UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:) **Investigation Nos.:**
VERTICAL SHAFT ENGINES FROM CHINA) **701-TA-637 AND 731-TA-1471**
) **(PRELIMINARY)**

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Wednesday, February 5, 2020
Main Hearing Room (Room 101)
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The meeting commenced, pursuant to notice, at 9:30 a.m., before the Investigative Staff of the United States International Trade Commission, Nannette Christ presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

WILLIAM R. BISHOP, SUPERVISORY HEARINGS AND INFORMATION OFFICER

TYRELL T. BURCH, MANAGEMENT ANALYST

Staff (continued):

NANNETTE CHRIST, DIRECTOR OF INVESTIGATIONS

ELIZABETH HAINES, SUPERVISORY INVESTIGATOR

ABU B. KANU, INVESTIGATOR

JEFFREY HOROWITZ, INTERNATIONAL TRADE ANALYST

CINDY COHEN, ECONOMIST

KAREN DRISCOLL, ATTORNEY/ADVISOR

Opening Remarks:

In Support of Imposition (Robert E. DeFrancesco, III, Wiley Rein LLP)

In Opposition to Imposition (Alexander Schaefer, Crowell & Moring LLP)

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

King & Spalding LLP

Wiley Rein LLP

Washington, DC

on behalf of

Coalition of American Vertical Engine Producers

David Rodgers, Senior Vice President & President, Engines and Power Group, Briggs & Stratton Corporation

Jeffrey Coad, Vice President, Product Management and Marketing, Briggs & Stratton Corporation

Joshua Brown, Director of Sales, Briggs & Stratton Corporation

William Harrison, Director, Division Controller, Briggs & Stratton Corporation

John Booher, Senior Counsel, Regulatory, Compliance & Governmental Affairs, Briggs & Stratton Corporation

Brian Melka, President of Engines, Kohler Co.

Eric Hudak, Director of Product Marketing for Gasoline Engines, Kohler Co.

Dave Mauer, Vice President, Operations of Gasoline Engines, Kohler Co.

Amy Sherman, International Trade Analyst, Wiley Trade Analytics Group

Stephen J. Orava, Stephen P. Vaughn, Clinton R. Long, Robert E. DeFrancesco, III, Elizabeth V. Baltzan - Of Counsel

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders:
Crowell & Moring LLP
Washington, DC
on behalf of
MTD Products Inc. ("MTD")
Steve Trumpler, Senior Vice President and General Manager, Wheeled Products Division, MTD
Erik Krueger, Vice President, R & D and Engine Development, MTD
Ed Griffin, Supply Chain Director, MTD
Alexander Schaefer, Spencer Toubia - Of Counsel

Hogan Lovells US LLP
Washington, DC
on behalf of
The Toro Company
Bill Buenz, Commodity Manager, Engines, The Toro Company
Ross Hawley, Director of Marketing, The Toro Company
Mitchell Ginsburg, Associate Principal, Charles River Associates
Jonathan T. Stoel, Nicholas R. Sparks - Of Counsel

-- continued --

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders (continued):

Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP
Washington, DC
on behalf of
Loncin Motor Co., Ltd.
Francis J. Sailer, Michael S. Holton - Of Counsel

REBUTTAL/CLOSING REMARKS:
In Support of Imposition (Stephen P. Vaughn, King & Spalding LLP)
In Opposition to Imposition (Jonathan T. Stoel, Hogan Lovells US LLP, Alexander Schaefer, Crowell & Moring LLP)

I N D E X

P R O C E E D I N G S 9:31 a.m.

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

MS. CHRIST: Good morning and welcome to the United States International Trade Commission's Conference in Connection with the Preliminary Phase of Antidumping and Countervailing Duty Investigation Nos. 701-TA-637 and 731-TA-1471 concerning vertical shaft engines from China.

My name is Nannette Christ. I am the Director of Investigations and I will preside at this conference. Among those present from the Commission Staff are from my far right Elizabeth Haines the Supervisor Investigator, Abu Kanu the Investigator, Karen Driscoll the Attorney Advisor, Cindy Cohen the Economist and Jeff Horowitz the Industry Analyst.

I understand that the parties are aware of the time allocations. Any questions regarding the time allocations should be addressed with the Secretary. I would remind speakers not to refer in your remarks to business proprietary information and to speak directly into the microphones.

We also ask that you state your name and affiliation for the record before beginning your presentation or answering questions for the benefit of the court reporter. All witnesses must be sworn in before presenting testimony. Are there any questions? Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Yes, Madam Chairman. With your permission, we will add Mitchell Ginsberg Associate Principal with Charles River Associates to Page 3 of the Witness List. I would note that all witnesses have been sworn in. There are no other preliminary matters.

MS. CHRIST: Thank you very much. Very well, let us begin with opening remarks.

MR. BISHOP: Opening remarks on behalf of those in support of imposition will be given by Robert DeFrancesco of Wiley Rein. Mr. DeFrancesco, you have five minutes.

STATEMENT OF ROBERT E. DEFRANCESCO III

MR. DEFRANCESCO: Good morning. I'm Robert DeFrancesco, Counsel to Co-Petitioner Kohler Company and the Coalition of the American Vertical Engine Producers. We're here today because the Domestic Vertical Engine Industry is suffering material injury at the hands of the Subject Imports from China and is threatened with material injury by the continued surge of these imports.

My client, Kohler has suffered enormously along with the rest of the Domestic Industry. The testimony you will hear today will illustrate for the Commission the debilitating affects the Subject Imports have had on the domestic vertical engine industry.

As you will hear today, the basics of this case are straightforward. The Subject Imports used dumped and

subsidized prices to gain significant market share in the United States at the direct expense of the Domestic Industry. Over the Period, the Domestic Industry's U.S. Shipments, market share and operating performance all declined significantly. By any measure, the Domestic Industry is materially injured and threatened with further injury by reason of the Subject Imports.

I would like to review a few basic points. First, both the U.S. and Chinese engine manufacturers supply all the major OEMS. Second, these engines while having slightly different designs are entirely interchangeable with each OEM's particular lawnmower models.

Finally, with only a limited number of EOMs and engine suppliers competition to win volume commitments is intense. As a result, the U.S. and Chinese engines compete almost exclusively on the basis of price and the dumped and subsidized imports have caused the U.S. Industry to lose a significant number of sales.

The Petition details hundreds of lost sales allegations representing a substantial portion of the Domestic Industry's total revenue. In the face of this unfair pricing, U.S. Producers had a choice to make; slash prices to maintain sales volumes or sacrifice sales to attempt to maintain profitability.

As you can see from the data in the Petition,

ultimately the U.S. Industry saw its prices and sales volumes decline from 2016 to 2018 at the expense of nearly 8 points in market share. This is especially significant given that over the period riding lawnmower demand remained relatively healthy and continued moderate growth in residential construction and housing starts.

Thus, despite moderate growth and demand, the U.S. Industry saw its prices, sales volume and market share all decline as Subject Imports surged into the market by nearly 80 percent. Not surprisingly the Domestic Industry's total profits, total net income, operating margin all declined significantly at a time when demand was growing.

The U.S. Industry should have performed significantly better in this environment. Instead, the Subject Imports and subsidized imports captured all of the increase in demand and more at the expense of the Domestic Industry. By 2019, notwithstanding the imposition of Section 301 Tariffs on Engine Imports from China, this trend continued.

As explained in the Petition, any relief in the 301 Tariffs was limited and short-lived. The following exemption was granted to many of the Subject Imports. More importantly, price negotiations for model year deliveries began well before the tariffs were in place at a peak of the Subject Imports surge.

As a result, those adverse price effects continued to impact the Domestic Industry's performance into 2019. In the first three-quarters of 2019, the Domestic Industry's pricing continued to decline. This resulted in substantial declines in profit, net income and operating margins. While Subject Imports continued to maintain a significant presence in the market.

Shortly after exemptions to the Section 301 Tariffs were granted, the import surge resumed. From August 2019 to November 2019, Chinese Imports increased by 80 percent over the same Period a year earlier and by over 320 percent compared to the same period in either 2017 or 2016. These rates of increase are alarming and show without relief the Domestic Industry is threatened with further material injury.

The bottom line is that the continued viability of the U.S. Vertical Engine Industry is at stake. The witnesses you will hear from today describe the adverse effects the Subject Imports have had on their business and the industry. each of these witnesses will tell you that on a level playing field they can compete with any supplier.

As is clear from the petition however, given the massive amount of dumped and subsidized imports the playing field is not level. The Chinese pricing is so low U.S. Producers cannot compete at those prices. Without relief,

the U.S. Industry will continue to see continued declines in employment, sales, prices and profitability and will have to face the hard decision to continue production in the United States at all.

As the largest market in the world, the U.S. Industry has been supplying riding lawnmower engines for decades and with a level playing field they can continue producing engines that drive America's riding lawnmowers for decades to come. Thank you.

MR. BISHOP: Thank you, Mr. DeFrancesco. Opening remarks on behalf of those in Opposition to Imposition will be given by Alexander Schaefer of Crowell and Moring. Mr. Schaefer, you have five minutes.

STATEMENT OF ALEXANDER SCHAEFER

MR. SCHAEFER: Good morning. My name is Alex Schaefer from Crowell and Moring. I'm here on behalf of MTD Products, Inc.

I'm not going to take much time here but I have to say that I'm struck by how much Petitioners' opening statement sounds like the typical opening statements that the Commission hears in cases involving China. I'm reasonably confident that before very long we will be hearing more about the surge in imports and the precipitous decline in prices and we're going to hear about how the Petitioners have the most skilled and dedicated workforce

and they can go toe-to-toe with a anybody, any competitor provided there's a level playing field -- so they're hitting all the usual notes to make it sound as though this is a typical China AD/CVD case.

But it's not. Here's the thing. The surge in imports wasn't much of a surge and the decline in import AUVs wasn't much of a decline. As a matter of fact, it doesn't exist. The import AUVs climb steadily through the POI. That's kind of weird, right. What are we to make of that?

Well to help you answer that, let me give you a sense of what this market looks like from the point of view of the people buying these engines. You have smaller manufacturers like MTD products and Toro. From where they sit, they have three options in the U.S. Engine Market.

The first is Briggs and Stratton. The most important thing you need to know about Briggs and Stratton is that they're a competitor of MTD's and Toro's. They manufacture riding mowers under the Snapper Brand, among others. I cannot think of any rational manufacturer that would want to entrust the sourcing of the single most important and expensive component for its product to a competitor.

And if that weren't problematic enough, Briggs has steadfastly refused to provide the features and

innovations that MTD's customers are demanding. MTD's customers want fuel injected mowers with integrated electronic governors sometimes called EGOV in the residential category. Well, Briggs won't make them in that category. So the only way MTD can get its customers what they want is to source those engines from somebody else.

By the way, on the odd occasion when Briggs has developed some new feature it has an alarming tendency not to make it generally available. It just releases it to certain customers. So it plays its customers against one another and chooses winners and losers and then they have the gall to suggest they are losing sales because of price rather than because of their own business practices.

Let's pivot to Kohler for a moment. Here are two key facts about that trusted partner. First, you may have seen last Friday that Kohler announced a consent decree with the Environmental Protection Agency in the State of California. It's a lengthy document but the gist is that a large number of Kohler's engines didn't meet California's or the EPA's emission requirements and that Kohler installed a defeat device that reduced the number of nitrogen oxides the engines produced when they were being tested as opposed to when they were being run in the field.

If that sounds familiar, that's because it's exactly, exactly what Volkswagen did in that scandal just a

few years ago. Under the terms of that decree, Kohler is paying upwards of 20 million dollars to EPA in the State of California. It's not great. And even putting that aside, the fact is that MTD has had to contend with continual and serious quality problems with Kohler's engines.

We're going to provide more detail on that in our post conference submission but here's a spoiler alert, the problems are appalling. Kohler too has the nerve to argue that their market share losses and financial distress were driven by imports. It's an astounding claim.

Then, there's Kawasaki. Kawasaki is rather conspicuously not a part of the Petitioner group. Do we know why? Because as far as we can tell they are selling their U.S. built engines as fast as they can crank them out. In a little while Mr. Trumpler from MTD is going to talk about how Kawasaki temporarily ceded a significant chunk of business to Kohler and to Briggs and Stratton only to then want it back and then some. Kawasaki has taken more business than the Chinese Imports have, notwithstanding that it sells predominantly premium products at a high price point. They're a walking refutation of the notion that imports have harmed the Domestic Industry.

So there you have it. if you're MTD or Toro, you put aside Kawasaki which appears to be doing quite well, then your domestic engine options are one, Briggs and

Stratton -- the guys who decided to manufacture competing mowers and won't provide the features you want and play games with the features that they do provide or two -- Kohler the emissions cheaters with the continued quality problems.

Now I ask you, would any rational company cross its fingers and trust the whole of its key input sourcing to partners like that? Of course not. So in a little while when the representatives from Briggs and Kohler are talking about the state of the reportedly beleaguered U.S. Industry and telling you about the existential crisis that they are facing and asking for you to level the playing field, please understand that they didn't get where they are because of Chinese Imports. Those imports are flagging and their values have gone up.

No, those producers got where they are by poisoning their customer relationships with one bad business decision after another. We have an eminently well-qualified panel of experts who are going to give you some additional color on those issues and as I noted we intend to provide further details in our post-conference submission. That's all from me to start, thank you very much.

MR. BISHOP: Thank you, Mr. Schaefer.

Would the panel in support of the imposition of the Antidumping and Countervailing Duty Orders please come

forward and be seated.

Madam Chairman, this panel has 60 minutes for the direct testimony.

(Pause.)

I would remind everyone to please state your name when you speak for the benefit of the Court Reporter. Thank you.

(Pause.)

MS. CHRIST: Welcome to all panel members, and thank you. Please begin when ready.

MR. DeFRANCESCO: Thank you, and good morning, again. Before jumping into direct witness testimony, we are going to present a brief presentation of some key elements of the case illustrating the nature and severity of the injury the domestic industry's experiencing due to the subject imports.

Following the presentation, we will then hear from our witnesses. First we'll hear from Dave Rodgers, Senior Vice President, Engines and Power Group, at Briggs & Stratton. Then we'll hear from Brian Melka, President of Engines at Kohler Company. Next we'll hear from Joshua Brown, Director of Sales at Briggs & Stratton. And finally, Eric Houdak, Director of Product Marketing for Gasoline Engines at Kohler Company.

So we're going to cover a few issues here,

obviously, to start. The Petitioners represent a substantial majority of the domestic industry. We believe there's a single domestic like-product co-extensive with the scope. The imports have surged over the POI.

The U.S. industry's market share, production, shipments, and profits are deteriorating as a result. The Antidumping Petition alleges margins of over 320 percent, and the Countervailing Duty Petition identifies more than 20 subsidy programs that have benefitted the Chinese industry, and these subsidies are significant.

With respect to domestic like-product, there is a single domestic like-product that is co-extensive with the scope. In this case, vertical shaft engines with a displacement of 225 cc's and up to 999 cc's.

All engines are subject -- all these engines are subject to the same common physical characteristics, the same channels of distribution, the same assembly process, facilities, equipment, and employees. And they have the same pricing and pricing practices.

With respect to the semi-finished analysis, obviously the scope also covers subassemblies of these engines. We believe those subassemblies should also be included as part of the domestic like-product. These unfinished subassemblies are unfinished engines. Vertical shaft engines are part of the same domestic like-product.

The subassemblies described in the scope are dedicated to becoming vertical shaft engines. They are not sold for any other purpose other than to become engines, and those that are sold are sold as replacement parts for vertical shaft engines. And the subassemblies themselves comprise a significant portion of the overall value of the finished engine.

With respect to conditions of competition, as we've already stated. With respect to demand, demand for lawnmower engines is seasonal. OEMs purchase engines in the early winter, as retail buyers buy the mowers in the late winter and into the spring.

Over this period, demand has grown moderately since 2016, and demand is primarily driven by landscape services for residential mowing.

In this slide, you can see that demand is driven for residential housing. This is the housing starts slide, and you can see over the period housing starts had increased moderately by about 3-1/2 percent from 2016 to 2018.

In this next slide, what we're doing here is we're modeling actual riding lawnmower shipments and the change in the riding lawnmower shipments year-over-year relative to the change in housing starts. And as you can see, these track fairly closely with one another. And you can see the moderate change in demand.

With respect to conditions of competition, again obviously most of these sales, if not all of these sales, are to OEMs. Both the U.S. and Chinese engine manufacturers, as we stated, supply all of the major OEMs. The domestic and Chinese producers compete on the same -- for the same OEM customers on the basis of price, and the price negotiations with OEMs are intense and establish prices, but maybe not establish volumes.

This slide shows the significant surge in subject imports which is reflected in the import statistics in the Census data. Obviously it's nearly an 80 percent increase, and this is significant.

Following the exclusion of the 301 tariffs, the import surge resumed. As we just mentioned, from August to November 2019, following the exclusion, imports began to surge again. This is an 80 percent increase over the August to November time period the year earlier, and it's a 320 percent increase over the August to November 2017 time period and 2016 time period.

With respect to underselling and lost sales, the data that's in front of you we believe it shows that the Chinese imports consistently undersell the domestic like-product, but a few points to be made here.

One, we don't believe replacement parts should be part of the underselling data. These are products that are

sold to -- for different purposes, in different channels of distribution, and therefore it's not appropriate to include them in the like -- or in the underselling data.

I would also like to point out, it's appropriate here we believe to consider the possibility of apply adverse facts available. Now we don't -- we feel the data itself supports an affirmative finding regardless, but you are missing a significant amount of import data in the importer queues. And you're also, frankly, missing a significant amount of foreign producer queues as well.

You've got two large Chinese producers, one not supplying an importer queue, and one not supplying a foreign producer queue. And that's obviously hindering your ability to investigate this product.

Regardless, the official import statistics indicate that AUVs of the subject imports were well below the AUVs of domestic like-product over the period, and the domestic producers detailed numerous instances of lost sale and lost revenue since 2016 totaling hundreds of millions of dollars in lost revenue.

With respect to price depression and suppression, the large presence of low-priced subject imports have forced U.S. prices down. There's evidence of a cost/price squeeze where low-priced imports have prevented some U.S. producers from pricing its product in an appropriate level. And when

they did attempt to increase prices, they often just simply lost the sale.

All of these factors have resulted in significant effects on the domestic industry, and the adverse effects you see here. The domestic industry's performance shows across all major indicators declines in production, capacity utilization, shipment volumes, shipment values, gross profit, operating income, and net income. And this occurred during a period where demand was healthy.

With that, I'm going to turn it over to my colleague to talk about threat.

STATEMENT OF STEPHEN J. ORAVA

MR. ORAVA: Thanks. Good morning. My name is Steve Orava. I am counsel to Briggs & Stratton, and I'm going to discuss, as Robert indicated, the evidence of threat in these investigations.

As you just heard, we think there is overwhelming evidence that subject imports have caused material injury to the domestic industry. Thus, we do not believe that the Commission needs to reach the threat issue. But if it does reach that issue, we think there can be no doubt that subject imports threaten further material injury to the U.S. producers.

So starting with Slide 15, I wanted to talk a bit about the legal standard for a threat determination. There

are two critical elements. First, are further dumped and subsidized imports imminent? In this case, the record demonstrates that in the absence of trade relief, subject imports are likely to surge.

Second, will material injury by reason of imports occur in the absence of relief? And here the evidence shows that domestic producers are in a highly vulnerable condition and are certainly in no state to face an increase in dumped and subsidized imports from China.

Moving to Slide 16, we should also recall that in a preliminary investigation like this case the Commission has merely asked whether we have shown, quote, "reasonable indication of the threat of material injury."

Longstanding precedent provides that the Commission will reach affirmative determinations on this point unless two conditions are met.

First, the record as a whole must contain clear and convincing evidence that there is no threat of material injury.

And second, no likelihood exists that contrary evidence will arise in a final investigation.

In this case, the evidence does not come close to satisfying either of these conditions. In fact, there could be little doubt that in the absence of trade relief the likely volume, price effect, and impact of subject imports

will be significant.

Moving to Slide 17, let's start with the likely volume. The record contains compelling evidence that if these cases do not move forward, we are likely to see a dramatic increase in imports from China.

As you've already heard, we saw such an increase from 2016 to 2018 before tariffs were imposed. But the Administration has since granted an exclusion from those tariffs. And when it asked for the exclusion, MTD specifically told the Administration that it intended to continue bringing in dumped and subsidized imports from China.

Furthermore, as we have shown in our CVD petition, Chinese producers benefit from export subsidies, which of course will encourage further imports.

