

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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SECTION 201 PUBLIC HEARING

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EXTENSION REVIEW OF SAFEGUARD ACTION ON
CRYSTALLINE SILICON PHOTOVOLTAIC PRODUCTS

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TUESDAY
JANUARY 4, 2022

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The Section 201 Committee met via
Video Teleconference, at 9:00 a.m. EST, Will
Martyn, Chair, presiding.

GOVERNMENT PANEL

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Administrative Law, Office of the United
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Trade Representative for Economic Affairs,
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Representative

MONICA GORMAN, Ph.D., Deputy Assistant Secretary
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Department of the Treasury

BECCA JONES-ALBERTUS, Ph.D., Director, Solar
Energy Technologies Office, Energy
Efficiency and Renewal Energy, U.S.
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RACHEL HASANDRAS, ESQ., Assistant General
Counsel, Office of the United States Trade
Representative

KARI HEERMAN, Ph.D., Senior Economist, Council
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AMY KREPS, Director for Environment and Natural
Resources, Office of the United States Trade
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VICTOR MROCZKA, Director of Trade Remedies and
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OLIVIA NEGUS, International Relations
Specialist, U.S. Department of Labor

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of State

PANEL ONE

TOM BELINE, ESQ., Cassidy Levy Kent

MATT CARD, President & CEO, Suniva

ELIZABETH DRAKE, ESQ., Schagrin Associates

ANDREW MUNRO, ESQ., General Counsel, Hanwha

SCOTT MOSKOWITZ, Director, Market Intelligence
and Public Affairs, Hanwha

DIANA QUAIA, ESQ., Arent Fox

MAMUN RASHID, CEO, Auxin Solar

PANEL TWO

AARON HALL, CEO, Borrego

ABIGAIL HOPPER, President & CEO, Solar Energy
Industries Association

MATTHEW NICELY, ESQ., Akin Gump

JAMIE RESOR, CEO, EDF Renewables

GEORGE HERSHMAN, CEO, SOLV Energy

MEGHAN NUTTING, Executive Vice President,
Government & Regulatory Affairs, Sunnova

VANESSA SCIARRA, Vice President, Trade &
International Competitiveness, American
Clean Power Association

RON REAGAN, Executive Vice President,
Engineering, Construction, and Integrated
Supply Chain, NextEra Energy

PANEL THREE

VINCENT AMBROSE, General Manager, Canadian Solar

PAOLO MACCARIO, President & CEO, Silfab

JOHN R. MAGNUS, President, TradeWins

MARTIN POCHTARUK, President, Heliene

JONATHAN STOEL, ESQ., Hogan Lovells

PANEL FOUR

ANNIE OUELLET, Counsel for Trade Policy,
Government of Canada

CESAR REMIS, Head, Office for the Implementation
of the United States-Mexico-Canada
Agreement, Government of Mexico

SON BUI, Minister Counselor, Head of Trade
Office, Government of Vietnam

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9:00 a.m.

CHAIR MARTYN: Good morning and welcome. My name is Will Martyn, and I am the Chief Counsel for Negotiation, Legislation, and Administrative Law at USTR. I will be chairing today's hearing.

The purpose of this hearing is to receive public testimony relating to the appropriateness of extending the safeguard measure on crystalline silicon photovoltaic products and the action to be taken should the safeguard measure be extended.

Before we begin the hearing, I will provide some procedural and administrative instructions and introduce the other Trade Policy Staff Committee representatives participating in the hearing today. We will then proceed with the remainder of the hearing.

On January 23rd, 2018 the President, pursuant to Section 203 of the Trade Act of 1974, issued Proclamation 9693 imposing a safeguard

1 measure on imports of CSPV products in the form
2 of a tariff rate quota on imports of solar cells
3 not partially or fully assembled into other
4 products and an increase on -- in duties on
5 imports of modules. The measure took effect on
6 February 7th, 2018 for four years, a period that
7 ends on February 6th, 2022.

8 On October 10th, 2020 the President
9 issued Proclamation 10101 which made certain
10 modifications to the safeguard measure announced
11 in Proclamation 9693. First, it withdrew an
12 exclusion previously granted by USTR for bifacial
13 panels. Second, it modified the applicable duty
14 rate during the fourth year of the safeguard
15 measure from 15 percent to 18 percent.

16 Proclamation 10101 has been subject to litigation
17 before the Court of International Trade, and on
18 November 16th, 2021 the court invalidated
19 Proclamation 10101.

20 Meanwhile, on August 6th, 2021,
21 following the receipt of petitions filed by
22 members of the domestic CSPV industry, the U.S.

1 International Trade Commission instituted an
2 investigation to determine pursuant to Section
3 204(c) of the Trade Act whether the safeguard
4 measure continues to be necessary to prevent or
5 remedy serious injury and whether there is
6 evidence that the domestic industry is making a
7 positive adjustment to import competition. That
8 notice is at 86 FR 4403 of August 12th, 2021.

9 On November 24th, 2021 the ITC made an
10 affirmative determination pursuant to Section
11 204(c) and on December 8th, 2021 the ITC
12 transmitted its report to the President. As a
13 result, the President now has authority under
14 Section 203(e) of the Trade Act to extend the
15 duration of the safeguard measure on CSPV
16 products if the President determines that the
17 safeguard measure continues to be necessary to
18 prevent or remedy the serious injury and that
19 there is evidence that the domestic industry is
20 making a positive adjustment to import
21 competition.

22 On September 30th, 2021 USTR on behalf

1 of the TPSC announced a process so that in the
2 event of an affirmative determination by the ITC
3 interested parties may submit views and evidence
4 on the appropriateness of extending the safeguard
5 measure and action to be taken should it be
6 extended. That announcement in the Federal
7 Register also invited interested parties to a
8 public hearing regarding this matter.

9 On December 15th, 2021 certain members
10 of the public submitted views and evidence on
11 these questions and requested to testify at this
12 hearing. We received rebuttal submissions from
13 certain members of the public on December 22nd,
14 2021. All public versions of written comments
15 are available for viewing on the regulations.gov
16 website under docket No. USTR-2021-0017.

17 Today we will consider testimony from
18 those who have requested to testify at this
19 public hearing. The TPSC will carefully consider
20 this testimony as well as all written comments
21 received in preparing a recommendation to the
22 President as to what action the President should

1 take under Section 203 of the Trade Act.

2 The schedule for today's public
3 hearing is on ustr.gov. In brief, we have four
4 panels comprising a total of 17 participants
5 scheduled to testify today. We will have a brief
6 break between panels to let the participants
7 situate themselves. We will also have a longer
8 break for lunch between the second and third
9 panels. We will end the hearing with a few
10 concluding remarks.

11 We have assigned each panel a time
12 limit for oral testimony. With the exception of
13 the fourth panel the participants on each panel
14 have determined among themselves how to allocate
15 their time. The TPSC has also circulated
16 advanced written questions to the participants in
17 each panel -- someone is not mute and probably
18 needs to be.

19 The participants on each panel have
20 determined among themselves how to allocate their
21 time. The TPSC has also circulated advanced
22 written questions to the participants on each

1 panel with instructions to them to address those
2 questions in the testimony or be prepared to
3 respond to them in a question and answer session
4 following each panel. TPSC representatives may
5 also raise follow-up questions at that time.

6 As we communicated by email to the
7 participants on December 22nd, 2021, the TPSC
8 will not consider new factual information during
9 this hearing. We do not at this time plan to ask
10 for or accept post-hearing submissions.

11 If a participant is having technical
12 issues, please let us know. I'd also like to
13 note that we had expected to do the USTR side of
14 this hearing from our offices. That was not
15 possible because of the snow, so we may be
16 experiencing some technical interruptions for
17 some of the participants, so please bear with us
18 if we need to correct those. I will also warn
19 you that I have some work going on in the house
20 and it is possible that construction noise will
21 interrupt at some point and I apologize for that
22 if that happens.

1 Having said that, my colleague Michael
2 Gagain will now review some technical details.

3 MR. GAGAIN: Good morning everyone,
4 and thanks, Will.

5 As Will mentioned, my name is Michael
6 Gagain. I'm an assistant general counsel here at
7 USTR. I'd like to first introduce my other
8 colleagues at USTR. As I call out your names
9 please feel free to briefly turn on your cameras
10 to make yourselves known. And if you're not
11 speaking during the hearing, please turn your
12 cameras off just to conserve bandwidth.

13 So, in addition to myself we first
14 have Rachel Hasandras who is an assistant general
15 counsel in OGC. We also have Victor Mroczka,
16 Director of Trade Remedies and Competition. We
17 have Amy Kreps, Director for Environment and
18 Natural Resources. We have Bill Shpiece, who's
19 our chief economist and the Acting Assistant U.S
20 Trade Representative for Trade Policy and
21 Economics. We have Laurie-Ann Agama, Deputy
22 Assistant U.S. Trade Representative for Trade

1 Policy and Economics, and Tricia Mueller, an
2 international economist. Finally, our timekeeper
3 today who is graciously helping out is Ronalda
4 Smith.

5 Now I'm going to introduce our
6 colleagues from the interagency. Again, I invite
7 them to briefly turn on their cameras as I
8 introduce you to make yourselves known.

9 First and foremost, from the Council
10 of Economic Advisors we have Dr. Heather Boushey,
11 member of the CEA. Filling in in certain points
12 is Kari Heerman, also from the CEA. From the
13 U.S. Department of Commerce, we have Dr. Monica
14 Gorman, who is the Deputy Assistant Secretary for
15 Manufacturing in the International Trade
16 Administration. From the U.S. Department of
17 Energy, we have Becca Jones-Albertus, who is the
18 Director for Solar Energy Technologies Office,
19 Energy Efficiency and Renewable Energy. From the
20 U.S. Department of Homeland Security, U.S.
21 Customs and Border Protection we have Alexander
22 Amdur from the AD/CVD Policy and Programs

1 Division, Office of Trade. From the Department
2 of Labor, we have Olivia Negus, who's an
3 international specialist. From the Department of
4 State, we have Carter Wilbur, who is the Acting
5 Director of Office of Multilateral Trade Affairs.
6 And finally, from the U.S. Department of the
7 Treasury we have Maureen Grewe, who is an
8 international economist.

9 Good morning to all of you.

10 Now that we've made these
11 introductions we will proceed to hearing
12 testimony from our first panel who are the
13 proponents of extending the safeguard measure on
14 solar products.

15 On Panel 1 we have representatives
16 from three companies: First Auxin Solar,
17 Incorporated; second Suniva, Incorporated; third
18 Hanwha Q Cells USA. And we'll proceed in that
19 order.

20 The three participants have a combined
21 60 minutes to provide testimony. They have
22 previously communicated that they will each

1 provide 20 minutes of testimony. As indicated,
2 Ronalda from USTR will indicate on her video when
3 you have two minutes, one minutes, and no time
4 remaining. We will keep your time as each of you
5 testify.

6 Can someone confirm that you are all
7 ready from Panel 1?

8 MR. RASHID: Yes, Auxin Solar. I'm
9 here.

10 MR. GAGAIN: Okay. Great. So, we'll
11 begin with you, Auxin. And as you proceed we
12 request that you identify your name and title so
13 that our court reporter can capture that. And
14 then following the panel, as indicated in the
15 schedule, we'll have a Q&A session.

16 So, Auxin, if you're ready, please
17 proceed with your testimony. Thank you.

18 MR. RASHID: Good morning. My name is
19 Mamun Rashid. I'm the CEO of Auxin Solar. Along
20 with my business partner Sherry Tai, Auxin Solar
21 is a minority and woman-owned business. Sherry
22 and I co-founded the company in 2008. Since that

1 time, we've been providing high-paying jobs to
2 our employees. We've been committed to producing
3 American-made solar panels.

4 Auxin Solar produces 60 and 72 cell
5 solar modules for use in all major product
6 segments: utility, commercial, and residential.
7 Since 2016 we have produced bifacial panels. At
8 that time our bifacial panels were used in major
9 utility-scale projects. One example is by
10 Georgia Power at the football stadium in Atlanta,
11 Georgia.

12 We admit that we're not a large module
13 producer and our company may not sound familiar
14 to you because we largely produce OEM modules or
15 white-label products that bear our customers'
16 brand logos, but our size, our bifacial
17 production, and our channel of distribution makes
18 this safeguard so important to Auxin. Its
19 extension is necessary for us.

20 I know you issued a list of questions
21 to the parties and I appreciate the opportunity
22 to answer them with my testimony. I will note at

1 the outset that I was disappointed that none of
2 your questions addressed the important topics of
3 American's solar energy independence, security of
4 our electricity grid, or the benefits of having
5 an American manufacturing base for the entire
6 CSPV supply line. I hope to expand upon some of
7 the topics in addition to your written questions
8 and explain why these issues necessitate
9 extending the safeguard.

10 As I testified before the
11 International Trade Commission, Auxin has
12 benefitted from the safeguard. The safeguard
13 helped us expand our production in 2019 and
14 employ many more workers at our facility, but we
15 know what we can do -- we know we can do so much
16 more with the safeguard extended.

17 As we have told the International
18 Trade Commission and many at the Department of
19 Commerce Department of Energy, and here at USTR,
20 we have plans to expand even further in inter-
21 cell production. Our facility is located on 6.5
22 acres and we've built it out to allow for

1 additional expansion. We also have options on
2 green field space in Northern California. We are
3 poised to proceed, but implementing these plans
4 requires the right economic and policy
5 environment to justify the necessary investments.

6 I'll be 100 percent honest with you,
7 I'm not satisfied with where we are in our
8 investment plans at all. We should be further
9 along. We should have been able to re-shore a
10 substantial portion of our bill of materials by
11 now. We should be operating at full capacity,
12 but we're not as the ITC found head winds facing
13 us.

14 The head winds facing us as well as
15 the rest of domestic industry were too
16 significant. These factors included the bifacial
17 exclusion. That exclusion resulted in foreign
18 producers shipping massive volumes of fake
19 bifacial panels for use in residential and
20 commercial applications. We also faced import
21 stockpiling and of course COVID-19.

22 If the safeguard is extended -- and

1 extended in the period when bifacial modules are
2 covered, and we have covered -- and we have
3 recovered from COVID-19, we have high hopes for
4 what can be accomplished, but it takes time to
5 bring these investments on line, execute a
6 strategy and see a return on investment.

7 We don't have a state-sponsored
8 industrial policy like China that has created the
9 Chinese manufacturing base to produce more CSPV
10 products than there is global demand. Chinese
11 industrial policy helped industries set up new
12 factories outside China in countries like
13 Cambodia, Thailand, Vietnam, and Malaysia to
14 avoid fairly trading their products.

15 The Chinese state-sponsored supply
16 chain fueled these moves and Belt and Road money
17 greased the skids. If we want to have a
18 manufacturing base for solar products here in the
19 United States, the safeguard needs to be extended
20 for as long as possible. And to be clear, there
21 is no reason to believe that a four-year
22 extension of the safeguard will have a

1 detrimental effect on solar installation.

2 During the first four years of the
3 safeguard solar deployment has skyrocketed, solar
4 manufacturing and installation employment has
5 increased and prices continue to decline, so this
6 sky is falling claim that tariffs will have a
7 negative impact on the market, on consumers, and
8 on the world is simply not true. These arguments
9 have been repeatedly rejected by the ITC. The
10 investments we make today will make a long-term
11 impact for America's energy independence, the
12 security of our electricity grid and our
13 manufacturing sector.

14 Your second question to all parties
15 identified COVID-related supply chain disruptions
16 and labor shortages that could potentially impact
17 installations of CSPV products, but this is the
18 wrong way to look at it. It presumes problems
19 associated with importation. With the right
20 policies in place long-distance transportation
21 costs and international supply chain disruptions
22 can be a thing of the past. We can also be free

1 from supply chain manipulation.

2 The biggest risk to the CSPV supply
3 chain and installations are not COVID or labor
4 issues. These logistical problems are temporary
5 and experienced by everyone across the board.

6 The biggest risk to the supply chain is continued
7 reliance on China. At this time China controls
8 the world's production of polysilicon ingots,
9 wafers, and cells, all inputs needed for a CSPV
10 module.

11 China produces 96 percent of the
12 world's silicon wafers and that dominance allows
13 them to force cell and module producers to
14 replace their equipment to be able to utilize a
15 near-constant stream of wafer size changes.
16 Right now, we're making a substantial capital
17 investment to bring on line new machinery because
18 Chinese wafer producers have changed the form
19 factor. This is commonly referred to as the
20 wafer size.

21 These changes are absolutely not new
22 technology. In fact, a very little -- the larger

1 wafer sizes actually result in less efficient
2 power generation because the wafers are too big
3 to accommodate certain module sizes, meaning that
4 module producers need to cut wafers themselves to
5 fit.

6 So why did the Chinese wafer changes
7 -- wafer suppliers change the form factor? I
8 believe it's to continue their dominance of the
9 supply chain and to make companies like Auxin
10 bleed money to bring new production equipment on
11 line. In 2021 we were forced to spend tens of
12 millions of dollars on new equipment upgrades to
13 adjust to the new form factor. We'd just spent
14 millions to bring back -- bring brand new
15 equipment on line in 2019.

16 If the safeguard is extended as the
17 ITC recommended and without any exclusions, I
18 believe we will be able to bring cell and wafer
19 production back on shore. Domestic polysilicon
20 producers have come back on line and are looking
21 for a market. We will then re-shore our bill of
22 materials. We'll once again have a vibrant

1 industry that can focus its collective resources
2 on innovation, returning America to the forefront
3 of the solar energy long term. This should be
4 the vision for domestic solar manufacturing.
5 Once we have the supply chain back on line here
6 in the United States we can safely say that
7 America will be green energy-independent.

8 My vision requires us all to pay a
9 little back -- a little bit. Look, Auxin is a
10 module manufacturer, yet we fully support the
11 unanimous recommendation of the ITC including its
12 recommendation on cells. Given the projections
13 for consumption of cells and given the ITC's
14 recommendation for quarterly quotas on cell
15 import volumes we know that our costs may
16 increase in the short term. We don't have
17 foreign ownership and we don't have private
18 equity, but we are okay with the result of
19 increased costs.

20 The only way to promote domestic cell
21 production is to actually apply the safeguard
22 remedy to cells. Because the quota on cells is

1 so large, this has yet -- not yet happened. With
2 cells subject to the safeguard there will be an
3 incentive to source cells from domestic
4 suppliers. Domestic cell production, wafer and
5 ingot production should be far behind. We
6 project that wafer ingot production could come on
7 line within a calendar year. This is largely
8 because the domestic polysilicon suppliers like
9 REC, Wacker (phonetic), and Hemlock are looking
10 for a customer base.

11 This is my response to your first
12 question to us. The market conditions are very
13 different from the last four years. The domestic
14 cell production is (audio interference) and not
15 just a possibility.

16 Auxin has been around since 2008.
17 Before that I was producing microchips and
18 semiconductors. I know well that investments in
19 industries like (audio interference) years to pay
20 off, but we need to counteract the Chinese
21 dominance of the solar supply chain for our
22 energy security. And make no mistake about it,

1 China's dominance of the solar supply chain is a
2 matter of national security.

3 We should be asking ourselves whether
4 we want the Chinese to control our electricity
5 grid, we should be asking ourselves if the
6 Chinese will stifle our ability to meet our
7 ambitious carbon-neutral goals, and we should be
8 asking ourselves -- we should be asking for
9 (audio interference) on the back of forced labor
10 and coal-fired power plants, and intellectual
11 property theft.

12 From my perspective I'd much prefer a
13 vibrant innovative domestic American-made
14 electricity grid. In this regard some of the
15 questions we received seem to channel arguments
16 that America needs cheaper and cheaper imports to
17 support its transition to clean energy even if
18 that means we're gutting the promise of a U.S.-
19 based supply chain.

20 Thanks to the safeguard America has
21 already made partial progress with firms like
22 Auxin increasing our module production footprint

1 and companies like Q Cells and LG investing in
2 American manufacturing. With an extended
3 safeguard and no exclusion there is great
4 potential for the American-made industry to once
5 again be an innovative force in the market free
6 from Chinese manipulation and able to source its
7 cells and upstream inputs domestically. We
8 believe in American manufacturing and we believe
9 that Auxin Solar is a key part of that.

10 American energy independence and
11 safeguarding our national security are only
12 possible if the extended safeguard is robust and
13 free of loopholes. I cannot overstate the
14 devastating impact of the recent decision by the
15 U.S. Court of International Trade overturning the
16 removal of the bifacial exclusion. An extended
17 safeguard that fails to include bifacial modules
18 is utterly worthless. Doing nothing on bifacial
19 modules tells the world that the United States
20 intends to be reliant on foreign production to
21 meet its clean energy goals.

22 When this (audio interference) was

1 first granted USTR was grossly misinformed by
2 companies driven by a desire to circumvent the
3 safeguard remedy and buy cheap imports. Auxin is
4 a small company and we do not have lobbyists in
5 Washington. I was shocked to learn companies
6 such Sunpreme told the administration it was not
7 aware of any production of bifacial modules in
8 the United States. Auxin was producing (audio
9 interference) cell bifacial modules for Sunpreme
10 during the same period.

11 Based on the false and misleading
12 statements concerning a lack of domestic bifacial
13 projection -- production, President Trump
14 excluded bifacial panels from the safeguard
15 remedy. Foreign producers quickly took advantage
16 switching their monofacial module production to
17 bifacial almost overnight. Other foreign
18 producers identified work-arounds by adding clear
19 back sheets to make the bifacial usable on
20 residential and commercial jobs just to qualify
21 for this exclusion.

22 Prices quickly crashed. Bifacial

1 imports replaced most monofacial imports and soon
2 we were unable to cover your raw material costs.
3 Our vibrant bifacial business largely disappeared
4 due to cheap imports. Both ITC and the former
5 president eventually recognized the mistake,
6 which is why the exclusion was removed, but now
7 the bifacial exclusion (audio interference)
8 putting everything in jeopardy. And in this
9 proceeding companies again advanced the same
10 misleading arguments. These arguments were false
11 four years ago and they're false today. We
12 cannot stay silent anymore.

13 Auxin, as one of the first innovators
14 of the bifacial panels, has a proven history for
15 -- of supplying bifacial panels to both utility
16 and commercial settings.

17 To your third question to Auxin, Auxin
18 absolutely has the capacity to produce bifacial
19 modules for utility-scale projects. More than
20 that, Auxin has produced bifacial modules for
21 utility-scope projects. As shown in Exhibit A to
22 our comments, Auxin provided Georgia Power, a

1 utility, with bifacial panels to power the
2 Mercedes Benz Stadium in Atlanta, Georgia. When
3 the project was completed in 2017, the stadium
4 had the largest voluntary renewable portfolio in
5 the country.

6 Auxin has produced 72-cell bifacial
7 panels for large-scale projects including the JP
8 Morgan Chase McCoy Center in Columbus, Ohio,
9 which is the largest commercial rooftop
10 installation of bifacial solar modules in the
11 world.

12 Auxin has a proven track record of
13 producing large-scale solar projects. I will
14 note that none of the companies requesting an
15 exclusion for bifacial modules have contacted
16 Auxin. The administration should not exclude
17 bifacials from the safeguard based on the say-so
18 of these companies when these companies have made
19 no effort to source bifacials domestically.

20 We could use the work. My engineering
21 team is standing by for a call. Give us an order
22 and we can quickly scale up production provided

1 the exclusion is terminated.

2 Now I'd like to quickly turn to the
3 exploitation of the bifacial loophole. Without
4 question bifacial panels make sense in the
5 utility segment and often in the commercial
6 segment as well because they offer certain
7 efficiencies due to their ability to absorb light
8 from both sides of the panel. However, in the
9 residential segment there's no reason to install
10 a bifacial panel except to avoid tariffs to pay a
11 lower price. This is exactly what we have seen
12 firsthand.

13 Your seventh question to Auxin asks
14 for examples. I direct you to Exhibit A of our
15 comments which references several examples of
16 foreign manufacturers advertising bifacial panels
17 that they have altered by using clear back
18 sheeting making them lighter and more suitable
19 for rooftop residential installs where only one
20 side of the panel is in use.

21 In fact, the video by Jinko, cited at
22 footnote 51, boasts of the various applications

1 of its lighter weight bifacial panels including
2 on the sun room of a home. This is circumvention
3 plain and simple. Bifacial is just one example,
4 but if any additional exclusions are granted like
5 countrywide exclusions I fear they will also
6 become a back door to evade the safeguard.

7 Sherry and I have put our own money
8 into this company. Remarkably because of the
9 recent court decision concerning bifacial panels
10 we're having to work with our lenders to ensure
11 that the necessary capital loans for the
12 equipment upgrades I told you about are not
13 pulled back.

14 When the wrong-headed decision came
15 out we were very far along in capital equipment
16 purchases to expand production to accommodate the
17 new form factors. We spent our Christmas week
18 trying to explain to our lenders that the
19 bifacial loophole would be closed once again.
20 When the decision came out we were also ramping
21 up production for two customers who were forced
22 to come back to us to ask for price concessions.

1 When we are only covering our costs
2 because of import pricing there comes a point
3 where we cannot provide further discounts. We
4 have to pay our employees, we have to keep the
5 lights on, and we have to be able to bring new
6 equipment on line to deal with China's predatory
7 change in form factors. After withstanding China
8 -- the Chinese predatory behavior for 13 years I
9 refuse to let a single judge put Auxin Solar out
10 of business.

11 These are real world examples in
12 response to your fourth question to Auxin of how
13 the safeguard being only a temporary measure has
14 direct impact on Auxin's ability to obtain
15 capital for investments and customers to buy your
16 products. The bifacial loophole needs to be
17 closed once and for all.

18 You can probably tell from my comments
19 that I'm frustrated. I'm frustrated by the
20 misinformation from opponents of U.S.
21 manufacturing, I'm frustrated by the addition to
22 cheap Chinese solar-made -- solar panels, I'm

1 frustrated by the head winds we've had for the
2 first four years of the safeguard, I'm frustrated
3 that our business plans have not fully come to
4 fruition, but let me (audio interference) that
5 I'm also hopeful. Every day I work on the plant
6 floor with our employees and (audio interference)
7 together. We find solutions for customers
8 together. We produce to custom specifications,
9 every day a new challenge.

