougan if he wants to add to that.

24 MR. DOUGAN: No, I would agree with that
25 statement and thank you for the legal context.

1 So, I mean the first part of your question is
2 can basically a de minimis level of imports have significant
3 adverse price effects and I would say no. I mean they're
4 basically de minimis. They haven't been significant
5 suppliers to the U.S. market for 18 months or something like
6 that and they're dominated by suppliers in Korea and
7 Malaysia, other places like that. So, to the degree that
8 prices in the United States are impacted, however they're
9 impacted, by imports I mean logic stands that it's going to
10 be those suppliers that are driving the price. You know the
11 ones that are shipping very, very minimal quantities cannot
12 be setting the price for the rest of the market;
13 particularly, when the majority of the volume is done in the
14 utility scale market. And if you're not supplying the
15 utility scale market to sort of affect I guess the weighed
16 average market price for modules, which is going to be by
17 way affected most by prices in the utility segment, the
18 Chinese suppliers aren't supplying enough volume to
19 participate in the utility segment products -- project
20 rather, then they can't be influencing the price, so that
21 answers the first part of your question.

22 With respect to the second part of your question
23 --

24 COMMISSIONER WILLIAMSON: I'm not sure that it
25 does, but go ahead.

1 MR. DOUGAN: Alright, but that's answer to the
2 first part of your question. How about that?

3 And then the answer to the second part of your
4 question, as Mr. Stoel said, I mean it's a counterfactual --
5 if there are imports, if they're coming in, how are they
6 going to have an effect? And our argument is that even
7 absent the AD/CVD Orders, if those are revoked, that the
8 combination of the 201 and the 301 will be enough to offset
9 or prevent any adverse price effects to the domestic
10 industry.

11 And in fact, you looked at something of this
12 nature in the tin mill case, as Commissioner Kearns pointed
13 out earlier today. And in the stainless steel bar sunset
14 review where you kind of looked at, okay, given the relative
15 prices that we observe in the U.S. market what is the likely
16 affect of the tariffs that are in place. In that case it
17 was 232, but here we're talking about 201 and 301 and I
18 think a similar type of perspective would be helpful.

19 COMMISSIONER WILLIAMSON: I'm way over my time,
20 but I do think we are talking about global markets and the
21 global prices are out there, but I can't go further on this,
22 so thank you.

23 CHAIRMAN JOHANSON: Alright, Commissioner
24 Broadbent.

25 COMMISSIONER BROADBENT: Okay, let's see, this

1 is kind of a big picture question for industry witnesses.
2 How do you characterize the price competitiveness of solar
3 power with other forms of electricity generation, including
4 wind, and how has this changed since we conducted the solar
5 safeguard investigation?

6 MR. SINGH: So, to more fully give background on
7 my company, we're a developer of both wind and solar
8 generation, so we're very familiar with both. Since 2012,
9 the bus bar -- the contracted price for wind or the price of
10 wind as traded in more open electric markets such as Texas
11 has plummeted and that's partly due to technology driven by
12 its own tax credit called the production tax credit as well
13 as high concentrations of wind generations, specific
14 geographic areas resulting in generation happening at the
15 same time which tends to lead to supply/demand imbalances
16 which further depresses prices.

17 So, the overall price of wind in the market is
18 incredibly low and relevant to solar, solar as to compete
19 with that in the market.

20 COMMISSIONER BROADBENT: Okay. What do you
21 think is the future of solar at this point, given all of the
22 interventions in the market we've had recently?

23 MR. ARNDT: I think the future of solar in the
24 market is strong. One reason for that is that even as folks
25 want renewables wind is difficult to site, the structures

1 are tall -- 500 feet tall in some cases. Solar could be
2 built in smaller projects closer to load. And I think that
3 solar is more coincident with load. It generates energy
4 during the day when power is needed where wind may not, and
5 not to pick to wind. It's an important resource, but I
6 think the future of solar is bright in the U.S. I think
7 it's got a pretty good trajectory as we move forward in time
8 and especially when there's other retirements of other
9 fossil fuel generators.

10 COMMISSIONER BROADBENT: That's good. That's
11 optimistic. That's great.

12 Mr. Dougan, the President in his safeguard
13 actions exempted 2.5 gigawatts of cells from additional
14 tariffs. Looking at the data on our record, it does not
15 appear that anywhere close to that volume of those cells has
16 been imported in the first half of 2018 or in any other
17 year. Within the reasonably foreseeable future, to what
18 extent do you think it's likely that a commercial market for
19 CSPB cells will develop in the U.S.?

20 MR. DOUGAN: Well, I'd have to think about that.
21 I mean there hasn't really been one, at least in the 201
22 when we talked about it we said there really wasn't like a
23 commercial market for cells. I think you'd have to ask the
24 folks who do this every day, the industry experts, but I
25 think that it's been discussed previously that that remedy

1 crafted particularly to be able to ensure supply to the
2 module manufacturers. And most, if not all, of the
3 investment that you've seen or at least announced
4 investment that you've seen in domestic manufacturing
5 capability since the 201 has been module production. And so
6 the idea is that they are -- you know 2.5 gigawatts is more
7 than current levels of module capacity, right? But the idea
8 that that would be enough over the term of the 201, over the
9 four years, that there would be sufficient supply and that
10 module production would grow and have basically enough
11 supply to go forward because certainly domestic cell supply
12 was -- there wasn't a lot commercially available, right? It
13 was consumed internally and there wasn't much otherwise
14 available, which is the need for imports.

15 Looking forward, what does that mean for the
16 prospects of domestic cell production or commercial domestic
17 cell production as opposed to that which would be captively
18 consumed you know I can't really speak to that, at least not
19 sitting here right now. I mean does anyone on the panel
20 have opinions about that?

21 MR. AMBROSE: So, to your question to the 2.5
22 gigawatts of cell exemption and do we see more of a market
23 for that source product, for lack of a better word, I would
24 say the numbers are low for 2018 simply because the market
25 didn't have time to react and build a module supply base

1 that would consume those cells. I would expect that number
2 to be bigger in 2019; however, the number of announcements
3 that we saw for domestic module assembly manufacturers
4 they've seemed to have walked back a number of their
5 promised investments, so I think it's yet to be seen whether
6 or not that business will flourish or not and whether or not
7 those cells get consumed.