Next on Slide 18, as you consider the issues of volume, I want to draw your attention to two data points. The first goes to the question of China's dependence on the U.S. market. In 2018, the year that the Section 301 tariffs were imposed, China exported roughly $1 billion worth of engines other than bio-fuel engines. Obviously we're using figures from China's export statistics, so they include a significant volume of additional products outside the scope. But what the data does show is that, by value, almost half of China's engine exports went to the United States

In other words, Chinese producers are highly dependent on the U.S. market, and have strong incentives to grow their sales here. We will address the available confidential data on the record in our postconference brief which we believe supports this conclusion. And just to reiterate what Robert said, there's substantial questionnaire responses missing from both foreign producers and importers. So we would argue that, you know, what is in the record now certainly shows that there will be aggressive targeting of the U.S. market in the future, and that you can assume that given the lack of responsiveness of those respondents.

On Slide 19, another critical data point. The exclusion for subject imports from Section 301 tariffs became effective on August 23, 2019. Since that time, we have had three full months of Census data for the relevant tariff code -- September, October, and November.

In each of those months, imports in 2019 were higher than imports during the comparable month in 2018. These facts show that imports from China have already resumed their surge into the U.S. market. Again, we think the data available in the confidential record supports this conclusion, as well.

Under these circumstances, it is not merely likely that we will see significant volume of dumped and

subsidized imports in the absence of unfair trade, we think this is certain.

In Slide 20, we'll talk a little bit -- I'll talk a little bit about price effect. The Commission should also find that those imports will have a significant and harmful price effect. Our witnesses will show that imports from China compete directly on the basis of price with domestic like-product.

The relevant data from the Census indicates that imports are entering this market from China at relatively low prices. Finally, as our witnesses will explain, this market has highly sophisticated customers who can -- and will -- use unfairly traded imports from China to pressure domestic producers into price concessions in contract negotiations. Given these facts, it is obvious that imports from China will have a harmful effect on domestic pricing.

Finally, in Slide 21 on impact, the record shows that the likely impact of subject imports will be significant. The record here shows that domestic producers are extremely vulnerable to further material injury. They are already operating at low levels of capacity utilization, which undermines their ability to obtain a healthy rate of return on their investments.

Furthermore, in the absence of trade relief, the

domestic industry will be at an unfair competitive disadvantage in contractual negotiations. Trade relief is essential to create a level playing field and giving domestic producers the chance to compete in a fair market.

We urge you to give them that chance. Now I'll turn it over to David Rodgers with Briggs & Stratton.

STATEMENT OF DAVID RODGERS

MR. RODGERS: Good morning, my name is David Rodgers. I'm a Senior Vice President of Briggs & Stratton Corporation and the President of our Engines and Power Group. I've held these positions since 2016. I've been with the company since 2006 and previously worked in senior posts at Briggs & Stratton, including that of Chief Financial Officer.

I'm here this morning to testify about how dumped and subsidized vertical shaft engines from China are hurting our business and why we need trade relief. I thank you for your time and attention to these vital issues.

To fully appreciate the harm that we've suffered, it will be helpful to know more about the product at issue and how it's made. This case covers vertical shaft engines anywhere from 225 to 999 cubic centimeters of an engine block with combustion capacity.

Let me explain what that means. With a horizontal shaft engine, the shaft comes out of the side of

the engine and can be used to turn something along the side like a tiller. In the engines under consideration today, the shaft is vertical. The most common use for a large vertical shaft engine is to attach the crank shaft to either a transmission to power a drive train or to a series of belts and pulleys that turn lawnmower blades in order to cut grass.

This case covers engines of a size used to make traditional riding mowers, which we often refer to as tractors, or "zero turn" mowers. Unlike a tractor, a zero turn mower can pivot 360 degrees which allows our user to cut more closely around obstacles. They are growing in popularity with all users, but are more commonly used by professional lawn care services.

We make engines at issue in this case in factories in Statesboro, Georgia, as well as Auburn, Alabama. These are two of the best facilities of their kind in the world. These facilities were opened in the mid-1990s and have manufactured tens of millions of engines in their proud history. We have approximately 450 people working in our Statesboro plant and more than 430 people in our Auburn facility. These are very good jobs for the people in each of these communities. We are deeply embedded in Statesboro and Auburn, where we work closely with each town to provide training and technical skills for our workers.

Some of the engines covered by this case use one cylinder, others use two. Starting in the mid-1990s, we have made single-cylinder engines covered by this case in Statesboro, while we make twin-cylinder engines in Auburn. In addition, we've also made our highest performance twin-cylinder engines for commercial users at a joint venture that we've operated in Japan since the mid-1980s.

A few years ago, however, we decided to increase our commitment to U.S. manufacturing. In October, 2017, we announced plans to wind down our Japanese joint venture and bring our commercial twin-cylinder engine production to Statesboro and Auburn. This decision meant 150 new jobs here in America. It also meant over $30 million of capital expenditures to invest in new equipment and upgrade our facilities.

In addition, we've invested in a new 400,000 square foot distribution center in Auburn that added even more jobs to that community. I cannot overstate the pride we felt in seeing the governors of both Georgia and Alabama stand on the floors of our factories and talk with our workers about the great job they were doing, which enabled us to bring this production to the United States. Those were certainly bright and hopeful days.

Unfortunately, we and our workers have never been given a fair opportunity to compete for these business on a

level playing field. Even as we shifted more production to Statesboro and Auburn, we were under attack by dumped and subsidized imports from China. Census data indicates that, in 2016, the United States imported almost 140,000 of the engines at issue from China. By 2018, that figure had grown to almost 248,000 engines, an increase of more than 77%.

Imports from China declined somewhat in 2019 due to the temporary effects of U.S. tariffs, but exclusions were granted regarding those tariffs, and Chinese producers are once again more active in this market. Our expectation is that, unless we obtain trade relief, imports from China will increase again in 2020.

These engines are being offered at prices that we cannot afford to meet. Josh Brown will soon testify about our sales operations and what we are hearing in the marketplace. But I know the types of prices we need to justify are investments in Statesboro and Auburn, and I know that we cannot match Chinese prices without doing severe harm to our operations. Let me explain, please.

At Briggs & Stratton, as at most companies, we judge our investments by our weighted average cost of capital. We compare the return of investment to the type of returns that we could make from other potential opportunities.

In short, we constantly monitor our operations to

ensure that they justify the use of our valuable funds. If they do not, then we have no choice but to shift those investments and look for different opportunities. That's Business 101.

When we face unfairly low prices, we simply cannot reduce our own prices to the same levels. Such a practice would make it impossible for us to achieve the type of return that justifies continued production and that our shareholders expect.

Even without imports from China, the market for lawnmower engines would be extremely competitive. We face strong competition from two other producers here in the United States, Kohler and Kawasaki. We sell our engines to a very limited number of original equipment manufacturers who use all of the leverage available to them to drive down prices.

The mowers themselves are ultimately sold in a very competitive market with large retailers like Lowe's and the Home Depot who also seek low prices. At all points along the line, therefore, we and our workers are under pressure to increase productivity, develop new and better products and be more competitive.

Here I'd like to make one point very clearly. Briggs & Stratton welcomes competition and we are confident that our world-class U.S. operations can do very well on a

level playing field. But it's not fair to ask our workers to go up against imports that are being sold at unfair prices or that benefit from ongoing government subsidies.

Every day my team and I study the engine market, as well as the market for other products we make, to determine how best to use our capital. For several years now, dumped and subsidized imports have caused increasing concern at our company.

There are potential new product offerings that we'd like to develop, but we are concerned about making the necessary investments. We could increase production by hiring more workers and running more shifts, but we cannot afford to do so in the face of the increasing Chinese imports.

This staff conference is public, so I can't discuss our financial information in great detail, but as you've seen in our questionnaire responses, and you know the difficulties that we've faced in recent years. I believe that those difficulties are the direct result of unfair trade.

If we cannot obtain relief, the likely consequences for Briggs & Stratton and for our hundreds of workers in Statesboro and Auburn will be severe. Those plants require fair market conditions for vertical shaft engines, which account for the overwhelming majority of the

products that these factories make.

There isn't enough demand for our other engines to justify using those plants to produce something else. Nor can we solve our problems by increasing exports. We need fair market conditions here. We've already been forced to operate at low levels of capacity utilization. We have already had to reduce capital expenditures and research and development efforts in ways that will leave us more vulnerable moving forward.

We cannot afford to have these trends continue and we cannot manage this crisis on our own. We need your help. I urge the Commission to let these cases proceed and give us and our workers the chance to compete on a fair and level playing field. Thank you.

STATEMENT OF BRIAN MELKA

MR. MELKA: Good morning. My name is Brian Melka. I'm the President of the Engines Division at Kohler Company. I've been with Kohler since 2013, leading the Engines America's business since 2014 and in my current role as the global engines leader for the last year. I've worked in industrial products for the outdoor power industries for more than 20 years of my career.

I'm currently responsible for the full strategic and operational leadership of Kohler Engines, including strategic planning and execution by delivering our gasoline

and diesel engines to our valued customers worldwide.

This investigation is critical to the future viability of vertical shaft engine production here in the United States. I'm here today to tell you about the devastating effects that unfairly traded Chinese imports have had on our business and its employees.

To start, I'd like to describe a little bit about the Engines business. It's a fairly mature industry. Kohler has been building engines in the United States since 1920 and the types of engines that are subject to this case for more than 50 years. We expect to see a continuation of low, single-digit market growth in the coming years. And although the industry experiences relatively low, stable growth in a fairly traded market there is room to make a reasonable profit by offering innovative products that provide higher productivity, higher quality, and better service and support.

The segment of the market covered by this case is expected to grow in the 1 to 3 percent range for the foreseeable future. Its growth as seen before tracks very closely with the housing market. Like the overall housing market, however, this market has not entirely recovered since its peak in 2005 prior to the housing crisis.

The overwhelming volume of vertical shaft engines are continue -- are consumed here in the United

States. We believe this is more than 85 percent of the global market for these engines. The market is here. We've always produced these engines here to be as close to our customers as possible to provide the highest quality, fastest delivery and the best after-market service and support.

Chinese imports of small, vertical shaft engines began to enter the U.S. market in a meaningful way in the early 2000s. They started in the smaller utility engines and walk-behind mowers, but moved up the value chain to larger displacement riding mower engines.

After the housing market crashed and while the market was still recovering in the mid-2010s, we saw Chinese imports of riding mower engines increase rapidly. While the market grew around 1 to 2 percent annually in the last three to four years, Chinese imports of subject vertical shaft engines surged. Between 2016 and 2018, Chinese imports increased by 77 percent and the rate of growth continues to be or appears to be accelerating. This devastated the U.S. industry. While the market was growing, the U.S. industry has had plenty of available capacity to fill this demand, but instead, the Chinese have taken all that increase in demand and more using dumped and subsidized prices to do it.

During the same timeframe, beginning in about 2016, we started experiencing increasing pressure from

Chinese imports to sell our products at lower and lower prices. Not just a percent or two, what we were being asked to drop our prices was often 20, 30, or even 40 percent just to keep our long-tenured business. It's simply impossible for us to compete with any brand position when pricing positions are this low. Some of these placements have been in place for more than a decade.

Last year's Section 301 exclusion process was eye-opening for me, exposing just how unbelievably low these prices were. During the exclusion process, we learned that the Chinese prices, again, were some 30 to 40 percent below our most competitive prices. When I finally saw the Chinese prices, I just could not believe the price levels they were operating at. They simply cannot operate at that level without unfair subsidies.

We've been pushed into a position where we either have to sell our products below costs just to maintain our business or we have to lose sales. We've explored various paths to improve efficiency in order to compete with the low-priced imports, but every alternative comes up short. There's simply no amount of cost-cutting that would allow us to compete with these subsidized products.

Chinese imports have had a devastating impact on Kohler's business. Investment is down across the board in

these engine categories. We haven't been able to create jobs, invest in Research and Development, or finance capital improvement at the rates needed to grow. Research and Development is vital to improving our existing engine models and without our competitiveness in the future is undermined.

Current sales volume was a primary driver in Kohler's decision consolidate our U.S. operations in Hattiesburg, Mississippi, closing our Kohler, Wisconsin facilities, which we announced in September of 2018. That is a facility we've operated in for more than 60 years.

Ultimately, this restructuring means hundreds of fewer jobs for the engines business in Kohler, Wisconsin where the company is headquartered and has been operating for more than 100 years. As a multi-generational family-owned business, it hurts to lose jobs in our community. If we continue on our current trajectory without relief from unfairly traded imports, the picture becomes even more bleak.

Over the next few years, we will see a significant further decline in our gasoline business due to Chinese imports. As I mentioned previously, we've explored every avenue to get our costs to a level where we could compete at those price levels with the imports, from design changes to automation to other adjustments in labor structure. There is simply no moves that would make us

competitive with these Chinese unfairly traded engines.

Without meaningful relief it is difficult to see a path forward and accordingly we may be forced to exit these product categories entirely. Ultimately, this could lead to even more job loss. However, trade relief can revitalize the U.S. industry. We have the sufficient upside capacity to regain a significant portion of the market demand. This translates to meaningful growth in a fairly stable market. We could realize current capacity and drive improvement in jobs, R&D, and capital improvements. Not only is this good for us, but it benefits the communities in which we operate.

With trade relief, Kohler will have the opportunity to substantially increase employment in our Mississippi facility, which could double our Mississippi workforce. Not only would this growth present substantial opportunity for Hattiesburg, but it can improve the economy of the entire surrounding region.

I urge the Commission to make a preliminary finding of injury and threat of injury so the domestic industry can obtain the relief it needs to survive and thrive in a fair market. On behalf of Kola Company, thank you for your time this morning. I'm happy to answer any questions that you may have. Thank you.

STATEMENT OF JOSHUA BROWN

MR. BROWN: Good morning and thanks for the opportunity to testify. My name is Josh Brown and I am Director of Sales for Briggs & Stratton. My team and I are responsible for selling the engines at issue here. I'm speaking this morning on behalf of Randy Ballard, Vice President of Sales for Engine and Power. Randy very much wanted to be here this morning, but could not make it because of the flu.

This morning I want to talk about how this market works and why we are so sensitive to unfairly traded imports from China. To begin with, it's important to understand that there are three major sets of players in the markets. There are producers, like Kohler and ourselves, who make the engines in question. At Briggs & Stratton, we use a limited portion of our engines to make our own riding lawnmowers.

Another relative small share of our production goes to distributors and other customers who use them to repair tractors and zero turn mowers. The rest of our output, the vast majority of the engines at issue here must be sold to original equipment manufacturers or OEMs. These OEMs, such as MTD, use our engines to make various brands of mowers with which many of you are no doubt familiar.

For example, MTD makes mowers under various brands, including Cub Cadet and Troy Bilt. The OEMs, in

turn, sell their mowers to retailers. The biggest retailers in our business, of course are well-known companies like Lowe's and the Home Depot. But mowers are also sold at a variety of smaller locations -- hardware stores, home and garden stores, and dealers that specialize in mowers. So, you have three sets of market participants -- producers, OEMs, and retailers.

As you already heard from Dave Rodgers, at each step along the way we deal with highly sophisticated companies. These companies have a significant amount of leverage and they know how to use it. For the most part, the engines at issue here are sold under annual contracts and the negotiations over those contracts are very intense. To remain competitive, Briggs & Stratton needs to operate our facilities at high levels of capacity utilization, which means that we move a large volume of product.

For example, in a typical year we will make slightly more than a million of these engines. Realistically, we can't export more than 20 percent of that production as the United States is the world's largest market for riding mowers and overseas markets are also very competitive. Together, these facts mean that every year my team must sell close to a million of the engines covered by this case. And again, the great majority of those sales must go to a very limited number of OEMs.

When our OEM customers talk to us about price, we take them very seriously. In recent years, those customers have been talking about the prices offered for imports from China. As you've already heard between 2016 and 2018, we saw a dramatic increase in the volume of engines being imported from China. Let me assure you that this increase would've been even greater if we hadn't agreed to lower our own prices in response to pressure from our customers.

Time and again, in recent years, our customers have told us that our prices were too high and that they would shift more volume to China unless we reduced pricing. You have our data, so you know the types of margins we make on these engines. Without getting into confidential details, I will merely state that we are not seeing the type of margins that would justify for their long-term investments in the industry.

As a result, my fellow sales colleagues and I are trapped in a very difficult position. On one hand, we need stronger pricing to improve our bottom line and make this business more sustainable over the long run. On the other, our major OEM customers demand lower prices to compete with dumped and subsidized Chinese imports. In recent years, we have tried every possible method of avoiding this dilemma. For all of our customers we try to

highlight that our American-made engines have significant advantages in terms of quality, availability, or other reasons.

We also confer closely with major retailers to try and educate them about the benefits of Briggs & Stratton engines in the mowers that they sell. All of our discussions are adversely affected by unfairly traded imports from China as a more and more significant portion of this market focuses on price. If we simply concede to any portion of our business to China, we will be unable to maintain necessary levels of capacity utilization at our facilities in Statesville, Georgia and Auburn, Alabama.

Of course, Chinese companies could not compete with us on a level playing field. The key fact here, the reason this whole market is distorted is that Chinese engines benefit from unfair pricing and subsidies. In other words, true market competition has broken down and we are being forced to bid against imports at prices that no market-based company can afford to match; therefore, we have been forced to seek relief.

I'd like to make one final point. There is no shortage of vertical shaft engines at issue in the U.S. market. We have three very competitive, U.S. producers in ourselves, Kohler, and Kawasaki. Speaking for Briggs & Stratton, we could significantly increase our production and

we would very much like to do so, but we can only make this step if justified by market conditions. We will certainly never be able to increase our production if we are forced to compete against dumped and subsidized imports.

For all these reasons, I urge you to allow these cases to go forward and give us a chance to obtain the relief we need. Thank you very much.

STATEMENT OF ERIC HUDAK

MR. HUDAK: Good morning and thank you for your time today. My name is Eric Hudak and I am the Director of Product Marketing for Gasoline Engines at Kohler Co. I've been with Kohler for my entire 21-year career. I spent the first 13 years in Kohler's engineering department and held several engineering and product development roles during that time. For the last seven years, I've had various product marketing roles. In my current role, I'm responsible for overseeing our product marketing team. From conceptualization through project launch, my team is responsible for making our products a reality. I'd like to thank the Commission staff for taking the time today to learn about vertical shaft engine production, and the challenges we face due to dumped and subsidized Chinese imports. This investigation is essential to the future of U.S. producers of vertical shaft engines, including Kohler.

The vertical shaft engines that we're talking

about today -- between 225cc and 999cc -- are predominantly used in riding lawnmowers, which are used to care for lawns, soccer fields, parks, and more. These engines are spark-ignited, most often fueled using gasoline and are exclusively single or twin cylinder engines. This displacement range also tracks closely with what the Environmental Protection Agency categorizes as Small Non-road, Non-handheld, Spark-Ignited "Class 2" engines.

Engines smaller than 225ccs are primarily used for smaller walk-behind lawnmowers, like the mowers you may have grown up using. They are not generally suitable for carrying people, a key feature of a riding mower. The EPA categorizes that size of engines as "Class 1" engines. Those engines larger than 999ccs are usually considered Large Spark-Ignited engines, or LSI engines, and are generally not used in lawnmowers.

I'd now like to begin a brief presentation that covers the basics of how a vertical shaft engine is made.

[Begins PowerPoint]. Vertical shaft engine production is a lengthy process, which can be summarized in five stages.

First, the major structural and rotating components of the engine are case from iron or aluminum. This primarily includes the crankcase, oil pan, cylinder

heads, crankshaft, camshaft, connecting rods, pistons, and flywheel.

These casted components are then machined to exacting specifications using highly capital-intensive machining equipment. Most engine manufacturers machine the components themselves, while some machining may be done by component suppliers or external machine shops. Machining involves numerous manufacturing processes and quality control steps to transform the casted parts into usable engine components.

Upon completion of component machining, the assembly process begins on what we call an "assembly line." Assembly lines are typically hundreds of feet long with hundreds of assembly steps putting together roughly 200-400 unique components to make a finished engine. A typical assembly line may employ 50-150 individuals and most producers have multiple assembly lines in a single facility.

We're now going to begin a short video and describe the assembly process. I apologize in advance for the small glitch in the video, but it doesn't interfere with the content.