10 Sherry and I are living the American
11 dream of owning a business and manufacturers in
12 America. We may be small, but we're in it for
13 the long haul. Our hope in many ways relies on
14 you. We're confident that you'll be providing
15 good advice to the President and that President
16 Biden will take strong and decisive action to
17 extend the safeguard in accordance with the
18 unanimous bipartisan recommendation of the
19 International Trade Commission.

20 I look forward to answering any
21 additional questions you might have. Thank you.

22 MR. BELINE: For the record this is

1 Tom Beline with Cassidy Levy Kent. I'm joined by
2 my partner Jack Levy. With the last couple of
3 minutes that we have left of Auxin's testimony we
4 just wanted to highlight a few things for the
5 TPSC.

6 I think you heard from Mr. Rashid that
7 the bifacial exclusion must be terminated if the
8 safeguard remedy is to have any impact whatsoever
9 on the market. We've provided in our detailed
10 comments various different ways for the
11 administration to address the bifacial exclusion,
12 the first being primarily through this extension
13 process you have the authority.

14 The second is through the
15 circumvention provision which allows you to take
16 decisive action to include by the way ratcheting
17 up any coverage contrary to what Judge Katzmann
18 seems to think the statute requires.

19 And third, one thing that bears
20 mentioning here is that all agencies; and this is
21 well-held Supreme Court precedent, all agencies
22 have inherent authority, inherent authority to

1 correct mistakes. What you've heard from Mr.
2 Rashid's testimony is that four years ago when
3 the bifacial exclusion was being talked about by
4 these same parties they were lying. They were
5 giving you false and misleading information that
6 nobody domestically was producing bifacial cells.
7 One of the specific parties requesting the
8 exclusion was sourcing bifacial panels from Mr.
9 Rashid's firm at Auxin Solar. If that's not a
10 bald-faced lie that requires decisive action
11 through the use of inherent authority, I don't
12 know what is.

13 And so, we're respectfully requesting
14 that you take this opportunity to reflect on the
15 testimony you've heard from Mr. Rashid. Auxin
16 Solar is facing significant head winds as a
17 result of the bifacial decision and an extension
18 is therefore necessary. And with that we look
19 forward to answering your questions further and
20 we'll turn the presentation over to Suniva and
21 its representatives. Thank you.

22 MR. GAGAIN: Thank you very much,

1 Auxin Solar. Yes, and we'll now hear from
2 Suniva.

3 Suniva, are you ready?

4 MR. CARD: We're ready. Thank you.

5 MR. GAGAIN: All right. Please
6 proceed. Thank you.

7 MR. CARD: Good morning. It's my
8 honor to appear before you again. My name is
9 Matt Card and I'm the president and chief
10 operating operator for Suniva, the Georgia-based
11 manufacturer of solar cells and one of the
12 original two co-petitioners in the 201
13 investigation.

14 We've co-petitioned with Auxin Solar
15 here today on the extension because we share a
16 common vision for America that one includes both
17 solar cell manufacturing and solar module
18 manufacturing that uses domestically-made product
19 and we appreciate Auxin's support in this.

20 As you're aware on December 9th the
21 ITC unanimously recommended that the 201
22 safeguards be extended for four years and they

1 unanimously recommended that the in-place 2.5
2 gigawatt solar cell TRQ be kept flat. Further,
3 there was near unanimity that step-down rate on
4 tariffs for both modules and cells be almost as
5 slow as practically possible at a rate of 2.5
6 percent annually.

7 Clearly, we agree with the ITC. The
8 President needs to maintain a strong remedy that
9 allows the domestic solar industry to fully
10 recover from the impact of being of being
11 targeted for extinction by foreign producers and
12 their supporting governments.

13 While the 201 is a global action at
14 the heart of the problem continues to sit China.
15 Over the last decade-plus the Chinese government
16 has used every tool available to them to target
17 the U.S. solar industry and achieve dominance in
18 the U.S. market including the Chinese industry
19 dumping Chinese government-subsidized solar
20 products into the U.S. market, the Chinese
21 government facilitating the use of forced labor
22 within its solar supply chain, the Chinese

1 government aiding its industry in establishing
2 manufacturing operations in third countries to
3 try to evade the original U.S. trade remedies,
4 and then bragging about their success in doing
5 so.

6 Based on her public statements in
7 October it appears that Ambassador Tai also
8 understands the severity of the problem. I quote
9 from her remarks: We see the impact of China's
10 unfair policies in the production of photovoltaic
11 solar cells. The United States was once a global
12 leader in what was then an emerging industry, but
13 as China built out its own industry our companies
14 were forced to close their doors. Today China
15 represents 80 percent of global production and
16 large parts of the solar supply chain don't even
17 exist in the United States. End her quote.

18 But as a result of the 201 remedies
19 our industry has started to rebuild. Instead of
20 two companies fighting desperately from the edge
21 of extinction you now see before you multiple
22 companies fighting to grow even as they fight to

1 survive.

2 Suniva has exited bankruptcy and
3 despite huge head winds over the last four years
4 we continue on our path to restarting the largest
5 solar cell manufacturing facility in the United
6 States. As you know, we've invested tens of
7 millions of dollars to date in the journey to
8 restart. Suniva's restart is important to our
9 collective dole of ensuring that America is not
10 completely dependent on foreign manufacturers for
11 its solar supply.

12 However, the safeguard has not been
13 able to achieve its full goal because of
14 significant head winds such as the exclusion for
15 bifacial modules, COVID, and frankly, the
16 exceptionally high TRQ granted for imported solar
17 cells established by the prior administration.

18 In its reports the Commission noted
19 the harsh impact of the bifacial exclusion on the
20 solar manufacturing industry at large. The
21 impact was especially severe on Suniva as it
22 occurred just weeks after we exited bankruptcy

1 and the immediate impact, as we submitted to you
2 before, of the exclusion was to halt investor
3 discussions.

4 Litigation brought by the same
5 stakeholders that have profited from, and even
6 abetted the efforts of the Chinese government,
7 allowed that massive loophole to eat away
8 approximately 18 months, almost half of the
9 entire safeguard period.

10 These efforts of opposition were a
11 cynical attempt to simply run out the clock on
12 the 201 safeguards, and sadly they were very
13 effective. Like the Chinese government these
14 stakeholders questioned the U.S. Government's
15 will to reestablish its industry and simply are
16 looking to regain their ability to profit from
17 the demise of U.S. manufacturing. However, those
18 parties, some of which will speak as respondents
19 today, cannot run from the history of their words
20 and actions.

21 When asking USTR for the bifacial
22 exclusion respondents asserted that bifacial

1 solar modules were just an emerging product with
2 low market share, that they would not be
3 disruptive to the overall market, and on that
4 basis urged the prior administration to exclude
5 bifacial modules from the safeguards. However,
6 during this extension process respondents told
7 the ITC a very different story.

8 Respondents have now testified to the
9 ITC that even before the exclusion was provided
10 they were importing bifacial modules in
11 substantial quantities and that bifacial was
12 already becoming the mainstay of their
13 businesses. Obviously, both of these claims
14 cannot be true, and yet respondents have uttered
15 both of them repeatedly and at times under oath.

16 Shortly after the midterm reviews and
17 well before the bifacial exclusion was
18 temporarily resolve the nation entered a period
19 of disruption of historic proportions with the
20 onset of the COVID-19 pandemic. For a
21 manufacturer like Suniva looking to add the final
22 piece of investment capital to restart operations

1 the impact of the pandemic was significant.
2 Outside investment capital for manufacturing
3 understandably dried up. This was a head wind no
4 one anticipated and it tragically touched on more
5 people than just solar manufacturers, yet the
6 impact to our industry was harsh and it severely
7 undermined our ability to benefit from the
8 safeguard.

9 In short, the bifacial exclusion and
10 COVID combined for a one-two punch that muted
11 well over two years of the total safeguard period
12 introducing uncertainty that made it
13 significantly harder for Suniva and other
14 publicly-announced new entrants to source
15 capital. Like our peers and like the ITC, we
16 believe the safeguard is still needed and must be
17 extended for an additional four years allowing
18 the industry to continue to grow and provide the
19 necessary runway for new plants to ramp and
20 scale.

21 We join with other domestic
22 manufacturers here today and ask that the tariff

1 on imported modules continue and it does so at a
2 step-down rate of 0.25 percent, as recommended by
3 the ITC. This will continue to address the needs
4 of both cell manufacturers and module assemblers.

5 However, as the ITC has clearly found
6 and documented, the remedies have had little
7 benefit for the American cell manufacturing
8 industry because of the exceptionally high TRQ
9 put in place by the previous administration.

10 Others on this panel argue that the
11 TRQ must be increased to ensure the continued
12 growth of the domestic module assembly industry,
13 however the module sector has grown precisely
14 because of tariffs being applied on modules
15 imported into the United States, something that
16 has never occurred for solar cells during the
17 four-year safeguard. Let me repeat that: Not a
18 single imported solar cell has ever been subject
19 to the safeguard tariffs.

20 The ITC rightly noted that the module
21 sector has recovered because of the tariffs on
22 modules while the cell sector has struggled

1 because of the lack of tariffs on cells.
2 Specifically, the ITC stated in its reports the
3 lack of an effective remedy for cell producers
4 materially hindered the industry's efforts to
5 make a positive adjustment to import competition
6 during the remedy period and contributes to our
7 finding below that action continues to be
8 necessary to prevent or remedy serious injury.

9 Arguments that there would be no
10 demand or market support for U.S.-produced cells
11 are spurious. Even if one were to accept the
12 claims that only one quarter of domestic module
13 producers would buy domestically-produced solar
14 cells, that is sufficient demand to absorb all of
15 Suniva's production alone, and more as the
16 domestic module sector continues to grow.

17 Suniva has provided declarations
18 detailing interest in investing and sourcing from
19 its facility from a variety of market actors. We
20 have provided confidential data that supports
21 that Suniva is close to restarting and when we
22 can and will start quickly. However, with this

1 said, it is true that Hanwha, LG, and Jinko Solar
2 are not interested in procuring cells from
3 resurgent domestic producers.

4 Why is this? That's because these
5 assemblers are all vertically integrated; that
6 is, they have their own cell manufacturing
7 capabilities in Asia. Their intent is to
8 continue to import their own cheap Asian imports
9 rather than procure domestically or invest in the
10 essential technology, cell manufacturing here in
11 the United States. Those arguing to increase the
12 TRQ do not want you focusing on one additional
13 vital fact. Without domestic cell manufacturing
14 there is no U.S. market for domestically-produced
15 wafers, ingots, and in turn polysilicon.

16 To be clear, domestic module
17 assemblers do not procure polysilicon wafers.
18 They use finished solar cells. Solar wafers are
19 only procured by solar cell manufacturers.
20 Without a domestic cell industry there is no
21 reestablishment of the solar supply chain. There
22 is only module assembly.

1 If the TRQ is held flat it still
2 provides massive access to tariff-free cells
3 every year. Even when tariffs are applied to the
4 marginal over-quota cells the total effective
5 tariff rate for cell imports to the U.S. will be
6 extremely low as the module industry will
7 continue to have access to 2.5 gigawatts of
8 tariff-free cells. As a result, the effective
9 tariff on module imports will always be
10 significantly higher than the effective tariff on
11 cell imports.

12 Until remedies have started to restore
13 the module portion of the domestic supply chain a
14 strong remedy that keeps the cell TRQ at 2.5
15 gigawatts is needed to finish the job and restore
16 the rest of the domestic solar supply chain as
17 well. To argue any differently is simply
18 inconsistent.

19 Later today you'll hear from the
20 respondents who will once again loudly proclaim
21 that solar deployment in the United States is
22 doomed with an extension of the 201 safeguards,

1 just as they've claimed in every single
2 proceeding since 2011. Nothing could be further
3 from the truth.

4 Despite their claims of doom the sun
5 is shining very brightly on solar deployment in
6 the United States. IN fact, quoting SEIA, the
7 United States has set records for solar
8 deployment in essentially every year since the
9 201 safeguards have been in place. Deployment in
10 2019 exceeded deployment in 2018 by 23 percent.
11 2020 set a record 19.2 gigawatts of solar
12 installations. Deployment for the first three
13 quarters of 2021 was already at just about 16
14 gigawatts, and 2022 is expected to set a new
15 record for solar installs yet again.

16 Think about that. In the last four
17 years during the 201 period we have installed
18 almost as much solar as we have had in the entire
19 history of the United States before the 201.
20 These are not the storm clouds that the
21 respondents would have you believe. This is the
22 very definition of solar deployment's day in the

1 sun.

2 The respondents will once again offer
3 you a false choice: dependence on foreign
4 imports, many produced using forced labor and in
5 a heavily coal-intensive process, for cheap solar
6 or missing our nation's climate goals. This is
7 simply wrong. And worse, it's in environmentally
8 destructive.

9 You do not have to take my word for
10 this. I'll reference the Wall Street Journal,
11 which has reported reliance on solar imports from
12 China will increase pollution. Increase
13 pollution. Please let me quote the Journal. The
14 solar industry's reliance on Chinese coal will
15 create a big increase in emissions in the coming
16 years as manufacturers rapidly scale up
17 production of solar panels to meet demand. That
18 would make the solar industry, and I quote, one
19 of the world's most prolific polluters analysts
20 say undermining of the emissions reductions
21 achieved from widespread adoption. End quote.

22 Further, analysis by San Jose State

1 University found that it would take nearly nine
2 years, nine years for a solar panel importer from
3 Asia and installed in the U.S. to generate enough
4 solar power to reach net zero emission
5 conditions.

6 Our country not only deserves, but
7 requires better than the false choice the
8 respondents will offer you. As the ITC has
9 already found failing to restore American solar
10 cell and module manufacturing negatively impacts
11 the national energy security of the United
12 States. As the nation continues the ambitious
13 energy renovation charted by the Biden
14 Administration, without cell manufacturing our
15 country will be 100 percent dependent on foreign
16 actors to produce the technology that turns
17 sunlight into electricity. Put simply, we will
18 have traded Middle Eastern oil for Chinese solar.

19 Indeed, extension of the 201 will help
20 achieve U.S. policy goals of national security,
21 economic security, climate change mitigation, and
22 of equal importance human rights.

1 Suniva has not given up. We believe
2 in American solar manufacturing, American energy
3 security, and American jobs. And once again I
4 ask of this administration stay the course and
5 work with us to shape the face of not only U.S.
6 manufacturing, but our nation's energy security
7 for years to come.

8 Before I close today I want to take a
9 moment and specifically address several questions
10 you have asked of Suniva which further detail
11 much that I've already touched upon.

12 First, you queried as to what
13 different market conditions would be necessary
14 for an extension to be effective for solar cells
15 compared to the previous four years. The four-
16 year extension of the 201 remedy without an
17 increase in the cell TRQ and an elimination of
18 the bifacial exclusion is the single most
19 significant signal the U.S. Government can send
20 that is committed to this manufacturing sector
21 long term and it will create the market
22 conditions necessary for investors and the cell

1 industry to restart. The very large TRQ and the
2 bifacial exclusion created cheaper solutions to
3 import foreign cells and modules tariff-free.
4 There is no other way around this.

5 As noted in our December 22nd
6 submission, Suniva has been engaged in multiple
7 discussions with module assemblers to procure
8 U.S.-made cells. When the TRQ was announced
9 discussions either stopped, slowed, or morphed to
10 a U.S. cell having to meet price points of
11 tariff-free imported cells.

12 Suniva's experience is consistent with
13 that of other market participants. For example,
14 it was well noted prior to the notice of the TRQ
15 Jinko Solar had announced plans to build an
16 approximate 500 megawatt cell and 500 megawatt
17 module manufacturing facility in Jacksonville,
18 Florida. Shortly after the TRQ announcement
19 Jinko stated it was no longer going to build a
20 cell factor in the U.S., instead using foreign
21 imports tariff-free.

22 Had the administration accepted the

1 ITC's much lower original TRQ recommendation, the
2 U.S. would likely already have operational cell
3 manufacturing today. Now it's time to accept the
4 ITC's unanimous recommendation and extend the TRQ
5 at its current level and to finally provide
6 domestic relief -- provide relief to domestic
7 cell producers.

8 Secondly, you wondered whether Suniva
9 would restart domestic production of the tariffs
10 were extended and cell demand conditions were
11 similar today. Please let me be perfectly clear:
12 Suniva's absolute and unequivocal intention is to
13 restart operations as far as possible. We have
14 provided testimony, affidavits, and confidential
15 information as to the amount spent since
16 emergence from bankruptcy for the sole purpose of
17 restarting. Assuming no TRQ increase demand,
18 conditions are already satisfactory today to
19 support at least one gigawatt of domestic cell
20 production. As the module industry grows so too
21 will demand for domestically-produced cells.

22 Next you asked us to describe the

1 expected effect an extension would have on job
2 creation in the cell industry over the next four
3 years. Solar cell manufacturing is in fact
4 semiconductor manufacturing. It is certainly
5 unlike the manual labor that dominates solar
6 deployment and is much more sophisticated than
7 module assembly offering a range of opportunities
8 from technical line workers to skilled tradesmen
9 and technicians, and even includes Ph.D.-level
10 scientists.

11 Within the course of one year from
12 commencement of restart activities Suniva is
13 targeted to employ 250 full-time, fully-benefited
14 workers. This is not seasonal work commonly
15 found in solar deployments. It's a reasonable
16 expectation that any and all cell manufacturing
17 facilities would face similar hiring profiles for
18 the startup of an 800 megawatt to 1 gigawatt
19 factory.

20 Finally, you expressed interest in
21 understanding the investments Suniva has made in
22 its sophisticated production environment. Suniva

1 submitted a description of its equipment and
2 pictures in Exhibit 1 to its December 15th
3 submission. In the period of Q4 2015 through Q1
4 2017 Suniva spent roughly \$80 million to upgrade
5 its facility infrastructure and production
6 equipment to produce a state-of-the-art
7 monocrystalline PERC solar cell.

8 Mono-PERC cells are current the
9 industry workhorse product and is the mainstream
10 of production worldwide. The Suniva facility
11 infrastructure was designed to accommodate
12 further technological evolutions and can thus
13 support additional upgrades to accommodate the
14 ongoing evolution in cell size and form factor.

15 On October 7th a dozen or so ITC staff
16 and Commissioner Schmidlein participated in a
17 virtual tour of Suniva's facility, and we'd be
18 pleased to provide a similar opportunity to
19 members of the TPSC should you desire it. We are
20 very proud of our factory. It's the largest
21 solar cell manufacturing facility in the Western
22 Hemisphere and America's best opportunity to

1 quickly restoring solar cell manufacturing.

2 As the only solar cell manufacturer
3 you'll hear from today I wanted to also comment
4 on a question you posed to developers; that is,
5 how complex is the transition from monofacial
6 cell to bifacial cell production? To use a
7 technical term, not very.

8 The equipment set we have can support
9 the manufacturer of monofacial and bifacial
10 cells. Facility infrastructure is fundamentally
11 the same for either. Indeed, a solar cell at
12 creation is inherently bifacial, but that
13 capability is masked for monofacial modules. To
14 create a bifacial cell requires minor retooling.
15 Total time, and I want to stress this to you
16 because you saw this in how fast bifacial started
17 swarming into America through the loophole --
18 total time to retool takes between approximately
19 4 weeks and 12 weeks at a cost of 1 to \$3
20 million, or put in perspective less than 1 to 2
21 percent of new factory CapEx. That's it.

22 I want to thank you for asking these

1 questions specifically as I think they go to some
2 of the very fundamental issues in front of you.
3 I'll be happy to address any of this further
4 during the Q&A. Thank you.

5 MR. GAGAIN: Thank you very much, Mr.
6 Card. And we'll now hear from Hanwha Q Cells
7 USA.

8 Are you ready?

9 MS. QUAIA: Yes. Good morning. This
10 is Diana Quaia with Arent Fox representing Hanwha
11 Q Cells USA. We plan to start our presentation
12 with a short video following by testimonies of
13 Mr. Andrew Munro and Scott Moskowitz. So, we
14 will start with the video momentarily.

15 (Video played.)

16 MR. MUNRO: Good morning. My name is
17 Andy Munro. I'm general counsel of Hanwha Q
18 Cells USA and I appreciate the opportunity to
19 testify before you today.

20 The 201 safeguard has spurred a
21 burgeoning renaissance in American solar
22 manufacturing and in order to protect and promote

1 that renaissance a strong and smart extension
2 will be necessary including the following: (1)
3 extending the safeguard for four years
4 at the highest tariff rate and with a minimal
5 step-down as recommended by the ITC; (2) promptly
6 withdrawing the bifacial exclusion which has
7 greatly undermined the safeguard remedy; and (3)
8 increasing the TRQ for cells so that U.S. solar
9 manufacturers are not penalized and are able to
10 maintain their competitors.

11 In May 2018 as a direct result of the
12 201 Q Cells decided to build our state-of-the-art
13 1.7 gigawatt solar module factory in Dalton,
14 Georgia. That factory is the largest in the
15 United States employing over 700 diverse and
16 skilled workers producing over 10,000 modules per
17 day for all segments of the market including
18 utility, commercial, and residential.

19 As a direct result of the 201 several
20 other solar manufacturers have also built and
21 expanded factories resulting in hundreds of
22 millions of dollars in investment and thousands

1 of jobs. And within the last year alone over 10
2 gigawatts of new U.S. module and cell factories
3 have been announced.

4 Q Cells is currently planning to make
5 massive additional U.S. investments across the
6 full solar supply chain including modules, cells,
7 wafers, and polysilicon. In fact, just two
8 months ago Q Cells invested over \$160 million in
9 REC Silicon. That investment will enable REC to
10 start its dormant U.S. polysilicon production and
11 will mark the auspicious rebirth of polysilicon
12 production in the U.S.

13 Q Cells is also currently engaging in
14 thorough business planning including actively
15 exploring potential sites for large-scale cell
16 and wafer manufacturing, as well as expansion of
17 our module manufacturing. That would result in
18 billions of dollars in investment, produce multi-
19 gigawatts of capacity, and create several
20 thousand high-quality stable and place-based
21 manufacturing jobs of the future. Now more than
22 ever U.S. solar manufacturing has momentum, but

1 in order to protect and promote this momentum a
2 strong and smart four-year extension of the 201
3 safeguard is necessary.

4 Extension of the safeguard is all the
5 more necessary because the effectiveness of the
6 201 remedy has been seriously impaired by COVID-
7 19, high input costs, and the bifacial exclusion.
8 COVID-19 has presented serious challenges due to
9 lock-downs, production stoppages, delays and
10 supply chain disruptions. High input costs due
11 to Section 301 tariffs that are not faced by
12 foreign producers and supply chain cost increases
13 have also undermined the effectiveness of the
14 safeguard. But most importantly the original
15 bifacial exclusion which lasted nearly a year-
16 and-a-half resulted in a massive surge of tariff-
17 free bifacial imports from China and Southeast
18 Asia.

19 NREL tracked over 10 gigawatts of
20 imported duty-free modules entering the U.S. in
21 2020. This was nearly half of all imports during
22 that period, which, as the ITC has reported,

1 severely undermined the effectiveness of the
2 remedy.

3 The reinstatement of the bifacial
4 exclusion due to the recent CIT decision is
5 having a similarly harmful result. Every day
6 that goes by with the bifacial exclusion in place
7 seriously harms U.S. solar manufacturers and the
8 effectiveness of a safeguard extension will be
9 severely undermined under the bifacial exclusion
10 is promptly withdrawn.

11 The effect of the bifacial exclusion
12 is even more damaging now as the rapidly
13 expanding U.S. industry is increasingly producing
14 these very modules. In fact, Q Cells has already
15 transitioned our Dalton factory to produce
16 bifacial modules and we will begin shipping them
17 directly from Dalton next month.

18 The USTR should of course promptly
19 appeal the CIT decision and seek a stay, but such
20 an appeal is quite likely to result in a delay of
21 a year or longer in withdrawing the bifacial
22 exclusion. Thus, the President should use his

1 broad authority under the statute to promptly
2 withdraw the bifacial exclusion via presidential
3 order.

4 Similarly, the President should
5 exercise his broad authority to establish high
6 tariff rates during the extension with a tariff
7 rate starting at 17.75 percent and stepping down
8 at 0.25 percent per year as recommended by the
9 ITC.

10 A fourth year tariff rate of 18
11 percent was appropriately prescribed by
12 presidential proclamation in order to address the
13 serious harm done by the bifacial exclusion, and
14 the harmful reinstatement of the bifacial
15 exclusion makes a high tariff rate all the more
16 necessary to provide a meaningful remedy for U.S.
17 manufacturers. As a result of the rapid growth
18 in module manufacturing the tariff rate quota on
19 cells will be exceeded and U.S. module
20 manufacturers will have to pay costly tariffs on
21 cells which are not available domestically if the
22 TRQ is not increased.

1 Q Cells is one of the world's largest
2 producers of cells. We, like most large module
3 manufacturers, use our own proprietary cells and
4 have plans to produce cells in the U.S., but it
5 will take at least two years for Q Cells to build
6 a factory and begin producing cells in the U.S.
7 And the recent cell factory announcements of
8 other U.S. manufacturers will similarly not
9 result in material cell production for at least
10 two years. Thus, any cell tariffs imposed on
11 U.S. manufacturers during the next two years
12 would merely be a penalty that makes a U.S. solar
13 manufacturer less competitive.

14 A smart extension of the 201 would
15 avoid this harmful penalty by increasing TRQ on
16 cells to a level that would result in no cell
17 tariffs during the next two years when Q Cells
18 and other cell factories are being built. An
19 increase in the TRQ to at least five gigawatts
20 will be necessary to accomplish this.

21 The 201 has not materially increased
22 prices or slowed deployment of solar energy as

1 repeatedly claimed by opponents of the safeguard.
2 On the contrary, during the 201 solar prices have
3 decreased and solar deployment has skyrocketed
4 exceeding all pre and post-201 forecasts. In
5 addition, during an extension 201 duties are
6 required to decrease and thus any effects on
7 pricing in deployment will be even further
8 reduced.

9 Solar is the lowest cost form of
10 energy available, even with the safeguard in
11 place, and that remains global over capacity
12 across the sector. U.S. manufacturing capacity
13 including bifacial capacity is rapidly growing to
14 serve all segments of the industry including
15 utility, commercial, and residential, and the
16 failure to extend the safeguard would significant
17 imperil the short-term health and long-term
18 potential of this nascent and growing industry.