8 COMMISSIONER BROADBENT: Okay. Let's see, Mr.
9 Dougan, I just wanted to put a finer point on this. Do you
10 agree with SolarWorld that in late 2017 just prior to
11 publication of the 201 tariffs that there was substantial
12 stockpiling of imports.

13 MR. DOUGAN: There was definitely an increase in
14 imports. We saw it in the chart. The data say that. I
15 think it was -- I'd characterized it or Mr. Ambrose
16 characterized it as panic buying. People had no idea what
17 was going to happen, if they were going to be able to get
18 supply; particularly, for those in the utility segment you
19 know there wasn't going to be the available supply from U.S.
20 producers, so I think there was a real, actual reasonable
21 concern about their ability to obtain these things and so,
22 yeah, there was some panic buying I think at the end of the
23 period, so I mean that was the facts. You've seen it
24 falling off. Certainly, from subject sources it's fallen
25 off to basically nothing since then.

1 COMMISSIONER BROADBENT: Okay, yeah. Let's see,
2 looking at sort of the 201 relief, the Commission has just
3 previously concluded that the temporary nature of the
4 Section 201 safeguard relief does not warrant revocation of
5 certain Orders and that in the cut-to-length carbon steel
6 plate from China, Russia, South Africa, and Ukraine. Why
7 shouldn't we conclude the same here?

8 MR. STOEL: I think what's important to think
9 about in terms of the 201 as opposed to some of your past
10 cases where you minimized or found that the effects weren't
11 significant was that in those cases the facts were that the
12 201 was going to end, for example, within a year or maybe
13 two years. But here, as you all know, better than I do, you
14 know the 201 was just put into effect in January, so clearly
15 it's at the starting point of its cycle and they're in
16 effect for at least four years.

17 Obviously, as there was discussion this morning,
18 there will be a mid-term review, but at this point, as I've
19 been thinking about it, this is sort of a lawyer's eggshell
20 plan. If we have to take the situation as it is today, the
21 situation today is that there are 201s. We can't speculate
22 what's going to happen in the future. And the same thing I
23 would add is true for the 301. You have to assume it's
24 going to stay in effect.

25 The President, as I think Mr. Brightbill said,

1 could decide to raise the tariffs to 100 percent or he could
2 decide to drop it 5 percent. We can't speculate or offer
3 conjecture about that. So, I think unlike those other cases
4 where you were seeing that the 201 was going to come off in
5 a very short period of time, here, you're at the beginning
6 of the cycle and they're going to be in effect, providing
7 protection to the U.S. industry for quite some time.

8 COMMISSIONER BROADBENT: Yes, Mr. Lewis?

9 MR. LEWIS: Craig Lewis. Maybe just a spin on
10 that same point. I think the common theme in the cases
11 where the Commission has looked at other remedies that are
12 in place like 201 is that you have to take them into
13 account.

14 What differs from case to case, as Mr. Stoel
15 pointed out, is the factual circumstances of each measure
16 that you're looking at. You know, is it about to expire?
17 What's the level of the remedy that we're talking about?
18 And what kind of impact could it have on the market?

19 But the important principle to draw from the
20 case--and I don't think there are any exceptions to this--is
21 that you don't just disregard it. You take it into account
22 for the factor, the competitive factor that it is in the
23 market, and over the foreseeable future.

24 COMMISSIONER BROADBENT: Right. Okay, thank you
25 very much.

1 CHAIRMAN JOHANSON: Commissioner Schmidtlein?

2 COMMISSIONER SCHMIDTLEIN: Thank you.

3 Mr. Stoel, you just mentioned that Korea is today
4 the biggest supplier for the U.S. market of modules, right?
5 So is the 201 having any restraining effect on Korean
6 imports? Or, for that matter, any other imports that it
7 applies to, putting aside the subject imports here for a
8 second?

9 MR. STOEL: I would note that in general--
10 Jonathan Stoel for the record--I think in general it's
11 important to keep in mind that the market today is smaller
12 than it was when it peaked. So we're talking about a
13 smaller market overall. So I think there has been a general
14 decline in imports.

15 I'd like to open it up to the developers, and
16 also Mr. Dougan, to comment on whether they specifically
17 have seen the impact of the 30 percent tariff on imports.

18 But as you've heard, there were substantial
19 projects and other things that were cancelled as a result of
20 the measures. And so I think clearly there has been an
21 impact on demand, which since most demand is still coming
22 from imports, I think it has had a significant impact.

23 MR. STRANGE: Yes, I think we can speak to that
24 one a little bit--Hewitt Strange with Cypress Creek. And
25 this I think goes to, you know, a question a couple of you

1 were asking, but we can sort of verify that we were one of
2 the very panicked buyers in the fourth quarter of 2017. You
3 know, we had plans to build 1.2 gigawatts of solar farms
4 this year. So we have to secure modules at a price that
5 makes those solar farms economical.

6 We were only able to secure 720 megawatts of
7 modules at a price that allowed their projects to pencil.
8 So we had to cancel, you know, 500 megawatts of projects we
9 would have otherwise built. And certainly, you know, the
10 biggest factor in that is the 30 percent from the 201 that
11 raised the price of modules in 2018.

12 MR. LEWIS: Commissioner Broadbent, this is
13 Craig Lewis. So I had meant to mention this earlier, too,
14 but also it's important to remember what was on the table at
15 that time, too. And nobody knew what the remedy was going
16 to be. SolarWorld and Soneva were asking for--I'm not sure
17 if my memory serves right--but to have a tariff in effect
18 that would raise the price to 72 cents per kilowatt,
19 something along those lines, or 78. But that would have
20 been an enormous impact on the market and killed off
21 availability for projects such as Hewitt was describing.

22 So it was a really extreme circumstance, which
23 goes to Mr. Dougan's point about how anomalous that period
24 of time was.

25 COMMISSIONER SCHMIDTLEIN: So for the Korean

1 imports, are importers absorbing the price there? The
2 tariff there? Are they passing that on and you're having to
3 incorporate that in your cost of development?

4 MR. STRANGE: Yes, ma'am. And certainly, you
5 know, as total imports have gone down because, you know,
6 demand for modules at the tariffed price has fallen.

7 COMMISSIONER SCHMIDTLEIN: So if we revoke this
8 order, would that affect the price of modules in the United
9 States, in your view?