The assembly process begins by creating what we call a "short block," which becomes the heart of a vertical shaft engine. It consists of, at least, the engine crankcase, oil pan, crankshaft, camshaft, balance shafts,

connecting rod, and pistons. The parts themselves that are assembled into the short block are typically designed specifically for use in vertical shaft engines. At this point, a short block is destined to become a vertical shaft engine or, alternatively, a replacement assembly for an existing damaged vertical shaft engine in the field. Short blocks are not generally sold for any other purpose as they cannot be used for any function on their own. The difference in value between a short black and a completed vertical shaft engine corresponds with the operations needed to transform it into a finished usable product. Typically, the short block comprises 40-60% of the total weight of the engine. The video is now paused at what we consider to be the short block. The final two steps of assembly continue to integrate the short block into a vertical shaft engine.

Next, as you can see from the video, a short block is then transformed into a "long block" by adding the valvetrain, cylinder heads, head gaskets, valve covers, and breather system components. By the end of this stage, nearly all the product's critical joints are completed, except the parts necessary to make the engine start and run. At this point in the video you can see what we consider to be the long block.

Lastly, the remaining external parts are added to create the finished engine. This includes an intake

manifold, carburetor (or fuel injection system), starter, flywheel, spark plugs, ignition modules, cooling fan and blower housing to make the engine start, run, and meet emissions requirements.

At every step of the way, we employ quality checks and detection processes to ensure that we are making a very high-quality product. Engines that do not pass inspection are either immediately reworked or scrapped, depending on the extent of the defect. The last step in the assembly process is the final quality test of the complete engine. The engine is connected to fuel, power, and exhaust -- then started and run to ensure correct operation, no oil leaks, to set engine speeds, and ensure safeties are fully functioning. Only after this test is successful, are the engines allowed to ship from the factory.

Kohler's commitment to quality is one of our core values. We have been building high quality engines for 100 years and vertical shaft engines for more than 50 years. Throughout our history, we have survived because we've been able to build products that are durable and reliable. We know there are hundreds of thousands of workers around the country who rely on Kohler engines to make a living and provide for their families. We take that responsibility seriously.

We put this quality commitment into action by

implementing quality systems, robust detection procedures and employing a large staff of engineers at all of our facilities. Our company rigorously monitors how our engines perform in the field through overseeing our warranty data and making changes as needed. This kind monitoring and adjusting is critical because, over time, regardless of product or industry, defects may arise in manufactured components. While we are no exception, we consistently maintain a very low warrantee claim percentage on our engines -- well below 3% of sales as a business.

Our vertical shaft engine customers are primarily original equipment manufacturers or OEMs. Historically, OEMs made their engine purchasing decisions based upon quality, engineering support, working relationships, service network, and engine features. However, over the last three to five years, price has become the single most important factor that our OEM buyers care about. The magnitude of lower price by Chinese manufacturers now outweighs quality, service, features, engineering support, or our working relationship with them.

This pricing pressure goes well beyond the ability to command annual price increases. In the last several years, we've been fighting hard just to maintain pricing, let alone increase prices. Despite our best efforts, we have not been able to match or beat the prices

of the unfairly traded Chinese imports that have flooded the market. We either forced to substantially reduce the engine price or offer significant rebates to either OEMs or retailers to maintain or win business. For some Chinese producers, the magnitude of the pricing difference, or net pricing provided via rebate programs, are enormous. As a result of the subject imports' aggressive prices, we've seen a large erosion in our business, which has negatively affected our company, its employees, and the communities where we operate.

The domestic industry urgently needs trade relief from dumped and subsidized Chinese imports so that U.S. producers can compete on a level playing field. Without this the future of the domestic small engine manufacturing industry, and the thousands of Americans that we employ, is gravely at stake. I ask you to fully document this in your staff report so the Commission may make a preliminary finding of injury and threat of future injury.

Thank you for your time this morning. I'm happy to answer any questions you may have.

MR. ORAVA: Robert, I'd like to just make one final comment. This is Steve Orava with King & Spaulding. Respondents have already put out, and they certainly will put out more of it this afternoon or after we're completed here, you know, shiny objects to try and distract you from

what, you know, is actually going on here and what the record demonstrates in terms of evidence before you. I would just say that, in order to, sort of, clean up some of these things that they're asserting, um, it's gonna require us going into confidential information. So, while we look forward to answering all of your questions in detail, some of it we'll just have to defer to the post-conference brief, so I hope you appreciate that. Thank you.

MR. DeFRANCESCO: And, with that, that concludes our affirmative presentation. We're happy to answer any questions that you have.

MS. CHRIST: Thank you very much for that informative information. We'll now turn to staff questions and we'll start with Abu Kanu, the investigator.

MR. KANU: Good morning and thank you for your time and your testimony. It's definitely been very helpful to understand this product and the market as a whole.

I have a few questions for you this morning. Also, as you previously stated, please feel free to address any questions in your post-conference brief, with more detail.

My first question is to producers here: do you guys produce a new product on the same machine as you guys produce, um, vertical shaft engines?

MR. VAUGHAN: I'm sorry. This is Stephen

Vaughan. The question was whether we produce the same -- other products in the same facilities where we produce vertical shaft engines?

MR. KANU: on the same machines.

MR. VAUGHAN: on the same machines. Okay, okay, thank you.

MR. RODGERS: Dave Rodgers, Briggs & Stratton. In our Statesboro and Auburn facilities, Statesboro and Auburn historically have made only vertical shaft engines. The predominance of them -- greater than 90% -- go into the applications that we discussed this morning -- tractors and zero-turn mowers. The move of the Japanese joint venture that I discussed that we announced in 2017 brought in our commercial grade engines from Japan to be built in both Auburn and Statesboro. Some of those engines are horizontal shaft engines, which are not covered by this case, but they are not make on the same equipment as what, historically, Briggs & Stratton has made in those facilities. So, the preponderance of the production in both Statesboro and Auburn is for the large vertical shaft engines that are covered by this case.

MR. HUDAK: thank you for the question. This is Eric Hudak from Kohler. Uh, agreeing with Briggs & Stratton. You know, we have a facility for vertical shaft engines primarily today in Hattiesburg, Mississippi. We have a

substantial amount of production equipment dedicated specifically to vertical shaft engines from both the casting through the machining process as well as assembly, dedicated assembly lines to vertical shaft engines. There are some shared casted components machining centers and assembly processes that are shared between horizontals and verticals. But a great deal of the vertical shaft engine equipment is dedicated.

MR. KANU: I guess just a follow-up question to that --

MR. DeFRANCESCO: If I might -- Robert DeFrancesco from Wiley Rein. In addition to that, those engines obviously service different customers. They have different end uses, different demand drivers, and completely different channels of distribution. So, just keep that in mind.

MR. KANU: I guess a follow-up question to that is: how easy is the shift of production from vertical shaft engines to other engines and does that slow down production of vertical shaft engines?

MR MELKA: this is Brian Melka, Kohler. I'll answer that. I agree with what Eric said. So, very specifically for us, we have 75% of our assembly operations are fully dedicated to vertical shaft engines. We have 25% of our assembly operation that can do both. The changeover

from vertical to horizontal is, in fact, fairly cumbersome, to go back and forth to the other. So, there's not a lot to be gained between the two. It's this -- there's an opportunity, just from an assembly workforce standpoint, is why we do them together but they're not that easily transferable back and forth.

MR. RODGERS: Dave Rodgers, Briggs & Stratton. I would just add, or reiterate, that the equipment that historically has been in both plants, Auburn and Statesboro, only made vertical shaft equipment so there would be significant effort in trying to redo all of the equipment and the assembly lines in order to do horizontal shaft engines.

The engines that we moved from Japan -- moved the production from Japan -- we did put in new equipment at that point in time. Those are commercial grade engines. A lot of those engines also go into lawnmowing equipment and our vertical shaft, but a portion of that equipment can be used to make vertical shaft -- the horizontal shaft engines.

MR. HUDAK: Thank you for the question, Eric Hudak again at Kohler. Horizontal shaft engine market is vastly different than the vertical shaft engine market. It's much different and a lot of different OEMs, different channels or distribution, different price points and we are already surfacing all of the horizontal shaft engine demand

that we have.

We can't simply shift our production to make more horizontal shaft engines because we are already satisfying all that market demand that we can.

MR. KANU: Next question is, are there any certain technologies in the industry that allows for significant more efficient production of vertical shafting that U.S. producers are not equipped with.

MR. RODGERS: I'm sorry could you repeat the first part of that question?

MR. KANU: Are there any technologies in the industry that allows for significantly more efficient production of vertical shaft engines that U.S. Producers are not equipped with?

MR. RODGERS: Dave Rodgers, Briggs and Stratton. Over the years we have put in automation into our facilities in order to remain competitive here in the United States. That's part of the large capital investment that I was referring to in some of my opening remarks. That's quite honestly what's allowed us to remain competitive here in the United States in the environment.

The automation is primarily done within the die casting operations as well as in the machining operations and moving engines along or components of engines along from one point to another in the manufacturing process. In the

assembly operations there is typically fewer opportunities in order to use automation but we do introduce certain elements to the assembly lines over time that can effectively make us more productive in the assembly process as well.

MR. MELKA: This is Brian Melka from Kohler. I'll add to that. The basis of your question was is there any technology that we're not taking advantage of and I'd say basically no. We are continuing to look at new technologies. We've implemented a lot of technologies around automation in different stages of our process. I think the challenge comes in that those technologies and capabilities continue to drive productivity and efficiency but none of those have been able to overcome this significant price differential that we're seeing from the Chinese.

So we're always focused on driving that, improving that but the price differential we're seeing in the competitive environment is so vastly different that it has not made up that difference.

MR. KANU: Next question, you might be able to expand on this more. In the five stages of production for vertical shaft engines you did mention that some, one of those 5 stages I don't know how many is sometimes farmed out to other suppliers to conduct and which stage specifically

is usually farmed out to suppliers to conduct?

MR. HUDAK: Mr. Kanu, thank you for the question. Eric Hudak, Kohler. I was specifically referring to the machine component level so many manufacturers, Kohler included, we do the vast majority of our own aluminum and cast iron machining in our own facilities but there are some components where it makes more sense for the supplier of that who may be doing the casting to also do some of the machining.

In the majority of cases for Kohler at least, that's not done at a third party. It's done at a component supply level and we take advantage of that where it makes sense but for the vast majority of what we do it would be our own machining in house.

MR. RODGERS: Dave Rodgers, Briggs and Stratton. I would comment on our manufacturing process. We're very vertically integrated in terms of manufacturing of the engine. So you have the die-casting which consists of melting aluminum and forming it. The second area is typically machining of aluminum or cast iron parts and then the third step is the assembly process.

We do all of that. As I said we are very vertically integrated. It takes a significant amount of manufacturing equipment and therefore a significant amount of throughput and we typically do steel stampings as well

internally, which takes a lot of equipment and what we don't do is plastic components. We do not blow mold or injection mold any of our own plastic components as well as electronic components we'll typically source as well.

MR. KANU: I guess for further clarification, so when you guys send out -- farm out a portion of that production -- is it considered finished or unfinished? At what point in time is the engine considered finished or unfinished?

MR. HUDAK: Yes, Eric Hudak again at Kohler. That is the farming out of those components is never at the complete engine level. It's not even at the sharp-lock level that I was describing in my video. It's very much so a component level that we would be talking about so of those 200 or 400 components I referenced it may be a half dozen or a dozen of those that we may be, you know -- so it's a very small portion of the total amount.

It's not the vast majority and it's certainly not at a finished engine level or even a sub-assembled engine level such as the short block or the long block. It's at a component level.

MR. KANU: I guess then what's the advantage really of an OEM or retailer buying unfinished subassembly engine as opposed to a finished engine? Is there any advantages related?

MR. RODGERS: Dave Rodgers, Briggs and Stratton. We generally do not sell any subassemblies of engines. The engines that we ship to our OEM customers are completed engines. The only exceptions to that in certain cases are some customers will want to install their own muffler and so in certain cases we will ship engines without a muffler and they attach their own but that's the only exception that comes to mind.

MR. MELKA: I'm sorry, just to clarify. This is Brian Melka with Kohler. I would say just like Mr. Rodgers, this is definitely consistent with how Kohler operates. We don't typically sell an unfinished engine. The exception is that we would sell an unfinished engine would be into a service engine so if someone had a major repair that they had to fix we might sell a partial engine but typically to our OEM customers as they integrate them into their equipment we are selling complete, running engines.

MR. VAUGHN: And Mr. Kanu, this is Stephen Vaughn Counsel for Briggs and Stratton. I just wanted to clarify from our perspective in terms of lawyers, I wanted you to understand, I think what you're hearing in terms of testimony is that there is not a big market for unfinished engines but we wanted to make sure that that was covered in the scope so that there would be no, in order to push back against potential for circumvention, so I just wanted to

flag that.

MR. KANU: I guess you guys mention a lot about the various testings that these engines undergo in the production process. Is there any test that is EPA mandated? Or just for quality control reasons.

MR. RODGERS: Dave Rodgers, Briggs and Stratton. We have various quality control tests throughout the process and we use fairly sophisticated monitoring systems, some of which are proprietary to our manufacturing process in order to do that. There is a significant amount of data that is captured along each step of the process as well.

As far as emissions testing that is something that is done separate of the manufacturing process following all of the laws and regulations that are set forth in order to test and certify as to the propriety of those engines, that they meet the emissions requirements.

MR. MELKA: Brian Melka from Kohler again. As was shared, the EPA has mandated rules and regulations on how engines get tested. There is a Lengthy certification process before an engine ever goes into production. As well as what we call PLT so product line test. So based on the volume of engines you require to pull and certify a certain sample of tests, we do that every day so we're pulling engines off the assembly process every day and running an emissions verification test on those engines and then there

is also an annual certification process that's required that you have to go through each year to recertify for the following calendar year.

MR. DeFRANCESCO: This is Robert DeFrancesco for Kohler and Wiley Rein. I've actually, on that note, I'd like to respond to something the Respondents raised as it relates to the certification process. As Mr. Rodgers has said, we will expand on this more in our confidential posthearing brief but to point out that the certification issue that they raised involves production of engines that occurred well before this period of investigation. It has nothing to do with the quality of the engines and merely whether it satisfies emission standards or satisfies the certification standards and is properly certified.

MR. KANU: The producers, do you guys pay for the testing or do the purchasers, OEMs, retailers oversee their own testing requirements?

MR. MELKA: Brian Melka from Kohler again. As it applies to emissions certification, there are various levels of certification required on these engines. Exhaust emissions certification is carried out by the engine manufacturer typically. We do all of our own certification. We are authorized by the EPA to do our own internal certification and so we manage that internally and report to the EPA and we have a very close relationship with both

the Environmental Protection Agency as well as the Air Resource Board in California.

There are other types of emissions certifications required including evaporative emissions. That would include typically more than just the engine. You would have to actually add on the fuel system, the fuel tank. Evaporative emissions are typically the responsibility of the original equipment manufacturer and is separate from the exhaust emission standards that you would typically know about from the EPA and carbon.

MR. RODGERS: Dave Rodgers, Briggs and Stratton. As far as any testing of engines related to quality control, we certainly do all of that ourselves. We do know that periodically we will have OEM customers testing those engines and then we will also do our own certifications under the rules and regulations of the EPA as well as the California Resources Board.

The one thing I'd like to mention however is that when it comes to the emissions, any engine manufacturer that produces an engine and sells it is subject to the same rules. So we all have to face the same emissions rules whether it is made here in the United States or anywhere else in the world including China, so we have to follow the same rules there, where we have seen a difference in the rules that are being followed is with respect to the pricing

of these engines.

What we're seeing is that there are dumped and subsidized imports coming in from China that are giving them an unfair advantage even though we have to play under the same emissions rules. Thank you.

MR. KANU: Thank you. I guess switching gears to employment. How does the seasonality of the demand for vertical shaft engines affect employment in the different plants that you guys have?

MR. RODGERS: Dave Rodgers, Briggs and Stratton. To the question of how does the seasonal nature of this product affect employment in the plants, we have manufacturing flexibility where during certain times of year we will bring on more employees in order to ramp up production during certain times of the year in order to produce more engines to meet demand.

We have contracts with certain temporary agencies where we will get the same employees back on a year over year basis. This allows us to ramp up production very quickly to the extent that we have additional workers and to the extent that we need to add full-time employees, we need only about 60 days of notice in order to recruit and ramp up production that way as well as make orders for other parts that come in.

MR. MELKA: Brian Melka from Kohler. I would

echo that. Our staffing levels vary throughout the year based on seasonality and we may have different staffing models in terms of the way we manage our businesses but we have good relationships in the community that we are able to ramp our work force very quickly if necessary and then managing them through the off-seasons but we've been managing that for decades and it works well.

MR. KANU: Are there any preference programs that prioritize domestically produced engines that effects the contracts and demand, essentially?

MR. MELKA: Maybe if I could ask you to restate the question, just to make sure that we answer it appropriately?

MR. KANU: I guess like the Buy America Program that was promoted. Is there any programs that prioritize your customers to buy professionally U.S. produced vertical shaft engines as opposed to imported shaft engines?

MR. VAUGHN: I'm sorry, just to be clear -- I'm sorry, Stephen Vaughn -- just to be clear, when you say is there a program that encourages people to -- do you mean a government program?

MR. KANU: Not necessarily, but I guess a government program.

MR. VAUGHN: So is there some type of a government program, similar to a Buy America type program --

MR. KANU: Correct.

MR. VAUGHN: -- that would motivate people to buy U.S.-made engines as opposed to other engines?

MR. KANU: Correct.

MR. VAUGHN: Okay, thank you very much.

MR. RODGERS: Dave Rodgers, Briggs & Stratton. I'm not aware of any programs that are run by anyone on the federal, state, or local level that would impact a Buy America type program related to these engines.

MR. KANU: So I guess the import data, how -- what I the best way to capture, I guess the most accurate to capture imports coming into the U.S.? Official statistics, or questionnaire data?

MR. DeFRANCESCO: So this is Robert DeFrancesco from Kohler and Wiley Rein. Obviously with the record you have in front of you now, we believe you need to use the import statistics. We believe that's reflective of the surge that's going on here. And as I mentioned earlier in the presentation, because you're missing one of the significant importer questionnaires, you have no choice but to rely on the import statistics.

I think when you obtain that missing importer questionnaire, the import statistics and the imports ought to largely track one another. And, frankly, based on some of the information that you have in front of you that's

confidential, it appears that even the import statistics may under-count the surge when you get the actual importer questionnaire.

So, but for now we think you should be relying on the import statistics.

MR. KANU: Would you mind providing what particular codes would you want us to rely on, and also can you provide us the names of the missing importers and foreign producer?

MR. DeFRANCESCO: Happy to do that. We'll provide the codes in our postconference brief. And they filed the foreign producer questionnaire, and they identified who the importer is. So you have that. But we're happy to provide that in your postconference.

MR. KANU: Sure.

MR. VAUGHN: Yeah, Mr. Kanu, this is Stephen Vaughn. I just want to refer to a couple of points.

First of all, I agree with what Robert said. I do think you have some key people who haven't participated. I also agree that, while the publicly available data is very helpful and very useful and maybe the best available data at this time, we do think that you have enough questionnaire data to be very, very confident that, whichever way you look at it, there's been a big surge.

We will certainly identify some of the people who

we think should have responded to questionnaires. But I do want to emphasize that it puts us at a very big disadvantage, obviously, that we haven't had a chance to sort of see those questionnaire data. And we will obviously be addressing that point as well in our postconference brief.

MR. KANU: My final question is: Are you aware of any antidumping or countervailing duty orders or safeguard measures on vertical shaft engines in other countries?

MR. DeFRANCESCO: This is Robert DeFrancesco. The only one I'm aware of that was recently filed wasn't on the engines itself, but they were on the lawnmowers. And it was filed in Argentina against Chinese lawnmower imports.

MR. KANU: Okay, thank you. I give my time back to the Chair.

MS. CHRIST: Thank you very much. We will now turn to Karen Driscoll, the attorney.

MS. DRISCOLL: Thank you, ladies and gentlemen. I am happy to here, and thank you all for coming.

I want to start out, and maybe Mr. Houdak would be the first best person to start up with my first questions.

You talked about horizontal shaft engines. Are those the engines that we usually think of as push engines?

MR. HOUDAK: Thank you, Ms. Driscoll. Eric

Houdak, Kohler. No, the horizontal shaft engines are primarily used in what you'd see in other equipment such as generators, or other construction equipment would be horizontal shaft engines there.

The push engines you're describing are those engines that are typically smaller in their displacement, so less than 225 cc's as EPA calls Class One engines.