19 Solar will be the leading source of
20 energy by 2035. A strong American solar
21 manufacturing industry that is not overly reliant
22 on imports is crucial to our economic and climate

1 goals, energy independence, and national
2 security. Support of American solar
3 manufacturing can result in hundreds of thousands
4 of American workers participating fully in the
5 future of energy through good-paying, place-based
6 and stable manufacturing jobs.

7 American manufacturing innovation and
8 a secure and clean supply chain will be necessary
9 to accomplish America's crucial climate goals and
10 our energy independence and national security
11 will require the U.S. to preserve its own solar
12 manufacturing capability. Smart trade policy
13 including a strong and smart extension of the 201
14 safeguard will be necessary to achieve these
15 crucial goals.

16 Opponents of the 201 extension claim
17 that American solar can be supported by tax or
18 other incentives alone and that we should abandon
19 smart trade policy, but as the ITC recognized in
20 its report potential future tax and other
21 incentives alone cannot replace the important
22 tool of smart trade policy which is tailored to

1 address serious trade injury. A whole of
2 government approach including smart trade policy
3 is the right way to build back better with solar.

4 The opportunity is great and the
5 stakes are high. A four-year extension of the
6 201 safeguard at the highest rates without a
7 bifacial exclusion and with an increase in the
8 TRQ on cells will be necessary to secure and
9 promote the future of American solar
10 manufacturing.

11 Thank you for your support and for
12 your consideration of these important matters.
13 I'd be happy to answer any questions in the Q&A
14 session.

15 MR. MOSKOWITZ: Thank you, Andy, and
16 hi, everyone. My name is Scott Moskowitz. Let
17 me go ahead and make sure you can see this. So,
18 I am the Director of Market Intelligence and
19 Public Affairs for Q Cells.

20 I'm going to be supplementing Andy's
21 statements with a few slides just walking through
22 the state of the solar industry and the

1 importance of this safeguard.

2 So, you have seen the video. You have
3 heard our plea, but just to contextualize this
4 factory within the scope of the industry, our
5 facility has an annual capacity of about 1.9
6 gigawatts. It's increasing from the original 1.7
7 gigawatts due to efficiency improvements, and it
8 produces over 10,000 panels per day.

9 So, for scale, the U.S. solar market
10 is now quite a bit over 20 gigawatts. This
11 facility alone is enough to cover not quite
12 nearly ten percent of U.S. demand.

13 It produces panels for the residential
14 and commercial sector where we are the U.S.
15 market leader in both segments, as well as the
16 utility sector. We have supplied products all
17 over the country, including a 100 megawatt
18 project powering the Facebook data center not too
19 far from our factor in Newton County, Georgia.

20 We have transitioned one of our three
21 production lines to make bifacial panels which
22 will begin shipping from Dalton starting next

1 month.

2 You'll see the products in front of
3 you. You'll notice the difference in these
4 products are very, very small, the only visual
5 discrepancies being the size of the panel and
6 whether the back sheet is white, black, or glass
7 for a bifacial panel.

8 So, this factory can produce about
9 almost ten percent of U.S. demand. It's
10 producing almost two gigawatts per year. We have
11 hopes of significantly expanding it, which we're
12 more than capable of doing.

13 We built this factory from scratch and
14 it's been about eight months between 2018 and
15 2019, and this investment has laid the foundation
16 for the additional expansion of the supply chain
17 that Andy mentioned, including cells and wafers.

18 We recently announced investment and
19 plans to restart the REC Silicon polysilicon
20 plant in Moses Lake in pursuit of becoming a
21 vertically integrated American solar manufacturer
22 and we are not the only ones.

1 On the left, you will see a map of now
2 legacy producers that were kept alive by the
3 (audio interference) and about a dozen recent
4 announcements of manufacturers looking to be part
5 of a whole of government approach to building up
6 this infant industry in the United States with
7 trade being a key pillar of the policies that
8 will enable this.

9 But it's worth caveating that today,
10 this approach remains totally prospective, and so
11 far, none of the major new investments on this
12 list have broken ground.

13 Cell manufacturing will take at least
14 two years to ramp up, which is why we think in an
15 extension scenario, the tariff rate quote on cell
16 (phonetic) should be increased to account for
17 that investment. As Andy said, we think an
18 appropriate level is five gigawatts.

19 The same is true of the bifacial
20 exclusion. Bifacial panels now make up a
21 majority of the solar installations in the United
22 States and the existence of the exclusion not

1 only makes the 201 extremely weak, it, in fact,
2 gives a competitive advantage to importing
3 manufacturers that don't pay 301 tariffs for
4 modular subcomponents. We urge you to do
5 whatever it takes to remove that exclusion as
6 soon as possible.

7 So, stepping back, and this is where
8 I really want to focus, is that we have been able
9 to -- is what's amazing about this safeguard is
10 that we have been able to benefit from the 201
11 and grow U.S. manufacturing with no impact to
12 downstream (audio interference).

13 And certainly, that is not what you
14 will hear later this morning because there is a
15 strong market dependence on growth, and it is a
16 fact that there is not enough U.S. modular
17 capacity to meet domestic demand, though there's
18 more than there used to be, but that does not
19 mean that the 201 has been harmful or that its
20 extension would be harmful.

21 So, I'm a former market analyst with
22 Wood Mackenzie. I have been tracking

1 installations and making forecasts in this
2 industry since 2014. And in this case, before
3 the 201 petition was filed in 2017, the U.S.
4 market predicted forecast for solar deployment in
5 2021, and I'm not cherry picking. You can see
6 2019 and 2021 on the chart too.

7 But back in 2017, the forecast for
8 solar installations in 2021 was 16 gigawatts.
9 After the 201 was proposed, Wood Mackenzie worked
10 with the industry and lowered those limits. For
11 2021, they lowered the installation forecast to
12 13 gigawatts. So, when you hear an argument that
13 62,000 jobs were lost because of 201, that's
14 where it comes from. It comes from the change in
15 that forecast back in 2018, but the actual
16 installations in 2021, 26 gigawatts.

17 Throughout the 201, prices have fallen
18 and installations have risen just as they would
19 in extension (audio interference). So, any
20 argument that the 201 has depressed demand is
21 extrapolated off of those old forecasts and it is
22 not a reflection of what actually happened, which

1 were record installations year after year.

2 And that is because fundamentally,
3 solar is the lowest cost form of energy available
4 in most places even with a tariff. We do not
5 have to rely on undersold imported products in
6 the United States.

7 And it's worth keeping in mind too,
8 the scope and context of what we're talking about
9 with these tariffs. Fifteen percent on a 30
10 percent on a \$0.30 per watt solar panel is 4.5
11 cents per watt. That's about one to two percent
12 of the cost of a residential solar project or
13 four to five percent of a utility project.
14 That's not insignificant, but it is not enough to
15 overwhelmingly change the economics of solar
16 energy in the United States.

17 Now, for developer and installer, that
18 four to five cents is a little extra profit. For
19 a manufacturer, it is the difference in life or
20 death, which is why, in our view, it is a very
21 small price to pay to lay a foundation for the
22 U.S. solar supply chain and to prevent our

1 industry from becoming any more reliant on
2 imports than it already is.

3 This is an industry that will grow for
4 decades, it's critical to fighting climate
5 change, and it is a major economic growth driver.

6 One last data point that I will leave
7 you with is on solar jobs. It's the second
8 bullet on this chart. The U.S. has 230,000 solar
9 workers and now installs 25 gigawatts of solar a
10 year. Those are the facts.

11 China installs about two times that
12 per year, 50 gigawatts, but their solar industry
13 employs 2.3 million people, ten times as many
14 because of its investment in solar manufacturing.

15 That is the opportunity that we have
16 in investing in our supply chain, which is why,
17 in our view, anything short of a full four-year
18 extension would be shortsighted and counter to
19 the long-term interests of the United States.

20 Thank you very much and that wraps up
21 Q Cells testimony.

22 MR. GAGAIN: Thank you very much for

1 your testimony. We will now move onto the Q&A
2 session and I thought I would start with Suniva.

3 And what I'm going to do here is I'm
4 going to pose a few questions to each of the
5 participants and then I'm going to turn it over
6 to Will Martyn at USTR and then other of our
7 panelists, both from USTR and from the
8 interagency.

9 So, I want to just start with Suniva.
10 During your testimony, you made various remarks
11 on the TRQ on cells, and one question I have is
12 that the ITC recommended changing the annual
13 quota to a quarterly quota.

14 So, how do you expect that to affect
15 imports of sales into the United States if the
16 TPSC were to make such a recommendation to the
17 President, and what anticipated impact would that
18 have on Suniva's production of cells in the
19 United States? Thanks.

20 MR. CARD: Yeah, thank you. Thank you
21 for the question. Again, for the record, this is
22 Matt Card with Suniva. I'd ask you, I'd

1 encourage you to ask that same question of module
2 manufacturers because they actually have to
3 procure cells. I'm a cell manufacturer.

4 But from my own observation, what I
5 believe the quarterly quota actually recognizes
6 and what the commission recognized was the weight
7 of the large vertically integrated multinational
8 players who are in the U.S. to dominate the cell
9 import market and to actually game the system.

10 Certainly, the capital requirements to
11 import cells while there's still TRQ available is
12 more prevalent for the larger companies than it
13 is for the smaller companies like Auxin.

14 What a quarterly cap does is allow the
15 TRQ to be spread balanced evenly over the course
16 of the year. Consumption of sales is a fairly
17 linear process. You don't ramp it up and down as
18 you're manufacturing modules. Your goal is just
19 simply straight line based on your capacity.

20 From Suniva's standpoint, a quarterly
21 tariff won't change anything. We've already
22 talked about the notion that Suniva's capacity,

1 which will be restarted at just about a gig, can
2 be more than consumed by the domestic market.

3 We will produce cells at a flat line
4 rate. You won't suddenly stop production of
5 cells because TRQ may or may not have been hit
6 for a potential quarter. You just continue to
7 operate your factory at a level rate.

8 But I do believe there's benefit and
9 potentially some of the other module
10 manufacturers can talk to that about levelizing
11 that so that you don't have the situation where
12 hoarding can take effect, you know, in Q3, or Q2,
13 or Q4 to consume all the rest of the available
14 supply underneath the TRQ.

15 So, actually, you know, as an outside
16 observer to that process who certainly knows a
17 good bit about it, I actually think it was wise
18 of the commission in that putting it in helps
19 them govern potential abuses by players that are
20 more capitally advantaged than others.

21 MR. GAGAIN: Thanks for that, Mr.
22 Card. Another question I have is with regard to

1 the second advanced written question that we
2 posted to Suniva specifically.

3 You mentioned demand is already there
4 to restart production of up to one gigawatt of
5 cells. If that's the case, has Suniva started
6 production, and if not, why not?

7 MR. CARD: We have not because what
8 you can't confuse between demand is actually
9 demand is different from restart costs. When
10 you're talking to the investment community, what
11 they're looking for, because cell manufacturing
12 does cost more to stand up than module
13 manufacturing, they're looking for a longer term
14 return on their investment.

15 Certainly, demand is in the short
16 term, but quite frankly, people worried, because
17 of the very large TRQ put in place, whether or
18 not the U.S. government was committed to
19 restoring cell manufacturing or was happy being
20 at the back end of the process if you will with
21 just simply assembling modules.

22 So, the TRQ sent a hugely mixed

1 message to the buying public and to the
2 investment community specifically as to whether
3 or not investments in cell manufacturing long
4 term was a good idea.

5 You then layered onto that TRQ in
6 fairly short order the bifacial exclusion and you
7 created, as everyone on this panel has said, a
8 massive loophole where it was simply easier to
9 convert your factories.

10 As the data clearly shows, it's not a
11 long and hard process. That's not my take or
12 anyone else on this panel. The data proves that
13 it's easy, and half the imports that came in over
14 that period were bifacial.

15 That became a -- using a bifacial
16 module, whether it was technically the right
17 answer or not, became the cheaper answer and
18 that's what we saw.

19 And so, I think between the two, when
20 you're in the investment community, you look for
21 what does the position look like in 12 months, in
22 24 months, in 60 months, and beyond? Because of

1 -- we understand this industry is tied to policy.
2 That is the reality for the foreseeable future.

3 Investors look for market signals from
4 the U.S. government, and the U.S. government
5 signals, quite honestly, over the previous four
6 years, was very lukewarm for cell manufacturing,
7 which is why it's so important the TRQ not
8 increase now because there needs to be a
9 declarative statement from the U.S. government
10 that yes, we want the entire supply chain.

11 We are not satirized just assembling
12 modules. We have to have the entire supply chain
13 to a certain degree here and sustainable in the
14 U.S.

15 There needs to be some signals because
16 there has been no signals to the market that the
17 government is committed to solar cell
18 manufacturing and that's just the reality that
19 the investment world has spoken to.

20 MR. GAGAIN: Thank you very much, Mr.
21 Card. I'd like to move onto Hanwha Q Cells. I
22 have a couple of questions for you all.

1 And the first one is the same one as
2 the first one I asked to Suniva which regards the
3 potential recommendation of a quarterly,
4 administering the TRQ on a quarterly basis, and
5 I'm wondering how do you expect that to affect
6 imports of cells in the U.S. and what anticipated
7 impacts would that have on Hanwha Q Cell's
8 production in the United States? Thank you.

9 MR. MUNRO: So, I think the
10 fundamental issue is the need to increase the TRQ
11 to avoid a penalty and remain competitive so that
12 we can expand our module production and then have
13 a flow through to expand all of the other parts
14 of the supply chain that we want to make billions
15 of dollars of investment, so that's really the
16 fundamental issue on the TRQ.

17 As to a quarterly administration,
18 while it won't have a material effect, it's
19 probably a smarter way to administer it and could
20 eliminate certain gaming that could occur, so a
21 quarterly TRQ, in my opinion, would probably be
22 superior to an annual.

1 MR. GAGAIN: Okay, thank you. Another
2 question is in your testimony today, you've
3 mentioned it at various points and you mentioned
4 this in your written comments before the TPSC as
5 well, is an expansion of the TRQ on cells, and
6 one of the questions we had is by how much would
7 you recommend expending the cell TRQ and why?
8 And I'm not sure in your testimony that I heard
9 an answer to that question, so I just wanted to
10 follow up on that.

11 MR. MUNRO: Sure, sure, there was a
12 lot said. We did mention that we were
13 recommending a TRQ of at least five gigawatts,
14 and that is what we estimate the spread between
15 module manufacturing and cell manufacturing
16 during the first two years while Q Cells and
17 other announced major cell factories are being
18 built because it will take at least two years.

19 So, what we're saying is the smart way
20 to extend the 201 is to avoid that penalty on
21 those who are making massive investments to
22 bringing back the supply chain, and so what we're

1 asking for is the minimum necessary to avoid that
2 penalty, and we believe that that would be at
3 least five gigawatts, a TRQ of at least five
4 gigawatts.

5 MR. GAGAIN: Okay, thanks for that
6 clarification. And then the last question I have
7 for you is you mentioned in your testimony that
8 you're considering an investment in cell
9 manufacturing in the United States.

10 And further to one of the advanced
11 written questions we asked you, could you
12 identify any concrete steps you have taken to
13 commence cell production in the United States
14 such as site selection or anything of that sort?

15 MR. MUNRO: Sure, so, yeah, first I'd
16 like to say that we're not only looking at cells,
17 but we've already made a major investment in
18 polysilicon which will be a rebirth of
19 polysilicon production in the U.S.

20 We plan to build wafers. We plan to
21 expand our module manufacturing, and as well as
22 the cell investment.

1 And we have had a number of
2 discussions with state and local authorities, as
3 well as private parties. We are exploring
4 financing options and we are serious about this
5 if we can get the policy right.

6 A whole of government approach with
7 smart trade policy at its center will be crucial
8 to make that vision a reality from Q Cells and
9 all of the other over ten gigawatts announced
10 module and cell factories within the past year.

11 MR. GAGAIN: Okay, thanks for all of
12 that. Before I turn it over to Will Martyn, I
13 have one question for Auxin, and that is I
14 believe I heard you mention circumvention of the
15 safeguard measure, and you mentioned this in
16 conjunction, I believe, with the bifacial
17 exclusion.

18 So, when you mention circumvention,
19 are you only speaking to your arguments regarding
20 the bifacial exclusion in your written comments
21 to the TPSC or are you speaking of something more
22 than that? I'm wondering if you could maybe

1 clarify that? Thank you.

2 MR. RASHID: Yes, sure, thank you.
3 Thank you, Mike. Yes, the circumvention, any
4 kind of -- we've seen this with the Chinese and
5 the predatory practices of the Chinese to win
6 market share at all costs.

7 So, any time there's any kind of
8 exclusion, whether it's bifacial or countrywide,
9 is a potential loophole to circumvent the
10 tariffs, whether it's the 201 safeguard tariffs
11 or the antidumping tariffs we've seen where
12 they're going through Southeast Asia, so we're
13 very, very concerned about it.

14 So, the policies, the AD, the Section
15 201, great, but if you have any kind of
16 exclusion, it's a potential for -- it's a
17 loophole for circumventing, and we've seen
18 evidence of this and we have suffered for it here
19 at Auxin.

20 MR. BELINE: Mike, it's Tom Beline
21 from CLK just to elucidate a couple of points.
22 Admittedly, it's early for Mamun on the west

1 coast, but one of the things that he often talked
2 to me about is that he's seen Cambodia come out
3 of nowhere.

4 Cambodia was treated as a developing
5 country and thus excluded from the safeguard
6 because of their lack of any shipments of CSPV
7 products. Well, lo and behold, over the last
8 four years of that countrywide exclusion, look at
9 the data on Cambodia.

10 Why does Cambodia now have a
11 production facility? It's because of Belt and
12 Road money. If you read the press, you'll see
13 that Cambodia is highly leveraged to China and is
14 allowing Chinese manufacturing to use it as an
15 export platform for things like CSPV products.

16 And then to Mamun's point about
17 bifacial, what he testified was that what
18 companies did was that they just basically add a
19 clear back sheet to make panels lighter for use
20 in residential application.

21 This is not intended for utility as
22 was told to the administration three-plus years

1 ago, and in fact, it was a loophole that you
2 could drive a truck through, and so those are the
3 types of specific circumvention activities that
4 we're talking about and we provided to you in
5 Auxin's written comments.

6 MR. GAGAIN: Thank you very much for
7 that, and with that, I'll now turn it over to
8 Will Martyn from USTR. Thank you.

9 CHAIR MARTYN: All right, thank you.
10 Thank you, Mr. Gagain. I don't have any
11 questions at this time, so I will turn to my
12 interagency colleagues and ask them to indicate
13 by raising hands if they have any questions, and
14 if after they're done, I have some, I will circle
15 back. Thanks.

16 All right, I see Dr. Boushey, you have
17 some questions. Mike, could you please begin?

18 DR. BOUSHEY: Okay, I think I am
19 unmuted and you should be able to see me.
20 Someone confirm that you can hear me, please.

21 CHAIR MARTYN: That is correct.

22 DR. BOUSHEY: Awesome, thanks, Jack.

1 All right, so I have a couple of questions. So,
2 the first one, and this is for all three
3 panelists -- and thank you very much for your
4 testimony. It was very interesting and very
5 compelling.

6 So, the first question, you know, a
7 number of you noted the ways that the past four
8 years were specifically challenging for the
9 industry and that this is part of the
10 justification for the extension of the safeguard.

11 And so, my question to you is do you
12 believe that another four years of a decreasing,
13 of this, you know, lower tariff rate would be
14 sufficient to justify the investments that you
15 all outlined were possible? So, will this four
16 years be sufficient, especially given the
17 challenges of the past four years?

18 (Simultaneous speaking.)

19 MS. DRAKE: If I just may say, one of
20 the key differences between the past four years
21 and the upcoming four years is that the 2.5
22 gigawatt TRQ will finally have teeth. It will

1 finally bite.

2 It will finally result in tariffs
3 being applied to at least some imported solar
4 cells, and for cell manufacturers like Suniva,
5 that makes all the difference in the world in
6 terms of justifying to their investors that we
7 have four full years of relief where tariffs will
8 actually finally be applied to some imported
9 cells and that is a game changer for the domestic
10 cell industry, but Mr. Card might want to
11 elaborate, whereas a five gigawatt TRQ as has
12 been proposed would be an absolute disaster and
13 would eviscerate the remedy for American cell
14 producers.

15 MR. CARD: Yeah, I'll follow up on
16 that point very quickly. You know, I'll point
17 back to one of the comments Mr. Moskowitz made
18 where he talked about more or less the effective
19 tariff, and this isn't an exact quote, but he
20 said with the effective tariff on modules about
21 three to four cents, which was basically profit
22 into a developer's pocket.

1 Let's talk about the effective tariff.
2 What we really are talking about an effective
3 tariff on solar cells. First, a solar cell sells
4 for half the price of a module. So, assuming
5 there was no tariff at all, we're talking about a
6 two cent tariff.

7 However, there is a tariff. If 100
8 percent of cells come in tariff free, as has in
9 the last four years, that was two cents of tariff
10 they did not receive. If we talk about leaving
11 the TRQ flat and let's use Hanwha's number of
12 five gigawatts, that represents approximately 50
13 percent of the sales that come in will still come
14 in tariff free.

15 So, when we talk about numbers that
16 don't change much the equation for installation,
17 the cell tariff is exactly that. An effective
18 tariff of 50 percent, half of 2.5 gigawatts on
19 five, on what was already roughly a two cent
20 tariff, is a penny or less.

21 And we've already heard Mr. Moskowitz
22 talk about three to four cents is meaningless,

1 not meaningless, but certain absorbable by
2 developers. What is under a penny if that's what
3 causes us to rebuild the cell industry? And that
4 is what we are talking about.

5 That's what we're talking about, about
6 the marginal tariff rate even on a non-expanded
7 TRQ, under a penny, and that assumes their
8 numbers, not mine, of five gigawatts. If it's
9 less than five gigawatts, it gets even less.

10 MR. RASHID: And if I may add
11 to your question, Doctor, about is this safeguard
12 enough, I don't think so. I think it needs to be
13 everything. The safeguard is one component of
14 the whole of government approach that we're all
15 requesting here to re-shore the solar supply
16 chain.

17 So, the safeguard remedies will create
18 the runway, but we need the proper tax incentives
19 that are being discussed in the Build Back Better
20 bill, as well as looking at Southeast Asia and
21 these other countries through which the Chinese
22 are circumventing.

1 And the other panelists that you're
2 going to hear from later on today enable these
3 imports of cheap Southeast Asian products that
4 are holding back the development of the solar
5 supply chain here in the U.S.

6 So, it's not only the safeguard. It's
7 a very, very important first step that must
8 happen because it sends a clear message for the
9 other policies that must follow.

10 MR. MOSKOWITZ: Yeah, I think we've --
11 so we all certainly agree on the whole of
12 government approach being needed here and, you
13 know, even across panelists here, there are
14 certain policies that we all think are critical
15 to further expanding beyond where we currently
16 are.

17 I think, frankly, what we've seen for
18 the last four years is that the 201 has kept this
19 industry alive. It has enabled it to grow quite
20 a bit.

21 The U.S. module manufacturing made up
22 less than five percent of U.S. shipments back in

1 2017 and now it's almost 20 percent, or ten to 20
2 percent. We are significantly further along.
3 Without the 201, I think it is quite safe to say
4 that this industry would be extinct.

5 And so, the question -- we have seen
6 that with the 201 in place, we have been able to
7 keep U.S. cell manufacturing alive and
8 installations have grown.

9 So, the question becomes what happens
10 if the 201 is removed? Like, it should not be a
11 question of what happens to the industry if it
12 gets extended.

13 We've seen what happens with the 201
14 in place. And when it extends, it has to
15 continue to liberalize, so prices will continue
16 to fall and the installations will continue to
17 rise.

18 But in the ITC hearing last month or
19 in November, the respondents to the case said
20 that if the 201 goes away, their importing module
21 vendors will drop prices and that will come to
22 the detriment of domestic producers.

1 And so, you know, it's really not a
2 question of -- it's not that if you take the 201
3 away, magically more imports will come in and
4 we'll be installing more solar. It will just
5 simply be that the market price will drop and it
6 will make life for domestic manufacturers
7 extremely difficult.

8 DR. BOUSHEY: Thank you. Do I have
9 time for a second question?

10 CHAIR MARTYN: Yes, one more would be
11 fine.

12 DR. BOUSHEY: Okay, great. So, I
13 wanted to just push all three of you on the
14 counter factual. So, you've each, you know, made
15 this argument that a U.S. industry to manufacture
16 solar is both a national energy security issue
17 and an economic issue, and so that it is a must
18 do regardless of the tradeoffs, you know, and
19 sort of insisted in the tenor of your remarks.

20 And so, my question is, you know,
21 where do you think those tradeoffs would balance
22 towards not thinking that this was important?

1 You know, the tradeoffs generally are
2 characterized as reliance on China. Would
3 removal of the global safeguard necessarily push
4 towards reliance specifically on China?

5 So, I wanted to ask each of you, and
6 I'm a little bit ambivalent about order, but I
7 realize last time there was some chaos, so maybe
8 we should go in the order in which you all did
9 the testimony at the beginning, so starting with
10 Auxin Solar. Thank you.

11 MR. RASHID: Yes, yeah, we view this
12 definitely as a national security issue, number
13 one to me, because if we're going to go renewable
14 for our energy grid, and that's a whole separate
15 topic, everyone agrees that renewable energy has
16 to be the future.

17 If we're not in a position with the
18 proper policies in place, you cannot turn on the
19 tap overnight, so it takes time for these
20 investments, first of all, to get the
21 investments. To get the investments requires the
22 right policies, and then to put those investments

1 into work and bring these factories online for
2 the entire supply chain, that takes years.

3 So, that has to be done now.

4 Otherwise, you essentially give up energy
5 independence and control of the grid because at
6 any moment, the faucet can be turned off and
7 that's how we view it.

8 And again, as I've said, we're not
9 necessarily the largest player here, but as
10 you've seen with what we're advocating, we're
11 really looking at a larger picture to the entire
12 supply chain at broad here, and to me, it's very,
13 very obvious it's a national security issue.

14 You have to own this supply of
15 equipment to this grid that's going to become
16 renewable. I hope I answered the question.

17 MR. CARD: I'll follow on with Mamun.
18 I think the proof that it's a national security
19 issue is an easy question. That's a very easy
20 question. If we're relying on foreign actors for
21 our supply, if that supply is turned off, we're
22 in trouble.