10 MR. STRANGE: So I don't know that there would
11 be a large, immediate impact from revoking the AD/CVD duties
12 in the immediate term, you know, but again like we don't
13 know when the next moment of panic is going to be, right?
14 We're sort of back here every couple of years with the same
15 issue of tariffs on solar panels--

16 COMMISSIONER SCHMIDTLEIN: And so when you say
17 "immediate," is that because you've already planned your
18 immediate projects? You already know where you're sourcing
19 those?

20 MR. STRANGE: Yes, ma'am.

21 COMMISSIONER SCHMIDTLEIN: But projects that
22 would come out further into the future?

23 MR. STRANGE: Yes, ma'am. The further out, you
24 know, the more potential there is to impact the market.

25 COMMISSIONER SCHMIDTLEIN: Do the 201 duties, in

1 terms of their effect for imports vis-a-vis other imports--I
2 sort of look at those as having a neutralizing effect in
3 terms of how they impact imports versus imports. Is that
4 consistent with how you all look at it?

5 In other words, all imports that are subject to
6 those 201s are equally disadvantaged, since it's the same
7 rate, right? Like that makes sense?

8 MR. STRANGE: Yes, ma'am. I think that's
9 correct. Like every country outside of China is basically
10 equally affected by the 30 percent.

11 COMMISSIONER SCHMIDTLEIN: Right. Right. Okay.
12 So I guess here's my question. When I look at--and I know
13 you all don't have access to the confidential information--
14 but once the AD/CVD duties went in place, which was at the
15 end of 2012, you see a drop-off of subject imports, and a
16 substantial decline in their share of the market in 2013,
17 right? Then it comes roaring back in 2014 and 2015 and
18 2016 and, frankly, even 2017 they hold an appreciable share
19 of the U.S. market, while they're under Order.

20 So given that the 201 sort of has this
21 neutralizing--you know, it's sort of level playing field
22 when you're talking about imports versus imports. And it
23 doesn't look like to me that the AD/CVD order which,
24 according to you all, has an average weighted weight of
25 around 25 percent, let's say, 26 percent, something like

1 that, was it restraining it that much, at least after 2013?

2 If we revoke the Order, why would a 25 percent
3 301 rate restrain it when a similar rate didn't seem to
4 restrain it during the POI? Do you see what I'm saying?

5 MR. STOEL: Commissioner, Jonathan Stoel. I'm
6 not sure which data you're looking at. Maybe we could put
7 the slide back up showing the very dramatic decline in
8 China? I just want to make sure we're talking apples to
9 apples.

10 COMMISSIONER SCHMIDTLEIN: Well you can look at
11 either the total market or--you know, since cells are such a
12 small part of the market, but if you just look at the C-2
13 table in the staff report, it shows the market share of
14 China for 2017. It's confidential, right? For the entire
15 year 2017, which obviously includes the big spike that came
16 at the end of the year. So it all came in at the end of the
17 year, right? But even before that--I mean, it's a bit
18 surprising. When you look at 2015 at the level of market
19 share they were able to obtain under Order, right?

20 So you can answer it in the post-hearing, if you
21 want, but my question: When we're looking at this, and
22 it's not really restraining--you know, you see a drop off in
23 2013, and then it comes back. Is it really restraining it
24 in terms of volume at that point?

25 So if we're looking at a counterfactual here as

1 to what's going to happen if we revoke this Order, okay, so
2 the 201s will be left. That applies to everybody outside of
3 the United States equally. China also has this 25 percent.
4 What's that going to do to their behavior?

5 Well, when I look back at what a roughly 25
6 percent weighted average rate did to their behavior under
7 the POR, they're still present in the United States market
8 quite significantly. Not to mention the underselling,
9 right? How are they able to undersell with that in place,
10 is another question. And you can answer that in the
11 posthearing, too, if you want. But how were they able to
12 undersell like that? Why are their AUVs so much lower than
13 nonsubject, and definitely AUVs for U.S.--shipments of U.S.
14 producers?

15 MR. STOEL: Commissioner Schmidtlein, we'll have
16 to look at that post-hearing. I think actually Mr. Ambrose
17 put his finger on it earlier, and Mr. Lewis's testimony,
18 which is earlier in the period was prior to the
19 restructuring that we've described. And again, to me it
20 goes back to my dollar versus dollar-twenty-five point that
21 I had to Commissioner Williamson. If you don't have
22 anything in the market, then you probably would buy the
23 \$1.25 because that's what's there and you need it. But if
24 you have a bunch of things in the market that are \$1,
25 because they don't have a tariff that the \$1.25 product

1 does, you're going to buy from the \$1.

2 It wasn't until later in this period--and that's
3 what's really causing this big decline. It's not the
4 AD/CVDs. I think there's been discussion here about was it
5 the AD/CVDs that caused this. Obviously we don't deny that
6 there was an impact, but it's really the restructuring of
7 the industry that Mr. Lewis, and also your staff report
8 really described.

9 And you all know very, very well because of the
10 201, that's what caused this structural shift, and that
11 combined with the 201 and the 301 moving forward, that's why
12 we don't believe there's going to be any change in what's
13 going to happen with respect to China.

14 But we'll definitely examine that post-hearing.

15 COMMISSIONER SCHMIDTLEIN: Okay. Alright, thank
16 you. My time is up.

17 CHAIRMAN JOHANSON: Commissioner Kearns.

18 COMMISSIONER KEARNS: Just continuing off that,
19 the chart you were showing, Mr. Stoel, the restructuring,
20 that explains the drop. But I think Commissioner
21 Schmidtlein's question is: How do we have such a high level
22 that was still paying the duties and still presumably
23 underselling in a way like what we see in our pricing data?

24 So I would just follow up with Commissioner
25 Schmidtlein's question, because I'm wondering now is the

1 right way to kind of do the--it seems to me like we want to
2 figure out, assuming that the 201 and the 301 relief remains
3 in place for the foreseeable future, one key question for us
4 is figuring out: Well, are those duties enough to offset the
5 impact of low-priced Chinese imports, unfairly low-priced
6 Chinese imports?

7 It seems to me that what we would do is, as
8 Commissioner Schmidlein said, look at the dumping margin,
9 and then also look at the underselling, and maybe add those
10 two things together and say how does this equate?

11 But I just want to point out, I think your answer
12 was only explaining the restructuring that reduced the
13 imports. It didn't explain how--I didn't hear it--for three
14 years at least we still had really high volumes of dumped
15 imports into the U.S. from China.