MS. DRISCOLL: So would it be correct to say that the engines that are used in what I think of as push mowers that are outside of the scope are not fungible with the subject merchandise, or the domestic equivalent of them?

MR. HOUDAK: Yes. Let me make sure I answer that correctly. Those engines are outside of the scope not because of their shaft orientation. They're outside of the scope because of their smaller displacement. So those are engines that are typically less than 225 cc's. Typical push mower engines would be in the 150, 160 cc type range for their displacement.

MR. RODGERS: Dave Rodgers, Briggs & Stratton. I would just add to that that engines below 225 cc are different in terms of the product, the engine itself, the power, the size, the applications that they go on, as well as the manufacturing facilities and the people who make those engines. So they're different in all of those respects.

MS. DRISCOLL: Okay. So they wouldn't be fungible. You couldn't take -- or they're not even on -- they're not on the continuum? There's not a continuum for push mowers that you could put into a tractor mower, and they're not -- I know they're not fungible because they're of a different power, but there's also, you're saying that there's not a straight line, if you will, of size from the push mower engine to the riding mower engine?

MR. RODGERS: Dave Rodgers, Briggs & Stratton. The power that's generated by the types of engines that are below 225 cc would not be able to power a riding lawnmower or a zero turn that we've discussed this morning.

MS. DRISCOLL: Alright. So are all the vertical shaft engines used for agriculture or horticultural purposes? Or are there other uses for them?

MR. MELKA: Yeah, this is Brian Melka from Kohler, and it's a good question. The overwhelming predominance of the applications that these engines are used on, that these engines are designed for specifically, are riding mower applications.

There would be -- in our experience, there's a less than one percent of the population in these size ranges of vertical shaft engines for us are used on anything other than mowing equipment.

MS. DRISCOLL: Okay.

MR. DeFRANCESCO: Robert DeFrancesco from Wiley Rein. As we detailed in the scope, we do identify the very small handful of other applications that these types of engines might be used in. But as Mr. Melka said, it's very, very small relative to the overall size of the market.

MS. DRISCOLL: Okay. There are some issues. You brought them up in your video, that you have the semi-finished analysis, because semi-finished engines are in the scope. When you talk about domestic like-product in your postconference brief, I would appreciate it if you gave some argument as to why you don't believe that the smaller engines should be in the domestic like-product. Because of course we don't have to define the domestic like-product to be exactly what Commerce says.

And secondly, whether the Commission should apply the semi-finished like-product. And what's the value added for that semi-finished product to the finished product? I'm sure counsel here knows what I'm talking about.

MR. DeFRANCESCO: Yes. We're happy to provide that in our brief.

MS. DRISCOLL: Along these same lines, I was wondering if you have -- and my thanks to Mr. Kanu who touched on these issues. In your Petition, you talked about some of the machining and some of the casting is done by outside firms. And if I understood Mr. Houdak correctly,

it's a small percentage of the value of the finished engine that is done by these outside machiners, or machining companies and foundries, and casters -- casting firms.

But it raises an issue, whether there's sufficient production related activity by those other firms. So I would like that also to be raised in your postconference brief, if you wouldn't mind. Because there is an issue. You could have people who finish it. In some of our cases, we have people who finish the product, and is that sufficient production-related activity. You have assembly. Are there people who assemble that have sufficient production-related activity? And also there was an argument raised in one of the declarations about propane engines going from a combustion engine to a propane engine.

And so I would -- and I think even in that declaration, they said that shouldn't be considered production, but I would like that to be covered in your brief, if you would, Mr. Vaughn.

MR. VAUGHN: Yeah, this is Stephen Vaughn for Briggs & Stratton. We will certainly make those points, and we will address those concerns.

I do just want to emphasize, I think that the testimony here today is pretty clear that, for the most part, you have -- there's not a big market in semi-finished or unfinished engines. The market is dominated by

production finished engines, and sale of finished engines for use in riding mowers.

So you do have some of these things at the edges, and we will talk about that. But I really do think for the most part it's fairly straightforward. But we'll certainly clarify all of that in the postconference brief.

MS. DRISCOLL: Okay.

MR. DeFRANCESCO: Robert DeFrancesco, just to reiterate Mr. Vaughn's point, just to clarify what Mr. Houdak was talking about machining a certain number of parts, those parts are machined. They come back. And then they're assembled. I believe we're not aware of any outside assemblers outside of the U.S. producers here that are assembling a finished engine. The engine manufacturers themselves are the ones assembling the engine, regardless of whether they farmed out a small handful of the parts or not.

MS. DRISCOLL: And are those tolling situations? Are they -- you buy it from them? Tolling would be, you'd pay a service and they make it for you?

MR. HOUDAK: Eric Houdak with Kohler. No, I mean, as I believe I understand that definition, we are just buying that component in a machined condition.

MS. DRISCOLL: I think it would be helpful to have an idea in the finished engine and the share that is produced by these other foundries, either casting or

machining, if you can give me some ranges on that I think that would be very helpful.

MR. DeFRANCESCO: Certainly we'll be happy to provide that.

MR. VAUGHN: Yeah, and I just wanted to say, I mean what we've been trying to do, and we will clarify all this, but just so we are all clear in terms of what we're trying to accomplish here, we really believe that the focus here is on finished engines and competition in finished engines. We understand that, and we know that's where most of the questions are going to be.

At the same time, what we've been trying to do in terms of putting together this case is to, on the one hand not create a situation for ourselves where they can simply take a few parts off here and there and send over, you know, an engine that's largely done, and evade the scope.

So that's sort of where a lot of this concern about unfinished engines came from. At the same time, as you'll also see, and I think this goes to your question, we didn't want to be in a situation where we were just covering all of the parts. So that's kind of the lines that we've been trying to work between, but we will clarify all of that as much as we can in the postconference brief.

MS. DRISCOLL: Okay. It was just raised by your Petition, so I'm following up on it.

I would -- I found the 301 arguments very interesting. I would like a bit more information -- these are just my requests for your postconference brief, essentially, and I understand that some of this information may be confidential -- maybe not this, but other -- but I'd like to have an idea of how much was covered by the 301 to begin with. And then how much was excluded later. And sort of a timeline of when that happened, and how that merges in with your injury arguments. So the Commission will have as good an understanding as it can of your 301 arguments or injury arguments, how they fit together.

MR. DeFRANCESCO: Certainly we'll be happy to provide that.

MS. DRISCOLL: Okay. I was also interested -- and this may be talked about by other staff members -- but you talked about how there's a lag between pricing and performance based on the delayed price effects and model year price negotiations. And I was wondering, is this a situation where -- I've seen industries before where there's one big time of the year when the industry gets together and they provide quotes.

And then there's another time where they provide the product.

MR. VAUGHN: This is Stephen Vaughn. We will certainly -- I mean some of that is going to get into

obviously like how the individual companies do their negotiations and do their business. So we will have to put some of this in the postconference brief.

I don't know if any of the company witnesses want to say anything.

MR. MELKA: Yes, this is Brian Melka from Kohler. I agree. There's obviously some confidential information in there, but in general your thought process in terms of, you know, there's a lag time between when much of the quoting is done. Most of the products that we're talking -- versus when they're consumed. So most of the products we're talking about, again we're talking about ride- on mower products that ultimate the engines go into that are sold typically in the spring and early summer time frame.

So there's a process that has to happen from there in terms of backing up to when that equipment gets built and distributed and when the engines get built, shipped into the OEMs so that they can integrate that. And then there's a time lag ahead of that that is when we're quoting for the next opportunity in business.

So the time frame is not perfectly straight. You know, I think it may be a little different for each of us. But there's roughly a 10- to 12-month time frame between when you're quoting business and when that product is actually going to get consumed by an end user in the

marketplace.

MS. DRISCOLL: Okay, that's helpful. And I want to understand that process, but I also want to understand how that affects -- how you believe that would affect the data that we will be looking at. And this is my last question and this is just sort of a curiosity. On page 30, you said it was difficult to get lost sales and lost revenue information. And that rather surprised me -- in your footnote 63. And that rather surprised me because OEMs are your primary customers I understood, so I was wondering.

MR. DeFRANCESCO: Certainly. So, I think it refers to the way the Commission collects lost sale and lost revenue data itself. They generally know that they've lost a sale. Sometimes it's difficult for them to know exactly when and how and at what price point exactly that they lost it at, so that's what that's referring to.

MS. DRISCOLL: Okay.

MR. VAUGHN: I mean part of what's going on here right now is you can have a situation where you may be dealing with an OEM and you know that you have a certain amount of volume from that OEM, but you don't know their total volume with everybody, alright. So, in other words, they may be giving you "X" and "X" may be close to what you got the year before, but before you know their total you don't know how much of that is going to other people. So,

what they can do is they can sort of say, okay, we know, generally, the size of the market and we see what's going on with imports and therefore we know that we're losing market share; but tying all that back to particular OEMs is complicated. MS. DRISCOLL: Actually, I do remember I do have some questions related to the opening. And I suppose this may be obvious, but you know there was some references to Briggs & Stratton and allegations about selling to MTD that I would like to see you respond to in your post-conference brief and also the Kohler quality questions. I'm just saying I recognize that you recognize that those are --

MR. MELKA: We look forward to doing so. Thank you.

MS. DRISCOLL: I'm done.

MS. CHRIST: We'll turn to Cindy Cohen, the economist.

MS. COHEN: Good morning. Thank you for the testimony this morning. It was very helpful. I do have some questions. The first is a follow up to the questions that Karen just asked to the extent -- I guess first for Kohler on the quality issues. Would Kohler like to respond publicly to the allegations made in the opening?

MR. DeFRANCESCO: Certainly, so I'll start and maybe Brian Melka can jump in. Obviously, we will be

responding in the confidential fashion in the post-conference brief. We believe Kohler's quality is just as good as anyone else's quality and there aren't difference there. With respect to, as I said earlier, the certification issue that involves engines that were produced long before the period of investigation. It had no affect on pricing during this period of time and it has no affect on either current performance in their data and we'll explain that more in the post-conference brief.

MS. COHEN: Okay, thank you.

MR. MELKA: I think Robert said it very well on our behalf. I think specific to the emissions information, which we can certainly share, I think it's not only now, but even during the period of some non-performance around our testing criteria that impact never impacted the quality, performance, durability, or usefulness of our engines as they were put into covers.

MS. COHEN: I guess a more general question on quality is how does quality compare among the different engine manufacturers -- Chinese, the U.S. producers, other suppliers?

MR. MELKA: Again, we believe our quality is, from a Kohler perspective, is on par with the industry. And I think that's what makes this even more challenging and more of an issue for us is that we view many of these

Chinese engines as being actually fairly good quality engines. So, they're not competing in the marketplace on a lower quality type of engine. They are producing an engine that we believe is pretty good, but they're producing it and selling it at dumped and subsidized prices that are just too far below what we can bear. And so, we wouldn't look at them as being materially different classes of engines. In fact, they're very, very similar, but at 30 to 40 percent lower price.

MR. VAUGHN: I just wanted to say from my perspective and I'm not going to go to the factual issues, but just kind of in terms of how you guys ought to be thinking about it. It's sort of an odd argument for them to make because to me what they're saying is that we're buying these engines and presumably they're going to argue that China is providing them some sort of service or some sort of benefit that they aren't getting from domestic producers. And yet, they're paying these incredibly low prices that are far below the prices that you can get from an actual market-based company.

So, to me, it kind of goes to the fundamental, sort of irrationality or non-market quality of what is happening in the marketplace and I think that is you know very consistent with what we're telling you, which is that obviously people can motivated for whatever reasons they're

motivated for, but if you're telling us that you're doing this for non-price reasons, then we would expect to see you paying even higher prices for the Chinese goods and that is not at all what is happening.

MS. COHEN: Okay, thank you. One of the other arguments made in the opening by Respondents was that Briggs & Stratton has refused to provide certain features in their engines. I didn't get the whole phrase down, but it was a certain type of fuel-injected engine.

MR. ORAVA: As I mentioned earlier, we'll certainly address that in much more detail in our post-conference brief. And obviously MTD has a very narrow view of the market and they only have their perspective, but to the extent that David would like to make any general comments I'm sure we'd appreciate that.

MR. RODGERS: I would say this; we make our technology available to all of our customers. The only time we are not able to do that is when we co-develop certain products or certain features with some of our OEMs. In addition, we do have -- well, as I said, when we co-develop it, we cannot -- it's not only our technology and we need to keep that to the customers that we co-develop it with.

Now, having said that, many times we'll take innovation or features to our customers that we have spent a lot of time, effort, and money investing in and what they

will tell us is that's a nice feature, but what we're really interested in is a lower price of your engine. And that's part of the issue here is that even though we've come up with new features in order to give something -- people something that's new and different price seems to be the top of mind every time that we talk with our OEMs and it's because they're getting lower prices, subsidized prices from Chinese competition.

MS. COHEN: Regarding the products that you co-develop with your customers, is that a large segment of your sales?

MR. RODGERS: Typically, no, because those features are typically limited to only a few different skews that might be for sale in the market and so they can be some higher-volume skews in certain cases, but because it doesn't go across a wide range of skews for any individual OEM or retailer typically not individually, no.

MR. HUDAK: I want to address some of that opening as well. So, the features that MPD's counsel brought up in the opening; specifically, electronic fuel injection or EFI and electronic governing, we have available on a vast majority of our products and we have offered that to them, as well as to develop other lines of our products for them. In all cases they have refused that based upon price.

MS. COHEN: Okay. And then, lastly, regarding the arguments raised this morning was about Kawasaki, who's not here, and where does Kawasaki participate in this market? Are they producing the same range of products as Kohler and Briggs & Stratton or do they compete in part of the market? Where do they fit in?

MS. RODGERS: Kawasaki is, as many people are aware, a Japanese-based producer. They do make the engines that are in this case in the United States, but as a Japanese company, typically, their range of product is higher end, both in terms of quality and in terms of price point. And so, they typically charge a premium for their products in the market. They are predominantly located at that higher end and most of their engines goes into commercial equipment, but they do have a certain portion of their engines that are sold in consumer equipment as well. Typically, it's going to be at the upper price points of consumer equipment.

MS. COHEN: And the commercial products would still be covered by this scope, right?

MR. RODGERS: That is correct.

MS. COHEN: They mentioned -- Respondents mentioned something about Kawasaki temporarily ceding the market share to Kohler and Briggs & Stratton during the early part of the period of investigation. Would anyone

like to address that?

MR. VAUGHN: I think we can address that you know more in the post-conference because that's kind of very specific. That's a very specific example.

I would like to make one other point kind of based off of what Mr. Rodgers just said. You know, obviously, I think the testimony -- whatever the situation is with Kawasaki, I think the testimony here is that these producers that are before you really do make the whole range of this product. And that they have people and jobs and factories that really make finished engines all day, every day, and they need to make that full range. And so, if they are losing a big section of that market, then that's sort of what the testimony here is that they are losing a big portion of that market. That starts to have very significant impact on their capacity utilization and that's a big part of our theory of this case.

So, to the extent Kawasaki may only be playing in a part of that, that doesn't necessarily go to the issue of the injury that the vast majority of the domestic industry is suffering.

MR. MELKA: I just want to add, and obviously can't speak on behalf of them, but I'm not aware of any of us actively just conceding market share. You know we are actively engaged in competitive and fair trade with our

domestic competitors all the time and you'll see movements amongst the domestic competitors what's really at issue here is that in a very slow -- stable, but slow-growth market, regardless of those moves that may happen in between these fair competitors we have a very unfair set of competitors in the market that are surging in their volumes at very, very low prices and so, that's really the issue we're trying to address. There's always going to be I think domestic competitive movements that happen. They happen year in and year out and we're welcome -- you know we welcome that opportunity to compete fairly with them.

MS. COHEN: To the extent that you know, do you know if Kawasaki had some production issues during the period, not your companies?

MR. RODGERS: They, in the past, had production issues that were temporary in nature that, to my knowledge, should not have impacted any of the volumes during the period that we're looking at in this case.

MS. COHEN: So, that was prior to our period?

MR. RODGERS: It's been several years, so I cannot confirm that for sure.

MS. COHEN: Okay, thank you. Do the OEMs, generally, have a qualification process for their engine suppliers and if so, can you describe how that works?

MR. BROWN: So, we do work very closely with our

OEM partners to qualify our engines with them. So, we actually have on site staff, what not, that can help our OEMs qualify that -- heat testing, cold testing, a lot of different things. Field testing is usually done by our OEMs, so what typically happens, though, is that they'll qualify our engine, for example, on a tractor. And they'll put that tractor into multiple configurations, right? They'll have a Kawasaki powered one. They'll have a Kohler powered one and a Briggs & Stratton and maybe some Chinese-engine powered ones, so in any configuration they typically will do that testing, so they're easily interchangeable between the two.

There are instances where they haven't done the testing on one particular engine and so that would be a relatively fast process supported by the engine manufacturer.

MR. MELKA: I was just gonna add -- Brian Melka from Kohler -- I echo that. In most cases it would be, you know, for the most of the applications that we're talking about across a wide range of OEMs, it's rare for them to single-qualify an engine. It's usually more common--that we see at least--that they're gonna qualify two or more engines within an application, is more common is what we see.

MS. COHEN: I guess for post-conference, if you can address any instances where the U.S. producers have

failed to qualify on any particular engines or with any particular OEMs.

MR. MELKA: We can address that. One thing I'd like to add, too is that typically in the qualification process, pricing is agreed to before they start that. So that's also a big part of it. There are cases where they may choose not to qualify because of pricing levels. That is always discussed and determined ahead of time, and again in a lot of cases, you may not see multiple qualifications when you have one of them that is, you know, significantly lower-priced, and that's typically what we see with the Chinese competitors, at their pricing levels, they may single-qualify that simply because the pricing is so much lower.

MS. COHEN: Thank you. I think Ms. Driscoll kind of asked this question for post-conference, but can you kind of describe the process with selling to an OEM? Like, do they go out to the different engine manufacturers and say, "I am looking for this sort of engine," do they send out requests for proposals. Can you kinda walk us through that process of how that works?

MR. VAUGHN: Stephen Vaughn, we will address that in the post-conference.

MS. COHEN: Okay. For Briggs & Stratton, that Briggs & Stratton also produces the mowers, as well as the

engines and I guess, two questions. One is the competition on the engine side with the competitors that are also with your mower competitors and how that affects your sales. So something respondents brought up in the --

MR. RODGERS: Dave Rodgers, Briggs & Stratton. We do have our own lawnmower brands that include Snapper, which was mentioned in some of the opening comments today. We do not attempt to sell lawn mowers to the retailers which move a lot, most of the equipment that we're talking about today, in terms of riding lawnmowers and zero-turns. So you will not find our brands at the major retailers that we discussed today. You will find them in our dealer networks and it represents only a couple of percent of the entire market.

Secondly, in terms of the Snapper brand that was brought up, you will find the Snapper brand on certain -- as well as another brand that we own by the name of Murray, that is sold at Walmart. And MTD is one of the actual OEMs who manufactures this equipment on behalf of Walmart. So we license our brands to Walmart, they make the decision as to what OEMs they are going to use in order to produce that equipment. And MTD has been in the position of actually manufacturing that equipment for Walmart. So while it's been our brand name, they've made the equipment for Walmart in many cases, as well as they have manufactured that

equipment for us for sales in certain regions around the world as well.

MS. COHEN: Sorry, I have a long list here. I tried to narrow it down a little bit. Have there been any -- who are the major OEMs in the market and have there been any changes in the OEMs over the POI?

MR. RODGERS: I'm sorry? Could you repeat the question?

MS. COHEN: Who are the major OEMs that are using these engines in the U.S. market, and have there been any changes in the firms? New entrants, firms exiting?

MR. RODGERS: Dave Rodgers, Briggs & Stratton. The major OEMs that are in this market include MTD, John Deere, and Toro and Husqvarna. The only significant change that I would note over the period in question is that Husqvarna over time has made, not only Husqvarna-branded equipment, but they have sold, or produced and sold under a number of different private-label brand names over time.

Over the period in question, they've recently announced that they are going to exit producing and selling of equipment that is private-label branded and they will be only focusing on Husqvarna-branded equipment moving forward. What that is done is that's created a situation in the market where there's really only one producer of any private label riding equipment that's in the market, which is MTD.

John Deere does not make anybody else's equipment except for John Deere-branded equipment. Toro only produces and sells under their brand names of Exmark and Toro.

MS. COHEN: And that -- I'm sorry? Did you have--

MR. MELKA: I was just gonna add a clarifying point. This is Brian Melka from Kohler. And you know what Mr. Rodgers has shared is accurate. I think the one thing to consider with any of those moves that may or may not have happened in different brands, etc., is that the overall market demand hasn't changed.