1 So, I don't want to debate that point,
2 but what I want to come back to actually is a
3 point I made because this shows the influence of
4 the false choice that the respondents are going
5 to promote at you, that basically the way I
6 interpret your question is are we trading off
7 energy and national security for potentially a
8 slower movement towards climate mitigation and
9 ultimately the other moral issues.

10 I've quoted from independents, not
11 people here, not necessarily people that have
12 historically been friends of U.S. manufacturing.
13 Certainly, if you go back in the history of the
14 201, the Wall Street Journal was no friend as I
15 personally remember very, very well early in this
16 process.

17 But the Wall Street Journal in their
18 studies and people like San Jose State said this
19 is not an either/or. In fact, it's an if you
20 choose imports, not only do you have an issue of
21 national and energy security, which no one
22 debates, but you actually increase pollution.

1 I'm struck by the Wall Street Journal
2 comment that the solar deployment industry will
3 become one of the largest polluters on the planet
4 with the dependence on predominantly Chinese
5 supply chain. That doesn't even begin to touch
6 the moral issues associated with what's going on
7 in Xianjiang and the Uyghurs.

8 So, the reality is we have a moral
9 imperative beyond an economic and national
10 security imperative to do just this. The two are
11 not opposing choices. They actually work very
12 much hand in glove and that's not what
13 respondents will want you to focus on.

14 MR. MUNRO: And I'd like to echo
15 Matt's point that it is a false choice, that we
16 can do both build the American solar supply chain
17 and rapidly roll out solar.

18 During the 201, solar deployment has
19 skyrocketed, and in fact, the rate of growth in
20 solar in the U.S. has been higher than almost
21 every other major market.

22 And if you were to look at every part

1 of the solar supply chain, it's over 90 percent
2 dominated by Chinese manufacturers, so I think
3 that, you know, that is the key point you need to
4 keep in mind, and whether or not it's directly
5 imported from China or imported from Southeast
6 Asia, the money and the control is from China.

7 MR. RASHID: And if I may add just
8 real quick, and we'll hear this later in the day,
9 and I'm so frustrated after my testimony, but I
10 find it very, very irresponsible to be honest
11 with you what's gone on in the last ten years,
12 and we're trying to get the right policies in
13 place and it shouldn't be so hard.

14 It's quite sad because these are
15 American companies and I don't know what they see
16 in our future. I hope the right things happen,
17 but to me, it makes me quite angry to see such
18 blatant lies and misinformation just to make a
19 buck.

20 CHAIR MARTYN: All right, thank you,
21 Mr. Rashid, and Dr. Jones-Albertus, I see you
22 have a question.

1 DR. JONES-ALBERTUS: Thank you, Will,
2 and thank you to all of the panelists. Yes, I'm
3 Becca Jones-Albertus, Director of the Solar
4 Energy Technologies Office at DOE. I have a
5 question actually for each of the panelists
6 starting with Hanwha Q Cells.

7 You mention a request to increase the
8 TRQ to five gigawatts, but I would like to ask
9 could you speak more specifically to the impacts
10 of not increasing the TRQ over the next two
11 years?

12 MR. MUNRO: Well, if the TRQ is not
13 increased, then we will have a tariff on our most
14 important input. This will harm out
15 competitiveness.

16 This will -- we will have to consider
17 this in terms of our plans to expand our module
18 manufacturing, and, of course, with our current
19 plans, that's going to ripple through the cell
20 manufacturing.

21 The scope of our module manufacturing
22 will dictate the scope of our cell manufacturing,

1 our wafer manufacturing, the amount of
2 polysilicon that we're restarting through our new
3 investment in REC. So, that's why this is smart.

4 If we can continue to -- if we can
5 allow the module manufacturers who have made
6 major investments and who are planning to make
7 additional major investments throughout the full
8 supply chain to remain competitive during the two
9 years in which we're building a massive cell,
10 wafer, and polysilicon capability in the U.S.,
11 this is going to incentivize us to follow through
12 and actually do that.

13 DR. JONES-ALBERTUS: Thank you. Next,
14 I have a question for Suniva, which is if the
15 tariffs were extended as proposed, what date or
16 month would you expect that Suniva would be able
17 to restart cell production and when would you
18 reach one gigawatts?

19 MR. CARD: Yeah, thank you. Thank you
20 for that. As we have indicated in multiple
21 submissions, both to the Department of Commerce,
22 both to the USTR over this process, to get to

1 initial first article production, it's inside
2 nine to ten months from when we begin the
3 activity, and we're full scale within about a
4 quarter of that.

5 DR. JONES-ALBERTUS: Okay, and if
6 there were a short-term increase in the TRQ for
7 the first one to two years, would that impact
8 those plans?

9 MR. CARD: I don't think we have to
10 guess about that. All we got to do is look at
11 the last four years. It absolutely impacts it
12 and aside from --

13 And we have an honest disagreement, it
14 appears, with some of the module companies as far
15 as the relative impact of tariffs, and I will
16 state again we're not talking about a tariff from
17 unit one. We're talking a tariff from unit
18 2.501, right?

19 The first however much percentage of
20 what they bring in, anywhere from 50 to 100
21 percent depending on what volumes people grow to,
22 is still tariff free, but the reality is the much

1 broader issue when we talked about what are the
2 market conditions that have to exist for cell
3 manufacturing to come back. This isn't just a
4 Suniva question.

5 There were multiple people that had
6 announced plans for cell facilities, most
7 notably, Jinko Solar, and within days after the
8 establishment of a large TRQ, they pulled the
9 plan saying it's more economical to continue to
10 work with imports.

11 So, I don't think there's any
12 speculation about what happens. If we continue
13 to live in an environment where the U.S.
14 government sends a message that cell
15 manufacturing is not a strategic priority, you
16 will not get investment in cell manufacturing in
17 the United States.

18 And the simple fact of the matter is
19 historically the data already shows that a large
20 TRQ, when it was, you know, four to five times
21 the size of U.S. production in 2018, sent a
22 crushing message to the investment community that

1 the U.S. government really isn't serious about
2 reestablishing the supply chain, that we'll take
3 the low hanging fruit and the quickest to come
4 back, which is module assembly.

5 So, an expanded TRQ will continue to
6 do a couple of things. It will continue to delay
7 investment, but then you get into the fact, as
8 others have noted, that the scale time -- Suniva
9 is, in fact, the fastest.

10 We can be at first article, like I
11 said, within three quarters, but new construction
12 that has to build the extensive infrastructure is
13 a longer period. Now you're talking about when
14 it makes no economic sense to build a cell here
15 if you can bring them in tariff free.

16 You're saying it does begin to make
17 economic sense with two years to go. What's Mr.
18 Moskowitz and Mr. Munro testified how long it
19 will take Hanwha to bring up a plant? Two years.

20 So, as they bring up -- and once they
21 start literally tomorrow or on February 8 doing
22 this, it takes a while for plants to come up, and

1 others will look at that continued ambiguity, the
2 lack of true support from the U.S. government for
3 cell manufacturing, and the length of time to
4 bring up plants and they'll say I've got better
5 places to put my investment dollars, and we've
6 already proven that out in the last four years.

7 DR. JONES-ALBERTUS: Thank you. And
8 just a quick clarification, that three quarters
9 to startup, that's after you secure investment or
10 that's from the day the tariffs are rescinded?

11 MR. CARD: It's from the day we start
12 the process and the two are not unlinked to each
13 other. It's not from February 8 if we say that,
14 but February 8 does trigger other decisions and
15 other milestones in our process that will --
16 assuming -- I should say the results on February
17 8.

18 So, you're looking at a very short
19 period after that and then the start on
20 activities, and depending where we are in the
21 process, we can already start some of our
22 renovation work in advance.

1 So, it's from a start date. There's
2 multiple factors that play into a start date
3 beyond just the extension.

4 DR. JONES-ALBERTUS: Thank you.

5 CHAIR MARTYN: All right. I'm sorry,
6 are you finished, Dr. Jones-Albertus?

7 DR. JONES-ALBERTUS: I had one
8 question for Auxin if there's time.

9 CHAIR MARTYN: All right, what I'm
10 going to say is I do not want to cut off
11 discussion. We have reached the official end of
12 questions and answers, and I note that Dr. Gorman
13 also has a question.

14 So, please ask your question, then
15 I'll ask Dr. Gorman to present her question, and
16 I would ask Ronalda to take the that, track the
17 time that we are going over and to allow the same
18 amount of extra time for panel two.

19 And I would ask the folks responding
20 to the questions to please be very brief and to
21 not repeat things that previous responders have
22 said. Thank you.

1 DR. JONES-ALBERTUS: Thank you. So,
2 my question for Auxin is given that there is no
3 existing cell production in the U.S. and you
4 stated support for removing the TRQ in entirety,
5 can you speak to how the higher prices that you'd
6 need to pay to import cells impact your business
7 model?

8 MR. RASHID: We'll definitely -- thank
9 you for the question. We'll definitely need to
10 pay a little bit more, but I anticipate the same
11 result that we saw with the 201 tariffs on the
12 modules, which is to have minimal if no impact on
13 the business.

14 And so, what I mean by that is just
15 like the tariffs have increased, supposedly have
16 increased the price of modules, and in the
17 marketplace, we see the installations have gone
18 up and the prices have come down, the impact is
19 minimal.

20 I suspect it will be the same thing
21 for the cells, but as I said in my testimony,
22 we'll -- willing to make that sacrifice because

1 you need to bring it upstream. You need to bring
2 cell manufacturing here in the U.S.

3 So, I just, I bring credibility to
4 this argument because I'm a module manufacturer,
5 but, yeah, to answer your question, I don't think
6 it's going to have any detrimental impact.

7 DR. JONES-ALBERTUS: Thank you.

8 CHAIR MARTYN: All right, thank you,
9 Dr. Jones-Albertus. Dr. Gorman?

10 DR. GORMAN: Thanks, Will, just a
11 question for Suniva. So, you spoke in-depth
12 about the focus of the investment community on
13 the long-term recovery of costs, particularly
14 regarding cell manufacturing in the U.S.

15 And I'm just curious, would an
16 investor find it more economically viable to open
17 a combined cell and module facility versus a
18 standalone just cell production facility? I'm
19 curious to hear your perspective.

20 MR. CARD: I think different people
21 will make different decisions, but I think
22 there's obviously some scale in creating both,

1 but I think, as we've seen already, the first --
2 again, I go back to the case point, and I'll be
3 brief as Will requested.

4 We don't have to look any further than
5 Jinko Solar. It came down to an economic
6 decision. Jinko said, and certainly had the
7 financial capability to do it, to build an
8 integrated plant here.

9 For that matter, so did Hanwha or LG.
10 They chose not to because the economics were more
11 advantageous to continue to use imported cells
12 while building modules here and they satisfied
13 the requirements of the 201 safeguards.

14 So, there is economic advantages to
15 it, but investors will look at multiple
16 calculations as to what's the way to do that.
17 What they look first and foremost for is a signal
18 that these issues aren't going to go away, that
19 the U.S. government is committed to a full supply
20 chain no matter how big or marginal.

21 DR. GORMAN: Will, that was my only
22 question. Thank you.

1 CHAIR MARTYN: All right, now I also
2 want to be sure we're not cutting off queries
3 unnecessarily. Dr. Boushey or Dr. Jones-
4 Albertus, do you have any additional questions
5 that you think warrant us going over the limit?

6 DR. JONES-ALBERTUS: I do not. Thank
7 you.

8 DR. BOUSHEY: Similarly, thank you.

9 CHAIR MARTYN: You're very welcome.
10 All right, then, Mr. Gagain, can we proceed to --
11 first, I should thank all of the folks on the
12 first panel for your being here and presenting
13 this testimony and your responding to our
14 questions.

15 This has been very informative to us
16 and will help us in putting together our
17 recommendation for the President. So, with that,
18 Mr. Gagain, could we move to the next panel?

19 MR. GAGAIN: Yes, thanks, Mr. Martyn.
20 We dismiss the first panel with our thanks and we
21 will pause for approximately five minutes to
22 compose the second panel. Thank you.

1 (Whereupon, the above-entitled matter
2 went off the record at 10:46 a.m. and resumed at
3 10:50 a.m.)

4 MR. GAGAIN: We will now proceed with
5 Panel 2. On Panel 2, we have first of all
6 Counsel to the Solar Energy Industries
7 Association and to NextEra Energy Incorporated.
8 We have the Solar Energies Industries
9 Association.

10 We have EDF Renewables Distributed
11 Solutions Incorporated. We have Borrego Solar
12 Systems Incorporated, SOLV Energy, Sunnova Energy
13 Corporation, the American Clean Power
14 Association, and NextEra Energy.

15 The participants on Panel 2 have a
16 combined 60 minutes to provide testimony. Based
17 on prior communications, each of them has
18 indicated that they will provide approximately
19 seven and a half minutes of testimony.

20 We will set the clock for one hour,
21 based on the requests of this panel. And we will
22 track the aggregated time. And then we will

1 shift to the Q&A session.

2 Similar to the first panel, as each of
3 you take the floor, please indicate your name and
4 title so that our Court Reporter can capture
5 that.

6 Mr. Nicely, are you ready, and is
7 everybody on your panel ready?

8 MR. NICELY: Thanks, Mike, I do
9 believe we're all here, and yes, we're ready.

10 MR. GAGAIN: Okay, thank you. Please
11 proceed.

12 MR. NICELY: Thanks very much.

13 I'm Matt Nicely of Akin Gump Strauss
14 Hauer & Feld, Counsel to the Solar Energy
15 Industries Association, or SEIA, and NextEra
16 Energy. I'm going to kick off the panel today to
17 set the proper legal context for the trade policy
18 decision facing the Committee, and ultimately the
19 President.

20 First, it's important not to lose
21 sight of the fact that safeguard actions are an
22 extraordinary form of relief aimed at addressing

1 the effects of presumptively fair trade, that is,
2 trade in product for which there is no proof of
3 unfair trade activity.

4 During the last 20 years, only three
5 products have been subject to U.S. safeguard
6 actions, steel, residential washers, and solar
7 cells and panels. Extension of such actions is
8 even more extraordinary. Until last year, it had
9 literally never happened.

10 No president except Donald Trump has
11 extended a safeguard action beyond the first
12 three or four years. And even when Donald Trump
13 extended the washer safeguard, he did so from an
14 initial period of three years and added only two
15 more years, for an extended total period of five
16 years.

17 Here, the safeguard has already been
18 in effect for nearly four years, and the domestic
19 industry is seeking an additional four. That's
20 eight years of total safeguard relief against
21 fairly traded imports. This would be
22 unprecedented for any product for any president.

1 In fact, extensions of any kind are
2 rare across the globe, and with good reason. The
3 WTO safeguards agreements permits trading
4 partners to seek compensation or suspend
5 concessions for safeguard measures that stay in
6 place over three years.

7 If the President extends these
8 safeguard measures, we should expect that our
9 trading partners will impose retaliatory tariffs
10 on billions of dollars' worth of U.S. exports, as
11 is their right.

12 The notion that we would take such
13 rare action and risk retaliation over the
14 products in question here would be senseless.
15 This case is not about a consumer item like
16 residential washers, where less demand as a
17 result of higher prices is not the end of the
18 world.

19 But here, the Biden-Harris
20 Administration has already identified massive
21 increases in solar deployment as a key component
22 of its policies to fight climate change, which

1 President Biden himself has called an existential
2 threat.

3 And those massive increases in social
4 deployment cannot happen without a massive
5 increase in a supply of crystalline silicon
6 photovoltaic, CSPV, solar cells and panels that
7 are the subject of this safeguard action. And
8 that increase in supply cannot happen without
9 significantly more imports.

10 Whatever additional capacity the
11 domestic industry might be planning to build in
12 the next few years, it will still be a drop in
13 the bucket compared with what the market needs to
14 meet the goals set forth in this administration's
15 Department of Energy's solar future study.

16 To extend safeguards on products that
17 are a centerpiece of this administration's
18 climate change policy would be illogical. It
19 would mean carrying on with the policies of a
20 prior administration that denied that climate
21 change was something to even be concerned about.

22 I said at the beginning of my

1 testimony that I was going to provide legal
2 context for our panel today. You might wonder
3 what my discussion about climate policy has to do
4 with the law. It has everything to do with the
5 law.

6 It is not the President's job merely
7 to consider the Commission's views on what would
8 facilitate the domestic industry's adjustment to
9 import competition and to decide if he agrees or
10 disagrees. It's the President's job also to
11 compare the economic and social costs versus
12 benefits of a safeguard action.

13 This is a foundational element of
14 Section 201 enshrined in the very first paragraph
15 of the law, and it's something the Commission
16 elected not to address. Notwithstanding our
17 efforts to get them to consider it, they decided
18 this is the President's job, not theirs.

19 And there is no question whatsoever
20 that the costs of the safeguard measures on CSPV
21 modules in particular has exceeded their
22 benefits, and their extension will just be more

1 of the same.

2 Now, let me be clear: SEIA, ACP, and
3 all the industry representatives with us today
4 agree that having a large, thriving domestic
5 industry producing CSPV products would be ideal.
6 After all, the supply chain interruptions
7 associated with reliance on imports has become a
8 huge burden, particularly in the last couple of
9 years, and we can't battle climate change without
10 imports and the significant volume.

11 And as Abby Hopper from SEIA will
12 testify, safeguard measures on those imports have
13 cost tens of thousands of jobs along the solar
14 supply chain, cost consumers billions of dollars,
15 and dampened demand by increasing the cost of
16 solar products and challenging the economics of
17 solar as compared to other sources of electricity
18 in many parts of the country.

19 It's time for adoption of policies
20 that will allow solar to flourish unabated, while
21 also incentivizing domestic manufacturing, which
22 can and should be done by lowering tariffs on

1 manufacturing equipment and inputs and passing
2 legislation that puts money in the pockets of the
3 domestic producers who produce here in the USA.

4 Next, I want to talk about -- I want
5 to address the legal question of whether the
6 Administration can impose safeguard duties on
7 bifacial panels as part of this extension
8 proceeding.

9 This is not a question of extension of
10 safeguard duties, this is a question of re-
11 imposition of such duties, because the safeguard
12 currently does not apply to these imports since
13 the Court of International Trade issued its
14 November 16, 2021 decision in SEIA v. the United
15 States, nullifying Donald Trump's Proclamation
16 10101 -- 10101.

17 As the Court concluded, once a product
18 has been excluded from a safeguard action,
19 reimposition of safeguard measures on that
20 product violate the statues requirement that the
21 trade protections be progressively liberalized.
22 The President does not have the authority to

1 reimpose safeguard duties now, for the same
2 reasons identified by the Court in the SEIA
3 decision.

4 The domestic producers have argued
5 that the President can trigger Section 204(b)(2)
6 of the Trade Act because they claim import of
7 bifacial panels are circumventing the safeguard
8 action. This is nonsense.

9 During the periods the exclusion has
10 been in place since June 2019, importers did
11 exactly what the exclusion specifically allowed
12 them to do, which is to import bifacial panels
13 free of safeguard duties. There can be no
14 circumvention when importers are doing exactly
15 what the exclusion contemplated.

16 You should also reject the prior
17 panel's insinuation that original requesters of
18 the bifacial exclusion mislead USTR. Pine Gate,
19 the lead requester, specifically said that,
20 quote, the exclusion would pave the way for
21 greater adoption of bifacial modules in the
22 utility segment.

1 In other words, one of the key
2 purposes was to increase demand for the product
3 because of the greater efficiencies to be gained.
4 In any event, the President may -- may therefore
5 only consider extension of safeguard duties
6 currently in effect. That means that any
7 extended safeguard action would be limited to
8 CSPV cells and monofacial CSPV panels at duty
9 rates of less than 15 percent.

10 But even if Proclamation 101 were
11 still in effect, the fact remains that imposition
12 of safeguard duties on solar products of any kind
13 undermines the Biden-Harris Administration's
14 battle against climate change and imposes greater
15 economic and social costs than benefits.

16 It's time to bring these safeguard
17 measures to an end and allow solar deployment in
18 the United States to reach its full potential.

19 Abby.

20 MS. HOPPER: Thank you, Matt.

21 Good morning, I'm Abby Hopper,
22 President and CEO of the Solar Energy Industries

1 Association, SEIA. As a national trade
2 association for the U.S. solar industry, SEIA
3 represents the entire supply chain, including
4 companies that promote, manufacture, install, and
5 support development of American solar energy.

6 During the original safeguard
7 investigation, SEIA led the opposition to these
8 tariffs. We believe strongly that the costs of
9 these measures would significantly outweigh any
10 benefit to domestic producers. Unfortunately, we
11 were right about that.

12 At the time of the original
13 investigation, we forecast that tariffs in the
14 rage of 30 percent would lead to several
15 gigawatts of lost deployment, tens of thousands
16 of lost jobs, and billions of dollars of lost
17 investments. And unfortunately, that is exactly
18 what happened.

19 In contrast, Petitioners argued that
20 the tariff would create 45,000 jobs in solar
21 manufacturing alone.

22 So, who are you going to believe going

1 forward? The side whose earlier forecasts were
2 prescient, or the one that just plain got it
3 wrong? The President should not let history
4 repeat itself. It's the time to end the solar
5 safeguard measures, the costs are simply too
6 high.

7 As you know and as Matt talked about,
8 this administration has recognized that rapid and
9 widespread deployment of solar energy is critical
10 for the fight against climate change. As the
11 Department of Energy found in its solar future
12 study, the United States must double its annual
13 solar deployment in the early 2020s and quadruple
14 deployment by the mid to late 2020s and beyond.

15 Domestic module production alone
16 cannot reach these goals, and it's currently
17 inadequate at only 3.8 gigawatts relative to the
18 current annual demand of more than 20 gigawatts.
19 This is particularly true in the utility scale
20 segment, which represents nearly 75 percent of
21 the total U.S. solar market, and where there is
22 almost no domestic module capacity.

1 To address this supply -- this supply
2 shortfall in the utility segment and as far back
3 as 2018, SEIA has been the leading advocate for
4 excluding bifacial modules from the Section 201
5 tariff. We fought for the exclusion before it
6 was granted and then against the unlawful
7 attempts to revoke it.

8 And contrary to what Petitioners have
9 said, no domestic supplier is currently able to
10 produce bifacial modules at the scale required
11 for utility scale projects. And as you'll hear
12 later, 150 megawatts of bifacial module
13 production capacity won't even qualify a company
14 to compete for most utility scale projects where
15 scale and bankability are so important. It is
16 critical that the Administration maintain this
17 exclusion.

18 The Administration should also get rid
19 of the tariff on imported cells for the benefit
20 of not only domestic producers, but also their
21 customers, who are mainly in the rooftop segment.

22 We were surprised that the Commission

1 concluded that keeping a cell TRQ in place will
2 drive investments in domestic cell capacity.
3 This just doesn't square with the commercial
4 realities as we understand them, or even the
5 history of the safeguard measure.

6 U.S. consumers have also paid an
7 estimated \$2.8 billion in tariffs on imported
8 modules since February of 2018, implying an
9 average cost of 1.4 million per CSPV job. Going
10 forward, the consumer costs of extending the
11 safeguard tariff and withdrawing the bifacial
12 panel exclusion is over 6.5 billion, with a
13 majority of the burden, 4.15 billion, falling on
14 the utility scale segment.

15 Under an extension, the cost per job
16 would grow to \$6.5 million. Let me repeat that,
17 \$6.5 million per module manufacturing job.

18 Next, I would like to address some of
19 the questions that you asked in advance. You
20 asked SEIA about the impact of the duties on
21 prices faced by consumers and to respond to the
22 LG's rebuttal comments that the impact was close

1 to zero.

2 Simply said, LG misses the point. The
3 reality is that increasing the cost of modules
4 challenges the economics of solar project
5 compared to other sources of electricity.
6 Consumers may not pay significantly more for
7 electricity, but solar becomes less cost-
8 competitive with added tariffs.

9 TPM Research found that solar is now
10 less expensive than other forms of new power
11 supply in 16 states. And while solar could be
12 competitive in all but four states by 2025, that
13 depends on the long-term trend of declining
14 prices. Extending the safeguard tariff would
15 undermine this progress.

16 Moreover, SEIA estimates that the
17 United States has lost almost 13,000 total solar
18 jobs due to the negative deployment effects of
19 the safeguard tariffs, in addition to almost
20 20,000 projected new solar jobs that were never
21 realized. This reversed years of steady growth
22 in U.S. solar jobs that had occurred prior to

1 imposition of the safeguard measures. And again,
2 the costs are too high.

3 You also asked about job losses on
4 2202 and whether COVID is to blame. What's
5 important here is that we have unquestionably
6 lost jobs because of tariffs lost before COVID,
7 and these jobs have not yet returned. Extending
8 the tariffs will only extend the damage.

9 It is also undisputable --
10 indisputable that the safeguard measures have
11 slowed deployment by several gigawatts. Total
12 solar -- total solar installments fell in 2017
13 and 2018 as a direct result of the safeguard
14 investigation after years of dynamic growth, a
15 loss of nearly 5.5 gigawatts of deployment from
16 2018 to 2020 alone.

17 This is consistent with SEIA's
18 original studies conducted during the
19 investigation. And although even though
20 deployment has increased since 2018, it would
21 have gone up even more without the tariffs. Lost
22 solar deployment is a missed opportunity to

1 address climate change and one we can no longer
2 afford.

3 I also note that Wood Mackenzie
4 recently lowered its 2022 outlook for solar
5 installations by 25 percent, which reflects a
6 staggering decrease of 7.4 gigawatts in
7 deployment. And adjusting its forecast, Wood
8 Mackenzie opined that 2022 will be a challenging
9 year for the solar industry because of the,
10 quote, Ongoing solar chain -- solar supply chain
11 constraints and prices increases.

12 Now, the prices for CSPV panels in the
13 United States are highest in the world. The
14 Commission staff found that U.S. prices are 50
15 percent higher than elsewhere. TPM Research
16 found that, quote, If the U.S. extends the same
17 set of tariffs for another round, by 2026 it may
18 cost twice as much to buy solar modules in the
19 U.S. than in Europe or Canada, end quote.

20 The suggestion that the safeguard has
21 not had any impact on price is simply false. By
22 extending the tariff, the Administration would

1 place an even greater burden on already severely
2 strained supply chains, solar supply chain.