16 MR. STOEL: Commissioner Kearns, again, we'll
17 look at this post-hearing. I know actually Mr. Dougan and I
18 were talking about this very same question. I think if you
19 look actually--and again I apologize for the length of this
20 and all of our briefs--but I think if you look at the
21 discussion starting at page 84 of our brief, we actually do
22 get into that. It's almost proprietary, but I will commend
23 that to you and your staff for after the hearing. We'll
24 expand on that.

25 But just to make sure I answer your question very

1 clearly and make sure I answer Commissioner Schmidlein's
2 question very clearly, what I meant by this in terms of
3 these years is that--we go back to the supply point. You
4 did not have major suppliers outside of China prior to this
5 time. If you don't have suppliers, you have to buy it from
6 the only place that you can get it from.

7 If you need a product, if you need oil and before
8 the fracking boom, you needed it from Saudi Arabia, you were
9 going to buy it from Saudi Arabia. Now you have Texas. Now
10 you have places in the United States you can buy it from.

11 At this time you didn't have a lot of available
12 sources. Today, as Mr. Lewis and others have testified, you
13 have Korea, Malaysia, these other places. So you can buy
14 from alternative sources. That pattern is not going to
15 continue, meaning that '15 to '16 pattern, because you can
16 go and buy it from somewhere else.

17 COMMISSIONER KEARNS: Okay.

18 MS. STOEL: So that's a big difference.

19 COMMISSIONER KEARNS: That helps. Yeah, I
20 didn't understand it, although of course the 201 tariffs
21 still apply to the other sources, as well.

22 MR. STOEL: That's true, but then it gets down
23 to a comparative advantage. My discussion with Commissioner
24 Williamson about whether you value that quarter or not. I
25 value that quarter. I would prefer not to pay a quarter to

1 somebody else if I can just pay \$1.

2 COMMISSIONER KEARNS: I see. Okay, thank you.
3 Switching subjects here, I want to talk a little bit more
4 about the utility segment of the market, the question that
5 Commissioner Williamson has been focused on a bit.

6 Mr. Strange and others on this panel have made
7 some interesting arguments concerning the various segments
8 of the CSPV market, asserting that U.S. producers are not
9 capable of meeting much of the demand in the utility
10 segment.

11 I would like the Petitioners to respond to those
12 arguments in their post-hearing brief, and I'd like to hear
13 further from the Respondents on that point, as well in the
14 post-hearing brief, please.

15 MR. DOUGAN: Commissioner Kearns, sorry, just to
16 add to that point. To the degree that the demand in those
17 2014 and 2015 was coming from utility scale projects--and we
18 can look more into this in post-hearing with whatever data
19 we have here, and maybe the public data from the 201--but
20 again, you have to get it from somewhere, and China may have
21 been the only game in town there until the other supplier
22 sources ramped up.

23 COMMISSIONER KEARNS: Okay, thank you.

24 A question about the Section 301. So my
25 understanding is that these products were added to the 301

1 in the second traunch. Is that right?

2 MR. STOEL: Yes, Commissioner Kearns. This is
3 Jonathan Stoel. So the USTR found that harm from certain
4 Chinese practices was roughly \$50 billion. And that was the
5 original amount that the President authorized ultimately for
6 tariffs to be imposed.

7 That was divided into two tranches. One was \$34
8 billion. Solar products were not included in that first
9 traunch. Then the Petitioner went and successfully got a 25
10 percent tariff added in the second traunch, which I believe
11 went into effect in late August. Anyway, it was the second
12 traunch.

13 And then as you know there's been an additional
14 \$200 billion. Our products are not part of that. So for 25
15 percent, it's within the \$50 billion that was originally
16 asked.

17 COMMISSIONER KEARNS: So if we look at the first
18 traunch of products and the second traunch of products, why
19 were these products put in the second traunch instead of the
20 first? What I'm asking is, my understanding in that case--
21 and maybe I haven't been following it that closely enough--
22 but this is in connection with a response to China's IP and
23 other tech policies. And I think solar is sort of within
24 the scheme of what concerns the administration of Chinese
25 policies.

1 So why wouldn't these products have been in the
2 first traunch?

3 MR. STOEL: You know Commissioner I did not work
4 on that in terms of why it was not added. I just know that
5 SolarWorld I believe had asked for it to be added and it
6 wasn't and then as you know when the first list came out,
7 certain products were then dropped and U.S.D.R. and then the
8 President decided to add certain additional products and so
9 on, products were added.

10 I think that maybe some importance over the fact
11 that ultimately it's not 50 billion dollars it's sort of the
12 core of this effort by U.S.D.R. The 200 billion is and
13 again, this is the world we live in but it's sort of the
14 counter retaliation to China's retaliation so that second
15 traunch is still within the original gambit of the 301 that
16 the U.S.D.R. had announced.

17 COMMISSIONER KEARNS: Okay, answered the
18 question. It does and I think you figured from my question
19 I'm trying to figure out how likely it is that the 301 will
20 remain in force on these products if there are changes to
21 the list going forward and I think I hear your answer,
22 thank you.

23 MR. STOEL: Yeah I think we're -- obviously as I
24 said earlier, I think we have to accept the plan for the
25 situation as it is. The tariffs could be raised. The

1 tariffs could be lowered, it's really I think anybody would
2 be speculating about what might happen you know, after today
3 or after the Argentina meeting either that's coming up.

4 COMMISSIONER KEARNS: Okay, thank you and I guess
5 Petitioners I'd also welcome any thoughts they have on the
6 likelihood that the 301 will remain in place at least
7 vis- -vis other products on the 301 list. It sounds like
8 it's likely that they will remain on the list as long as
9 there's anything left of the 301 but if they have different
10 views I'd like to hear them.

11 Another question again I think probably for the
12 record, but as I asked the Petitioners if we all have -- if
13 we have any data on what has happened with respect to
14 imports from China into the EU market since they terminated
15 their restrictions, I would appreciate anything you could
16 provide us on that.

17 MR. STOEL: We'll do that Commissioner.

18 COMMISSIONER KEARNS: Okay thank you and then
19 let's see I wanted to ask you about the 2.5 gigawatt
20 exemption under 201. I know Commissioner Broadbent asked
21 you about this but I'm not sure if she asked specifically,
22 you know, what do you say in response to the Petitioner's
23 argument that you know, that right now if we were to revoke
24 the order I guess they would say there would be no 201
25 applied to you know, dumped and subsidized imports coming

1 from China.