So the demand for consumers, there's certainly seasonality in our business as we've discussed, but the overall demand, which is highly correlated with housing starts in the U.S., the demand hasn't changed, it's stable, it's growing, and so while there may be shifts in brands and stores and manufacturers, at the end of the day, the demand for product that you and I might need for our home, has not changed. It may have shifted around.

And therefore the demand ultimately for a domestic engine really has not changed, except that we've seen a significant influx and surge of Chinese competitive engines at lower pricing. And so the topline market numbers haven't shifted just because some of the OEMs have changed. But what we've felt obviously has changed.

MS. COHEN: Your responses bring up two questions. One is on private labels. Is there private labeling of engines, as well as the mowers?

MR. RODGERS: We generally sell our engines under the names of Briggs & Stratton or Vanguard Engines. Vanguard is our more premium commercial nameplate. The engines are also covered by the case that we're discussing today. Generally speaking, Briggs & Stratton brand is found on all of the engines that we sell with one except to that, which is the engines that John Deere are branded John Deere, regardless of the engine manufacturer.

MS. COHEN: And for Kohler?

MR. MELKA: This is Brian Melka. I'd say the situation is very similar for us. The vast majority of the products that we sell will carry the Kohler brand, even ones that may be less branded, will still carry the Kohler name on those products at some point. I think the thing to look at is, the respondents may talk about private labeling and the opportunity to leverage their brand.

I think the challenge in that scenario is one, we know what happens in the industry. Secondly is that if that's an option that somebody would like, then why aren't they paying more for it? Because there's more value in that. And the Chinese do not have a brand, and so they will typically come into the market under the OEM equipment

brands, again at much, much lower price points.

MS. COHEN: Okay, thank you. My next question is on warranties and what sort of warranties are offered by the U.S. producers and how that compares to the warranties offered by the Chinese producers?

MR. MELKA: I'll speak on behalf of Kohler. I think Briggs is fairly similar. This is Brian Melka again. We offer a comprehensive warranty on our products. We administer that through a combination, in some cases through our OEM customers. They may actually manage that and/or through our independent service network. So the aftermarket side of that is done. We expect that our Chinese competitors have similar warranties. I mean they have to warranty their product in the marketplace.

We don't think our quality is at a differentiated level that we're at an advantage or disadvantage from that perspective. But the reality is, the engines are coming into the market so cheaply that instead of servicing and repairing a lot of those engines, you can simply throw them away and put another one on, and that's gonna continue to proliferate the usage of those engines in the marketplace and in fact we've had our OEM customers tell us exactly that, that one of the reasons they really like these Chinese engines is because they are so cheap, if something happens to them, they can just throw them away and put something

else on.

In reality, as I said before, we don't actually see the quality level being that significantly different. What we see is a pricing level that is that significantly different.

MS. COHEN: Thank you. Are there engines from nonsubject countries entering in the market and who are the major players?

MR. RODGERS: Dave Rodgers, Briggs & Stratton. There is a small number of engines that are coming in from Japan that are produced and sold by Honda. Other than that, I'm not aware of any others.

MS. COHEN: Thank you. I'm gonna stop at one more question and that's, if you could discuss the discounts and rebates that are offered by U.S. producers, including the rebates that are offered to the OEM customers, I understood from the petition? A little more detail on that.

MR. VAUGHN: Yeah, this is Stephen Vaughn. I think we're gonna get into that more in the post-conference brief, because that goes more to relations with individual customers, unless Mr. Rodgers wants to say anything more generic. We'll just talk about that in the post-conference brief.

MS. COHEN: Great. I look forward to it. Thank you.

MS. CHRIST: We'll now turn to the industry analyst, Jeffrey Horowitz.

MR. HOROWITZ: Good morning, everyone. And as echoed by all my colleagues, thank you so much for taking the time today. This has been really informative. So about half of my questions have been answered by my colleagues, so this'll be a little briefer. But I do have a few questions. Starting with Mr. Hudak's presentation into the manufacturing process, I thought was really informative.

But one question that I have branching out of it is, are the processes at all different? So I'm talking specifically between the two domestic producers here, anything that you might know about Kawasaki or maybe, more importantly, the imported products. Are there any differences into their physical composition, into their manufacturing processes, into their uses, of the end use, anything like that would be really informative.

MR. HUDAK: Yeah, thank you, Mr. Horowitz for the question, Eric Hudak at Kohler. For the end uses, no, I mean these are -- we're talking about one type of market that these products are going into predominantly, these riding lawnmowers.

In terms of the manufacturing processes, it may or may not be different. You know, I can certainly speak for Kohler, but I believe that, you know, we have

world-class engine manufacturing facilities. I believe Briggs & Stratton has world-class manufacturing facilities and Kawasaki has world-class manufacturing facilities. You know, certainly we've done to our, to the greatest degree possible, putting in as many quality checks through that entire process as possible.

You know, many pictures of those things are proprietary to be able to show, etc., but we do quite a bit of work to be able to make -- you know, automation quality checks, work constructions, you know, extremely robust to be able to make a high-quality product every day.

MR. RODGERS: Dave Rodgers from Briggs & Stratton. As I noted earlier, for Briggs & Stratton, we're pretty vertically integrated, where we do the die-casting, the machining, as well as the assembly.

My knowledge of some of the engine producers that are located in China, is that they are much less vertically integrated. You'll see many of them only do the assembly operations, and so they are buying parts and merely assembling them. As time has gone on, some of them have gotten into more machining. I do not know if any of them are completely vertically integrated, which is really important in understanding our business.

Because we've made these large fixed capital investments, the volume that we need in order to keep these

plants going at an economic profit, is really critical. And to the extent that, you know, the volumes in the industry have been flat, but we continue to see the Chinese imports that are low-priced that are being dumped going up.

It's really putting us in a potentially worse position or vulnerable position moving forward, that if left unchecked, is going to potentially impact hundreds, if not thousands of U.S. manufacturing jobs. And so I think it's really critical to understand that fixed cost investment and the impact that these dumped engines could have on that investment, as well as the employees that work in our factories.

MR. HOROWITZ: Thank you very much. One follow-up question about the end use lack of differentiation, so does that mean I just want to sort of drill down into the interchangeability. If I'm an end user consumer in my home life and the engine in my lawnmower breaks, does that mean that replacing a Kohler engine, if that was the original engine in my lawnmower, cannot be replaced with a Briggs & Stratton or a Kawasaki or an MTD, so on and so forth or are their differences, even if it's just in like physical characteristics that make putting a different engine in my existing lawnmower difficult?

MR. HUDAK: There's actually a very robust repower market that where you can if you have a failure of a

Briggs & Stratton you can replace it with Kohler and vice versa. There are nuance differences to hooking that up, maybe a slight difference in the wire harness, et cetera.

I jokingly said with our counsel to my right here that if you give me a wrench and an hour I can change out any engine in the industry, so it's absolutely something that can be done and is done frequently.

MR. HOROWITZ: Thank you so much. My next question -- and I think we've established here that you guys are primarily interested in the assembled engines, but I just want to make sure that I understand. In the petition in a couple of different places you state out unfinished and finished or assembled and unassembled. Is there any difference between those things? I've worked with engines in some end uses that I've never heard that distinction before, so I just want to make sure I understand if there is a difference.

MR. DeFRANCESCO: But in all practicality, no. We were using those terms interchangeably in the petition to describe the sub-assembly that we want covered, as Mr. Vaughn had talked about for reasons of circumvention and evasion, primarily.

MR. HOROWITZ: Okay, so anything that is not an engine ready to go on a lawnmower is either unfinished or unassembled, the terms are --

MR. DeFRANCESCO: Correct, we were using them interchangeably.

MR. HOROWITZ: Okay. Okay, so next, in your scope you identified that engines covered by the scope normally must comply with and be certified under EPA Air Pollution Control Title 40, Chapter 1, Subchapter U, Part 1054, but then underwards it says "Engines that otherwise meet the physical description, but are not certified under such are still under the scope of the investigation." Is there a concrete example of those? Do either of you produce an engine that doesn't meet that specification? Does the imported product not meet that specification? I'm just trying to figure out what the inclusion there is.

MR. DeFRANCESCO: I'll start and the panel can jump in. The inclusion of that language was to, again, address possible issues of evasion or circumvention where someone might produce the engine, ship it to the United Stated, and then certify it later and that was what we were concerned about when we included that. I'll let the panel answer where there are any instances of that.

MR. MELKA: We would not intentionally build an engine that was uncertified for domestic consumption. There are cases, understanding that there are different regulatory environments around the world, so there are some engines that we may export either to unregulated or different

regulated countries that we may or may not EPA certify; but again, this is the primary market. This is we estimate more than 85 percent of the market for the engines that go into this mowing equipment are here in the United States and would all carry an EPA and typically carb certification as well.

MR. HOROWITZ: One follow-up question that I have that I was going to ask at the end, but Mr. Melka just touched on it. Early on in your testimonies this morning -- I believe it was Mr. Rodgers who spoke about being unable to increase exports and it just sort of made me thinking as the industry person. What portion of your production is consumed in the United States and then what is being exported and if you don't even mind telling me sort of key export markets. If that's a post-conference question, that's fine, but I would just be interested in that information.

MR. RODGERS: Most of the production ends up in the United States, 80 percent, approximately. To the extent that it goes to other markets, the second largest market would be the European market, and then after that would be the Australian market, but those are significantly smaller than the United States.

MR. MELKA: I'm sure the 85 percent number is consistent. The one thing that I would add is that you know

China is not a market for this product. It really is not. There really is almost no domestic consumption of riding mowers in the Chinese market to really any measurable numbers and so the target for these engines that are being produced in China is the U.S. This is where they are going because this is where the market for those is and there really is -- for vertical shaft engines in this classification there really is no domestic China market for them to serve.

MR. HOROWITZ: Thank you. My last question is I want to touch on the Section 301 tariffs a little bit more and Karen has already asked you at length for a post-comment on this, so if this needs to get rolled into there I totally understand. But as I understand it, the maximum valuation of the petitions are -- I'm sorry -- of engines that are exempt from China 301, as per the exclusion request requested last year, are engines that do not exceed $180 in value. So, my question is sort of three pronged. One, to the best of your knowledge, how does that differ from what the average imported price is for these engines that are being imported. Two, if there's a variance, sort of what share is exempt and what share is not exempt. And then, specifically, looking at it from sort of a trade data perspective especially since Mr. DeFrancesco is telling us that the official trade data is sort of where he leans on

this. As I understand it, only certain HTS codes are exempt, so it would be interesting to know sort of which HTS codes are the majority of trade and whether or not those are exempt and which aren't, that sort of thing.

MR. RODGERS: Certainly, we'll be happy to answer in the post-conference brief, but just to touch on it, the actual vast majority of the product that's coming in that's exempt that is actually covered under one specific HTS code and that reflects the overwhelming majority of what's in the HTS code. I'd also point out that the AUV distinction really has two effects. One, it's actually relatively consistent with the existing AUVs of the imports and it really simply incentivizes the subject imports to price as much of their product as possible below that, so it's actually incentivizing further underselling in some ways, but we'll be happy to expand on that in the post-conference brief.

MR. HOROWITZ: That is everything that I have. Thank you all for your time.

MS. CHRIST: Thank you. And we'll turn to Betsy Haines, the Supervisor/Investigator.

MS. HAINES: Thank you very much. The questions I had were all asked. I appreciate the helpful testimony and the helpful answer to staff questions. Thank you.

MS. CHRIST: Thank you. I'll just check and see

if there's any follow up.

MS. DRISCOLL: I have two follow-up questions. There was some testimony in your opening, I believe, perhaps by Mr. Rodgers, but it could've been Mr. Melka, that there was a facility in Wisconsin that was closed. Perhaps it was yours, okay. Perhaps you could comment on why it was closed. You could do it in your post-conference brief, but I would like to have more information on why that facility was closed.

MR. MELKA: Yes, we'll be able to provide you know the detail around that. It is a closure we announced in late 2018 within the timeframe of this and one of the primary drivers was the decreasing in volume that we were seeing, but we can get into certainly more detail around that.

MS. DRISCOLL: Okay. The other one was there was some testimony about customers telling you your prices were too high -- if you could comment on that and the importance of those customers, in other words, not just the name -- if you could provide us the customer names and how important they are to your sales. I expect that to be confidential.

MR. BROWN: That is confidential, but it is a generality that we've made about many of our customers and they way that they approach us with negotiating.

MS. DRISCOLL: Thank you.

MR. VAUGHN: And we will provide more detail in the post-conference.

MS. CHRIST: Thank you. I would like to reiterate the gratitude of my colleagues for all of you taking the time and also being knowledgeable enough to step in when your colleague has got the flu so that we can all benefit from the information. So, do express our apologies he couldn't make it and hope he feels better quickly.

Like Betsy, I do not have a lot of follow-up questions. I did want to touch on -- I wanted to go back to the size of the engine, the small and the large. I think it was mentioned that that small one was around 150 to 160 and then the ones that are scope are 225 to 999. Are there any in between 160 and 225?

MR. RODGERS: There are engines produced that are between 99cc and 225cc that do not go onto any of the equipment that we discussed this morning, such as riding lawnmowers or zero turns. Those engines are used in a variety of applications, the largest of which would be walk-behind lawnmowers.

MS. CHRIST: I'm sorry. And the walk-behind lawnmowers they're the 150 to 160?

MR. RODGERS: Yes, engines that are within that entire range -- engines in that entire range, 99cc to 225cc,

can be used on walk-behind lawnmowers. Yes.

MR. HUDAK: My comment are on the 150 to 160cc is that is kind of the center of that market, but as Mr. Rodgers explained, that 99 to 224cc range is the entirety of what we'd consider a walk-behind engine market.

MS. CHRIST: Okay, so just to confirm that I understand, there is that range from 99 to 225, but 225 is the distinction for the ride-on versus the push-behind?

MR. HUDAK: 224 would be the top of the walk-behind market. 225 would be the beginning of the EPA Class 2 and what we consider the riding engine market.

MS. CHRIST: Thank you. So, there was a discussion of Kawasaki's product as being a higher quality range and therefore primarily destined for -- and also destined for commercial use. Could you clarify what aspects or what characteristics of an engine would make it a high-quality engine and/or an engine destined for consumer versus commercial?

MR. RODGERS: Typically, it's going to be in the components that are used within the engine, as well as how the engine is put together. They're built in the same facility, but of higher grade, higher quality components, as well as the -- and the idea behind using the different components is going to be durability and longevity of the engine because typically those are used on products that are

used every day by people who make a living as opposed to more infrequently by consumers or residential users. We also have commercial engines that are made in Auburn and Statesboro. We compete with Kawasaki on all of those engines and we believe that we can compete very well up and down the entire line. Where we can't compete is where we have the lower-priced dumped Chinese engines coming in that make it an unfair and uncompetitive market.

MR. MELKA: In respect to our domestic competitors and ourselves, I would argue that you know between us we have actually very comprehensive and overlapping products from different applications, different feature sets and so I think there's -- you know when you look at what's available in the domestic market there's availability of product to meet every need, feature, and function that a producer might need.

And while we're definitely talking about the Chinese engine manufacturers dumping very, very low-priced product in the market, we're not just seeing that at kind of low-end product categories. We're seeing that across the entire value chain. So, we're seeing it at lower price points, medium price points, higher-price points end product getting billed. We're actually seeing that product coming in across the range of product with consistently lower prices and consistently subsidized prices across the range.

MS. CHRIST: And just whether -- now we're in a post-conference brief -- you just mentioned sort of low, medium, high -- if there's any type of features or specific characteristics of a product -- of an engine that put them in those categories that would be helpful to know.

MR. MELKA: We will. Thank you.

MS. CHRIST: Thanks. And my last question, I think you mentioned that Vanguard is the brand for the premium market.

MR. RODGERS: Yes, we sell under the Briggs & Stratton brand name across a wide range of products that include both consumer and commercial, so we do have commercial series engine that we sell under the Briggs & Stratton brand name. We do have another brand that we've used for many years that also called Vanguard which is primarily used on commercial-grade engines only.

MS. CHRIST: Okay, so that's what I wanted to clarify. So, by premium you're referring to a commercial as opposed to other types of features, either electronic or other innovative features.

MR. RODGERS: That is correct. It's a brand positioning statement that we make.

MS. CHRIST: Okay, thank you. Thank you very much. I appreciate all your time in answering our questions. I'm not very good at asking questions when I'm

hungry, so I do need to take a break. And I'm going to let these other folks kind of tag along with my needs, but not too long. How about if we break and return and reconvene at about 12:15? Thank you.

(Whereupon, at 11:49, a lunch recess was taken)

AFTERNOON SESSION

MR. BURCH: Will the room please come to order. All witnesses on this panel in opposition to the imposition of anti-dumping and countervailing duty orders have been sworn and are seated, and I'd like to note they have 60 minutes for their direct testimony.

MS. CHRIST: Okay, thank you very much. And Mr. Secretary, are there any preliminary matters?

MR. BURCH: There are no other preliminary matters.

MS. CHRIST: Thank you. And I would like to welcome all the panel members. Please begin when ready.

STATEMENT OF JONATHAN T. STOEL

MR. STOEL: Good afternoon, Director Christ and staff. My name is Jonathan Stoel. I'm a partner with Hogan Lovells US, LLP. It's a pleasure to be here with you again. I'm here today representing our client, the Toro Company, and I'm glad to be kicking off this Respondents' panel.

Before you hear briefly from Mr. Schaefer and our important industry witnesses, I just want to offer a few observations for the staff. First is one that is not in my prepared testimony and that is I think there's an inherent, inconsistency in what you heard this morning.

Petitioners seem to be saying this case is all about price -- price, price, price. But then, they also

concede that customer choice, features of the engines and very specific products are different. If that's true, then I would submit to you this case cannot be all about price, price, price. And so, I would encourage you as you listen to the witnesses that have come before you today -- and I think you'll admit that it's unusual to have OEMs come before you in a staff conference and we're very glad to be here with you. I'd urge you to keep that inconsistency in mind because I think it's very important for your consideration.

The second thing, and the Commission staff's good questions touched upon it, is you must wrestle with who is not here before you. I was really amazed to hear any mention of AFA today from the Petitioners. One of the three -- let me emphasize -- three domestic producers is nowhere to be found. We don't have a questionnaire from them. We don't know how they're doing, but you're going to hear a lot about Kawasaki from the witnessed today.

What we hear from, I think, both witnesses and also from indications from the market is that they are prospering. In fact, in 2020, Toro is substantially increasing its purchases of vertical engines from Kawasaki; moreover, Toro previously has asked Kawasaki for additional engines, but Kawasaki has repeatedly informed Toro that it lacks the production capacity to provide those engines. So,

it's really, really important that you hear what Kawasaki has to say, that you consider their data in this case; otherwise, your record is clearly incomplete. And as I said, it's astounding to me the Petitioners would claim that AFA is appropriate against Respondents when one of three companies -- this is a big company in this market -- has not responded to you.

Second, this is not a typical case involving imports from China. We gathered yesterday to discuss the petitions and we thought about this together. First, if you look at the volumes of imports in the petition -- HTS U.S. data submitted in Exhibit 11, you'll see that there was a precipitous drop in imports in 2019. Well, that's the most recent period that you're looking at.

Usually, Petitioners are coming in here screaming about how imports are waiting at the docks. Well, if you look at the import data, the numbers dropped precipitously in 2019. That's one very odd thing. Secondly, AUVs are rising. AUVs rose consistently over the period of investigation. I haven't been in many China cases where you see that before the Commission. Their highest point is in the interim 2019 -- highest point -- and it's not up five cents. It's up significant amounts.

Third, I submit to you -- and I know it requires a lot of additional work from the staff, so I apologize for

the indulgence, but you must examine the rule of non-subject imports. There were some odd mention this morning of, oh, perhaps Honda sells to the United States. Well, I would encourage you to look at what imports from Japan have done over the last two years -- very, very substantial increases in non-subject imports. You must understand what that's doing in the market. Those imports are skyrocketing. Look at the interim 2019 data. And not only are the volumes going up, but guess what, guess whose prices are going down? Non-subject import prices are plummeting. I would submit to you, you must consider who is causing any alleged price effects in the market. If China is going up a lot and Japan is going down a lot that has to give you some pause.

Fourth, and lastly, this is a small domestic industry and a successful one. You're going to hear a lot this afternoon about how inter-industry relations matter. As an example, I mentioned earlier that Toro previously has asked Kawasaki for additional volumes of vertical engines, but Kawasaki could not provide them. As you listen to the MTD and Toro witnesses who will follow me, I urge you to focus on their comments regarding the business practices of the two Petitioners.