3 You also asked how extension would
4 affect the broader U.S. solar industry. Clearly,
5 placing safeguard tariffs on modules in the years
6 ahead when deployment is already expected to be
7 negatively impacted by rising costs and supply
8 chain constraints will make solar less
9 competitive with other forms of energy.

10 This will result in suppressed demand
11 for solar energy, fewer jobs, less fuller
12 deployed, and the loss of precious time in our
13 fight against climate change.

14 Regarding the impact of extension on
15 U.S. cell and module producers, domestic
16 manufacturers are poised for dramatic growth, but
17 tariffs are not going to be the driver. What
18 these companies need are long-term federal
19 investments. And even with these investments, it
20 will take several years before we see significant
21 growth in domestic capacity.

22 Under any scenario, the U.S. solar

1 industry will continue to rely on imported
2 modules, including continued imports from U.S.
3 module producers themselves. Extension of the
4 safeguard will not change this reality.

5 So, SEIA has long argued that tariffs
6 are ineffective at growing solar manufacturing,
7 and that what's needed instead is a suite of
8 long-term policy options.

9 In September 2019, SEIA published a
10 manufacturing white paper, which opines that
11 growing domestic solar manufacturing requires,
12 one, demand drivers such as a long-term extension
13 on the solar investment tax credit with a bonus
14 for domestic content. Two, manufacturing tax
15 credits. And three, ongoing domestic production
16 support as companies and their suppliers scale
17 operations.

18 Importantly, all three categories of
19 federal investments are required if we hope to be
20 globally competitive, and Congress is close to
21 enacting such -- just such a program under the
22 Build Back Better Act. Indeed, SEIA is the lead

1 proponent of the climate provisions in Build Back
2 Better, including Senator John Ossoff's Solar
3 Energy Manufacturing for America Act, or SEMA.

4 We forecast that these investments
5 would create 27,000 direct manufacturing jobs by
6 2025 and 40,000 by 2030. This is how we help
7 domestic manufacturers.

8 Finally, all the great news we're
9 hearing about new U.S. solar manufacturing
10 investments has little to do with the potential
11 extension of the Section 201 tariff. Rather,
12 it's all about the climate provisions of the
13 Build Back Better Act, and SEMA in particular.

14 SEIA has found hard to make Build Back
15 Better provisions provide domestic manufacturers
16 with the help that they need. More tariffs are
17 simply not the solution, the costs are just too
18 high.

19 Thank you. Ron.

20 MS. SCIARRA: Hi, I'm Vanessa Sciarra,
21 Vice President for Trade International
22 Competitiveness at the American Clean Power

1 Association, or ACP.

2 We represent the companies that build,
3 finance, own, and operate a majority of the
4 utility-scale solar projects in the United
5 States. Our companies work every day to help
6 American utilities and businesses find ways to
7 meet President Biden's goal of creating a carbon
8 pollution-free power sector by 2035.

9 We agree with the previous witnesses
10 on this panel that what is needed to reach this
11 goal is quick and decisive action to reduce
12 barriers to utility grade renewable energy
13 installation. This in turn requires rapid
14 deployment, a large, utility grade, bifacial CSPV
15 products that are not used in the residential and
16 commercial markets and are not currently produced
17 at scale in the United States.

18 Achieving these aggressive but
19 necessary targets requires a thoughtful balancing
20 of what is more important to the national
21 interest. We believe that the TPSC should
22 recommend that the President act to confirm that

1 imports of utility scale products and
2 specifically bifacial panels should not be
3 subject to further Section 201 tariffs.

4 Looking at the statutory language of
5 201, the President is authorized to take
6 appropriate and feasible action that provides
7 greater economic and social benefits than costs.
8 In essence, he must consider the -- he must
9 consider the ITC recommendation in the broader
10 context of what is best not just for the
11 Petitioners, but what is best for the country
12 overall.

13 In contrast, the ITC report was
14 limited to a narrow examination of the domestic
15 industry's experience in the past four years of
16 tariff protection. In fact, the ITC made no
17 findings or recommendations as to the economic
18 impact on all Americans of extending its proposed
19 tariff measures.

20 The utility solar market requires
21 access to a dependable supply of utility scale
22 modules to meet the massive demand for large

1 scale solar projects. To build on this progress
2 toward meeting the renewable energy goals of the
3 Administration, ACP asks that the TPSC consider
4 how tariffs on bifacial modules, which would add
5 to other headwinds facing the utility solar
6 industry, would impact these larger social and
7 economic goals.

8 I am pleased that in your specific
9 questions posed to ACP, you focused on the issue
10 of whether the ITC erred in finding that there
11 was no market segmentation in the CSPV industry.
12 We continue to believe that ITC made specific
13 analytic error when it rejected the concept that
14 there are essentially two distinct markets for
15 solar modules.

16 It is true that the ITC found some
17 domestic utility scale module production and some
18 evidence of bifacial modules sold in the
19 residential market. But what is critical to an
20 accurate assessment of this data is scale and
21 context. Any domestic production is simply
22 minuscule when compared to the massive demand of

1 utility projects.

2 Further, industry representatives from
3 companies representing the largest utility grade
4 solar developers in the country spoke directly to
5 this dynamic at the ITC hearing and unfortunately
6 were largely ignored.

7 We understand that the TPSC has
8 received the complete from the ITC proceeding and
9 we urge you to consider the direct testimony and
10 sworn declarations of these company
11 representatives as they explained how the supply
12 and demand conditions of the solar utility market
13 affected their purchasing decisions.

14 In particular, we cite to ACP's
15 October 27 prehearing brief at Exhibits 2 and 3,
16 which were declarations from ACP members Clearway
17 and Invenergy. Their testimony noted that they
18 knew of no domestic suppliers that have
19 manufactured utility grade bifacial modules in a
20 quantity sufficient to support utility scale
21 developments.

22 Further information that is consistent

1 with this will be provided by NextEra and EDF
2 representatives on this panel.

3 Further, you asked us to comment on
4 Hanwha's statement regarding the, quote,
5 Dedicated production line for 72 cell modules,
6 end quote. Again, context is key. Just because
7 Hanwha itself claims that it has a, quote,
8 Material percentage, end quote, of its production
9 in bifacial says nothing about what percentage of
10 overall utility project demand Hanwha or the
11 domestic industry can supply.

12 We urge the TPSC to closely consider
13 the broader context of these utility scale
14 projects, which are simply massive when compared
15 to the inconsistent and inadequate of domestic
16 producers.

17 I would further refer you to ACP's
18 post-hearing brief at page 13, and also Annex 4,
19 where we respond to Commissioner Schmidtlein's
20 questions, where you can see that the utility
21 scale production was woefully insufficient during
22 the POI to meet the demand of the utility market.

1 What we continue to find perplexing is
2 that the ITC did not refute the evidence provided
3 directly by procurement officials who work for
4 the companies engaged in the most significant
5 large scale solar deployment projects. Instead,
6 they chose to disregard the experience of these
7 officials entirely.

8 I urge you to consider their approach
9 as you hear from others on this panel who work on
10 a daily basis in this industry as to their
11 experience both with regard to their attempts to
12 purchase from U.S. domestic manufacturers, as
13 well as their business concerns about the needs
14 of utility grade developers.

15 Acting as the TPSC, you can -- you can
16 assess the ITC's conclusions and assess whether
17 the ITC was justified in rejecting the actual on-
18 the-ground experiences of APC -- ACP's solar
19 energy developers, who comprise the largest
20 purchasers of solar modules, in deference to
21 testimony of witnesses who, as a practical
22 matter, have very limited experience of dealing

1 with purchasers outside the context of
2 residential and small scale commercial
3 applications.

4 You also asked us to expand upon our
5 statement that we are supporting increasing
6 domestic manufacturing equipment for utility
7 grade projects. ACP has been very public in its
8 advocacy of the long-term extension of the
9 renewable energy investment tax and production
10 tax credits.

11 When coupled with manufacturing tax
12 incentives currently being debated in Congress,
13 long-term certainty around these credits will
14 bring the necessary market stability to maintain
15 existing domestic manufacturing capacity and to
16 encourage additional investments in domestic
17 clean energy supply.

18 As a final matter, I would like to
19 address the CIT decision of November 16. This
20 case bears consideration because it means that,
21 as a current legal matter, bifacial modules are
22 excluded from the Section 201 tariffs, and there

1 are no measures on bifacial products to extend.

2 We recommend that the President
3 confirm that the CSPV bifacial modules remain
4 excluded from further Section 201 tariffs. Even
5 if there is an increase in the domestic
6 manufacturing footprint of utility grade
7 products, which ACP does not oppose, the
8 practical reality is that production on the scale
9 necessary to meet U.S. utility scale deployment
10 needs would take years to come online, leaving
11 U.S. utility grade solar developers with no
12 option but to import these modules and pay
13 tariffs.

14 Tariffs on imported bifacial modules
15 will translate into higher electricity costs for
16 solar energy operators, as that cost will be
17 passed on to consumers and the economy as a
18 whole. The net result of reintroducing tariffs
19 on bifacial products will be a negative and
20 inflationary impact on consumers and less solar
21 deployment overall.

22 The short- and long-term economic

1 costs of extending measures must, under the
2 statute, be considered by the President.

3 Our ability as a country to meet the
4 clean energy targets established by the Biden-
5 Harris Administration with insufficient domestic
6 capacity is simply put a significant cost for all
7 Americans.

8 Thank you, and I look forward to
9 answering any of your questions.

10 MR. NICELY: Ron. Ron, it looks like
11 you may be frozen. Ron, are you there? If Ron
12 is having trouble, maybe we should move on to
13 Jamie.

14 CHAIR MARTYN: I think that's a good
15 idea.

16 MR. RESOR: Okay, good afternoon, can
17 you hear me?

18 MR. NICELY: Yes. Although, Jamie, it
19 looks like Ron is in fact on.

20 (Simultaneous speaking.)

21 MR. REAGAN: I lost my connection.

22 MR. RESOR: Go ahead, Ron. Yup.

1 MR. NICELY: Go ahead, Ron.

2 MR. REAGAN: Yeah, sorry, about that,
3 lost my connection.

4 Good morning, my name is Ron Reagan,
5 I am the Executive Vice President for
6 Engineering, Construction, and Integrated Supply
7 Chain for NextEra Energy.

8 (Audio interference) my test utility
9 scale solar sector and respond to the questions
10 posed by the TPSC to NextEra and the world.
11 NextEra and its affiliates own and operate
12 approximately 58 gigawatts of total electric
13 generating capacity. We employ over 14,000
14 people throughout the United States, and our
15 projects create thousands of additional local
16 U.S. jobs every year.

17 As one of the largest capital
18 investors in U.S. infrastructure, we are planning
19 to invest more than \$60 billion over the next
20 four years. We have already invested billions of
21 dollars in utility scale solar generation
22 projects in 33 U.S. states.

1 Extension of safeguard measures has
2 only occurred once in our history, and the
3 President must consider how an extension would
4 harm solar deployment, which is required to
5 combat climate change.

6 To meet the ambitious climate goals of
7 the Biden Administration, the U.S. energy
8 industry must significantly increase the share of
9 U.S. solar energy production from approximately
10 four percent of U.S. electricity production today
11 to 40 percent of U.S. electricity production by
12 2035. And estimated 80-90 percent of added solar
13 capacity will need to be in the form of utility
14 scale solar projects like those developed by
15 NextEra.

16 As NextEra has maintained throughout
17 these safeguard extension proceedings, the
18 domestic industry has no meaningful presence in
19 the utility scale segment of the market. The
20 TPSC asked us to address the WTO panel's finding
21 that the domestic industry was present in the
22 utility segment and the ITC's finality that a

1 plurality of the domestic industry's reported
2 shipments of CSPV modules went to the utility
3 segment in 2020 and the interim 2021.

4 The pages cited either rely on
5 confidential data to which we do not have access
6 or refer to residential installations, which
7 doesn't appear relevant to the question. In any
8 event, I can speak to the Commission's finding
9 that in 2020 and interim 2021, a plurality of the
10 domestic industry shipments went to the utility
11 scale segment.

12 First, the Commission's data is flawed
13 because the Commission did not meaningfully
14 engage in a market segmentation analysis. The
15 Commission rejected the respondent's
16 recommendation to clearly define the utility
17 scale segment and collect data on U.S. shipments
18 by market segment.

19 Instead, the Commission relied on its
20 typical channels of distribution questions, which
21 did not clearly capture (audio interference.)

22 MR. HALL: Is Ron frozen again?

1 MR. REAGAN: Enough new U.S. module
2 manufacturing capacity for the utility scale
3 market. Domestic module manufacturing increased
4 by approximately 2.6 gigawatts during the four
5 years of safeguard measures.

6 Solar module demand grew by
7 approximately 15 gigawatts during those same four
8 years and is expected to grow by another
9 approximately 40 gigawatts over the next four
10 years to meet the Biden Administration's goals.

11 Safeguard measures have not be
12 effective in creating the domestic manufacturing
13 we need to balance domestic supply with domestic
14 demand.

15 An even greater restriction on
16 domestic supply of utility scale capacity is that
17 no U.S. producer or manufacturer of bifacial
18 modules for utility scale applications, which
19 currently make up more than 80 percent of our
20 projects. This means that NextEra cannot even
21 consider domestic producers for the great
22 majority of our projects, which has been the case

1 since the NextEra began shifting to the use of
2 bifacial modules in 2019.

3 The TPSC asked NextEra to explain the
4 increase in bifacial module imports following the
5 imposition of safeguard measures in light of the
6 fact that bifacial technology was not available
7 at the time the safeguard measures went into
8 effect.

9 The shift to bifacial modules was long
10 anticipated and revolutionary to utility scale
11 solar deployment. Even before the safeguard
12 measures went into effect, we were aware that
13 solar manufacturers around the world were
14 developing bifacial technology and we were
15 eagerly anticipating designing and integrating
16 this technology into our projects.

17 Once bifacial technology became
18 available, it was a game changer for our projects
19 because it allowed us to maximize the amount of
20 electricity that a project can produce. Because
21 of these efficiencies, we shifted the vast
22 majority of NextEra's utility scale deployment to

1 bifacial modules, and this shift continued to
2 occur even after President Trump redrew the
3 bifacial module exclusion, showing that the
4 conversion to bifacial modules was not
5 conditional on the exclusion.

6 This move to bifacial technology is
7 not limited to the United States either. Utility
8 scale developers worldwide have done the same
9 because of the clear advantages of bifacial
10 modules. However, despite the widespread global
11 adoption of bifacial technology, no U.S. producer
12 currently manufactures bifacial modules in the
13 quantity necessary for large projects.

14 The TPSC also asked whether the
15 safeguard measures resulted in any changes to
16 sourcing plans for CSPV sales and modules. The
17 answer is no. The utility scale segment is
18 moving to bifacial modules, regardless of the
19 safeguard measures. U.S. producers simply have
20 not responded to this clear shift in the market.
21 So, we have no choice but to source from foreign
22 suppliers that manufacture the bifacial product

1 we require.

2 It's all about scale. Domestic
3 producers continue to focus on supplying the
4 residential and commercial segments of the
5 markets, not the utility scale sector. Even
6 Hanwha, which supplies some monofacial modules to
7 utility scale developers, dedicates the vast
8 majority of its supply to residential and small
9 commercial buyers and has very little capacity
10 available for NextEra or the rest of the utility
11 scale sector.

12 The safeguard measures only act to
13 make utility scale projects less economically
14 viable and solar energy more expensive for end us
15 consumers of electricity.

16 The President must also examine
17 whether extension of safeguard measures provides
18 greater economic and social benefits than costs.
19 The safeguard measures have depressed demand in
20 solar projects because they add significant and
21 unexpected cost to the large projects developed
22 by utility scale companies.

1 When bidding on projects, solar can
2 lose out to other less expensive forms of energy
3 because of the added costs and uncertainty caused
4 by the safeguard measures. Long-term power
5 purchase agreements are negotiated and priced
6 based on costs expected at the time the agreement
7 is signed.

8 The future addition of costs, such as
9 duties imposed under the extension of safeguard
10 measures, can make a project no longer
11 economically viable. Extension of the safeguard
12 measures will only make this problem worse while
13 doing little to increase the domestic production
14 of modules.

15 This slows deployment of utility scale
16 solar energy, which is critical to expanding
17 clean energy technology in the United States.
18 The cost of safeguard measures far outweigh any
19 incremental benefit to the domestic industry.

20 For these reasons, extension of the
21 safeguard measures is simply not the right answer
22 for America. This is especially the case for

1 bifacial modules in light of domestic supply
2 constraints and the solar goals of the Biden
3 Administration, which are dependent on utility
4 scale deployment that rely on bifacial
5 technology.

6 Earlier this year, domestic module
7 producers and solar developers worked together on
8 policy that achieves positive adjustment for the
9 domestic module industry while maintaining strong
10 demand for solar projects. U.S. manufacturing
11 incentives and tax credits are currently proposed
12 in the Build Back Better Act that meet the needs
13 of all parties in this case.

14 This is good policy, policy that would
15 benefit and strengthen domestic manufacturing
16 without increasing costs and without restricting
17 imports that are necessary to meet demand and
18 increase solar growth in the United States.

19 This is the type of policy required to
20 meet the Biden Administration's climate goals and
21 make a meaningful impact on carbon emissions.
22 NextEra therefore requests that the President not

1 extend these harmful safeguard measures, but
2 rather allow us to move in a new direction the
3 benefits the U.S. solar industry as a whole,
4 including passing needed manufacturing incentives
5 and tax credits.

6 Thank you.

7 MR. NICELY: Jamie.

8 MR. RESOR: Good morning, my name is
9 James Resor, and I'm the CEO of EDF Renewables
10 Distributed Solutions, which is part of EDF
11 Renewables or EDF-R. I have been in my role at
12 EDF-R for six years and have worked for a total
13 of 15 years in many facets of the solar industry.

14 Headquartered in California, EDF
15 Renewables is one the largest utility scale
16 renewable energy developers in the U.S., with
17 over 20 gigawatts of developed projects. We
18 employ approximately 1,400 employees in the U.S.,
19 and for example, over the last five years, EDF-R
20 has built projects in 20 states, which have
21 collectively created and supported hundreds of
22 construction jobs in those states, in addition to

1 numerous jobs in engineering, development,
2 operations, and administration.

3 The utility market is by far the
4 largest segment of the U.S. market and is key for
5 the Biden Administration's goal of carbon-free
6 electricity generation by 2035. As a rule,
7 domestic CSPV manufacturers are not capable of
8 supplying the utility segment. Most domestic
9 module producers focus on the residential and
10 small scale commercial segments, which have
11 smaller projects and higher profit margins.

12 Domestic producers do not have the
13 production capacity to provide the line that we
14 need for our utility scale projects. Also,
15 suppliers must be able to effectively deliver
16 modules not only to suitable utility scale
17 projects, but at a rate of at least 20 megawatts
18 per week.

19 And then these same suppliers of other
20 customers, so they are -- therefore they really
21 need to be able to supply 50 megawatts a week for
22 the U.S. market, which is approximately two

1 gigawatts per year. But hardly any domestic CSP
2 producers have near that capacity, other than
3 Hanwha, to produce the volume and pace that we
4 need for our utility scale projects, and thus are
5 not capable of meeting this requirement.

6 In addition to -- we also need to
7 trust our suppliers and rely on their long
8 cooperation for dedicated supply, and also
9 because the functionality and performance of the
10 modules and other system components, such as
11 single access trackers, which we procure
12 separately, are very interrelated and must remain
13 capable with the module provider.

14 This further limits the pool of
15 potential module suppliers. Moreover, I strongly
16 disagree with the assertions by Hanwha and LG
17 that the same type of module is used in all
18 applications. Residential and small scale
19 commercial projects are generally located in
20 residential groups or commercial buildings with
21 all the modules in a stationary position and the
22 modules used are suited for those purposes.

1 Utility scale segment requires
2 specific kinds of modules such as bifacial with -
3 - and typical with largely wafers as the industry
4 continues to advance, which have increase energy
5 production. The bifacial modules almost always
6 utilize single access trackers holding the
7 modules above the ground to track the sun during
8 the day and allowing for the capture of reflected
9 light on the back side of the module.

10 This additional six to ten percent
11 energy from the bifacial module is essential for
12 the economics of very competitive utility scale
13 projects. These large bifacial modules are not
14 suitable for use in residential and most
15 commercial installations where the back side of
16 the module sits closely on the roof, which
17 effectively prevents the backside gain of the
18 bifacial modules and also brings more weight on
19 the roof.

20 Since the safeguard measures were
21 proposed, I've yet to see any U.S. producer
22 offering the 72 cell comparable panels in a

1 bifacial format for the utility scale segment in
2 a meaningful way. And certainly, none have
3 approached EDF Renewables to do so. While there
4 have been some, I'm not aware of any significant
5 volume, as others have testified today.

6 I understand that some U.S. producers
7 have blamed the bifacial exclusion for their
8 failure to adjust to the import competition. But
9 U.S. producers largely ignored this key
10 technology in the utility segment more generally,
11 before the bifacial exclusion was granted, while
12 the bifacial exclusion was in place, and after
13 President Trump approved the exclusion.

14 Given the volume and product demands
15 of the utility scale market, the domestic CSPV
16 industry is capable -- is capable of supplying
17 only a small sliver of utility scale product, and
18 only then with the suboptimal module. Thus, EDF
19 and other renewable energy utility scale project
20 developers have no choice but to rely on imported
21 panels to support and undertake our projects.

22 Utility scale developers rely on

1 suppliers whose individual production capacity is
2 often more than two gigawatts per annum in order
3 to meet the volume requirements for our projects.

4 Extending the safeguard measures and
5 reimposing the duties on bifacial panels would
6 place a tax on solar energy without changing the
7 purchasing patterns of utility scale developers,
8 because the import's often our only source of
9 reliable supply.

10 Thus, even if the President had the
11 authority to reinstate duties on bifacial panels
12 despite what Mr. Nicely said on that, doing so
13 would be terrible policy.

14 I would also like to address some of
15 the comments that suggest that tariffs have not
16 harmed the broader solar industry. The tariffs
17 have had a negative impact on demand. Although
18 this might have always resulted in a year-over-
19 year decline in demand, demand in the utility
20 market has increased since the imposition of
21 safeguard measures because of things like
22 technological advances and the tariffs.

1 Deployment is also not immune to price
2 increase and market uncertainty, including wind,
3 natural gas, and other existing generation
4 resources. In our experience, although the
5 demand in the utility market has grown, the
6 tariffs have prevented our firm from installing a
7 number of projects that we could have absent the
8 tariff.

9 Tariffs reduce demand because we have
10 to increase our price and/or shift more risk to
11 the potential purchaser of electricity from the
12 solar project to cover the added cost of tariffs
13 to a point where such potential purchasers may
14 not accept those terms.

15 This is even more problematic now with
16 the substantial increase in costs for steel,
17 shipping, and labor and general chain constraints
18 that are greatly hindering the ability of EDF and
19 other solar developers to meet the demand of the
20 utility market to the point where some contracts
21 are being canceled.

22 In response to the TSPC's question

1 regarding the potential ongoing impacts of COVID-
2 19 on the supply chain for solar materials and
3 labor, these adverse impacts will continue at
4 least through third quarter of 2023.

5 Extended safeguards will only
6 exacerbate these supply chain challenges and
7 reduce the growth of business for, one, U.S.
8 producers of single-axis trackers and other
9 balance of system components which are
10 manufactured in the U.S. And also U.S.
11 installers, including union electricians,
12 engineers, and other construction workers.

13 Alignment will increase at the pace
14 needed to meet the -- in order to ensure that
15 solar is competitive with other forms of energy.
16 Extending the safeguards -- safeguard tariffs,
17 especially in bifacial panels, will make it more
18 difficult for solar to compete with other energy
19 sources and will act as a dead weight on demand,
20 particularly during a period where there's
21 already under-supplies of bifacial panels in the
22 U.S.

1 I emphasize that we're happy for the
2 CSPV cell and module manufacturers to grow and to
3 source some of our supply from within the U.S.
4 But the way to grow U.S. solar manufacturing is
5 to manufacture along the entire solar supply
6 chain, including polysilicon and wafer
7 production. Incentives like those in SEMA
8 encourage that type of long-term investment, and
9 importantly, do not act as a tax on the broader
10 solar industry.

11 The safeguards, however are temporary,
12 raise prices for solar cells and modules,
13 suppress demand, and none of the duty collected
14 is invested in the domestic CSPV industry. Four
15 more years of the tariffs at progressively lower
16 rates will not spur the kind of investment needed
17 for the domestic CSPV producers to become more
18 than bit player in the utility market.

19 We need more solar manufacturing
20 centers to help achieve that goal, extending the
21 safeguard tariffs will not.

22 Thank you very much.

1 MR. NICELY: George, go ahead.

2 MR. HERSHMAN: Thank you for the
3 opportunity to speak today. I am George
4 Hershman, CEO of SOLV Energy, formerly known as
5 Swinnerton Renewable Energy, based in San Diego,
6 CA.

7 Until recently, Swinnerton Renewable
8 Energy was a division of Swinnerton, Inc., one of
9 the oldest and largest general contractors in the
10 U.S., with a 130-year history. We carry this
11 legacy with us at SOLV Energy as the largest
12 engineering procurement and construction firm, or
13 EPC, for utility scale solar in the United
14 States.

15 I was employee number one when we
16 started in 2008, and I now represent over 4,000
17 people working in almost 30 states across the
18 country. We offer turnkey solar power solutions
19 and partner with major utilities and developers
20 to build reliable, clean power.

21 Solar -- SOLV Energy has installed 9.3
22 gigawatts of solar nationwide. Collectively

1 we've created 11,000 construction jobs, all high
2 paying and with many union workers.

3 We have a pipeline of over 4.3
4 gigawatts of solar projects scheduled to begin
5 installation between now and the end of Q3 2022.
6 These projects will span across 20 job sites in
7 nine states. SOLV Energy must have access to
8 imported modules to complete these projects as
9 contracted.

10 You asked about the impact of the
11 safeguard action on the broader U.S. solar
12 industry. In my testimony before the TPSC during
13 the original safeguard investigation and before
14 the International Trade Commission during the
15 extension proceedings, I expressed concern about
16 the negative effects of safeguard tariffs. My
17 concerns have only grown since then as I've seen
18 and experienced the actual impacts of these
19 tariffs first hand.