2 Do you have any further thoughts on that or any
3 response?

4 MR. STOEL: Yes Commissioner, Jonathan Stoel with
5 Integrated. A couple of points -- one is that if you look
6 at the Commission's record I think throughout all these
7 cases you know, Chinese solar cell capacity is being used
8 very significantly. There's not extra capacity out there.

9 Secondly, as I explained with respect to the
10 so-called solar 2 orders, Chinese solar module manufacturing
11 is much bigger than solar cells, so they are consuming all
12 the solar cells they need in China. That's why they were
13 bringing China cells from other markets and then shipping
14 them to the United States.

15 So there isn't stark cells that are sort of
16 floating around, you know, eagerly being await to export to
17 the United States. The other thing this again goes to my
18 quarter example. Yes it's true that the 201 doesn't apply
19 but the 301 does apply to the Chinese solar cells. It
20 applies to both cells and modules so yet again why wouldn't
21 you buy a solar cell from Malaysia or from Thailand or from
22 wherever else?

23 There are reasons why you'd want to buy from
24 those other sources then from China and I don't think
25 whether it's a solar cell or a solar module that analysis

1 changes.

2 COMMISSIONER KEARNS: Okay, thank you, I have no
3 further questions.

4 CHAIRMAN JOHANSON: I have just one more
5 question. Are the products that you produce in China and
6 other global production locations the same as those sold in
7 the United States and other parts of the world? If so, what
8 effects what products you choose to produce in each
9 location?

10 MR. AMBROSE: Vincent Ambrose, Canadian Solar.
11 Commissioner Johanson I would say that for the most part, we
12 produce almost the exact same product in multiple
13 manufacturing facilities so we produce in Vietnam, Thailand,
14 Indonesia, China, Brazil, Canada and our products are pretty
15 much ubiquitous between that.

16 So it's no different than if you had an Apple
17 iPhone 8 and you built some in Malaysia and some in China,
18 they're still the same product -- obviously some slight
19 differences when it comes to certifications and
20 specifications, but for the most part it's a very similar
21 product.

22 CHAIRMAN JOHANSON: Alright well I appreciate
23 your answer Mr. Ambrose, that concludes my questions,
24 Commissioner Williamson? Commissioner Broadbent,
25 Schmidtlein?

1 COMMISSIONER SCHMIDTLEIN: I have one more just.
2 Okay, Mr. Ambrose, you know I didn't ask you this question.
3 Does Canadian Solar intend to bring product in from China if
4 the order is revoked?

5 MR. AMBROSE: Great question, so quite honestly
6 it's disadvantageous for us to import anything from China.
7 If you repeal ADCBD Number 1, it's still disadvantageous for
8 us. Our customer -- it'll come in at a price structure our
9 customers are just not comfortable with. The cost delta
10 between our China and non-China production is modest at best
11 and that delta is small enough that it makes it worthwhile
12 not to bring in China product.

13 COMMISSIONER SCHMIDTLEIN: Regardless of the
14 tariffs?

15 MR. AMBROSE: As far as ADCBD 1 and 2, yes.

16 COMMISSIONER SCHMIDTLEIN: Okay.

17 MR. AMBROSE: Because we still have 301 and 201
18 on top of that but it's really the 301 coming out of on top
19 of the China product that makes it cost disadvantageous.

20 COMMISSIONER SCHMIDTLEIN: I see, okay, so then
21 can I ask what is your interest here in seeing the order
22 revoked?

23 MR. AMBROSE: Great question. I think Canadian
24 Solar stance is we are for free trade first and foremost.
25 We do, again, we sell and manufacture in multiple locations

1 around the globe. We don't think that tariffs and either
2 importation barriers are positive for our marketplace.

3 Obviously being a representative of the U.S.
4 marketplace, that's first and foremost. If we didn't have
5 these tariff and trade barriers, I think we would have a
6 much more robust solar industry and as we've stated in the
7 C201 testimony that the job base and the production base for
8 solar farms and solar installations would be much bigger
9 than domestic manufacturing jobs that may be lost.

10 COMMISSIONER SCHMIDTLEIN: But you're talking
11 about all the tariffs, not just the ADCBD tariff?

12 MR. AMBROSE: We prefer to have no tariffs.

13 COMMISSIONER SCHMIDTLEIN: Right but in terms of
14 if there -- so you don't see, there wouldn't be any effect
15 on the U.S. market if the ABCBD tariff is revoked?

16 MR. AMBROSE: In my opinion there would be no
17 effect on it.

18 COMMISSIONER SCHMIDTLEIN: There'd be no effect,
19 okay, I don't have any further questions, thanks.

20 CHAIRMAN JOHANSON: Commissioner Kearns?

21 COMMISSIONER KEARNS: Yes I'm sorry just one more
22 question I forgot to ask earlier. The India Safeguard
23 Action in July of 2018 India applied Safeguard duties to
24 imports in modules from China in 2017 India was China's
25 largest export market. What has been the effect of this

1 Safeguard duties on China's exports to India and you can
2 answer it now or post-hearing or however you'd like.

3 MR. STOEL: Commissioner Kearns, Jonathan Stoel,
4 I think the answer it's too soon based on what we're
5 hearing, you know, the Indian market is still supposed to
6 grow dramatically and so I think you know, we're expecting
7 that they'll continue to be sourcing from all markets
8 including from China. We'll get you the further data in the
9 post-hearing.

10 COMMISSIONER KEARNS: Okay thank you. I have no
11 further questions.

12 COMMISSIONER BROADBENT: One more question.

13 CHAIRMAN JOHANSON: Commissioner Broadbent?

14 COMMISSIONER BROADBENT: This is for the group.
15 Does anyone have information on what the discussion was in
16 Europe surrounding the removal of their minimum import price
17 and their import restrictions?

18 MR. STOEL: Commissioner Broadbent, we've
19 actually been asking for that same question, we'll try to
20 get you something.

21 COMMISSIONER BROADBENT: It would be helpful,
22 yes.

23 MR. STOEL: Yeah understood.

24 COMMISSIONER BROADBENT: Thank you. Okay, thank
25 you.

1 CHAIRMAN JOHANSON: Alright so do any other
2 Commissioner have questions? It looks like there are no
3 more Commissioner questions, do staff have any questions for
4 this panel?