Mr. Schaefer mentioned this morning how it's disappointing that one of them has violated U.S. law and recently has to pay a twenty million dollar fine. That's

not the kind of business partner I'd like to have. Secondly, you're going to hear from my witnesses, Mr. Buenz, this afternoon about how Briggs & Stratton has infringed the patents of my client. You're going to hear about a thirty-five million dollar infringement action that has been upheld by multiple courts. Again, that's not the kind of business partner that I'd like to have.

So, I submit to you that if the Petitioners are suffering injury, and we still need that data from Kawasaki to make that assessment. We can't assess whether there's been material injury without a third out three producers. We need that data. But if you're going to look at whether there has been harm, it certainly seems to have been self-inflicted and not due to subject imports. Thank you for your attention. We look forward to your questions.

MR. SCHAEFER: Good afternoon, Director Christ, and members of the staff. Once again, thank you very much for the opportunity to appear before you today. I'm not going to say much on top of Jonathan's remarks for now. Let me rather pass the baton to Steve Trumpler from MTD Products to give you his insight into this market.

STATEMENT OF STEVE TRUMPLER

MR. TRUMPLER: Good afternoon, my name is Steve Trumpler, Senior Vice President and General Manager for MTD Products, Inc., Wheels Products Division. I have been with

MTD for over 20 years. Today my responsibilities include product development, its overall profitability, and the aligning the supply chain with the needs of our retail partners.

With me today are Erik Krueger, MTD's Vice President of R&D and Engine Development. Erik has been with MTD for over 23 years and is responsible for MTD's co-development program with Chong-Ching Xong-Chen, General Power Machine Company, which is MTD's current China-based engine supplier. Also, with me is Ed Griffith, Supply Chain Director at MTD with responsibility for engine purchasing. Ed has been with MTD for over 12 years.

I would like to begin by thanking the staff for the opportunity to testify today and for your efforts in this case. To help accomplish this task and to provide better understanding of some of the information you've been given, I'd like to provide some background about MTD's position in the U.S. outdoor power equipment market.

MTD is a third-generation family-owned company founded almost 90 years ago in Cleveland, Ohio where its headquarters still remain today. Today, MTD is the largest domestic manufacturer of powered outdoor lawn and garden equipment for residential and commercial use. MTD makes ride-on lawnmowers, residential zero turn lawnmowers, walk-behind lawnmowers, and other lawn and garden outdoor

equipment products.

You will see our products in retail outlets such as Lowe's, The Home Depot, Wal-Mart, Menards Tractor Supply Company, and on Amazon, places where U.S. consumers shop every day. In addition, our product are both sold and serviced by over 1300 locally-owned independent dealers. Our well-known brands include Cub Cadet, Troy Bilt, Remington, and Yard Machines. We also private label similar products under the iconic Craftsman trademark and under other brands such as Murray and Snapper.

MTD has kept its manufacturer operations close to its markets and currently has major operations in Willard, Ohio, Martin, Tennessee, and Tupelo, Mississippi. At these locations, MTD employs over 3,000 workers. MTD's other U.S. operations employ another 1500 people across the United States in Research & Development, Sales & Marketing, and Customer Support positions. MDT does not manufacture the vertical shaft engines that are the subject of this proceedings. MDT purchases these engines primarily for riding lawnmowers and zero turn lawnmowers.

MTD believes it is one of the largest consumers, if not the largest consumer, of these types of engines. MTD purchases such engines made in the U.S. from both Petitioners and Kawasaki, who did not join the petition. According to Briggs & Stratton's annual report, MTD is

Briggs & Stratton's largest customer in terms of overall engine purchases. We believe we are Kohler's largest engine customer as well. MTD also purchases such engines from one particular Chinese producer, Chong-Ching Xong-Chen General Power Machine Company, which we refer to as Xong-Chen for short.

In order to understand the market for vertical shaft engines that are the subject of this proceedings, it is necessary to go back to a point in time when Briggs & Stratton, an engine manufacturer, decided to enter the market for finished lawn and garden equipment and became a direct competitor to MTD. Briggs & Stratton today remains a direct competitor of MTD. This circumstance, coupled with the 2008 bankruptcy of Ticomsy which had been a major supplier of engines for MTD placed MTD on the path to develop a more diversified engine supply base. Essentially, in order to provide for MTD's long-term financial health and for the continuity of our business, MTD had to develop a diverse engine supply base that was in no way dependent on MTD's direct competition.

MTD's charter for engine diversity included developing a state-of-the-arts supply chain producing innovative engines that are individually optimized for our products. Several years into our journey MTD identified a foreign engine supplier that met these criteria. Thus, MTD

and Xong-Chen entered into a series of agreements to provide for the joint development of engines that have innovative features, are sold exclusively to MTD, and that are individually optimized for MTD's products.

As part of the joint development agreement, MTD supports product development, engineering, and quality assurance for the Xong-Chen engines. MTD also assists with compliance testing and certification to U.S. standards, including U.S. EPA emission standards. In return, MTD realizes substantial non-price related advantages. Also, unlike domestic engines, at MTD's direction these engines are not labeled for gross horsepower. Managing for gross horsepower is extremely costly. MTD's engines avoids such unnecessary costs and include just the right amount of features for MTD's products at every price point, including innovative solutions such as electronic chokes, electronic governors, and electronic fuel-injection engines specifically designed for MTD's premium products.

With MTD engines, MTD also has more direct control of our quality, warranty, and the consumer experience and overall satisfaction versus relying on Briggs & Stratton and Kohler to represent our brands to our standards. Our experience, especially with Kohler's quality and responsiveness, have not been up to our standards.

From MTD's standpoint, MTD co-develops engines

that are not directly or easily interchangeable with engines produced by the Petitioners. Regardless, MTD believes that upon further investigation, the Commission will find that Chinese engines, generally, and MTD's Xong-Chen engines, specifically, are not the cause of the harm claimed by the Petitioners here. There are a number of market factors affecting the outdoor power equipment industry and the Petitioners.

Changing consumer preferences is one factor. MTD's proprietary consumer market research, which was updated in 2019, continues to highlight trends that pose additional challenges to the sales of the type of outdoor power equipment that utilize the type of engines that are at the subject of this proceeding. This includes an accelerating shift away from a do-it-yourself toward a do-it-for-me consumer mindset, which has also shifted demand away from residential riding lawnmowers toward the commercial landscape.

Research shows a growth of do-it-for-me as a percentage of those responsible for lawn care has increased from 26 percent to 35 percent from 2013 to 2019. Not surprising, market research also shows that the commercial zero turn motor shipments significantly increased over that same time period, while the market has seen an overall steady decline in shipments of residential riding mowers.

In fact, it has been suggested that the sale of every incremental commercial mower results in the loss of three to four residential lawn tractor sales.

Housing market trends which show a growing movement to more urban centers and delayed first home ownership are also impacting growth in the residential lawn and garden business. Trade uncertainty is another factor that has resulted in significant fluctuations in the market for vertical shaft engines.

This includes the effect of Section 232 tariffs on steel and aluminum, and the Section 301 tariffs on goods from China. Tariff turmoil, since its inception, has caused prices to rise.

For example, riding lawnmowers' prices have risen in some cases by $200. And the demand has fallen accordingly. The seasonal nature of our outdoor power equipment industry and the timing of the various tariff actions should cause the ITC to exercise some caution when interpreting the purchasing data as presented by the Petitioners.

As the market for commercial lawnmowers has grown, not all domestic engine suppliers had the capacity to capitalize on the growth. Both Briggs & Stratton and Kohler were temporarily able to take advantage of the growth. Kawasaki has since expanded its U.S. manufacturing capacity

and its strong brand and premium quality have enabled it to regain market share at the expense of Briggs & Stratton and Kohler.

Although today the market for battery and electric powered ride-on lawn tractors is small, this trend is coming. As a point of reference, battery-powered walk-behind lawnmowers now account for over 20 percent of the walk-behind mower market, while in 2015 battery-powered walk-behind mowers only accounted for roughly 8 percent of that market.

In addition, new regulations such as California announcing planned regulations intended to provide -- or prohibit, excuse me, prohibit sales of gas-powered riding lawnmowers in 2026 will negatively impact the growth in the residential lawn and garden business.

MTD expects these trends to continue and even accelerate in the future.

In the fact of all of these factors, which collectively point to a declining market in gas-powered residential lawn and garden products, MTD's purchases of vertical shaft engines from Briggs & -- excuse me, Briggs & Stratton and Kohler has remained largely unchanged. In fact, in 2018 MTD's purchases of these engines from Briggs & Stratton and Kohler actually increased.

To the extent MTD's 2019 purchases from the

Petitioners decreased, it was for reasons that MTD will address in its confidential submittals to this Commission.

Under all of these circumstances, it cannot be said that Briggs & Stratton or Kohler's domestic production of these engines has been harmed by MTD's purchases of engines from Zon Chen.

We also ask the Commission to consider the implications to MTD, the outdoor power equipment industry, and the consumers who are benefitting from new, innovative solutions developed by MTD and Zon Chen, by forcing MTD to source engines from either their direct competitor or a challenge -- quality challenged supplier.

Thank you, and we'll take any questions.

STATEMENT OF BILL BUENZ

MR. BUENZ: Good afternoon, and thank you for the opportunity to appear before you today. My name is Bill Buenz. I am the Commodity Manager for Engines at The Toro Company, and I am in charge of leading supply strategy for engines, including those that are used in our lawnmowers. I have held this role at Toro's headquarters in Bloomington, Minnesota for eight years.

We appreciate the Commission's examination of this important industry and its attention to U.S. jobs and manufacturing. The Toro Company is an employer of approximately 7,000 hard-working Americans and a

manufacturer of innovative solutions for the outside environment, including turf and landscape maintenance and snow and ice management.

We are proud to be a dependable supplier of outdoor power equipment for customers serving diverse sectors, including golf, professional contracting, agriculture, and residential. Our products are sold throughout the United States and in more than 125 countries around the globe.

Vertical shaft engines are an important component in our riding lawnmowers. Toro sources its vertical shaft engines from both U.S. and foreign suppliers. In making our engine sourcing decisions, we are driven by Toro's three guiding principles:

First, our purpose is to help our customers enrich the beauty, productivity, and sustainability of the land.

Second, our vision is to be the most trusted leader in solutions for the outdoor environment every day, everywhere.

Third, our mission is to deliver superior innovation and to deliver superior customer care.

I would like you to focus your attention on how our third guiding principle, Toro's ability to deliver superior innovation and customer care, has impacted our

sourcing of vertical shaft engines. Toro sources these engines from both U.S. suppliers -- Kohler and Kawasaki -- as well as from a Chinese producer, Loncin.

Toro also has a healthy and important relationships with Briggs & Stratton, focused on engines for walk mowers and commercial equipment. However, Toro does not purchase the engines covered by these investigations from Briggs & Stratton because Briggs is a direct competitor of Toro in the riding mower segment.

To be blunt, for Toro to work with Briggs to improve its vertical shaft engines would be like San Francisco giving Patrick Mahomes an additional wide receiver threat in the Super Bowl last Sunday.

Further complicating our current relationship, Briggs has infringed certain patents controlled by Toro. We have been awarded an initial judgment of $35 million in the litigation, which Briggs has now appealed.

Toro has been a long-standing purchaser of Kohler's vertical shaft engines. Regrettably, however, Kohler has not offered us the innovative solutions sought by Toro's customers in the residential market for riding mowers. We have also been concerned that Kohler has not consistently met Toro's high standards for customer care.

Finally, Kawasaki is the premier manufacturer of vertical shaft engines for riding mowers in the United

States. Toro has long purchased these engines from Kawasaki for our high-end products. We value Kawasaki's commitment to quality and to helping us meet the needs of our customers. Notwithstanding, Kawasaki has not been able to fill Toro's demand for vertical shaft engines due to capacity limitations.

Accordingly, faced with limited options to source the engines in the United States, Toro sought six years ago to diversify its supply. Specifically, Toro decided to source a portion of our vertical shaft engines from a Chinese producer, Loncin. Our partnership with Loncin has enabled Toro to better support its mission of superior innovation and superior customer care.

Over the past six years, Toro has built a relationship with Loncin in order to meet the needs of our customers. To start, Toro, not Loncin, handles the engine warranty claims with respect to the vertical shaft engines manufactured by Loncin.

U.S. engine manufacturers, on the other hand, manage warranty service claims themselves. Our ability to manage customer warranty claims as the OEM gives Toro greater control over customer experience, and her or his perception of the Toro brand.

If an engine breaks down, for instance, we would prefer to assist a customer directly, as opposed to waiting

for one of our engine suppliers to act and then needing to follow up to ensure that each customer has been treated well.

Unfortunately, this strong preference is informed by Toro' experience. Our customers have repeatedly complained about lack of warranty responsiveness by certain U.S. engine manufacturers over recent years.

Furthermore, unlike Toro's arrangements with its U.S. suppliers, Toro is able to dictate and enhance design elements through its participation with Loncin. Loncin then implements -- I'm sorry -- Toro has dedicated U.S.-based engineers that develop innovative solution that Loncin then implements in its Toro-branded engines.

Our partnership has thus allowed for improvements in engine power, convenience features, engine life span, torque response, and other key characteristics that distinguish our brand.

Toro is also able to employ supplier quality engineers who are on-site at Loncin manufacturing facility and ensure that the supplier is providing a reliable and innovative solution for our customers.

Relatedly, Toro's partnership with Loncin supports our ability to deliver innovative solutions. Toro private labels all engines sourced from Loncin and has invested substantially in equipping them with features that

are exclusive to Toro.

Our Loncin-sourced engines, for instance, have patent-pending self-cleaning air filter housing. This housing incorporates a unique dual-element air filter and sloped floor designed to protect the engine from debris, specifically in zero-turn radius mowers.

These private-label Toro engines also have a quick-drain oil hose which allows users to easily drain oil without using tools. These are just a couple of examples of the innovations that our partnership with Loncin has produced.

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

STATEMENT OF ROSS HAWLEY

MR. HAWLEY: Good afternoon, and thank you for the opportunity to provide testimony today. My name is Ross Hawley, and I am the Director of Marketing for the residential and landscape contractor division at The Toro Company. I have been with The Toro Company or its subsidiary Exmark since 2007. In my role at Toro, I lead product strategy, new product development, marketing communications and consumer insights for our residential and landscape contractor customers. My responsibilities cover the products within the scope of these investigations.

I want to follow up on Bill's comments by

describing the overall market for riding mowers, the primary driver of the demand for vertical shaft engines at issue in these investigations. Toro and other zero-radius turning mower manufacturers are fortunate: Demand for these mowers has grown since the Great Recession and continues to grow. We thus have required larger volumes of vertical shaft engines to meet our needs and, as a consequence, have become increasingly concerned about the limited diversity of supply for vertical engines.

At the same time, our customers increasingly want more sophisticated products. This is why Toro focuses so heavily on innovation, put simply, we want to serve our customers with creative problem-solving solutions. For example, Toro is proud to maintain a center for technology research and innovation. We currently have a partnership with Virginia Tech to research GPS spray technology, to precisely spray targeted areas and improve groundskeeping efficiency.

Furthermore, we have partnered with the University of Minnesota to develop a unique autonomous "cowbot" lawn tractor. When fully operational, this self-driving machine will automate one of the more tedious chores for farmers, mowing down weeds in pastures after cattle have grazed, while also reducing the use of fossil fuels. In sum, we seek to be leaders in developing creative

solutions to meet our customers' needs.

Our partnership with Loncin has supported our ability to provide innovative solutions, specifically for zero-radius turning mowers. We have developed vertical shaft engines for our mowers with twice the EPA useful life in a comparable engine. We have developed an entire line of blue feature items, they are blue-colored and show the customer, as well as our retail partners, that they are unique innovations.

We have introduced a quick-drain oil hose, which can drain oil with no tools;

We have developed a self-cleaning air filter housing that keeps debris out of the engine, maximizing filter life and engine performance;

And we have designed and implemented a unique torque curve that better pairs our Toro-branded engines with our application.

These unique characteristics, among many others, help to define the Toro brand and set us apart from our competitors.

Toro's brand is distinguished by our commitment to customer service and product reliability. If a Toro lawnmower breaks down because of a faulty engine, it is Toro's reputation that suffers, not necessarily the reputation of the engine manufacturer. It has thus been

very important to Toro that our partnership with Loncin has enabled us to handle warranty claims as they arise, and to implement strict quality controls. In fact, Toro has taken on several additional costs, including channel and after-market costs, that are not incorporated in the price paid for engines manufactured by Loncin. This is not the case with U.S. suppliers.

Thank you. I would be pleased to answer any questions.

MR. STOEL: Thank you staff, this concludes our presentation this afternoon.

MS. CHRIST: Thank you. We'll start with staff questions and begin with Abu Kanu, the Investigator.

MR. KANU: Thank you, everyone, for your presentation. Definitely very informative and helpful, again, for us to understand both sides of this investigation. I have a few questions for your presentation here today.

I guess I just want to get a better understanding. Petitioners listed the five stages of production in the domestic producers use to produce vertical shaft engines. Does Loncin or other Chinese producers also follow the same five-step stage production process?

MR. BUENZ: This is Bill Buenz for Toro. Yes, they have operations similar to those I've seen at the

petitioners, including vertical integration of machining of components, casting of components, and all the way through the assembly line and everything. So I would say that there's not always gonna be an exact one-to-one comparison of every component, whether it's inhouse or purchased, but there's quite a bit of vertical integration there as well.

MR. KANU: Thank you.

MR. KRUEGER: This is Erik Krueger with MTD. I would also reiterate the same thing that it is very similar with our partner of the process of assembling the engines. Also with vertical integration, as well as purchase components from outside suppliers as well, assembling them together into a finished engine.

MR. KANU: Thank you. Mr. Trumpler, in your testimony you said that subject engines are not exactly interchangeable with domestic engines. In what instances are domestic-produced vertical shaft engine not interchangeable with subject import engine?

MR. TRUMPLER: Thank you, Mr. Kanu. When we look at interchangeability, there are many factors that have to be included in that. Certainly it's how the product is positioned, what are the key components of the product, what brand it sits at? What retail price points? So you have to look at the total portfolio of what comes to market, rather than just taking one component off and putting one component

on.

Today, for example, we use e-governing and electronic fuel injections. The petitioners do not have those at the residential level. They stress that they do have EFI engines, but I believe that that is more of the commercial area and that only MTD, don't wanna speak for Toro in this case, but only for MTD, when we look at our engines from Chongqing, we have electronic governors and we have EFI engines for residential applications.

So it's not possible to take an EFI engine off and put on the same engine and have the same value equation to the consumer. It's the portfolio. And when we look at our total costs, when we look at what it means for the interchangeable, we have to look at the quality of the product, we have to look at the performance of the product and we certainly are very -- safety is one of our standing principles, so we have to make sure that it's safe for the consumers as well.

So understand what they say interchangeably, yes you can use a wrench, probably do interchangeable, but that doesn't mean you're delivering to the brand attributes, as well as the product that meets the specifications that we bring to market with our high standards.

MR. KANU: Mr.Stoel do you want to share your opinion on this interchangeability aspect?

MR. STOEL: We generally support the view of Mr. Trumpler, so nothing to add, Mr. Kanu. Thank you.

MR. KANU: Thank you. My next question's for Loncin specifically. How do you describe the market for engines in China? Roughly what is the size for, if you can speak to that point, what's the size of the Chinese market for vertical shaft engines?

MR. SAILER: I'm sorry. Are you asking what is the size of --

MR. KANU: Yeah, what's the size and what's the demand in China for vertical shaft engines?

MR. SAILER: I'm afraid we're gonna have to address that in our post-conference.

MR. KANU: Generally speaking, my next question goes to the issue of the lag time. Compared to domestic producers, how would you describe the lag time between the order of the -- when you order vertical shaft engine and when it's delivered, what is -- is there a significant difference in the lag time, ordering from a domestic producer as opposed to Lonsin or other Chinese producers?

MR. GRIFFIN: Ed Griffin from MTD. I would say that the lag time from U.S. producers is anywhere between 8 and 12 weeks, depending on the specific lead time. On engines that we get from China, you're probably talking about 60 to 90 days roughly.

MR. TRUMPLER: I would add one comment. You know, when we think about the cost of procuring that inventory for 60 to 90 days, you know, the manufacturers do borne that higher cost, so when we look at just PO to PO as has been referenced, purchase order price to purchase order price, we've heard a lot of conversation by the petitioners, it's all about price. We do have to factor in other elements such as that lead time and do our costs when we look at it from a total cost of service on each engine.