20 Over the years, trade restrictions led
21 to slower industry growth, fewer installations,
22 canceled projects, lost revenue, and reduced

1 employment across all sectors of the domestic
2 solar industry. We have -- there have been
3 meaningful changes in the U.S. solar industry
4 since the original investigation.

5 The average size of the utility scale
6 solar installation has increased significantly.
7 In 2016 and '17, the average project was only 30
8 megawatts. Eight megawatts was considered a
9 large project. In 2021, the average project size
10 grew to 150 megawatts. In 2022, it will be 180
11 megawatts.

12 The size of these projects has a
13 profound impact on local employment. Larger
14 deployments lead to hundreds of additional well-
15 paid local jobs. For example, 150-megawatt
16 project would make about 200 local hires. But a
17 500-megawatt project has over 500 local hires.

18 We're providing good-paying jobs in
19 rural areas where the ability to have trainable,
20 safe jobs, particularly during COVID, is often
21 very limited. There are also multiplier effects
22 as income is spent in local communities on goods

1 and services, rental equipment, and local
2 suppliers.

3 A continuation of the tariff could
4 mean these jobs wouldn't be created and projects
5 can't be completed as contracted. Since the --
6 since the Section 201 tariff was implemented,
7 several module manufacturers started production
8 in the U.S. But we continued to use a majority
9 of imported modules.

10 We have seen no significant increase
11 in the utility scale module production capacity,
12 despite what we've heard from U.S. module
13 producers in written comments to this committee.
14 For a number of reasons, domestic module
15 producers cannot supply utility scale demand.

16 Developers and companies like mine
17 that procure modules must mitigate as much risk
18 as possible. We are unable to finance large
19 scale projects if a majority of module
20 manufacturers' capacity is being consumed by only
21 one project.

22 This fact should come as no surprise

1 to this committee that supply capacity and
2 bankability is not unique to the solar industry.
3 If SOLV Energy is contracted to build a 250-
4 megawatt project, we would not able to procure
5 from a U.S. or any plant that produces 500
6 megawatts or less, as procuring 50 percent of a
7 manufacturer's capacity is a high risk and not
8 bankable.

9 Our team and client partners evaluate
10 whether a potential supplier meets a very
11 specific set of qualifications. Does the
12 manufacturer have a sufficient and bankable
13 supply of modules that can be delivered in a
14 timely fashion? Do they meet our high quality
15 and technical specifications? And finally, do
16 they meet our warranty standards?

17 SOLV and our developer partners do not
18 purchase CSPV solar modules based on the location
19 of their manufacture or cost alone.

20 Finally, I challenge what U.S. module
21 producers said about the demand for bifacial in
22 utility projects. In 2021, we installed almost

1 one gigawatt of bifacial panels. In 22 -- in
2 2022 and beyond we are currently bidding on or
3 under contract for 27 projects totaling almost
4 five gigawatts of bifacial panels.

5 In all cases, the developer is using
6 bifacial due to high efficiency and energy yield,
7 as this allows for more efficiency per installed
8 module.

9 Hanwha Q cell and LG say there are no
10 technical differences between modules. They are
11 wrong. Lower efficiency monofacial modules are
12 not adequate substitutes, and entire racking
13 systems are engineered around specific types of
14 modules, including the make and model, and are
15 not interchangeable without re-engineering the
16 entire solar plan.

17 Reimposing safeguard tariffs on
18 bifacial panels will have a negative financial
19 impact on these projects and will create general
20 disruption to the U.S. market. Many businesses,
21 including SOLV Energy, made decisions based on
22 the assumption that there would be no safeguard

1 duties on these panels. The cost to the utility
2 segment is simply unjustified.

3 For these reasons, I believe an
4 extension of the safeguard measure is not
5 warranted. I ask the President and the
6 Administration to listen to the guidance in the
7 safeguard statute that any safeguard action must
8 do more good than harm, not the other way around
9 as is in this case.

10 Any extension to the 201 would only
11 raise prices, causing self-inflicted inflation in
12 the energy market. And I'm concerned that
13 policymakers continue to ignore the negative
14 impacts this would have on the rest of the solar
15 value chain, including U.S. producers that
16 balance the system components, U.S. installers,
17 and EPCs, as well as the U.S. energy consumer.
18 The best option is to not extend the safeguard
19 action.

20 Thank you.

21 MR. HALL: Good morning, my name is
22 Aaron Hall, and I am President of Borrego Solar

1 Systems, and I've been personally responsible for
2 module procurement for the last 20 years.

3 According to our industry's leading
4 research and consultancy firm, Wood Mackenzie,
5 Borrego has had the largest market share in the
6 commercial market. Last year, we represented 11
7 percent of this market. We are therefore the
8 leader in commercial across our business units,
9 which include EPC services, as well as
10 developing, operating, and maintaining commercial
11 solar projects.

12 We conduct projects for our
13 educational facilities, local and state
14 governments, small and large corporations, water
15 agencies and districts, commercial real estate
16 developers and owners, independent power
17 producers, and investor-owned utilities.

18 Most of our installations are between
19 one and ten megawatts, and we have over 383
20 commercial projects and over four gigawatts of
21 utility scale projects in development through
22 2025. Our solar projects depend on a reliable

1 supply of modules. For this reason, we order
2 directly from manufacturers, which allows us to
3 establish a predetermined delivery schedule for
4 modules.

5 Due to the size of our projects, the
6 timeline for completion is often over several
7 weeks, months, or even years. We can only work
8 with suppliers who are able to meet our supply
9 needs over these longer durations and reserve
10 their future capacity to continue to fill our
11 supply needs.

12 But in our experience, domestic
13 suppliers do not have the capacity or willingness
14 to fill our orders. Our projects use 72 cell
15 monofacial and bifacial modules, neither of which
16 are produced by U.S. producers in significant
17 enough quantities to serve the non-residential
18 and utility scale markets.

19 Instead of focusing on large format
20 modules like the 500-plus and 600-plus watt
21 modules using large commercial or utility scale
22 projects, domestic producers primarily

1 manufacture for residential and small scale
2 commercial projects.

3 During these extension proceedings,
4 proponents of extension have tried to argue that
5 there is little difference between the larger
6 format modules used in large commercial and
7 utility scale projects and the smaller format
8 modules used in residential and small commercial
9 projects.

10 The TSP -- TPSC also asked SEIA to
11 discuss the limitations of bifacial modules in
12 residential applications. Larger format modules
13 including bifacial modules are utterly unsuitable
14 for residential projects.

15 Obviously, 72 cell monofacial modules
16 are larger and weigh more than small format
17 modules. And bifacial modules weigh even more
18 because of the double glass that is often used.

19 OSHA requirements prohibit individual
20 workers from handling items that are more than 50
21 pounds, so residential installers would need to
22 hire more workers to install the larger format

1 modules that weigh significantly more. These
2 labor costs compound in small residential
3 projects.

4 Additionally, residential installers
5 and homeowners generally want to avoid excess
6 weight on a roof for safety and maintenance
7 reasons. Slanted rooftops also have smaller
8 areas for installers to work and often have small
9 or irregular geometry so residential installers
10 can fit more small format panels into the same
11 surface area.

12 At the ITC hearing, Hanwha and LG both
13 played videos about their operations that clearly
14 showed the limitations that residential
15 installers face when installing on rooftops and
16 why bulky, heavy large format and bifacial panels
17 are inappropriate in these applications.

18 Moreover, even the few domestic
19 producers that do manufacture large format
20 modules cannot meet our needs. Borrego has
21 consistently contacted domestic producers to
22 supply modules, especially in light of the

1 uncertainty in the import market caused by
2 safeguard measures and other tariffs.

3 However, despite our efforts, we have
4 been unable to find domestic producers willing or
5 able to sell to us in any meaningful quantities.
6 In fact, we have had domestic producers expressly
7 decline to sell to us because they have reserved
8 their capacity for the residential market. And
9 we have had domestic producers completely stop
10 responding to our inquiries.

11 Additionally, no U.S. suppliers have
12 consistently maintained Tier 1 status, meaning
13 that banks have confirmed that they are
14 comfortable providing non-recourse debt to
15 projects that utilize modules from these
16 suppliers.

17 This is a key consideration for
18 Borrego, as we want to ensure that the owners and
19 independent power producers that are our
20 customers are able to finance their projects with
21 the modules that we supply.

22 However, because most U.S. producers

1 have chosen to focus on residential projects,
2 they are not Tier 1 certified. We are only aware
3 of two U.S. CSPV producers that have reached Tier
4 1 status, but they have not remained on the list
5 long-term, which we and our buyers typically
6 require.

7 Accordingly, even if U.S. producers
8 had the capacity to supply our projects, which
9 they have made clear they do not, almost all have
10 not attempted to show financial institutions, and
11 by extension purchases like Borrego and its
12 customers, that they are suitable options to
13 supply these large scale, high cost projects over
14 long periods of time.

15 We are willing and eager to buy
16 modules from U.S. producers to supply our large
17 commercial projects, which has had -- which has
18 the added bonus of reducing logistics costs,
19 particularly with supply chain disruptions
20 currently increasing international shipping
21 costs.

22 We also support federal policies that

1 incentivize a strong domestic manufacturing base.
2 But despite almost four years of safeguard
3 measures, we still cannot source from domestic
4 manufacturers for large commercial projects as
5 they have focused most of their efforts on the
6 resident market.

7 And the safeguard measures have slowed
8 critical solar deployment in the significantly
9 larger large commercial and utility scale
10 segments of the market.

11 Thank you.

12 MR. NICELY: Meghan. You're on mute,
13 Meghan, you're on mute.

14 MS. SMITH: Hi, Meghan. At this time,
15 you have about six minutes left. Thank you.

16 MS. NUTTING: Great, thank you. Good
17 morning, I am Meghan Nutting, Executive Vice
18 President of Government and Regulatory Affairs at
19 Sunnova Energy Corporation.

20 Founded in 2012, Sunnova is a leading
21 residential solar and storage service provider.
22 Sunnova's goal is to be the source of clean,

1 affordable, and reliable energy. We have a
2 simply mission, to power energy independence so
3 homeowners have the freedom to live life
4 uninterrupted.

5 We have more than 180,000 customers in
6 33 U.S. states and territories. Sunnova works
7 exclusively in the residential sector of the
8 market. Sunnova works with over 800 dealers and
9 sub dealers, many of whom are small businesses or
10 EPC contractors that handle design, procurement,
11 and installation of residential solar systems.

12 Since Hurricanes Maria and Irma in
13 2017, Sunnova annually purchases a small quantity
14 of modules to have inventory available for our
15 dealers for hurricane response.

16 I would like to address some
17 misperceptions put forward by U.S. module
18 producers that support extension of the safeguard
19 action. All solar modules are not
20 interchangeable. We have strict technical
21 specifications consistent with residential
22 building codes and the practical limitations of

1 rooftop solar installations.

2 We require lighter weight, 60 cell
3 modules with an aesthetically pleasing design,
4 such as triple black, which means black back
5 sheets, black frames, and black cells, and low
6 voltage of 48-500 volts. These requirements are
7 distinctly different from commercial and utility
8 projects.

9 We use 60 cell modules for typical
10 rooftop installations because larger modules are
11 more difficult to handle and install on a pitched
12 roof. The roof area is also constrained,
13 requiring few solar modules at higher
14 efficiencies. For these reasons, the majority of
15 our dealers simply do not use the 72 cell modules
16 and have no desire to do so.

17 And as a result, the price of 72 cell
18 utility scale modules has no effect on the price
19 of 60 cell rooftop modules. They simply do not
20 compete with each other.

21 You asked SEIA to explain the
22 limitations of bifacial modules in residential

1 applications. Bifacial technology is
2 incompatible with residential installations
3 because roofs are commonly a dark shade that does
4 not permit the added energy generation of a two-
5 sided cell.

6 A very small percentage of residential
7 installations, almost -- which are almost
8 entirely in tropical locations, have a white
9 surface. As a result, residential solar systems
10 require monofacial modules.

11 You asked for the percentage of
12 imported bifacial modules used in residential
13 versus commercial applications. The Commission
14 did not collect questionnaire data at this level
15 of detail, but according to the Commission's own
16 research, bifacial modules accounted for only .3
17 percent of residential installations in 2020, 1.8
18 percent in 2021 for the five states with data
19 available. That is at page I-70 of the staff
20 report.

21 Sunnova opposes extension of the
22 safeguard action because any increase in cost for

1 solar installations is a disincentive for
2 customers to install solar. The safeguard also
3 negatively affects American jobs.

4 It is indisputable that more solar
5 deployment means more good-paying jobs,
6 particularly in the residential segment that
7 relies on more workers than other segments of the
8 solar industry. The small changes in domestic
9 module supply industry over the last four years
10 do not outweigh the increased cost and job loss
11 caused by the safeguard measures.

12 Sunnova is extremely supportive of
13 domestic panel manufacturing. Our dealers
14 purchase panels from domestic manufacturers to
15 the extent that they are available. We've also
16 been very supportive of Senator Ossoff's Solar
17 Energy Manufacturing for America Act, which we
18 believe is the right approach to supporting
19 domestic manufacturing capabilities.

20 The TSPC should also acknowledge the
21 obvious conflict in the position of U.S. module
22 producers regarding extension of the tariff on

1 modules while also wanting more access to tariff-
2 free imported cells.

3 Sunnova supports termination of the
4 safeguard action in its entirety to ensure a
5 reliable supply of modules, imported and
6 domestic, which can only be achieved by removing
7 these unnecessary trade restrictions.

8 Thank you for your time.

9 MR. NICELY: Thanks, Meghan. That
10 concludes our presentation, Mike and Will.

11 But if I could just mention one other
12 thing, that if it would be helpful, particularly
13 for the court reporter, for Ron and Jamie's
14 testimony, you can tell there were some technical
15 difficulties. So, if we need to give you the
16 written testimony to help the court reporter,
17 we'd be happy to do that.

18 With that, we turn it back to you.

19 MR. GAGAIN: Thank you to all the
20 participants on this panel. And thank you, Mr.
21 Nicely, for that. We'll consult internally and
22 let you know if we need any, you know, written to

1 clean up the transcript.

2 That being said, let's turn to the
3 question and answer session now. Like the first
4 panel, I'll begin. I have a couple hopefully
5 quick questions just to clarify some state of the
6 record. And then I'll turn it over to Mr. Martyn
7 and the other panelists to pose any questions
8 that they may have.

9 So, my first question is to the
10 American Clean Power Association. And this is
11 just a matter of clarifying the record.

12 One of our advanced written questions
13 to you indicates that at page 4 of your written
14 comments you argued that economic data presented
15 at the ITC hearing demonstrated that none of the
16 petitioners has produced utility grade products
17 but instead focused any investment or expansion
18 planning on the more lucrative residential module
19 market.

20 However, in that question, we pointed
21 to statements by Hanwha Q CELLS and by Auxin
22 Solar that they have production lines or have

1 produced bifacial products in the United States.
2 I want you to, I'm hoping you can reconcile your
3 position with the statements of these domestic
4 CSPV producers.

5 For the record, is it that no, just to
6 clarify, is it that no domestic producer is doing
7 this in your view, or is it more of a question of
8 scale? Thank you.

9 MS. SCIARRA: So, thanks for the
10 question, Mike. Just to keep in mind for
11 everyone viewing, I don't have access to the
12 confidential record. So, I'm working on publicly
13 available information.

14 And I think the answer is scale. You
15 know, I'm not going to tell you that I don't have
16 access, as I said, into the confidential record.
17 But it's my understanding from talking to my
18 members and talking to our legal team that the
19 issue of production on the domestic side is, if
20 there is production or there was production or
21 there were sales in the market, they were so
22 small that they were relatively insignificant

1 relative to the scale of the developer needs.

2 MR. GAGAIN: Okay. Thanks. And then
3 one other question to ACP as well. I believe I
4 heard you mention in your testimony that this
5 country is dependent on imports of CSPV products.
6 And that is a basis for not continuing the solar
7 safeguard measure.

8 Do you believe that there is any
9 connection between such imports and what the ITC
10 found regarding the state of the domestic
11 industry in its extension review report?

12 MS. SCIARRA: So, my point about
13 imports is that I think if you look at the sheer
14 numbers of the panels that our industry will need
15 to move forward with the deployment goals that we
16 have and that the administration has, it's
17 impossible to conceive even under the most
18 optimistic scenario that we would have a
19 situation where there weren't some imports.

20 And the reality is that for the
21 domestic manufacturing footprint to grow, and
22 this is really based on testimony that the first

1 panel provided, you're talking scales of a year
2 to three to four years for people to be able to
3 have capacity come online.

4 And if at the same time we're trying
5 to grow our deployment and really sort of hit the
6 goals that we're trying to hit, there's just no
7 way to do that without some level of imports.

8 So, I think the question that I'm
9 trying to put before you all is what level of
10 tariff do we want to have on those imports, if we
11 want to have any level of tariff.

12 MR. GAGAIN: Okay. Thanks for that.
13 And then I have one question to SEIA.

14 And that is, you contend that no
15 domestic cell producer can produce bifacial
16 modules. And you emphasize at the scale needed.
17 Do you have any estimate of how much bifacial
18 product production is needed to satisfy U.S.
19 demand?

20 MS. HOPPER: So, I would concur with
21 Vanessa. I don't have access to the confidential
22 record either.

1 But I think you heard from George
2 Hershman at SOLV and other of the developers that
3 the -- and you heard from Ron at NextEra about
4 how much of their products are bifacial.

5 But if you think about it, if you
6 listen to their testimony, they have to de-risk
7 their investments, right, so they're not going to
8 buy 100 percent of the output for their, from one
9 manufacturer. And so, as we think about the
10 amount that is growing, I don't have a particular
11 number.

12 But if we think of 20 gigawatts of
13 deployment this year, we think 75 percent of it
14 is utility-scale. We heard from the largest
15 developer that the majority of their projects are
16 bifacial. You can sort of quickly do the math
17 around -- and then understand that you're not
18 going to buy just from one developer. You have
19 to de-risk that investment. You can pretty
20 quickly get to a very large number.

21 MR. GAGAIN: Thanks for that. I have
22 no further questions. So, I'll turn it over to

1 Mr. Martyn. Thanks.

2 CHAIR MARTYN: All right. I think I
3 am on screen now. I have a few questions. The
4 first two are for SEIA.

5 The first question to SEIA is, does
6 SEIA include in its membership any U.S. producers
7 of solar cells or solar modules for polysilicon?

8 MS. HOPPER: Yes, 100 percent.

9 CHAIR MARTYN: Okay. Second question
10 is I noted you said that the loss of employment
11 in 2018 was due to tariffs. Now, I look at --
12 and this was something from SEIA's submission.
13 On page 17, it shows the number of jobs in the
14 U.S. solar industry peaking in 2016, declining in
15 2017, declining again in 2018 by somewhat less,
16 and then rising in 2019.

17 How is that consistent with your
18 assertion that the safeguard measure resulted in
19 a loss of employment?

20 MS. HOPPER: I think, Mr. Martyn, when
21 you think about a loss of employment, it is both
22 the loss of actual jobs and the loss of jobs that

1 were not created.

2 And I think when we compared our
3 projections of what deployment would be and the
4 resulting employment as a result of that
5 deployment versus what it was in 2017 and 2018
6 our projections, there is a pretty significant
7 sort of delta there between what could have been
8 and what is.

9 I mean, you are right that over the
10 course of time our industry has continued to
11 grow. But it is our opinion, and I think our
12 economic analysis shows, that the job loss in
13 deployment has been greater because of the
14 imposition of tariffs.

15 CHAIR MARTYN: Thank you. All right.
16 My next question, I think it was the gentleman
17 from NextEra who was saying that the ITC had an
18 error in its collection of data for the utility
19 sector. He said that I think the ITC collected
20 its data based on its normal channels of
21 distribution and did not look at utilities.

22 And I want to look into that because

1 that's a pretty serious accusation. It says the
2 ITC ignored what it said, what some participants
3 had alleged.

4 I note here there's Table 2-1, which
5 says that the ITC gathered data on assemblers,
6 distributors, residential, commercial, and
7 utilities. So those aren't the ITC's normal
8 channels of distribution. So, I don't think
9 that's accurate.

10 Is it your assertion that the ITC
11 defined the utilities channel incorrectly, or is
12 there something I'm missing?

13 MR. NICELY: Ron, I can -- since we
14 were involved in helping with the, develop the
15 questionnaires with the ITC, I can answer that.

16 Well, the issue is that this is a case
17 in which it's quite clear to us that, and you can
18 tell from our witness testimony that there are
19 clear segments, different segments that required
20 different kinds of products. And we made this
21 very clear to the ITC throughout, all the way
22 back to the original investigation.

1 And the only extent to which they
2 gathered information about that clear distinction
3 was through their channels of distribution
4 questions, which only had to do with sales. And
5 they asked about distributors. We tried to make
6 it clear that distributors were mostly devoted to
7 selling to the residential sector. But that
8 muddied the water because of the distributor
9 category.

10 In any event, the point is that if
11 they had gathered more information, not just
12 sales information through channels, but
13 production, et cetera, et cetera, other
14 information about the various segments, what we
15 think of as three large segments, the residential
16 on the one hand, the commercial/industrial on the
17 other hand, and the utility-scale, they would
18 have had a clearer picture of what was going on
19 and a better understanding of what we are talking
20 about when we distinguish and explain why it is
21 that the industry is really woefully incapable of
22 supplying the largest segment, which is utility-

1 scale.

2 So that's I think what Mr. Reagan was
3 really speaking to.

4 CHAIR MARTYN: All right. Well, this
5 is a really significant point, so I want to be
6 really clear about it so that there's no
7 confusion.

8 So, it is your position -- well, let
9 me ask. Is it your position that the utilities
10 data that the ITC gathered contains companies
11 that aren't utilities?

12 MR. NICELY: When you ask the
13 utilities data, well, there's another issue that
14 I think maybe others can help me with here, which
15 is utilities versus utility-scale. But the point
16 is I think what the ITC was collecting, when they
17 said just purely utilities what they actually
18 meant there was utility-scale.

19 But, again, we offered, just to be
20 really clear with this, Will, we offered specific
21 definitions of what utility-scale means and what
22 the size is, because as George Hershman talked

1 about in his testimony today, over the last
2 several years the size of a utility-scale project
3 has changed dramatically, right, going from, you
4 know, in the, around 10 several years ago to as
5 big as 150 on average to what George said next
6 year would be 180 megawatts per project.

7 So that's also something that wasn't
8 captured, what's happened in the market from a
9 dynamic perspective with the size of these
10 projects. And that's important to getting a
11 better sense of whether or not the domestic
12 industry can actually service that part of the
13 market.

14 I mean, let's bear in mind, Auxin, for
15 instance, and publicly available information
16 tells us that Auxin has about 150 megawatts'
17 worth of capacity total. And Mr. Hershman talked
18 about how an average utility-scale project is 150
19 megawatts.

20 So that's really the critical issue to
21 recognize here and what we weren't able to gather
22 in as much detail as we wanted to when the

1 Commission didn't accept our proposal for
2 adjusting or adding questions to the
3 questionnaires.

4 CHAIR MARTYN: All right. Thank you.
5 That's all.

6 Last question, and you can decide, Mr.
7 Nicely, whether you want to ask this, whether you
8 want to answer this or refer it to Mr. Hershman.

9 You said that folks in the utilities,
10 selling the utilities sector made a number of
11 purchases based on the assumption that there
12 would not be duties on bifacial cells. Now, I
13 note that we granted the bifacial exclusion in
14 June of 2019. And the first withdrawal was in
15 October of 2019.

16 So, was it reasonable after October
17 2019 to rely on the proposition that there would
18 be no duties on bifacial panels?

19 MR. NICELY: Well, part of the problem
20 with the yo-yo effect that happened as a result
21 of this litigation was that it was difficult to
22 know whether or not there was going to be, there

1 were going to be duties imposed on these products
2 or not.

3 And part of the goal of these
4 safeguards from the first instance, given that
5 you're imposing these duties on fairly traded
6 products and the reason why when they were
7 originally announced in the first year, when the
8 President announces them, he actually indicates
9 what the rates will be year by year is so
10 companies can plan, right.

11 And what has happened with this
12 particular case is it's made it much more
13 difficult for companies to plan in advance. You
14 heard Abby talk about how even for '22 going
15 forward Wood Mack talked about, had established
16 what was going to happen in the market assuming
17 no more safeguard.

18 And now we're in an extension
19 proceeding that is an extraordinary proceeding
20 that nobody thought, nobody expected would
21 happen. And so now they're adjusting their
22 numbers.

1 Now, so I'm getting off topic from
2 what you asked about. But the point is that you
3 need certainty in the market. And we haven't had
4 that here.

5 But, George, do you want to speak to
6 that issue of reliance upon what the duties would
7 be or not be going forward?

8 MR. HERSHMAN: Sure. So, an average
9 utility-scale solar project, even by the time it
10 gets to us, right, as an EPC, a developer has
11 moved that project along for 12 or 18 months on a
12 planning schedule. And then we are, we're
13 another six or eight months out in design before
14 we start construction.

15 So, you can easily see where planning
16 began years ago for projects that are slotted for
17 2022 where the tariff was intended to be stepped
18 completely down.

19 So, we absolutely relied on the fact
20 that we were going to be past a four-year
21 safeguard and that we were not going to be in an
22 extension period.

1 So those project have been priced both
2 from a PPA standpoint from the developers and
3 from an EPC point of view priced on buying
4 projects, buying modules without a tariff imposed
5 in the 201, because the belief is that the 201
6 would have ended in 2022.

7 And those projects were priced back
8 in, you know, '19 and '20, and let alone that
9 the, when we talk about the bifacial exemption
10 and then the exemption being reversed. You know,
11 all of those were happening in a period of time
12 where we're continuing to price out projects
13 years in advance.

14 MR. RESOR: As an example to that from
15 a developer perspective, if we have executed PPAs
16 with utility offtakers and we executed it in 2019
17 for delivery of products in 2022 and 2023 and we
18 have a fixed contract to deliver that power, and
19 our assumption was that there would be no tariffs
20 and worst case on bifacial after February 7,
21 2027. So, we're currently underwater on some of
22 those if the tariffs, indeed, were extended or

1 reimposed.

2 CHAIR MARTYN: All right. Ron, did
3 you want to add anything further on that, Ron?
4 Ron might be frozen again.

5 MR. HALL: I'll just add that that's
6 definitely the industry perspective. Since the
7 beginning of the process four years ago, we've
8 been planning on that it's going to go down five
9 percent every year and it's going to be gone
10 after the end of four years.