5 MR. THOMSEN: Craig Thomsen, Office of
6 Investigations, staff have no questions for this panel.

7 CHAIRMAN JOHANSON: Do Petitioners have any
8 questions for this panel?

9 MR. BRIGHTBILL: No questions of this panel.

10 CHAIRMAN JOHANSON: Alright then we will now
11 prepare for Petitioners and Respondent's rebuttals and
12 closing. Let me note that those in support of the Petition
13 have a total of 27 minutes consisting of 22 minutes of
14 direct and 5 minutes of closing. Those in opposition have a
15 total of 13 minutes, consisting of 13 minutes of direct and
16 5 minutes in closing.

17 MR. STOEL: Sorry Mr. Chairman, how long will we
18 have?

19 CHAIRMAN JOHANSON: I apologize, those in
20 opposition you all have 13 minutes and Petitioners have 27
21 minutes.

22 MR. BURCH: Closing and rebuttal remarks on
23 behalf of those in support of continuation of orders will be
24 given by Timothy C. Brightbill, of Wiley Rein and Doctor
25 Seth Kaplan, of International Economic Research. Gentlemen

1 you have 27 minutes.

2 CLOSING STATEMENT OF SETH T. KAPLAN

3 MR. KAPLAN: I don't plan to take 27 minutes but
4 I do have a couple comments about factual points that were
5 made, questions that were asked and weren't answered. I
6 want to point out that during the 201 the Respondents said
7 that there would not be a surge and in fact they freely
8 admit now there was --

9 MR. BURCH: Would you please pull the mic a
10 little closer.

11 MR. KAPLAN: There was a surge in 2017 and we'll
12 point that out in the post-hearing brief. During that same
13 period where there was that surge that was talked about, was
14 China's largest level of consumption over the period. So
15 they were able to do the surge while they were at their peak
16 demand.

17 The question was asked multiple times of whether
18 there could be a surge and it was avoided -- plainly there
19 could be and there can be now, given what happened to
20 demand. Mr. Stoel said China consumption peaked in 2017,
21 it is leveling off in fact because of the feedings it is
22 declining so the surge occurred in '17 when they were at peak
23 demand, now demand is falling and capacity has increased in
24 China -- plainly they have the ability to increase imports
25 to the United States very, very quickly, that was the

1 question you asked and that's the answer.

2 I also want to point out that Mr. Stoel said that
3 his -- that the purchasers found out after the surge that
4 the 201 was a workable remedy. I want to quote that again,
5 "A workable remedy." They were feared that it wouldn't be a
6 workable remedy but since then they have been able to import
7 and so you have a workable remedy with a serial subsidizer
8 and dumper out there who's under order which they want
9 unleashed.

10 So the 201 by itself does not do the job,
11 especially when you have someone that is willing to
12 undersell the people that are currently considered fairly
13 traded. On Commissioner's Williamson's point I'd answer the
14 question earlier and there was evasion to your point about
15 China affecting world prices.

16 And there is -- I want to go back to my answer
17 again, the fact is yes, they affect domestic prices and
18 suppress prices through imports but they also by
19 overcapacity in the market have driven down the world price
20 as well.

21 Now, the affects in a dumping case -- in an
22 immediate dumping case are through the imports and you have
23 found an affirmative and there were imports during the
24 period of review. There will be imports should the order be
25 removed which is your counter factual.

1 But the affects occur both through the 201 and
2 both through direct imports and that's why both orders need
3 to stay in place. Mr. Lewis talked about revision in the
4 5-year plan raising consumption in China but what he failed
5 to talk about was the change in capacity in China.

6 And the capacity has increased and there's
7 considerable excess capacity, multiples of the U.S. market.
8 I would ask you to look at the stock prices that are out
9 there for these companies and they tell you the future is
10 such that these people are going to be looking for places to
11 sell their excess capacity.

12 And that will happen. Let's see -- Commissioner
13 Schmidtlein asked why are the developers here? And when
14 that wasn't answered she asked another question which is
15 what is the effect of removing the order on prices? What is
16 the effect of putting the order on prices?

17 And people that have been in the industry for
18 many, many years stood in silence, looked at each other and
19 said, "I'll answer in the post-hearing brief." I think that
20 was particularly telling that the purchasers refused to
21 answer what the effect on prices were over the last 10 years
22 and you know, since China entered the market, the last 5
23 years since the order's in place, what will happen in the
24 future.

25 I think that the evidence is strong. I think the

1 reason they -- well, I am not going to speculate on the
2 reason they did answer -- did not answer, but it is kind of
3 remarkable to me that the central question of this whole
4 hearing was unable to be addressed by all the witnesses
5 except the attorneys.

6 And finally, Mr. Stoel said that the U.S.
7 products are attractively priced and when pressed I think he
8 said and I withdraw if I misquoted him, that the duties were
9 part of the reason they were attractively priced. So
10 there's a world price, that's a dumped price, there's a
11 Chinese price that's a dumped and subsidized price and
12 there's a premium in the United States and that premium is
13 needed to get the industry going.

14 And it's a combination of the remedies that
15 allows this. So that is the end of my comments, thank you.

16 STATEMENT OF TIMOTHY C. BRIGHTBILL

17 MR. BRIGHTBILL: I also just want to touch on a
18 few of the very good questions that were asked throughout
19 the day including this afternoon and the question I always
20 have in sunset reviews is the same one that Commissioner
21 Schmidlein asked and that Dr. Kaplan alluded to, if the
22 Respondents have no interest in the Chinese market, why are
23 they here?

24 And it was asked several times. Did you see an
25 effect in the market due to the AD/CVD orders? Are these

1 duties affecting pricing? Does it permeate the market?
2 Commissioner Broadbent asked this as well. There were no
3 answers and the obvious answer is disastrous for them. This
4 is not just a pro bono educational effort on behalf of
5 Respondents -- that's not credible.

6 China sets the prices for the world market, that
7 drive the market. Your staff report says that and it said
8 it four times now over 7 years, that's why they're here. If
9 they aren't willing to say it I'm willing to say it and your
10 staff report says it as well.

11 Also, Mr. Stoel talked about the other major
12 Chinese producers that are not here and he said and
13 confirmed that they are no longer interested in the U.S.
14 market. Well if that's true then there's no objection from
15 the vast majority of the Chinese industry to leaving these
16 orders in place for 5 more years which is what you should
17 do.