MR. KANU: Thank you very much for your time and response.

MS. CHRIST: We will now turn to Karen Driscoll, the attorney.

MS. DRISCOLL: Thank you very much for all coming here today. I appreciate it very much, we all appreciate it. My first question is whether you agree with petitioners' domestic like product argument, that it's co-extensive with the scope.

MR. STOEL: Ms. Driscoll, this is Jonathan Stoel for the record. I think for purposes of this staff conference, we agree. I think you asked some excellent questions this morning around different sizes between, you know, below 225 and things like that. Clearly petitioners had some reasons why they wanted to establish the scope the way they did, and I think it's important for the Commission

to look at that.

You know, both petitioners have operations in China, and they ship from China. So they ship various products from China, so obviously they had reasons why they decided to carve up the scope the way they did. One other point I think that was raised this morning, by one of petitioners' counsel, it might have been Mr. Orava or one of their other strong attorneys on their team.

But, you know, there is a difference between replacement engines and original engines, and certainly for Toro, that's an important issue. I don't think, at this point, we want to make a domestic like-product argument. But I do agree with petitioners that there is a difference between those products.

MS. DRISCOLL: Okay. The other question I had is, do you -- I don't think they actually said this this morning, but is it your position that Briggs & Stratton, Kohler and Kawasaki constitute the entire domestic industry?

MR. GRIFFIN: Ed Griffin from MTD. I would say yes, they're the U.S. domestic manufacturers.

MS. DRISCOLL: Okay, all right.

MR. BUENZ: Bill Buenz, Toro, yes, I'd agree with that.

MS. DRISCOLL: Okay. I would be wondering -- you heard both myself and Ms. Cohen talk about soft of the quote

and delivery seasonality of petitioner and they're gonna tell us more about that. But I was wondering, do you have -- you know, do you have the same type of conditions of competition in your business that you quoted and then six months later you deliver it, and there's negotiations with a quote stage and possibly later?

MR. TRUMPLER: Steve Trumpler, MTD Products. We would agree with their time reference of about a 10 to 12 month, I believe what they referenced, in terms of when you quote it versus when the consumer will ultimately see the product.

MS. DRISCOLL: Okay. Then I'd put the same question to you. I would like -- this is just a request. To understand that process, but also the effects it has on -- what effects you believe that would have on the data that we see?

MR. HAWLEY: Ross Hawley from The Toro Company. I think we share a similar perspective, maybe some difference in some of the time frames and we can spend more time in that in the brief.

MS. DRISCOLL: I was intrigued by the testimony this morning about the sales, and I tried to make my own sort of sheet of who sells to who, and if I understand this, and you can comment and tell me where I have it wrong, but MTD does not sell to Briggs -- or Briggs & Stratton does not

sell to MTD; is that correct?

MR. GRIFFIN: No, that's -- Briggs & Stratton does sell engines to MTD.

MS. DRISCOLL: Briggs & Stratton does sell to MTD. Is it Toro that does not -- that Briggs & Stratton does sell them to?

MR. BUENZ: We purchase a lot of engines from Briggs & Stratton every year, but not those in the scope of this petition.

MS. DRISCOLL: Okay, all right. All right. So, okay. So Toro is not purchase the subject engines from Briggs & Stratton that are in this investigation. MTD does purchase from both petitioners and Kawasaki, I mean both of you buy from Kawasaki, I got that. All right. So I have it right. Okay.

Do you have any evidence that you could point to us -- you made two points in your opening and later, about quality and about business practices of petitioners. I don't know how much of that is, that you can talk about, is BPI, but to the extent that you can give us something, either e-mails or concrete to present us with that, that would be helpful.

MR. SCHAEFER: Ms. Driscoll, this is Alex Schaefer for MTD Products, we have a wealth of background material on those topics and we'll cheerfully provide those

in our confidential submission.

MS. DRISCOLL: Okay.

MR. STOEL: Ms. Driscoll, Jonathan Stoel for Toro. We'll do the same. Thank you.

MS. DRISCOLL: Okay. I had just a little bit. Oh, and I would like to ask if you could comment on two more things. I believe this is -- MTD has relationship with Chongqing, is that correct? Okay, I have that right. Okay. And that there were extra aspects to the products that you purchase from Chongqing that make it, that you prefer? Could you provide information on those extra attributes of those engines?

MR. TRUMPLER: Yes, I believe we can include that -- we will include that in our confidential briefing.

MS. DRISCOLL: Okay. And then I had a question of, um, is demand part of your analysis? In other words, were you saying that demand -- that the lower, um -- what is your arguments on demand? Let me put it like that.

MR. TRUMPLER: So, thank you, Ms. Driscoll. Steve Trumpler, MTD Products. Our position is that the market -- there's a lot of market factors affecting the petitioners. They're talking about the imports are harming them but in fact there are many factors that are affecting the overall volume. The volume is going to continue to shift from residential to more commercial products, especially as

do-it-for-me, which traditionally, a consumer would do it themselves. But what they're finding is 26% of people, now 35% of people, would rather have somebody do it for them. So, that's where the commercial mowers are growing, and the residential ones are still slightly declining over time. So, when they talk about the volume being harmed because of the imports, there are shifts that are going on in the marketplace that are going to impact their volume and it's important that they -- that we understand that those things are going to continue to affect their business models going forward. Shifts from gas to battery are going to impact their volumes, going forward. So, there's many other factors that we're asking you to consider rather than just looking at one item, we ask you to look at all the different factors that are affecting those.

And it's our belief that the imports are not the primary reason of their challenges. That those factors that we talked about in my testimony are large factors that are affecting their business as well.

MR. GRIFFIN: Real quick ma'am. Ed Griffin, from MTD. I would add to that, that I think you'll find in Kawasaki's data, when they do turn in their questionnaire, and I believe they will, they have seen growth in their engine sales and it's largely related to this do-it-for-me mentality, where they sell -- and I think one of the

petitioners mentioned that they admitted Kawasaki does built a better engine than the petitioners. So, as that shift to do-it-for-me takes place, Kawasaki has seen their sales grow.

MS. DRISCOLL: Alright. Okay, well I look forward to your arguments on that point. The other question is, how has the 301 impacted your, uh, the import levels?

MR. TRUMPLER: May you elaborate on that? Is that question only on engines or on all --

MS. DRISCOLL: It's on engines. Certainly, you can elaborate on that in your post-conference brief. I think that's all I have. Madam Director.

MS. CHRIST: Thank you. We'll now turn to Cindy Cohen, the economist.

MS. COHEN: Hi. Thank you, everyone for your testimony this afternoon. It was very helpful. So, a follow-up to something Karen asked about -- the answer to something Karen asked about the original and replacement engines. Do you agree with petitioners that the replacement engines should not be included in the pricing data?

MR. STOEL: This is Jonathan Stoel. I think we'll take that in our post-conference brief.

MS. COHEN: Okay, thank you. I asked a couple other questions this morning, since we have the OEMs here. So, one of the questions was about the qualification process

for engine suppliers.

MR. KRUGER: This is Erik Kruger. Is there some specific --

MS. COHEN: Just generally, how does the qualification process work and do you quality on specific engines? Is there [an] overall qualification process for suppliers and have any suppliers not qualified on particular engines or overall?

MR. KRUGER: So, there's a couple different things. So, we qualify the engines that we co-develop specifically the engines themselves through -- to meet the EPA regulations on carb as well as any safety standards. We do field testing, starting testing -- a myriad of tests to do that.

In the application, we do also do hot and cold temperature testing. We do field testing. On the purchasing side, the engines are qualified under a very similar process just for the application of the engine into the product.

MR. GRIFFIN: Ed Griffin from MTD. I believe the process that the petitioners described this morning was fairly accurate. We do testing of people's engines on our products. Make sure that they meet our needs as best their engines can. So, I wouldn't materially disagree with what they explained.

MR. HAWLEY: Ross Hawley at the Toro Co. We

always qualify engines onto our platforms. To your question of, do sometimes products not pass the test? The answer to that is yes. We generally work very closely with our partners to improve those products so at a future time they can qualify but -- We find that, even through their own qualification tests, sometimes some of the things, in our experience, are different than what they do so we make sure that we run it through our test also.

MR. BUENZ: Bill Buenz, the Toro Co. Yes, we have specific qualification processes focused on the engine and they're even specific to the actual application of the engine. I know that the petitioners would be quite familiar with our qualification process as well because we've qualified many of their engines together and it is no different than that we -- that the process that we would put through the Loncin produced engine.

MS. COHEN: Thank you. This may be confidential as well and I think Karen asked it somehow but, could you walk us through, to the extent you can in the public setting, and then also in the post-conference brief, the process of going out for a request for quotes or, how do you choose who is going to supply the engine for a given model of mower?

MR. STOEL: This is Jonathan Stoel for the Toro Co. We'll address that post-conference. I did just want to

make one comment again, to be clear. In terms of Briggs & Stratton, Toro buys engines for products that are outside of the scope. But, again, they're a direct competitor of ours, so I think it's hardly surprising that they don't want to share their IP especially given the case that I described earlier and that Mr. Buenz has described. When you have a $35 million judgment of IP theft, you're not going to be sharing your products with your competitor.

MR. TRUMPLER: And we will also share ours -- excuse me, Steve Trumpler, MTD Products. We will also share ours in the brief. There are many factors that we do look at when we look at the purchasing decisions. I talked briefly about those and the interchangeability but will make sure we cover those in completeness in the brief.

MS. COHEN: And also, what share or a kind of more standard product that's not individually developed for the mower versus those specially developed products? If you can provide information probably in the post-conference on that?

This is just kind of a general question: how does the pricing of the U.S. producers' product compare to the Chinese producers' product? Or more, like, more standard sort of products?

MR. GRIFFIN: Ed Griffin from MTD. I would say, in general, we look at the overall cost, not just the PO

price, which I think is the very specific focus of the petitioners. But the overall cost of the engines, and I would say that when you get -- and it's in our brief, in our questionnaire you'll see that the costs aren't all that different.

MR. STOEL: Jonathan Stoel from the Toro Co. We'll handle that post-conference but, if you look at our questionnaire, we explained how the company considers costs and, I think, similar to what you're hearing from MTD, it's not a one-to-one comparison. You have to consider some of the things that Mr. Hawley explained in terms of aftercare costs and things like that that are different between U.S. suppliers and relationships that have now been developed with China. Thank you.

MS. COHEN: Okay, and if you have examples for the post-conference brief on pricing from different suppliers, that would be useful.

MR. STOEL: Happy to do that.

MS. COHEN: Thank you. I think we've mostly covered demand. So, overall demand for engines: do you agree with petitioners that overall demand is up but that the argument is that it's shifting to different types of engines? And also, I think one of the witnesses referenced some data on that that? Can you supply that for the post-conference brief? I believe there was an exhibit in the

petition which was confidential because it was an industry-provided data that looked like the mower shipments were up.

MR. TRUMPLER: Yes, Steve Trumpler, MTD Products. We'll cover that and more clarity on the brief. We'll certainly show how the volumes have shifted over time from more traditional residential and to commercial products and that supports the do-it-for-me versus do-it-yourself position that we talked about.

MR. STOEL: Ms. Cohen, Jonathan Stoel, for the record. We'll do that as well. You know the petitioners did put in their -- in the petition -- there's a report that goes through different segments of the market and, I think, it's generally consistent with some of the comments that Mr. Trumpler has made. I would say we're happy to augment that post-conference.

MS. COHEN: Thank you. Do your suppliers adjust engine prices based on changes in raw material prices?

MR. GRIFFIN: I would say that that happens on a case-by-case basis. Not always. In some cases the commodities will decrease and we won't see a decrease in our engine pricing and sometimes -- there's other cases it will follow the same trajectory.

MS. COHEN: Did the steel and aluminum tariffs, did they increase prices during that -- when those were put

on.

MR. GRIFFIN: We did see increases in our engine pricing because of the tariff regime, yes.

MR. BUENZ: Bill Buenz of Toro. For our Loncin engines we have a commodity adjustment clause which would kick in in specific situations not in all cases and it covers a broad cross-section of materials that go into the engine.

MS. COHEN: If you could go into greater detail in your brief, we would appreciate that.

One more thing on demand, on the impact of the battery-powered, is that something that's already affecting the market or something that is expected to see -- you expect to see several years down the road? It seems like that may be -- that's a small part of the market at this point, for the riding mowers?

MR. TRUMPLER: Steve Trumpler, MTD Products. It is currently a small portion of the market. But it is rapidly changing. A lot of people have different perspectives on how quickly it will accelerate in there. But, if you look at the population of battery-powered lawn tractors in the market, it is growing very quickly from that standpoint.

MS. COHEN: Does MTD produce those type of mowers?

MR. TRUMPLER: We do produce battery-powered lawnmowers, yes.

MS. COHEN: That would be of the same -- the tractors and --

MR. TRUMPLER: Yes. Lawnmowers, yes.

MR. HAWLEY: Ross Hawley from the Toro Co. We would, generally, agree with that point of view. Obviously, looking at other market segments like automotive and some of those places, there are better power density options today than there used to be to fill that. But ... but certainly as was stated in the petition, the walk-power mower market and other -- some of the small products have really seen the impact of battery.

You would expect that it's going to continue to move across the rest of the market, you know, as we look forward.

MS. COHEN: I think that Abu asked a question on the data sources this morning, on the official statistics versus the questionnaire data for imports.

MR. STOEL: I think we're still examining that question but, as we looked at the data, the trends at least, in general, are similar between the FPQs and the HTS U.S. data, you know. Given the coronavirus and other things, I don't know how much more information will get out of China. But, certainly, if more data comes in, we'll look at that as

well.

MS. COHEN: Okay, 'cause looking at the handout, with the official data with the 2019 increase from all other countries, I'm wondering if that's in-scope product or possibly something out-of-scope.

MR. STOEL: We've been looking at that as well. I will point out though, that the petitioners specifically chose three HDS numbers and said that those numbers were in-scope. So, they seem like they're in-scope, based on that.

MS. COHEN: Okay. Thank you.

My last question is on discounts and rebates and this may be for post-conference but how the discounts and rebates offered by the engine producers and I believe there was some earlier testimony or information in the Petition about the rebates to the retailers. I don't know if you want to discuss that here or in post-conference.

MR. STOEL: Will address those in post conference if that's okay.

MS. COHEN: Thank you.

MS. CHRIST: It is now Jeff Horowitz now so I wasn't sure if she was actually done.

MR. HOROWITZ: I just wanted to thank you guys very much for taking the time, I know it has been a long day. I have a couple of follow up questions with regard to

things I heard from you all and then I want to ask a few of the same questions I asked a few of the same questions I asked this morning but I will try to make this quick.

So Mr. Trumpler during your testimony you had talked about this diversification that MTD needed to do after Briggs and Stratton entered the lawnmower market, not just the engine market. Can you describe in a little bit more detail, and if it needs to be a post conference thing I understand, what that diversification was? Why it was such a strategic advantage beyond, I mean obviously I understand they suddenly became one of your competitors and not just a supplier but knowing a little bit more about the steps you guys took post that decision would be really useful to me.

MR. TRUMPLER: Okay, we'll clarify that in the post Petition.

MR. HOROWITZ: Okay, and then more so for the group because I think I heard three different people talk about it, this desire and need to innovate and how partnerships with Loncin or with the company that MTD works with whose name I'm blanking on, allows you guys to do a sense of innovation and personalization that maybe is otherwise not possible. Is that to say that the domestic companies especially the two here today would not allow this same innovation but there is some lack of willingness on their part to do that type of innovation?

MR. HAWLEY: So Ross Hawley, Toro Company. I characterize it as certainly we partner with the Petitioners on opportunities for innovation. Generally, that innovation is not owned by us. It is owned by them and what oftentimes happens is after some period of time they decide that it's in their best interest to make that innovation available in a broader sense, which takes you from a differentiated position to a not differentiated position so in a scenario where we can invest our dollars in innovation we can hold onto with that is much more appealing to us.

MR. GRIFFIN: Ed Griffin, MTD. I would say some of the innovation that we specifically highlighted in our survey and Steve talked about in his opening, products that the Petitioners do have available but only in commercial type engines, not in the residential space which is where the bulk of the volume that we're talking about today. That was our charter was trying to find innovative ways to increase our customer satisfaction.

MR. HOROWITZ: So in response to that for both of you, if I could in posthearing or post conference briefs rather get through examples of these things that you guys have in residential that otherwise are only available in commercial or things that you wanted in terms of innovation that you did not want suddenly made available to your competitors or something like that down the road. Concrete

examples of that would be really useful to us.

Kind of going in line with that on this question of battery-powered motors. So my understanding of battery-powered engines moving forward specifically in something like the automotive industry is that there is this belief out there and this kind of goes with Cindy's question, that battery packs and combustion engines are going to achieve price parity, sometime in the mid 2020's if you believe written sources.

So I guess my question is just does that seem accurate to you? Are we talking about a transition that's happening in the immediate future or is this a transition that's well a ways down the road?

MR. TRUMPLER: Steve Trumpler MTD products. If we reflect back on the walk-behind mower example where 8 percent of the market I believe I referenced was the market share a few years back and now it's over 20 percent and the projections are that 20 percent will probably double in the next few years so one would have to lean to what we are seeing happening within the walk-behind category as well as automotive to kind of develop their own hypothesis but it definitely seems like they're accelerating and going to be an implication to the overall volume of the traditional gas-powered lawn tractors in the future.

MR. HOROWITZ: Thank you very much.

MR. HAWLEY: Ross Hawley, the Toro Company. If I can add just a touch that may be helpful. As Mr. Trumpler said earlier, even that example is not as simple as thinking about price. There's the cost of fuel over time. There are sort of the ease of use implications so even that question is important to consider sort of the overall value of the customer through their lifecycle that they use the product and I think that will have some impact too.

Maybe just rounding out your question a little bit, even if it's not exactly a price parity there will be more value potentially for a consumer in a battery-powered unit than otherwise leading them to choose to purchase that.

MR. HOROWITZ: That's really helpful. So then turning to a few things I asked this morning, when we were talking this morning about scope the assertion was made that for the universe of riding lawnmowers this scope to 225cc to 999cc A) covers everything and then that B) those engine displacement sizes are almost entirely in the riding lawnmower industry.

So I'm just curious from you all specifically, the engines that are being sourced from China, are there any other uses for those engines that you're aware of? Do your competitors sell those engines for any other purposes? Any information like that would be welcomed.

MR. STOEL: Just looking at peoples' faces we'll address that post conference. Thank you.

MR. HOROWITZ: Two more and then I promise I'm done. The same EPA question this morning. So the scope of the investigation talks about these engines all being certified under the Environmental Protection Agency, Pollutions Control, Title 40, Chapter 1, Sub-Chapter U, Part 1054.

Same question, I would just like to hear a little bit about the engines being sourced from China immediately certified under those regulations as well. Does anything have to be done with them stateside to make them compliant? Those sorts of questions.

MR. KRUEGER: Erik Krueger from MTD. Yes, all engines that are brought into the U.S. are immediately certified to the EPA and car regulations. There may be a short period of time where we do import some non-compliant engines where we ask for exemptions to do testing, to develop them so we can qualify them for production and to have them certified so there is just a short period while you're developing an engine where it may be in the U.S. that it is not qualified but we follow the EPA protocol to handle that.

MR. HOROWITZ: Okay and then finally, and this kind of goes hand in hand with Karen's question about 301,

but in those post conference submissions, I'm still again struggling with this idea that what was excluded has to not exceed 180 dollars and as I understand it only is a few HTS codes, not the entire scope of the investigation. So it would be really helpful to sort of understand what is coming in under 180 dollars, what is coming in over 180 dollars, what HTS code things belong to. That sort of analysis. That's it for me. Thank you so much.

MS. CHRIST: Thank you. We will turn to Betsy Haines, the Supervisory Investigator.

MS. HAINES: I have no questions. Thank you very much for the testimony and answering Staff questions. Thanks.

MS. CHRIST: Thank you. I would also reiterate the gratitude that everybody else expressed as you can hear. Your additional information has definitely put a lot more layers and that's what we rely on so that's why we appreciate you taking the time to come in and help us identify the additional avenues of data analysis and questions that we will definitely be pursuing but also that you'll be able to provide us with additional information.

I just wanted to follow up on a couple of questions. During the testimony someone mentioned that not the need to label the engine for gross horsepower, and that being a cost advantage or a cost consideration? Just

elaborate. I hadn't heard that before and wanted additional information as to what that meant.