11 This is one of those things that has
12 happened, what, two or three times in history.
13 We thought, okay, under Trump, yeah, but things
14 will change.

15 And so, I'm just telling you that's
16 our perspective and basically every one of our
17 customer's perspectives is like, okay, we're
18 waiting for February for relief.

19 In the utility-scale market, in
20 particular, you know, three cents is not a small
21 thing. And nowadays the tariff is about six
22 cents. So, it's a huge deal.

1 CHAIR MARTYN: All right. Thank you
2 very much. I think we, I have a sense of where
3 you guys are on this, which is very helpful. And
4 I don't want to monopolize the time that's
5 available to us for questions. Have I lost you
6 all?

7 MR. NICELY: No, I can hear you, Will.

8 CHAIR MARTYN: All right. Just wanted
9 to be sure.

10 All right, then. I will now turn to
11 my TPSC colleagues to ask if they have any
12 questions. And I see that Dr. Boushey is first
13 in line. So, please, go ahead.

14 DR. BOUSHEY: Yes. And thank you.
15 Thank you for all of the testimony. Really it
16 was very interesting.

17 I just wrote my question down here.
18 I want to get it back up on my screen. Okay.
19 So, I'm going to direct this to Mr. Swinerton at
20 SOLV Energy, but others can weigh in, of course,
21 if they have answers.

22 And so the question here I think rests

1 a little bit on the last set of questions. So,
2 will utilities still be able to meet their clean
3 energy goals with the tariffs extended for this
4 four-year period?

5 And if you answer that question, can
6 you please clarify whether or not this four years
7 of a declining safeguard will disadvantage solar
8 as an option for utilities seeking to shift to
9 clean energy sources permanently? Is that the
10 argument that you are making here? Thank you.

11 MR. HERSHMAN: Well, I'll take part of
12 this question. And then I think what you
13 probably want to hear is from the developers in a
14 group that actually worked directly with the
15 utilities, because in our capacity we are EPC
16 contractors. So, we build projects for utility
17 developers.

18 And so, the more direct question would
19 be to the developers themselves that work with
20 the utilities and understand more closely that
21 business model.

22 I can assure you that from our point

1 of view at the kind of the final deployment
2 aspect is that we are seeing less deployment,
3 less contracts moving forward because of the, if
4 we see a safeguard measure imposed.

5 As we spoke about in the earlier, our
6 answer to the previous question, we've made
7 business decisions and priced projects according
8 to a step down or a, you know, completion of the
9 safeguard at the end of February. And projects
10 were priced with that tariff level or lack of
11 tariff in place.

12 And so those prices will go up. So,
13 we'll have to renegotiate our contracts with
14 developers. Developers will have to try to
15 renegotiate a project with a utility with a fixed
16 price contract. And those projects are now no
17 longer economic.

18 So, we're seeing many projects of ours
19 that are on the bubble because of the economics
20 that will change dramatically if a tariff is left
21 in place at its, you know, its current rate and
22 with a marginal if, you know, negligible step

1 down as it's been recommended.

2 So, we're seeing that at the very end
3 of the scale, right, of building and deploying
4 projects. But I think Ron or Jamie can speak to
5 the discussions directly with the utilities and
6 what their goals are and being able to meet their
7 goals or lack of being able to meet those.

8 MR. REAGAN: Yeah, thanks, George.
9 And thanks, Doctor, for the question.

10 So, as George said, when we talk to
11 the customers right now, we're still pricing our
12 solar projects assuming the safeguard measures go
13 away. You know, our assumption is safeguard
14 measures have only been extended once in history.
15 So, you know, we don't want to price up to our
16 customer something that, you know, historically
17 has not happened.

18 And, you know, our other assumption is
19 if safeguard measures were to be extended we
20 would still have the bifacial exclusion, because,
21 you know, it's been through the courts twice now.
22 And, you know, the judge has found that the

1 bifacial exclusion must remain in place because
2 of liberalization of duties. So, at this point,
3 you know, we're still pricing them up at the
4 lower rate.

5 If for some reason, you know, we lose
6 on both of those fronts, then we got to go back
7 and talk to our customers. And like George said,
8 you know, some of these projects likely go away
9 because our customers are not going to be willing
10 to pay a higher price for solar projects.

11 MR. RESOR: Well, another example
12 related to that, and I agree with those comments,
13 is we sometimes are seeking to, our customers
14 need us to meet, get below their avoided costs of
15 energy. So, there's a pretty clear target price
16 to hit.

17 And if we lose on one or two of those
18 things that Ron mentioned, we're just in many
19 cases not going to be able to hit that mark. And
20 the project won't go forward.

21 So, there will definitely be -- for
22 the utilities to meet their clean energy goals

1 will definitely be significantly held back if we
2 lose on, if one or two of these variables were to
3 go against us.

4 MR. HALL: To your point about
5 permanency, I don't know that there would be a
6 permanent impact of a short-term tariff.

7 But, you know, if we're thinking about
8 cost and benefit, I just want to remind you that
9 the goals for the Biden administration, of
10 course, the solar industry are very aggressive.
11 And four years of hamstringing that growth will
12 have a long-term impact and prevent us from
13 achieving those goals.

14 And that's I think important to keep
15 in mind. We don't have ten years to kind of
16 slowly play at this game to get where we want to
17 be.

18 DR. BOUSHEY: Thank you. Will, I'll
19 turn it back to you as we're running out of time.

20 CHAIR MARTYN: All right. Next
21 question I see is from Mr. Mroczka. Please go
22 ahead.

1 MR. MROCZKA: Thanks, Ron. You all
2 mentioned -- this is for pretty much everybody.
3 But I suspect Ron will probably take the first
4 crack at the nut.

5 You all mentioned that a tariff will
6 just be an increase in prices. As you all know,
7 tackling inflation is a serious issue for this
8 administration.

9 We've already seen a significant
10 impact that a, what a tariff increase can have on
11 an input and will have on inflation with ammonium
12 nitrate and food prices, which is a main
13 contributor to inflation.

14 Do you all have any sense on what an
15 extension of the tariffs would contribute to
16 inflation? Would it move the needle at all and
17 would the impact be minimal?

18 MR. REAGAN: Yeah, so I'll start. So,
19 you know, if the extension were at 15 percent,
20 you know, that directly translates to \$2 to \$3 a
21 megawatt hour on the price (audio interference).

22 MR. NICELY: It looks like we lost Ron

1 again. Does anybody else want to take this on?

2 MR. HERSHMAN: Well, if you look at it
3 just from a --

4 MR. NICELY: Ron, are you back? We
5 lost you for a little bit there. We lost you.

6 (Simultaneous speaking.)

7 MR. HALL: We heard you say \$2 to \$3
8 a megawatt hour, and then we lost you.

9 MR. REAGAN: Oh, sorry. So, the
10 market today for solar PPAs is \$20 to \$30. So,
11 you're talking about ten percent increase in the
12 price of a solar PPA if the safeguard measures
13 get extended.

14 MR. HERSHMAN: And from a build cost,
15 modules still make up roughly 50 percent of the
16 cost of a utility-scale project. So, if you
17 have, you know, 15 percent tariff, you've got 7.5
18 percent of just raw costs that go into the
19 additional cost of building a solar project.

20 And then you compound those on top of
21 historically high shipping costs, you know, a
22 number of other, you know, inflationary costs

1 within the overall project build, and you can see
2 that the projects quickly get, become uneconomic.

3 CHAIR MARTYN: All right.

4 MR. NICELY: Victor, I think there's
5 one thing to bear in mind here. Prices have,
6 indeed, fallen notwithstanding the tariffs over
7 the last several years. But, again, we're
8 talking about opportunity costs and what doesn't
9 get built because those prices haven't fallen
10 enough.

11 But we're also critically talking
12 about, and what I think you just heard about, is
13 the situation right now given the additional
14 costs that everyone is facing is that there,
15 we're seeing, this industry is actually
16 experiencing that kind of inflationary effect.

17 CHAIR MARTYN: All right. Thank you.
18 Ms., Dr. Gorman, do you have a question?

19 DR. GORMAN: I do. Thank you. And
20 I'll pose this to all the panelists, so feel free
21 to respond as you see fit.

22 Just, we've learned a lot during COVID

1 about the risks in global supply chains for
2 critical industries and, in particular, the heavy
3 reliance by any one industry on production in any
4 one part of the world and the risks of disruption
5 that this can cause.

6 And I think as all of you are aware
7 the administration has been working to assess
8 risks in a number of sectors that are vital to
9 our economic recovery and our broader climate
10 goals.

11 So, I'm just curious, how do you think
12 about balancing cost versus managing risk in your
13 supply chains? And has your, has recent
14 experience with COVID-related disruptions changed
15 your thinking at all whether it's regards to a
16 diversity of supply or de-risking your
17 operations? If it has changed, I'm curious how.

18 MR. REAGAN: I can start. Ron Reagan
19 with NextEra.

20 Yes, we have looked at it very
21 seriously. And, you know, our big goal at this
22 point is to get more of the module manufacturers

1 to move their production to the United States.

2 So, we've talked to the top five
3 module manufacturers in the world. And we've
4 asked them point blank what's it going to take
5 for you to move to the U.S.

6 And all of them have told us they need
7 the incentives that are in the Build Back Better
8 Act. They want legislation. They want
9 certainty.

10 Safeguard measures are not certainty.
11 Safeguard measures can change day to day with the
12 stroke of a pen by the President. None of them
13 are going to bring their capital investment to
14 the United States when the rules can change from
15 one president to the next president.

16 They want legislation. They want it
17 written. They want long-term incentives. And
18 that's what Build Back Better is going to give
19 us.

20 And that's really what we've been
21 working hard for is to get these top five or six
22 folks to bring their operations here to the U.S.

1 And I think we're on the cusp of making that
2 happen.

3 MR. HALL: I just want to add that,
4 you know, China is the name on the headline from
5 the other side of who we need to attack and
6 defend against in our energy dependence and
7 everything.

8 But the fact that we now are getting
9 modules from a half a dozen to a dozen southeast
10 Asian countries as well as other countries around
11 the world, including on this hemisphere, is a
12 good thing for diversifying our supply. And when
13 factories in Cambodia were shut down, we could
14 get stuff from Vietnam or Thailand and vice
15 versa.

16 And so, you know, basically, high
17 level I just want to say putting a tariff on the
18 whole world, which is what this tariff does,
19 except one or two exceptions in the world, does
20 not help the diversity of supply of solar modules
21 in the United States at all.

22 And, of course, we don't believe this

1 safeguard is necessarily the answer to get the
2 domestic manufacturing piece of the puzzle solved
3 either.

4 CHAIR MARTYN: All right. Thank you
5 very much. Dr. Jones-Albertus, do you have a
6 question?

7 DR. JONES-ALBERTUS: Thank you. And
8 thank you to all of the panelists.

9 I know we heard from each of the
10 individual developers how the increase in costs
11 related to the tariffs would cause you to need to
12 reexamine your projects.

13 My question is for SEIA and ACP. Do
14 you have any aggregated estimates across the
15 industry of what a continued remedy, if the
16 recommendation by the ITC is put forward in
17 aggregate what that would mean for solar
18 deployment?

19 MS. HOPPER: Matt, do you know if we
20 -- I can't think of one. Thanks, Dr. Jones-
21 Albertus. Are you aware of one that we've put in
22 our testimony? I'm not aware of one.

1 MR. NICELY: No. Sorry, the impact
2 that it would have --

3 MS. HOPPER: If they were continued.

4 MR. NICELY: No, I mean, what we've
5 talked about are the costs to the consumer. And
6 that's set forth in our comments, which are
7 obviously significant.

8 And given the amount of duties that
9 would be collected and even the assumed or the
10 planned for additional manufacturing that would
11 happen in the module sector, the amounts that
12 we'd be paying for each individual module-making
13 job would be massively higher than even the first
14 four years.

15 MS. HOPPER: Okay.

16 MR. NICELY: But that's the kind of
17 analysis we did in our comments. We didn't do
18 the other, what you specifically asked for.

19 MS. HOPPER: Yeah, I would just --
20 Becca, I'm sure you're aware of this. But what I
21 would point out is what I talked about in my
22 testimony, which is the most recent projections,

1 even just for '22, that included a 25 percent
2 decrease in deployment in 2022 without the
3 assumption that these tariffs would continue, and
4 then sort of the stories that the developers have
5 told about the incredible impact that additional
6 costs will have.

7 But I think that a 25 percent decrease
8 in projections over just a couple of months,
9 right, from, in our projections tells you how
10 truly sensitive the market is to those kinds of
11 additional costs.

12 MR. NICELY: Vanessa, did you want to
13 add anything?

14 MS. SCIARRA: I think the only thing
15 I would add is that we're talking headwinds on
16 headwinds on headwinds for the industry, right.
17 I mean, at some point solar just becomes
18 disfavored.

19 And I think there's been some
20 testimony to that effect, that, you know, the
21 developers have talked about how at some point
22 projects just don't get built. And when projects

1 don't get built, it takes a long time for someone
2 to decide to rebuild it.

3 So, you're just talking about further
4 and further putting our goals of reaching the
5 deployment goals the administration has set are
6 getting further and further out of reach. And
7 it's just one more headwind for the industry.

8 DR. JONES-ALBERTUS: Thank you.

9 CHAIR MARTYN: All right. Ms. Grewe,
10 you had a question.

11 MS. GREWE: No, sorry. Sorry, no, I
12 didn't have a question. Sorry, I hit the button
13 by --

14 CHAIR MARTYN: No problem. All right.
15 Ms. Hasandras, you had a question.

16 MS. HASANDRAS: Yes, thank you, Will.
17 And thank you, everyone, for your testimony
18 today.

19 I'm going to direct this question to
20 Ms. Nutting with Sunnova, although I'm sure other
21 folks may want to jump in. I'm going to revert
22 back to our advanced questions.

1 You noted certain bifacial module
2 limitations in residential applications such as
3 the sloped roof and the darker color of the roof.
4 And I am wondering if certain, something such as
5 a carport or a ground mount system or an awning
6 that may already exist in a residential setting
7 would resolve some of those limitations.

8 MS. NUTTING: It could potentially.
9 We don't do carports, ground mounts. We do
10 rooftops at homes, along with storage. So, for
11 our applications, our almost 200,000 customers,
12 bifacial panels aren't something we would use.

13 MR. RESOR: Also, I can comment on
14 that a bit because we've done some carports.
15 And, yeah, you could have carports with a
16 bifacial module. It might work.

17 But that's going to such a small drop
18 in the bucket compared to the utility-scale. I
19 mean, a big carport is one or two megawatts, just
20 to put it in perspective. So --

21 MR. HALL: Even sticking in, within
22 residential, forget about utility-scale, a

1 carport percentage of the market versus rooftop
2 has got to be in a single-digit percentage --

3 MR. RESOR: Yeah.

4 MR. HALL: -- probably less than one
5 percent. It's not a thing. You know, yes, you
6 could see one in a city maybe but not like two on
7 a block.

8 MR. RESOR: Yeah.

9 MS. HASANDRAS: Thank you. That was
10 my only question, Will.

11 CHAIR MARTYN: All right. Thank you.
12 Do we have any -- I don't want to cut things off
13 just because of the schedule. Do we have any
14 more questions from our interagency colleagues?
15 Please raise hands if you do.

16 All right. I don't see any. I'm
17 going to take advantage of my chair's prerogative
18 and ask one last question then. I'll direct --
19 Mr. Nicely, direct it wherever you think most
20 fitting.

21 Our friends in the first panel, many
22 of them said that if the bifacial exclusion

1 continues any extension would have no effect
2 whatsoever. Do you agree with that view?

3 MR. NICELY: Absolutely not. I mean,
4 and by the way, I'm glad you asked that, Will. I
5 mean, we did a detailed analysis of the best data
6 we could comparing 72 cell to 60 cell. Had Tom
7 Prusa from Rutgers University do that analysis to
8 see what the relationship was. And he discovered
9 that in fact there was not the kind of
10 relationship that these folks are suggesting
11 there is.

12 And in fact, by the way, they say the
13 bottom fell out on the pricing. Prices have been
14 falling every single year as everybody knows.
15 Swanson's law tells you that prices are going to
16 fall. And they have done just that
17 notwithstanding the safeguard.

18 And the extent of the price decline
19 that happened even the year of the, when the
20 bifacial panel was, bifacial panel exclusion was
21 granted, the decline was the same that it had
22 been previously.

1 And so, as a result, there isn't the
2 proof either, including from -- using economic
3 tools, there wasn't the proof to show that there
4 was a relationship between the bifacial panel
5 exclusion and what was happening with the pricing
6 in the marketplace.

7 So, no, we don't think there's going
8 to be the same effect. We think the bifacial, by
9 and large, bifacial is being used in the utility-
10 scale segment where this industry by and large is
11 not servicing that industry.

12 We've all talked about how Hanwha is
13 using one of its lines for that industry, and
14 it's able to serve a small, very small portion.
15 And in fact, Ron has talked about how he has
16 purchased from them before.

17 But the fact is that there is so
18 little available for that industry, for that
19 segment of the industry from the domestic
20 producers that as a result you're going to import
21 anyway.

22 And so, if they're able to import

1 bifacial panels, which is what most of them are
2 using these days because that's where they get
3 the greatest efficiency, we don't see the effect
4 that they suggest is going to happen.

5 Does anybody else want to --

6 (Simultaneous speaking.)

7 MR. NICELY: I guess not.

8 CHAIR MARTYN: I think that answers
9 the question. And we are I believe past when we
10 said we were going to close down. So, Mike, what
11 do we have for our time to resume with panel 3?

12 MR. GAGAIN: Thanks, Will. The
13 notional schedule indicates that we would resume
14 at 1:00 based on an end time of 12:20 for panel
15 2, so a 40-minute lunch break. But I would defer
16 to you on how much of a break you want to provide
17 before we resume. I was thinking maybe 1:15 --

18 CHAIR MARTYN: 1:15 sounds logical.

19 MR. GAGAIN: Okay.

20 CHAIR MARTYN: Yes. All right. So,
21 we will resume at 1:15. I will see a new set of
22 faces. But I hope those of you who can listen in

1 if you find it interesting.

2 So, with that, we'll close out panel
3 2 and thank all of you for being with us today
4 and presenting us with a tremendous amount of
5 useful information in responses to our questions.
6 Thanks.

7 (Whereupon, the above-entitled matter
8 went off the record at 12:32 p.m. and resumed at
9 1:16 p.m.)

10 MR. GAGAIN: Good afternoon, and
11 welcome back. I hope everyone enjoyed their
12 lunch. We will now continue this public hearing
13 regarding the solar safeguard extension review,
14 and we'll proceed to Panel 3.

15 Panel 3 will comprise Mr. Jonathan
16 Stoel of Hogan Lovells U.S. LLP -- then we'll
17 hear from Silfab Solar Incorporated, then Heliene
18 Incorporated, then Canadian Solar Solutions, and
19 finally from Maxeon Solar Technologies Limited.

20 The participants on this Panel have a
21 combined 45 minutes to testify. Based on prior
22 communications with them, we will start with Mr.

1 Stoel and then proceed to Silfab, Heliene, and
2 Canadian Solar. They have a combined 30 minutes
3 to testify. From there, we'll move to Maxeon,
4 who has 15 minutes to testify. We'll then turn
5 it to questions and answers from the Panel.

6 As of this morning, Ms. Ronalda Smith
7 from USTR will be keeping your time, and she will
8 indicate when you have two, one, and no minutes
9 remaining. So, in regard to this morning, we
10 request that you state your name and title before
11 proceeding for the purposes of the transcript.

12 Mr. Stoel, are you ready?

13 MR. STOEL: Yes. Thank you.

14 MR. GAGAIN: Okay. Please proceed.

15 Thank you.

16 MR. STOEL: Good afternoon, and thank
17 you, Mr. Chairman, for the opportunity to testify
18 today to the Committee. My name is Jonathan
19 Stoel. I'm a partner of Hogan Lovells
20 representing the government of Canada and also
21 Canadian industry in this expansion proceeding.

22 I'll be leading off this afternoon's

1 panel of Canadian and Mexican industry witnesses.
2 I will be followed by representatives of the
3 three companies representing the Canadian solar
4 industry: Paolo Maccario of Silfab Solar, Martin
5 Pochtaruk of Heliene Inc., and Vincent Ambrose of
6 Canadian Solar Solutions. Our final witness will
7 be John Magnus of TradeWins, representing Maxeon
8 for the Mexican solar industry.

9 We look forward to answering your
10 questions at the conclusion of our testimony.
11 The Canadian solar industry sits before you today
12 as a proud partner of the U.S. solar industry and
13 a strong supporter of the administration's Build
14 Back Better agenda, including specifically its
15 efforts to transition the U.S. economy to green
16 energy and to combat climate change.

17 Heliene and Silfab employ hundreds of
18 American manufacturing workers at four facilities
19 in three states: Florida, Minnesota, and
20 Washington state. And they will soon have the
21 capacity to produce 1.7 gigawatts of solar
22 modules right here in the USA.

1 Canadian solar has invested more than
2 one billion dollars in the United States as a
3 leading U.S. utility-scale solar and energy
4 storage project developer for the project
5 development portfolio of over four gigawatts of
6 solar energy generation and nine gigawatts of
7 battery storage projects. The company is
8 completing detailed due diligence on the
9 feasibility of investments in U.S. solar
10 manufacturing.

11 I would like to make three points
12 today to the Committee this afternoon. First, if
13 the President determines to extend the safeguard
14 measures to Canada, it should both grant an
15 exclusion to Canada and terminate or expand
16 substantially the tariff rate quota, or TRQ,
17 currently being applied to U.S. import of solar
18 cells.

19 Second, consistent with U.S. law, the
20 U.S.-Mexico-Canada agreement, and the material
21 facts, the Committee should recommend to the
22 President that Canada be excluded from any

1 extended safeguard measure. And, finally, the
2 President should either eliminate or expand
3 substantially the TRQ currently being applied to
4 U.S. imports of solar cells.

5 I would now like to turn to why U.S.
6 law permits the President both to exclude Canada
7 from any extended safeguard measure and also to
8 eliminate or expand substantially the TRQ on
9 solar cells.

10 First, the text of the safeguard
11 extension statute, 19 U.S.C., Section
12 2253(e)(1)(b), is sparse and places few
13 constraints on the President's authority to
14 extend the safeguard measure. If the President
15 finds that the two prescribed conditions have
16 been met, this part of the law simply limits the
17 total duration of the safeguard measure to eight
18 years.

19 There is no prohibition on the
20 President's authority to craft the specifics of
21 an extended safeguard measure. This statutory
22 conferment of broad safeguard extension authority

1 on the President is reinforced by Section
2 203(a)(3)(i) of the Trade Act of 1974, which
3 directs the President to, quote, take any action
4 which may be considered by the President under
5 the authority of law and which the President
6 considers appropriate and feasible.

7 The President's broad authority to
8 craft safeguard measures has also been recognized
9 in several contexts by the U.S. Court of Appeals
10 for the Federal Circuit and the Court of
11 International Trade. Indeed, relying on this
12 broad delegation of authority, President Trump
13 determined in the recent washers extension
14 measure to exclude imports from Canada and
15 imports from a lengthy list of developing
16 countries.

17 My second point is that Section
18 203(d)(5) of the Trade Act provides that an
19 extended safeguard action, like an original
20 safeguard action, quote, shall be phased down at
21 regular intervals during the period in which the
22 extended action is in effect.

1 This requirement would be met if the
2 President determines both to exclude certain
3 countries, such as Canada or Mexico, from the
4 safeguard measure and also to eliminate or
5 substantially expand the TRQ for solar cells.
6 This is because both a country's specific
7 exclusion and the elimination or expansion of the
8 TRQ would be, quote, trade-liberalizing, unquote,
9 actions by the President vis-a-vis the safeguard
10 measures currently in place.

11 With respect to the exclusion of
12 Canada from an extended safeguard measure, there
13 are two additional reasons why the Committee
14 should recommend such an action to the President.
15 One, the Canadian solar industry is very small,
16 and its exports to the United States have been
17 minuscule and remained stable over the past four
18 years.

19 As a consequence, and a response to
20 the Committee's advance question of the
21 government of Canada, the share of Canadian
22 exports to the United States has declined as a

1 share of U.S. market demand for solar products
2 and as a share of total imports.

3 Furthermore, none of the three
4 Canadian solar producers appearing before you
5 today has plans to expand production capacity in
6 Canada, a logical outcome of the fact that today
7 the cost of producing solar products is lower
8 here in the United States than in Canada. Before
9 you today are the only three Canadian solar panel
10 producers and exporters. As such, there is no
11 threat that material quantities of solar panels
12 will be exported from Canada to the United States
13 in the foreseeable future.

14 Two, the United States' international
15 obligations under the USMCA mandate an exclusion
16 for Canada based on these facts. In fact, the
17 current U.S. imposition of a safeguard tariff on
18 Canadian solar modules is unlawful.

19 The safeguard chapter of the USMCA,
20 which is reflected in the USMCA Implementation
21 Act, mandates the exclusion of imports from a
22 USMCA country, in this case Canada, from a U.S.

1 safeguard measure unless imports constitute a
2 substantial share of U.S. imports and contribute
3 importantly to the serious injury suffered by
4 U.S. producers of solar products.

5 As I have already explained, the
6 minuscule volume of Canadian exports of solar
7 products does not constitute a substantial share
8 of U.S. imports. This is confirmed by the fact
9 that Canada is not one of the top five exporters
10 to the United States. Moreover, imports from
11 Canada do not contribute importantly to the
12 challenges confronted today by U.S. solar
13 manufacturers.

14 In fact, as you will hear from our
15 witnesses, the exact opposite has occurred.
16 Canadian manufacturers Heliene and Silfab are
17 together the second-largest manufacturer of solar
18 products in the United States, and both companies
19 have detailed for the Committee, and will again
20 today, their exciting, concrete plans for further
21 expansions of their U.S. production operations.

22 As a consequence, every dollar of

1 safeguard tariff paid by these Canadian producer-
2 exporters curtails their ability to invest in
3 additional solar production and accompanying
4 manufacturing jobs here in the United States. If
5 the President were to lift the tariff on imports
6 from Canada, the consequence will be millions of
7 dollars of additional investments in solar
8 manufacturing here in the United States.