18 Commissioner Kearns asked about excess capacity
19 -- 11 gigawatts of cell capacity, 30 gigawatts of module
20 capacity. Respondent's panel did not really have a response
21 to that point. There was also the question about the drop
22 in Chinese demand of 8.5 gigawatts and how significant that
23 was. Respondents called that a leveling off, a drop of 8
24 gigawatts is not a leveling off in China, that's a decline.

25 And we have multiple independent sources that

1 will put on the record in a post-hearing brief that indicate
2 that Chinese demand will be at that reduced level for 2018,
3 2019, and 2020 which is the reasonable foreseeable future.

4 An important point on over-capacity -- if the
5 Chinese factories and what China will do when it has
6 facilities in China and in other locations if Chinese
7 producers are at risk of closing for any reason because of
8 over-capacity pressures, the Chinese are more likely to
9 retrench and focus on sustaining their domestic
10 manufacturing and their domestic jobs rather than sustaining
11 their overseas manufacturing facilities.

12 It makes it entirely likely that Chinese
13 companies would shift production back from non-subject
14 countries back to China or just ramp up that production in
15 China again. So I think that's worth noting. There are a
16 lot of jobs in this industry both in China and here in the
17 United States.

18 Mr. Dougan argued that the 301 duties are
19 significant and an important barrier at 25%. I'm not an
20 economist, by inference that means the AD/CVD duties of 25
21 to 30% or higher must be significant and important as well.
22 And again Commissioner Schmidlein was getting at that and
23 that they must be having some restraining effect and
24 similarly as Commissioner Kearns noted, that means there's
25 an ability to greatly increase imports in a short amount of

1 time.

2 There was the question about how you are able to
3 continue to undersell throughout this period even with the
4 AD/CVD orders in place. We would urge the Commission to
5 continue to think about that question. It doesn't make
6 sense unless China has the ability to ramp up quickly.

7 Chairman Johanson mentioned that the small role
8 of China's imports recently demonstrates the effectiveness
9 of the orders and the importance of keeping them in place.
10 We would confirm that. Mr. Stoel conceded that the AD/CVD
11 duties played a role and so we argued the AD/CVD duties are
12 important, the 201 duties are important as well.

13 Chairman Johanson asked about the financial
14 condition of this industry. I don't know how Mr. Dougan can
15 avoid the brutal financial results of the last 5 years.
16 This is more red ink than I've ever seen for U.S. industry.
17 Mr. Boken testified that as a restructuring expert he's
18 never dealt with an industry so damaged by Chinese imports.

19 With regard to third countries -- we didn't talk
20 a lot about that in the morning but demand has not
21 sky-rocketed from third countries. India, the second
22 largest market has safeguard duties. It cannot be the
23 secondary focus of the Chinese market as Respondent's
24 claimed.

25 On 1,500 volt panels -- this sounds like some of

1 the prior excuses for how the domestic industry couldn't
2 compete. SolarWorld debuted a 1,500 volt panel in 2016. We
3 have a press release, we'll put it on the record in the
4 post-hearing brief. We had that product for years and it
5 could never get off the ground for the same reason that so
6 many producers went out of business during this period.

7 The capacity for utility scale products -- Mr.
8 Strange says the domestic industry doesn't exist -- capacity
9 doesn't exist that it's limited at best but of course that's
10 largely due to the injury to the domestic industry that shut
11 down 28 facilities over the period.

12 The Commission has considered this evidence
13 before and found material injury and serious injury due to
14 imports and elsewhere. I think that's probably enough of
15 points, there's others and we'll address them in the
16 post-hearing brief. So with that, I'd just like to focus
17 again on the key facts before you from the record and the
18 investigation record has everything you need.

19 This industry has lost -- as we pointed out, 28
20 cell and module producers since 2012, documented. You've
21 made findings of material injury and serious injury and
22 despite growing demand in the U.S. market, all of the
23 performance indicators of this industry are down. We're
24 down in 2017 and 2018.

25 Demand in the United States is increasing, it's

1 going to continue to increase. Demand in China has grown
2 but it declined sharply in 2018 and it's not coming back any
3 time soon. Price is a primary factor and purchasing
4 decisions with regard to the other key issue -- the 201
5 tariffs and 301 tariffs.

6 Again the 201 tariffs are temporary, they can be
7 terminated early or not extended and I think there were some
8 great points in the afternoon about how the 201 -- how the
9 anti-dumping duties were baked into the 201 remedy that was
10 proclaimed.

11 The 301 tariffs are also uncertain, set by the
12 President and can be terminated at any time. You have
13 likely volume effects and the ability to shift massive
14 volumes. You have negative price effects, continued
15 underselling even with the orders in effect.

16 You have a likely adverse impact on U.S.
17 producers -- this is a highly vulnerable, highly susceptible
18 industry. So the industry is -- has a real chance at
19 recovery. It has not had for some time, these orders are
20 critical to allow all of the new investments that have
21 occurred to take hold. If there are additional volumes of
22 dumped and subsidized Chinese product, they will come back
23 into the U.S. market if the order is revoked and that would
24 further harm U.S. manufacturing in the reasonable
25 foreseeable future.

1 You have all the evidence that you need and this
2 investigation record demonstrates that so on behalf of our
3 domestic industry and its workers, I would like to thank you
4 for your hard work on this. I don't have a Thanksgiving
5 metaphor but I will wish you happy holidays, thank you.

6 MR. BURCH: And closing and rebuttal remarks on
7 behalf of those in opposition to continuation of orders will
8 be given by Jonathan T. Stoel of Hogan and Lovells, Mr.
9 Stoel you have 13 minutes.

10 CLOSING STATEMENT OF JONATHAN T. STOEL

11 MR. STOEL: Good afternoon again Commissioners
12 and staff. I want to start off on behalf of Respondents by
13 saying thank you. I know that this industry has been
14 subject to a lot of scrutiny by yourself and as always
15 you've conducted this investigation with incredible
16 professionalism and patience.

17 And I want to assure you on behalf of at least
18 Respondents that we've done our best to give you as much
19 information and data as we can to make your decision one
20 that's based on a full record and we really appreciate all
21 of your efforts.

22 There are a few key facts that I want to return
23 to from my presentation earlier today that are really not in
24 doubt. And while my friends from the other side have tried
25 to throw a lot of sand in the wheels, those facts remain

1 true even after this afternoon's testimony and excellent
2 questions.