MR. KRUEGER: Erik Krueger from MTD. MTD has taken the stance on the engines that we develop that we do not label them for gross horsepower so there is significant cost into testing for gross horsepower and it is an application that's never used.

That's typically without a muffler, without an air filter, so our products all have those features on them. It doesn't, the customer will never use it in that application so we only test what we call net horsepower, but there's no reason for us to label that. So we label our products using displacement so CC's or cubic centimeters.

MS. CHRIST: And does that impact your sourcing decisions?

MR. GRIFFIN: Ed Griffin from MTD. I would say in terms of the cost, the question was I think what the basis of what you were getting at. There is a cost of the regime so it's not only initial testing but ongoing testing and so sure if there's a cost difference between a set of engines that would play into our decisions. I mean price is always a factor.

MS. CHRIST: Okay, so the Chinese import products that you're purchasing do not have that label on it but do the domestically produced products have that label on it and

therefore the associated cost?

MR. GRIFFIN: All the domestic suppliers label their engines in horsepower. The engines that are in this Petition.

MS. CHRIST: Thank you and if I'm still not getting it please feel free to elaborate in the post conference. I think this was asked but just to reiterate to the extent that you can specifically identify innovations that are produced in collaboration and those that are not made available to you by domestic and import-sourced products just to get that itemization but I think that was also asked earlier.

I want to follow up on that comment that was made this morning on the first Panel about, we talked about the qualification and qualification process but a comment that was made this morning was that qualification follows price negotiation and so there is potentially a lack of qualifications as a result of an inability to agree on price or the price being too low.

Could you comment on when if it's for post conference, but when in this process do you discuss price and is it consistent with what the Panel indicated this morning?

MR. TRUMPLER: Yes. We will work through that in the post conference. Sorry, Steve Trumpler MTD products.

We will walk through that in our post conference.

MS. CHRIST: Thank you. Specifically the statement was made this morning about prices determined and agreed prior to the qualification process being entered into. The table of data that was provided it would be helpful to the extent that some of the, particularly AUVs that shift between 16 and 17 and 17 to 18; I'm wondering if that was meant to connect to the demand story that you're providing.

Is this demand story about a shift away from consumer and residential? Towards commercial because of end users, I guess do-it-yourself or have someone else do it for you, is that reflected in the AUVs and in the shifting and if so could you elaborate in your post conference brief how the demand story is either reflected or not reflected in the import and domestic shipment AUV story? Did that make sense?

MR. STOEL: Yes, John Stohl. I think you're asking for information about market segmentation. I think we've all been talking about that. I think there is obviously some overlap where you could use one product for another but I think from what I have heard from the team over the last few days is that in general you buy a product either for commercial or for residential and that seems to be, at least in terms of how it's sold as Mr. Hawley has

explained to me, in terms of how it's sold there appears to be a differentiating point.

MS. CHRIST: So would on average the AUVs for the commercial end use destinations be higher than those for the residential and consumer end use destination products?

MR. BUENZ: Bill Buenz, Toro. Yes.

MS. CHRIST: And would that shift in the market demand be reflected in AUVs of the trade data?

MR. STOEL: I think we will have to look at that post-hearing. I also obviously, we can't talk about what the Petitioners data is in public so yes.

MS. CHRIST: Thank you. So did that clarify where I was going with my -- thank you very much. And one last question. In response to questioning, Mr. Krueger you mentioned EPA and car regulations? Did I hear you correctly?

MR. KRUEGER: Erik Krueger, MTD. Speaking of the California Air Resources Board. It's the short.

MS. CHRIST: Oh, so the two major regulations that are governing this particular product at the EPA and CAR regulations?

MR. KRUEGER: Correct, for the United States.

MS. CHRIST: Are all imports coming to the United States subject to both of those regulations? They are all subject to the EPA regulations and if they are used in

California or taken through California then they would need to require the California Resources Board Certification as well.

MS. CHRIST: As OEM pushers would you purchase any, even if you didn't intend to sell it in California would you purchase anything that wasn't certified by both of those regulations?

MR. KRUEGER: Erik Krueger, MTD again. In general, most engines are all certified with what we consider 50-states which means EPA and CARB. There are some differences in regulations in certain categories, specifically the evaporative emission categories which the cost would be different for California.

So there are some cases where we have 49-state which means the EPA certified products versus 50-state. It's a smaller percentage and a lot of times that will wind up being on the product even though the engine is certified to 50-state. So it kind of depends on which specific products we're looking at.

MS. CHRIST: So did you want to add?

MR. BUENZ: Bill Buenz, Toro. Yes. We have versions of the subject engines that are 49-state that are not certified to CARB so we have both 50-state certified with CARB and EPA and what we would call 49-state in the business which is a non-CARB certified version of an engine.

MS. CHRIST: And generally speaking is a non-CARB certified less expensive because of the lack of the additional certification?

MR. BUENZ: Bill Buenz, Toro. In our case, the cost of the engine isn't necessarily different but the product that we produce has additional carbon filters and things like that that are on the Toro content side then on the engine so the cost is higher of the product itself. Yes.

MS. CHRIST: Is there a distinction between among suppliers domestic, non-Subject or Chinese with respect to provision of engines, again 49 versus 50-state?

MR. BUENZ: I didn't understand that. I think we'll take that to post-conference.

MS. CHRIST: Okay, thank you. Sorry, I think we have one more question.

MS. DRISCOLL: Sorry, I've started a trend. I've got two more questions.

I was wondering if there was an explanation for -- I'm looking at this handout of the "all other countries" in the 2018 data. Anyway, so if you could comment on that I would appreciate it. That's it.

MR. STOEL: Ms. Driscoll, just for the record, those data are straight out of the Petition, I believe

Exhibit 11. So I think we all have a question around non-subjects, which is why I raised it earlier. And again, you know, the Petitioners chose those three HTS numbers. You can see exactly what's happening, and I think it is an important issue for the Commission to consider.

MS. DRISCOLL: Thank you.

MS. COHEN: This is Cindy Cohen. I have a request for postconference briefs, and that's for Toro and MTD, if you could describe your contracts with the engine manufacturers. How long they typically last for? Are they annual contracts? Or a different term? And where in the process are prices set, and whether the price can change during the contract? And then also, is there a volume set in those contracts? Thank you.

MS, CHRIST: Thank you very much, again, for your testimony and for your patience as we learn more about this industry and all of the characteristics of the product and the market.

I want to thank you all, and, Mr. Secretary, let us proceed to rebuttal and closing remarks.

MR. BURCH: We release this panel with our thanks.

Closing and rebuttal remarks on behalf of those in support of imposition will be given by Stephen P. Vaughn of King & Spalding. Mr. Vaughn, you have 10 minutes.

CLOSING REMARKS OF STEPHEN P. VAUGHN

MR. VAUGHN: Thank you. My name is Stephen Vaughn, and I'm here to do closing remarks for Petitioner.

In a preliminary phase investigation, the Commission has to decide whether or not we've shown that there is a reasonable indication of material injury or the threat of material injury. And in looking at that situation, one of the things that you do is you check to see whether or not there is clear and convincing evidence of no material injury or threat of material injury. And then also, is there a likelihood that there will be no additional evidence that's uncovered in the final phase?

So the real question that you kind of have to ask yourselves here is: Do you have clear and convincing evidence of no material injury? And I think the answer is just overwhelmingly, No.

In fact, on every one of the factors that the Commission normally looks at, we actually have very compelling evidence of material injury, especially given that we're still only at the preliminary phase of the proceeding and we haven't yet been able to fully develop the case. As we've talked about, there's a number of people who we still haven't heard from. They are major Chinese producers who didn't submit any data.

We think that that evidence would help show even

more the harm that we've suffered and the harm that we're likely to suffer going forward. We believe there are importer data that's missing. We think that data would provide more evidence of under-selling and the harm that we face going forward.

So we think that the record is likely to get even stronger as we move into the final phase of the investigation, but given where we are now you clearly have far more than enough evidence to conclude that there is a reasonable indication of material injury.

Now let's look at sort of what the other people argued this afternoon. They basically had kind of to types of arguments. First of all, they pointed to a number of different market conditions that have been going on for a very, very long time.

They talked about Kawasaki, who has been a player in this market for a long time. They talked about things, about all the different stuff that's happened to demand since the housing bubble burst. But as you know, the housing bubble burst more than 12 years ago.

They talked about the shift toward commercial sales versus other types of sales. That's another long-time trend. There was a reference to a patent litigation between Briggs and Toro that has been going on for many, many years. And it didn't prevent Toro from buying other products from

Briggs.

There were references to Briggs going into their mower production business, another thing that goes all the way back to the turn of the Century, basically, and it's been going on for a long time.

And none of these arguments really explain like what happened during the Period of Investigation, right? What happened during the Period of Investigation was, out of nowhere from 2016 to 2018 Chinese imports went up by 78 percent. That is new. That is different. And their explanations do not address that at all. China is the change, and China is what is causing a lot of the problems in this market.

So those arguments I think you can pretty quickly set aside.

The next set of arguments that they made, and they were quite eloquent on these points, were to talk about the many advantages of doing business with partners in China. They tell us that China wants to be engaged in innovation. They told us that China wants to form partnerships; that Chine wants to work with them in developing products. But I don't think those arguments go toward what they think they go to.

They don't, to me, they don't indicate that China is not a threat or a source of harm to the domestic

industry. They underscore why China is a threat, and why China is a source of harm to the domestic industry.

We believe that your record leaves no doubt that China is under-selling the domestic industry. And they are under-selling the domestic industry by significant margins. Now they're telling you that the under-selling is actually more dramatic than it appears because China is apparently providing like additional services on top of the under-selling. In other words, they are saying we want to work with China because China gives us things that we don't get from the domestic industry.

Well if that's the case, and China were a rational profit-maximizing force, then China would be charging more, not charging less.

And so when you sort of go through these two sets of arguments that they have and you look at their testimony, and you look at the record before you, you see that really this is a very typical China case, like the Commission has seen many, many times before.

To begin with, we have a very large industry in China that has sort of no actual market-based reason to exist. The testimony is that there's not a very large market for this product in China. The main source of -- the main source of demand for these products is here in the United States, and yet somehow China has built this

enormous industry with subsidies and are shipping engines to this market where they can under-sell people who have been in this market for decades. And on top of that, provide, you know, work, and innovation, and all sorts of other things at below-market prices.

Now let's be very clear. The domestic industry said to you this morning, and said to you throughout this investigation, they want to do research and development. They do do research and development. They want to be innovative. They want to make customers happy. They want to develop products. They told you all along they want to make their customers satisfied.

They told you this morning the pressure that they feel to satisfy these OEMs, because there only a few limited number of customers for these products. And the domestic industry is under huge pressure to satisfy those customers. But here's the difference between the domestic industry and the Chinese industry.

The Chinese industry is subsidized. The Chinese industry is engaged in unfair trade. They don't have to worry about all the stuff you heard this morning our people have to think about "am I making a healthy rate of return? Am I able to justify these investments? Am I able to get money back for the things that I'm doing?"

That's not a problem for the Chinese companies.

And that's why we're here. Because this isn't real market competition. This is unfair trade. And this is exactly the sort of thing that the Title VII Rules were designed to prevent.

The bottom line is this. You have a very large Chinese industry built with government services offering engines at a below-market price, in addition to whatever services they're offering on top of that. And, sure enough, it turns out they find major customers who are willing to work with them, and so sales go up and up. They go up 80 percent from 2016 to 2018.

So again when you hear the stories about all the difficulties with demand, and people don't want as many of these mowers as they used to, well then why are we seeing so much increase in demand from China? Because they're not having a problem moving their product.

Now they come here and they have told you, with sworn testimony, that they intend to keep buying these imports from China, and that in fact they are likely to buy more imports from China. So this is not a short-term thing. This is not a small, you know, blip in the market.

This is a long-term shift away from domestic production and toward Chinese imports. And that is one of the reasons the domestic producers are so concerned.

Now, again you can see it from the perspective of

the OEMs. According to their testimony, China has -- they can supply all parts of the market. They can make commercial grades. They can make all different types of engines. They provide additional services. And they do all of this at prices that are significantly below the prices that are available from the domestic producers.

Again, because the domestic producers cannot afford to offer those prices because they have to get a decent rate of return on their investment.

Now they did try to make this one point about how Chinese AUVs, according to the Census data, has moved up. I think the staff, and I think Ms. Christ did a great job of sort of probing on that. That is obviously a shift in product mix as they move up the value chain.

But we think the evidence is going to show that throughout this whole period, '16, '17, '18, and even today, the prices they are offering are well below market prices.

So the bottom line is this. Two of the largest OEMs in the country have come in here, companies that the domestic industry is dependent upon to make sales of this product, they have come here and they have given you sworn evidence that the volumes from Chinese imports are likely to grow.

They have given you sworn testimony indicating that those volumes are being sold at prices that under-sell

the domestic industry. Taken together, and in addition to all the other evidence in the case, these facts leave no doubt that in the absence of trade relief the effects on the domestic industry would be devastating.

So we urge you to let this case go forward. We urge you to let us continue to develop this record. And we urge you to help us move toward the relief that the industry needs.

Thank you, very much.

MR. BURCH: Thank you, Mr. Vaughn. In rebuttal and closing remarks on behalf of those in opposition to imposition will be given by Jonathan T. Stoel of Hogan Lovells. Mr. Stoel, you have 10 minutes, and Alexander Schaefer will be joining him.

CLOSING REMARKS BY ALEXANDER SCHAEFER

MR. SCHAEFER: This is Alex Schaefer for MTD Products.

I told you they were going to say it's a typical Chinese case. The problem is it's not. Mr. Vaughn left a couple of things out.

First of all, on the AUVs, they increased through the POI. He suggests it's a product mix issue. There's not a whit of evidence on the record that that's the case, nothing anybody can point to. Second, the volumes in 2019 are down. That's just a fact. Mr. Vaughn asked if

there are all these market factors affecting demand why do we see an increase in demand from China? Well, let's talk about that for a moment. You heard from MTD's and Toro's witnesses today that Kohler has quality problems. That's not an opinion. That's a documented fact. You're going to see all sorts of stuff in the confidential post-conference [microphone failure, in hearing room. Lasted for 2 minutes.]

MR. SCHAEFER: The wrath of the Petitioners' bar is mighty. So, we were talking about demand. Why would we see an increase in demand from China? Well, we heard precisely why from the witnesses. MTD's and Toro's witnesses both said Kohler's got serious quality problems and it has for a while and they're serious enough that they've had to move away. And now, on top of everything else, we have this EPA emissions -- EPA and carb emissions issue. Now, Mr. DeFrancesco says, well, sure, but that only affects engines that were manufactured prior to the POI. That entirely misses the point.

First of all, it's an open question whether anybody wants to do business with companies who engage in that sort of behavior. And more importantly, the fact is it's going to be the OEMs who suffer when -- if you listen carefully, you can hear the pitter-patter of feet running to the courthouse to file class action lawsuits in the wake of

that consent decree. And the brand damage that that sort of thing can do to somebody manufacturing the Troy Bilt or Cub Cadet Lawnmower that carries one of these hundreds of thousands of engines that were implicated by that consent decree is incalculable. So, it's cold comfort to say, well, but they're all older, so no worries.

As to Briggs & Stratton, once again, they're a competitor. If you're Ford building cars in the United States and your only option for engines is to buy them from Chevrolet, you're going to first grind your teeth for a while and then you're going to look for an alternative source. That's just rational business -- and on the subject of looking for an alternative source, we heard a lot from Mr. Vaughn and others about targeting; particularly, in the context of the discussion of the threat of injury; that there's going to be aggressive targeting.

There hasn't been any targeting by Chinese manufacturers, aggressive or otherwise. What there has been is domestic OEMs throwing their hands up in aspiration that this combination of having to buy from a competitor and having to buy from somebody with serial quality problems and going out and hunting for an alternative source. This notion that people were waiting at the border to dump their engines onto the U.S. market has no bearing -- has no basis in reality.

Finally, one of the other things that we talked about this morning in addition to the AUV increases across the POI was the role that Kawasaki has played in this market. You heard from the Kohler folks that they had to close their facility in Kohler and there was a strong implication that that was the result of the impact of imports.

Here's the problem. What was being manufactured at that facility was predominately large commercial grade engines. There are not a lot of large commercial grade engines coming in from China. They mainly are in the smaller residential categories. So, what was going on there? Guess who makes large, commercial engines. Kawasaki does. That business was lost to Kawasaki engines.

Earlier on today, Mr. Vaughn said, well gee, if we were seeing an increase in demand wouldn't we be seeing higher prices? The answer is yes and we are seeing them, but they're getting paid to Kawasaki and this is emblematic of one of the fundamental flaws in the Petitioners' case which is they're pointing and hollering at the imports from China when, in fact, it's another domestic producer who's persistently eating their lunch. And when you look at the questionnaire response data it shows that.

So, respectfully disagree with Mr. Vaughn. I think there absolutely is clear and convincing evidence of

no injury by reason of imports because there's clear and convincing evidence of perfectly good reasons why one would go to China for reasons other than price. That concludes my remarks and I'll pass the baton to Mr. Stoel.

CLOSING REMARKS BY JONATHAN T. STOEL

MR. STOEL: Thanks, Alex, and thank you Commission staff. We in the trade world know just how busy you are and we really appreciate your close attention to this matter.

I think this is an important case, so important that two major OEMs, Toro and MTD, have come to Washington to express their strong opposition to Petitioners. Why are they here so quickly and why do you have to pay such close attention? Mr. Vaughn asserted that there is no basis for throwing out this case at this early stage. Respectfully, I disagree. There's one simple reason. Petitioners lack credibility.

Petitioners have come to you today and I would sum their arguments as being this is all about price. These are about low-priced imports. Well, you heard from two OEMs who talked about the features of their products. While I was sitting here listening carefully to my client, I also decided to multitask. I looked online. I looked at Home Depot. What did I find? I found a lawnmower that was labeled Toro Kohler. Why does that matter? Because the

engine's reputation, the engine's features, what happens with the engine is critical to what happens to the OEMs and to their downstream customers. So, this is not a case about price. This is about whether or not the producers before you have come to you for relief, deserve that relief, and whether they are supplying the needs of their customers and whether it's that failure, we submit to you, that is the real reason why if there is material injury that injury has been caused.

It's also important to consider the credibility of the companies before you. Do you believe a company that misappropriated my client's intellectual property? It's the very kind of theft that Mr. Vaughn has been working on so skillfully in the government -- thirty five million dollars in intellectual property theft in this very segment. Why should my client be forced to do business with a company that stealing from it?

To Mr. Schaefer's standpoint, why would a company want to do business with somebody who violates the law and who is subject to a very large fine. And as Mr. Schaefer pointed out, it's going to be the credibility of the downstream customer, whether it's MTD or Toro or John Deere, nobody wants to do business when your credibility and your reputation will be stained. That's why you have to throw out this case. It's not simply about import data.

It's about who's asking for relief and can they be believed.

You also heard from Briggs & Stratton that they have moved operations from Japan to the United States. I, like all Americans, welcome that and urge them to continue to apply as many hard-working Americans as possible, but you have to look at what that's done to their financial data. Any time you have a major move like that, of course, it impacts your operating income and your net income. So, when you look at the industry's overall profitability and Briggs & Stratton's alleged injury, I urge you to look at their bottom line and consider what implementing a major shift like that would do to your bottom line. They haven't offered you any explanation and they need to do that.

Lastly, I am insulted by the claim that we have not supplied you with the data you need. This is a small industry. We're talking about three suppliers. There was no disagreement about that today. Kawasaki where are they? Their data, I submit to you, drives this case. They are the ones who've been capturing more of the market share in this market. You heard that from Mr. Schaefer. You heard that from our distinguished industry witnesses today. You need that data. You need to take it into account. You can't find material injury in an industry with only three companies when you only have two of them. That simply can't be done under the law I don't believe.

Again, we really appreciate your attention to this matter. As you can tell, it's important to the Respondents and we thank you for your time and attention. We certainly will answer your questions as fully as we can. Thank you.

(Whereupon, at 2:02 p.m., the conference was adjourned.)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Vertical Shaft Engines from China

INVESTIGATION NOS.: 701-TA-637 and 731-TA-1471 (Preliminary)

HEARING DATE: 2-5-20

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary

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: 2-5-20

SIGNED: Mark A. Jagan

Signature of the Contractor or the Authorized Contractor's Representative

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
Proofreader

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.

SIGNED: Larry Flowers
Court Reporter