3 The first is that since you looked at this
4 industry for the first time back in 2012, the solar industry
5 is very different -- it's global. China is not the dominant
6 player, it's still a key player but there are many other
7 players. That has a lot of implications what's happening
8 globally and particularly for here in the United States.

9 Second, there's been no sand thrown against the
10 fact that China's demand has grown and that today is the
11 dominant market for consumption of solar products. There
12 was a lot said today about China's capacity and its capacity
13 utilization. China's capacity is large -- that's not in
14 doubt.

15 However, its capacity utilization has actually
16 been increasing substantially. Your record reflects that.
17 I think SolarWorld's papers don't disagree with that and
18 we've put on the record substantial evidence showing that
19 capacity utilization in China has been increasing.

20 I also do want to comment on what it means to
21 have high capacity utilization levels in this industry. You
22 heard from Mr. Boken and I think from also my friend Mr.
23 Brightbill earlier today that 2015 and 2016 were sort of the
24 high water mark for the U.S. industry.

25 They seem to be suggesting that that was a time

1 when after the solar 1 and solar 2 duties the U.S. industry
2 was doing well. Well I would commend to you Table 37 of
3 your staff's report. Capacity utilization for U.S.
4 producers at that time was 63% in 2015 and 53% in 2016.

5 The Chinese industry is operating well into the
6 '80's. This is an industry that's operating very
7 efficiently. It doesn't need to generate every kilowatt --
8 it's able to sell to its home market and to other markets.
9 It doesn't need to ship to the United States market where it
10 faces a combined 55% ad valorem tariff notwithstanding the
11 revocation of these duties.

12 Turning to those tariffs -- you've heard nothing
13 today that disputes essential point of our brief and our
14 arguments. With the 201 tariff will remain in place for the
15 reasonable foreseeable future and will protect the U.S.
16 industry and the U.S. market. A 30% tariff is very
17 significant.

18 Second, we've heard nothing today that would
19 contravene the fact that the section 301 tariff that's going
20 to remain in place for the foreseeable future. Not only
21 does that provide a 25% ad valorem tariff which as Mr.
22 Kearns -- excuse me, Commissioner Kearns, pointed out
23 earlier, is comparable to the AD/CVD duties currently in
24 place.

25 But it also provides a competitive advantage to

1 other exporters to the U.S. market and to China. This goes
2 back to my point and Mr. Lewis's point several times
3 reiterated today. Since global supply -- since supply is
4 globalized, U.S. purchasers have additional sources of
5 supply -- they don't need Chinese supply.

6 I go back to my colloquy with Commissioner
7 Williamson. Myself, I would prefer to pay that \$1.00. I'm
8 not really interested in paying \$1.25, which is what will be
9 required if I have to pay the additional 25% tariff. That
10 provides other producers in Malaysia or in Korea, or
11 whichever market you might want to choose, a significant
12 competitive advantage over China.

13 That's not going to change for the reasonable
14 foreseeable future if you decide to revoke the orders
15 currently in place. My friends on the other side neglected
16 in their briefs to talk about the fact that the MIP in
17 Europe has been removed.

18 This is very significant for at least two points.
19 One -- it's a major market that's now open to Chinese supply
20 and you've seen I believe in our declarations on the
21 submissions that certainly some Chinese supply can go to
22 Europe as a result of the end of the MIP.

23 But very importantly, again I go back to the PV
24 Magazine that I cited to you earlier -- because of the fact
25 that the restrictions are lifted, predictions are for a 40%

1 increase in solar demand. So it's not only that the market
2 is open, it's also that there's going to be increased demand
3 and Europe doesn't have the capacity, the production
4 capacity to meet that demand so they'll need to get it from
5 somewhere else.

6 China's producers could meet that demand as well
7 as producers from other countries. U.S. purchasers after
8 several -- in response to questions attested again that
9 they're not interested in lifting the China orders, they're
10 not interested in Chinese products. The key for them is
11 that right now the cumulative effects of the tariffs are
12 having adverse impacts on demand.

13 As I said to you apparently in our testimony
14 earlier today, you have before you third party validators --
15 all those validators said to you they're not interested in
16 buying Chinese product, the 301, the 201, deter them from
17 doing that and as we've explained several times, the fact
18 that they are able to get supply from other countries, they
19 don't want to shift back from China.

20 They have successful supply from other sources.
21 My friend, Mr. Brightbill, has talked about the state of the
22 domestic industry. We're all here today before you as
23 Americans. We want the U.S. solar manufacturing industry to
24 do well. We're encouraged by the fact that Sun Power, a
25 deep pocket, has purchased SolarWorld and we're hopeful that

1 SolarWorld will be successful in the future.

2 I also wanted to point out to you that when you
3 consider the state of the domestic industry today, I think
4 you should essentially ignore Suneva from the record.
5 Suneva unfortunately has not operated since the middle of
6 2017, it's bankrupt, unfortunately all indications are that
7 its equipment is being sold and that it will not operate for
8 the future.

9 So when you look at those red numbers that Mr.
10 Brightbill talked about, I think you have to make some
11 adjustments and we'll look at that in our post-hearing
12 submission.

13 In sum, when you look at the whole of all the
14 parts, I think that you can see that the correct thing to do
15 here Commissioners, is to revoke the ADCBD orders on China,
16 they're not warranted at this time, there's a lot of other
17 protection for the U.S. industry as you well know much
18 better than I. Thank you for your attention and I
19 appreciate your patience with us, thank you.

20 CHAIRMAN JOHANSON: I would like to thank all the
21 parties for appearing here today and I will now make the
22 closing statement. Post-hearing briefs, statements
23 responsive to questions and requests of the Commission and
24 corrections to the transcript must be filed by December 4th,
25 2018.

1 Closing of the record and final release of data
2 to the parties occurs on January 2nd, 2019 and final
3 comments are due on January 4th, 2019. This hearing is
4 adjourned.

5 (Whereupon at 4:56 p.m., the meeting was adjourned.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of Crystalline Silicon Photovoltaic Cells and Modules from China

INVESTIGATION NOS.: 701-TA-481 and 731-TA-1190

HEARING DATE: 11-27-18

LOCATION: Washington, D.C.

NATURE OF HEARING: Review

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 11-27-18

SIGNED: Mark A. Jagan

Signature of the Contractor or the
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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings 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 proceedings.

SIGNED: Christopher Weiskircher
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I hereby certify that I reported the above-referenced proceedings 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 proceedings.

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