9 Finally, I must reinforce that the
10 President should avoid imposing a punitive task
11 on U.S. solar module manufacturers that likewise
12 will inhibit Canadian investments to develop a
13 U.S. solar supply chain. The solar cell TRQ was
14 exhausted in 2021, and U.S. solar module
15 manufacturing is set to expand even further in
16 2022.

17 As a consequence, if the Committee
18 recommends that the President extend the
19 safeguard, it should also recommend the 2.5
20 gigawatt TRQ on solar cells be enlarged
21 significantly or eliminated altogether. That is,
22 no tariff should be imposed on solar cells

1 destined for U.S. solar manufacturing of modules.

2 Both Heliene and Silfab must import
3 solar cells in order to run their U.S.
4 manufacturing plants, to employ their American
5 workers, and to expand their U.S. production
6 capacities. Solar module manufacturing is
7 inherently a low-margin business, and neither
8 company can afford another unnecessary tax on
9 their American-made solar panels.

10 Thank you again. Our next witness is
11 Paolo Maccario of Silfab.

12 MR. MACCARIO: Thank you.

13 Good afternoon and happy New Year. My
14 name is Paolo Maccario. I'm the President and
15 CEO of Silfab Solar Inc., a solar module producer
16 based in Ontario, Canada, and of Silfab Solar
17 Washington, a module producer located in the
18 state of Washington.

19 I am here today to request that
20 imports from Canada are excluded from the
21 safeguard measure. Our small and stable imports
22 of solar modules from Canada complement our

1 growing U.S. manufacturing. Indeed, our Canadian
2 and our U.S. production are intertwined, and harm
3 to Silfab on one side of the border harms our
4 business on the other side.

5 On the other end, if the tariff is
6 removed, Silfab will invest millions more dollars
7 in U.S. production instead of paying the tariff.
8 Furthermore, if the TPSC recommends that the
9 President extend the safeguard measure, it should
10 also recommend to increase the TRQ on solar cells
11 to avoid imposing a harsh tariff on U.S. module
12 manufacturers like Silfab.

13 A new tax on our U.S. manufacturing in
14 the form of a safeguard tariff on cells would
15 directly harm our U.S. manufacturing operation,
16 the largest buyer of non-cell (phonetic) produced
17 cells.

18 I am quite excited about the success
19 of Silfab growing U.S. business. Since 2018, we
20 have invested in U.S. solar manufacturing and
21 created the second-largest manufacturer (audio
22 interference) for CSPV modules in the United

1 States.

2 Silfab first invested in a solar
3 manufacturing facility in Washington in 2018,
4 saving the jobs of workers at the almost-bankrupt
5 Itek facility. We have since invested a
6 substantial amount in the facility, significantly
7 increased capacity, and grown employment.

8 In August 2021, Silfab opened its
9 second U.S. solar manufacturing facility in
10 Burlington, Washington, creating American
11 manufacturing jobs and doubling Silfab U.S.
12 production capacity. We currently employ more
13 than 270 Americans, and we have big plans to
14 further expand our U.S. operations, make
15 additional investment, and hire more U.S.
16 workers.

17 We are very proud to be a major part
18 of the American green energy theater. But I want
19 to make very clear a few points: first, that our
20 business plan is entirely predicated on Canada
21 being excluded from the Section 201 tariffs;
22 second, that our plan is based on no or an

1 increased TRQ on cells; third, that unlike other
2 panelists, our plan is not only on paper, but
3 with location, building, equipment, and hiring
4 contracts for people ready to be signed.

5 The continued health of Silfab
6 Canadian manufacturing business is vital to our
7 U.S. production operation in Washington. Silfab
8 Canadian operation facilitates investment and
9 research that have benefitted our U.S. business.
10 The safeguard takes away from our ability to
11 continue investing millions of planet (phonetic)
12 dollar in U.S. manufacturing.

13 Quite simply, the tariff on imports
14 from Canada makes it more difficult for us to
15 continue to expand our U.S. production capacity
16 or increase our American hiring. If the tariff
17 is removed, we could put millions upon millions
18 of dollars into the green economy in the United
19 States. This should be quite an easy decision
20 for you.

21 Silfab has a long history of
22 partnering with U.S. solar industry. There is no

1 solar production in Canada, so we are required to
2 import cells into Canada to make modules. So, we
3 used to partner with Suniva to procure cells for
4 our modules. Our Canadian business was one of
5 Suniva's biggest customers in 2015 before Suniva
6 went out of business. We were frequently
7 ordering larger quantities of cells from Suniva
8 than they could even provide to us.

9 Unfortunately, we encountered problems
10 receiving enough cells on time. We also
11 experienced quality problems, and then Suniva
12 business failed and stopped supplying us
13 altogether in 2016. We wanted to buy cells from
14 the United States then, and we still would buy
15 today from the United States if cells were
16 available.

17 But, unfortunately, there are no cells
18 in all of North America for purchase and no cell
19 production coming online in the immediate future.
20 And even if it was, it would certainly be unable
21 to make the type and format of cells Silfab needs
22 in terms of size of the wafers or in terms of

1 beck count (phonetic) of cells.

2 This is why it's very important that
3 if the safeguard is extended, then the TRQ on
4 cells is also expanded or eliminated altogether.
5 We cannot expand at the pace we are planning for
6 2022 and beyond if we are forced to pay a
7 punitive tax on our major import, the solar cell.

8 It is unfortunate that certain U.S.
9 competitors have asked the TPSC to recommend
10 harming Silfab on both sides of the border. One
11 of the companies, Suniva, previously failed to
12 meet Silfab's requirement for solar cells, as
13 I've already explained, and subsequently hasn't
14 produced a single solar cell over the last five
15 years. On the other hand, Silfab has delivered
16 on its promise to expand solar manufacturing in
17 the United States.

18 Another competitor, without citing any
19 evidence, calls our import cells, small
20 quantities of modules from Canada, as pernicious.
21 This is absurd. There are only two companies
22 opposing an exclusion for Canada and seeking a

1 tariff on imports of solar cells, which fuel our
2 module business in the U.S.

3 I hope that the TPSC sees through
4 those companies' rhetoric and understand that
5 imports from Canada have never been large and
6 have never been harmful to the U.S. industry.
7 Moreover, until there is a sufficient supply of
8 solar cells, we need tariff-free cells, access to
9 imported cells in order to support the solar
10 manufacturing in the United States.

11 Silfab is ready and willing to work
12 together with the U.S. government to build a full
13 solar manufacturing supply chain in the United
14 States. We have detailed our big plans in our
15 confidential written comments. Tariffs on cells
16 or imports from Canada are counterproductive to
17 those goals.

18 The TPSC should recommend that
19 President Biden do what is best for American
20 manufacturing and our green energy theater: if
21 the TPSC recommends extension of the safeguard
22 measure, then it also recommend the exclusion of

1 Canada and an expansion or elimination altogether
2 of the TRQ on solar cells.

3 Thank you, and I'd be pleased to
4 answer all of your questions.

5 MR. POCHTARUK: Good afternoon. My
6 name is Martin Pochtaruk, and I'm the President
7 of Heliene. We manufacture solar modules in our
8 facilities in the United States and Canada.

9 I'm here today for two reasons.
10 First, I request that the TPSC recommend that the
11 safeguard tariff is removed on imports from
12 Canada. Imports of solar modules from Canada do
13 awfully benefit the U.S. solar industry. The
14 small imports of solar modules from Canada are
15 part of a North American supply chain that
16 supports manufacturing to increase research and
17 development, technical know-how, and investment
18 dollars flowing from Canada to the United States.

19 Second, it is critical that the solar
20 cells continue to be duty-free, as Paolo Maccario
21 from Silfab was just saying. If the President
22 extends the safeguard tariff without increasing

1 the TRQ on cells or eliminating it entirely, that
2 will be devastating for Heliene and the rest of
3 the U.S. module manufacturing industry.

4 I would like to provide a bit of
5 background on Heliene and our commitment to
6 manufacturing solar panels in the United States
7 and Canada. Heliene began manufacturing solar
8 modules in Canada in 2010, and four years ago,
9 due to the safeguards, the solar modules
10 manufactured in Canada that were primarily
11 exported to the United States had to be
12 curtailed.

13 Canadian modules were qualified by the
14 U.S. Department of Defense for various projects,
15 including of the Army and the Navy, since 2014.
16 Prior to the safeguards, Heliene also invested in
17 a laminate facility in Minnesota that was earlier
18 operated by a company that went out of business.

19 When the safeguard was imposed in
20 2018, as I was saying, Heliene shuttered the
21 Minnesota laminate operation and reduced the
22 Canadian production. In April of 2018, Heliene

1 decided, repivoting on the safeguard decision, to
2 reinvest in a new manufacturing facility in
3 Minnesota, investing then 21 million dollars and
4 hiring 90 American workers.

5 Our Minnesota production capacity in
6 that building continues to be at 150 megawatts.
7 But in September, we started construction for an
8 additional factory on the same site for another
9 400 megawatts through an investment that also
10 consists of 21 million dollars. This expansion
11 will create yet another 60 jobs for that one
12 location in Minnesota.

13 Prior to this, in the month of July,
14 we opened a second manufacturing facility in
15 Riviera Beach, Florida, after upgrading the 100-
16 megawatt-capacity production line that was
17 previously operated by SolarTech Universal. We
18 began producing high-efficiency heterojunction
19 cell modules out of that location one month ago.

20 This has created an additional 60
21 good-paying jobs -- for the clean energy
22 manufacturing industry in the U.S. We are

1 planning at this time to add on the Florida
2 facility a 250-megawatt manufacturing line that
3 will be in place by the beginning of Q4.

4 These two expansions, the one in
5 Minnesota and the one on Florida that I just
6 mentioned, will position Heliene at 900 megawatts
7 or slightly over 900 megawatts and slightly over
8 200 jobs within Minnesota and Florida. Our story
9 is one of success even in the face of immense
10 challenges.

11 Many U.S. manufacturers, such as
12 SolarWorld, SunPower, Panasonic, and Tesla, have
13 all shuttered since the safeguard (audio
14 interference). Suniva, as Paolo was saying, has
15 been out of business for the last five years.
16 Heliene, on the other hand, has expanded our U.S.
17 production capacity by leaps and bounds,
18 overcoming several challenges along the way,
19 including -- which is something that I think is
20 worth mentioning and reminding everybody --
21 Section 301.

22 Section 301 tariffs is actually making

1 our materials inputs more expensive and
2 penalizing U.S. manufacturing of solar modules.
3 On top of that, we have had big global supply
4 chain crisis and COVID-19. So there has been no
5 lack of entertainment for sure.

6 In addition, other U.S. manufacturers
7 such as Hanwha, LG, and Jinko do have their own
8 cell manufacturing in Asia, while in our case, we
9 suffer the logistical disadvantage of needing to
10 purchase foreign-made solar cells.

11 As we mentioned already, and let me
12 emphasize, the safeguard tariff on imports from
13 Canada has harmed Heliene's operations on both
14 sides of the border. This is because Heliene USA
15 depends on capital and know-how from Heliene
16 Canada. Heliene Canada has suffered from reduced
17 sales and profit only as a result of the
18 safeguard, limiting its ability to provide
19 capital to Heliene USA.

20 In turn, this has slowed Heliene USA's
21 ability to invest farther in U.S. solar
22 manufacturing. Quite simply, the tariff imposes

1 a burdensome tax on Heliene that reduces our U.S.
2 investment dollars, keeps us from hiring more
3 U.S. workers, and forces the production of more
4 U.S.-made solar panels.

5 For these reasons, if the TPSC
6 recommends extension of the safeguard measure,
7 then it should also recommend that imports from
8 Canada be excluded. In addition, if the TPSC
9 recommends that the President extends the
10 safeguard, it should also recommend that the TRQ
11 of solar cells be expanded significantly or
12 eliminated altogether.

13 The TRQ has been exhausted for this
14 year, as was mentioned already. We will soon
15 need to pay the safeguard tariff on solar cells.
16 So, let me say it again and repeat myself by
17 saying that there is no near term availability of
18 U.S. cells. So Heliene is required to import
19 cells to run our factories and to support the
20 jobs of American workers.

21 If the TRQ stays at 2.5 gigawatts next
22 year and we're forced to pay the tariff, then

1 this will simply stifle our progress over the
2 last four years. And by our progress, I mean not
3 only Heliene, but the entire U.S. solar panel
4 manufacturing industry will be forced to slow our
5 expansion counts. We're already running on thin
6 margins and simply cannot afford another tax on
7 American-made solar panels and, as I mentioned,
8 the said 301 safeguard among them.

9 Finally, I'm compelled to say
10 something about the highly inaccurate comments of
11 two of my U.S. competitors. Particularly galling
12 is that these two companies urge the TPSC not to
13 expand the TRQ for solar cells that is essential
14 to the financial ability of Heliene and other
15 U.S. solar module producers.

16 One of these companies hasn't ever
17 made a solar cell, and the other one hasn't made
18 a single solar cell in five years. And when they
19 were making them, they weren't even good. This
20 is an industry where the technology improves
21 every month.

22 Heliene and its workers have been

1 manufacturing solar panels here in the United
2 States over the last four years and in Canada for
3 11. In the face of immense challenges, we have
4 expanded and succeeded. Do not impose an
5 unnecessary tax on blossoming American
6 manufacturers of (audio interference) modules on
7 the basis of these unfounded comments.

8 Moreover, most companies argue that
9 there is something -- theoretical harm caused by
10 imports from Canada. And, as Paolo just
11 commented, one of them calls its imports
12 pernicious. If you haven't noticed, I'm outraged
13 by these comments. Imports from Canada have
14 always been tiny, and no other competitor opposes
15 an exemption for Canada.

16 And, as I already explained,
17 maintaining the tariff on U.S. imports from
18 Canada would only serve to punish Heliene with
19 millions of dollars of investments and hundreds
20 of U.S. workers that work for Heliene and
21 actually make solar panels.

22 Thank you, and I'll be pleased to

1 answer your questions.

2 MR. AMBROSE: Good afternoon. My name
3 is Vincent Ambrose. I'm the General Manager for
4 North America of Canadian Solar Incorporated.

5 Canadian Solar is a global solar
6 company headquartered in Ontario, Canada. We
7 have invested about one billion dollars in the
8 U.S. solar industry. We are responsible for many
9 gigawatt hours of deployment of utility-scale
10 solar energy across the United States through
11 Recurrent Energy, which is our U.S. solar
12 development arm.

13 We also have roots in Canada, hence
14 our name. Our Canadian manufacturing facility,
15 Canadian Solar Solutions Inc., is located in
16 Guelph, Ontario, and produces very small
17 quantities of solar modules, not solar cells.
18 Canadian Solar today produces very few solar
19 modules in Canada.

20 Our U.S. imports of solar modules
21 manufactured in Canada declined prior to the
22 Commission's initial safeguard investigation and

1 have continued to decline since the imposition of
2 the safeguard measure in 2018. This was
3 primarily due to high production costs in Canada
4 that have caused the Guelph facility to no longer
5 be commercially viable and competitive.

6 We have thus shifted our Canadian
7 operations primarily towards research and
8 development and have been forced to reduce
9 significantly our Canadian workforce and our
10 production capacities.

11 Today, Canadian Solar has no business
12 plans to import commercial quantities of CSPV
13 modules from Canada into the United States in the
14 foreseeable future. This is irrespective of
15 whether the safeguard measure is extended beyond
16 February '22, and these plans are highly unlikely
17 to change.

18 In 2017, the Commission recommended
19 the exclusion of U.S. imports of solar products
20 from Canada from the President's safeguard
21 measure. That was the correct recommendation,
22 and yet President Trump ignored the Commission's

1 recommendation. President Biden now has the
2 opportunity to fix President Trump's mistake and
3 issue an exclusion for Canada.

4 Finally, I'd like to address some of
5 the statements made by Suniva in its written
6 submission to the TPSC. Suniva argues that
7 because Canadian Solar manufactures in Asia that
8 its small Canadian operations are a threat to the
9 U.S. industry. This is just false.

10 Our Canadian operations are very
11 small, and there's no evidence that our Canadian
12 manufacturing arm could harm the U.S. industry.
13 As you've heard from Heliene and from Silfab, the
14 exact opposite is actually true. Removing the
15 tariffs on imports from Canada would actually
16 benefit the U.S. industry.

17 For these reasons, I ask that the TPSC
18 recommend to the President that imports from
19 Canada be excluded from the safeguard measure.
20 Thank you, and I'd be pleased to answer any of
21 your questions.

22 MR. MAGNUS: I guess that's me now.

1 Good afternoon, members of the Committee. I'm
2 John Magnus, TradeWins LLC, appearing for Maxeon.
3 We appreciate this opportunity to testify.

4 Maxeon spun out of SunPower in August
5 2020 and is a global CSPV solar manufacturer. It
6 is currently assembling interdigitated back
7 contact panels in Mexico IBC for the U.S. market
8 and has announced plans to resume assembling
9 shingled cell panels in Mexico for the U.S.
10 market.

11 Maxeon has also announced its
12 intention to produce CSPV cells and modules in
13 the United States. This is a plan to produce at-
14 scale three gigawatts a year of both cells and
15 modules. A three-gigawatts-per year MODCO would
16 be nearly twice as large as the largest existing
17 U.S. MODCO Q cells facility in Dalton, Georgia.

18 I can't compare the three-gigawatt-
19 per-year cell fab to any existing U.S. cell
20 production because there is none. I have some
21 more detail in a moment on our concrete progress
22 with respect to that manufacturing investment.

1 We have two messages today. First,
2 Mexico should be excluded if the safeguard
3 measure is extended. And, second, an extended
4 safeguard measure should not apply to unassembled
5 CSPV cells. We'll start with Mexico. I'll
6 answer the Committee's prepared questions as I
7 go. I'm going to try to do a screen-share here.
8 This worked yesterday, so I hope it will also
9 work today.

10 Some statistics -- these are based on
11 DataWeb data rather than the confidential figures
12 developed by the ITC and its extension
13 investigation. But the percentages are valid.

14 Over the four-year period preceding
15 the safeguard measure, 2014 to 2017, imports from
16 Mexico accounted for roughly one-tenth of total
17 U.S. imports in the relevant tariff category. By
18 2020, after a couple of years of safeguard
19 relief, imports from Mexico had declined so much
20 that they accounted for just one percent of total
21 U.S. imports.

22 Essentially, all of what you see here

1 in the Mexico line since 2017 comes from Maxeon's
2 factories. What this means is that the small
3 remaining flow from Mexico to the United States
4 consists entirely of exempt IBC modules. IBC
5 modules have never been made in the United
6 States. They command market prices well above
7 those of conventional CSPV modules.

8 These small numbers speak for
9 themselves. In practical terms, Mexico is not
10 and could not possibly be part of an import
11 competition problem for the U.S. industry.
12 Legally, imports from Mexico are well below the
13 threshold for current coverage, much less
14 extended coverage, the safeguard measure.

15 For example, in referencing the NAFTA
16 USMCA criteria that Jonathan spoke about, Mexico
17 is not among the top-five suppliers, and imports
18 from Mexico have been falling in absolute terms
19 while total U.S. imports have been growing.
20 Accordingly, if the safeguard measure is
21 extended, Mexico should be exempted from it.

22 I should add that the trade

1 compensation owed to Mexico given its historic
2 share of U.S. imports during the pre-safeguard
3 period is in the neighborhood of one billion
4 dollars a year. Under NAFTA and now USMCA,
5 Mexico has an automatic right to suspend
6 concessions at that same level and as much as
7 compensation isn't being provided. It's a big
8 bilateral trade relationship, but suspended
9 concessions of that magnitude would not likely go
10 unnoticed.

11 The Committee has asked why -- if our
12 IBC panels assembled in Mexico already benefit
13 from a product exclusion, why would we support a
14 country exclusion for Mexico? The Committee also
15 asked whether our announced plans to ramp up
16 production in Mexico involve IBC panels or
17 covered products.

18 As publicly announced, Maxeon's
19 expanded production in Mexico will not involve
20 excluded IBC products. Rather, it will feature
21 shingled cell panels. The shingling technology,
22 although proprietary, uses conventional CSPV

1 cells, and it falls inside the safeguard
2 measure's product coverage.

3 Excluding Mexico is critical, and even
4 with Maxeon's expanded shingled cell panel
5 production, shipments from Mexico will remain far
6 below the legal threshold I referenced moments
7 ago for maintaining Mexico's coverage under a
8 global safeguard measure.

9 This ties directly to one of the
10 questions posed by the government of Mexico by
11 the Committee asking whether a reduction in
12 installed capacity to produce modules might be
13 responsible for the decrease in imports of
14 modules from Mexico to the United States. It
15 appears that the drafter of this question has the
16 cause and effect reversed, at least as it relates
17 to Maxeon.

18 Our decision to stop producing
19 shingled cell CSPV products in Mexico was made in
20 part because the U.S. safeguard measure made it
21 uneconomic to continue assembling these products
22 in Mexico for sale in the U.S. market. With the

1 end of the safeguard measure or Mexico's coverage
2 under that measure approaching, Maxeon now plans
3 to reinstate production of shingled cell modules
4 in the same facility. That's the first point:
5 exclude Mexico.

6 The second point has to do with
7 unassembled cells. And our message here rests on
8 the premise that in assessing the domestic
9 industry's adjustment, the Committee should focus
10 on the industry that exists today. The U.S.
11 industry trying to adjust is a module assembly
12 industry. The failure of prior U.S. cell fabs,
13 none of which was built, much less operated,
14 anywhere at scale, can't be considered
15 surprising.

16 In any event, closing uneconomic
17 facilities and exiting uneconomic segments are
18 consistent with -- actually, they are a form of
19 positive adjustment as that term is defined in
20 the safeguard statute.

21 We respectfully submit that in this
22 extension review, the Committee should not

1 indulge in nostalgia or in blue-sky industrial
2 policy musing. Rather, its task is tightly
3 framed as determining whether safeguard relief
4 remains necessary in the context of positive
5 adjustment. This requires staying focused on the
6 MODCO industry and its near-term needs. One of
7 those needs is an unconstrained supply of duty-
8 free unassembled cells.

9 The Committee has asked by how much we
10 recommend expanding the TRQ. For the reasons
11 already stated, we see no reason to have import
12 relief on unassembled cells at all. If it's
13 going to continue, the allowance for duty-free
14 entry should expand by at least enough -- cover
15 all existing and announced MODCO capacity in the
16 United States.

17 The Committee also asked about
18 concrete steps Maxeon has taken to begin cell
19 production in the United States, when it's
20 expected to start, and whether Maxeon would be
21 supplying cells only to its own module factory.
22 I can report in this public setting four things.

1 First of all, site selection is very
2 well advanced. It's down to three locations.
3 Maxeon's application to the Energy Department's
4 Loan Programs Office is also advancing well. And
5 the expected operational date for the cell line
6 is early 2024, of course subject to final site
7 selection, passage of SEMA, and successful
8 project financing. And, lastly, Maxeon plans to
9 internally consume the entire three gigawatts per
10 year of cell production.

11 The Committee's last question is
12 whether we really are confident that import
13 relief on unassembled cells would not help on its
14 own to facilitate cell production in the United
15 States. The answer is yes. After intensive
16 review, that is our confidently held view.

17 Import relief on cells does not
18 provide sufficient incentive for Maxeon or, in
19 our view, any other large-scale CSPV producer to
20 implement U.S. cell production. If import relief
21 were going to catalyze production of cells in the
22 United States, that would have happened already.

1 As for Maxeon, our planned U.S. cell-making
2 investment is SEMA contingent. It is not import
3 relief contingent.

4 In conclusion, the case for excluding
5 Mexico is unassailable. The case for excluding
6 unassembled cells is also compelling in our view.
7 We thank the Committee for allowing us to testify
8 and look forward to fielding any additional
9 questions you might have.

10 MR. GAGAIN: Thank you very much,
11 everybody, for your testimony.

12 So, we'll now go into the question and
13 answer session, and I thought I would start by
14 following up on a few of the prepared questions
15 that we had sent in advance to all of you on this
16 panel today.

17 My first question is for Mr. Stoel,
18 and it's really for the Canadian industry. We
19 just heard from Mr. Magnus regarding potential
20 expansion of the TRQ and how the Mexican industry
21 sees that. You mentioned in your testimony --
22 and this was for Canadian Solar, Silfab, and

1 Heliene and also Mr. Stoel -- to expand
2 significantly or eliminate the TRQ on cells.

3 If the TPSC were to recommend
4 expanding the TRQ on cells, by how much would you
5 recommend, and what's the basis for that
6 recommendation?

7 MR. STOEL: Thank you very much, Mike.
8 This is Jonathan Stoel, for the record. As you
9 heard, on behalf of Canadian industry, we do
10 support expanding the TRQ. I think you heard
11 this morning from Hanwha that they supported, I
12 believe, five gigawatts as the -- and, to be
13 fair, we're talking about no tariff on solar
14 cells up to five gigawatts.

15 We would concur that that should be
16 the minimum amount. We think the key here is to
17 align the TRQ with expected solar module
18 capacity. As I think both Heliene and Silfab
19 have testified, what we really don't want is to
20 have another tax on U.S. manufacturing.

21 I mean, these companies are already
22 manufacturing in the United States. Both

1 companies have announced expansions of their
2 capacity and also new hirings of U.S. workers.
3 We don't want to make that more difficult. And
4 just to make sure I emphasize so Mr. Pochtaruk is
5 happy, that's the same with the Section 301
6 tariffs. We've applied to have 301 tariffs on
7 certain key inputs removed.

8 Again, those are taxes on U.S.
9 manufacturing. I think as the Committee looks
10 holistically at how to improve U.S. manufacturing
11 of solar products, we ought to think about how to
12 eliminate all those taxes that inhibit our
13 ability to do that.

14 I hope that answers your question.

15 MR. GAGAIN: It does. Thank you very
16 much.

17 And I have a follow-up question for
18 Silfab and Heliene. We had posed in writing that
19 if the President were to take no action to extend
20 the solar safeguard measure, I was wondering what
21 impact you would expect that to have on your U.S.
22 module production operations.

1 MR. MACCARIO: Well, I believe I
2 testified, obviously, not having tariffs on our
3 Canadian operation would be extremely beneficial
4 because we'll generate a significant amount,
5 double digits of millions, that we would be
6 investing in the U.S.

7 MR. POCHTARUK: However, not having
8 tariffs on the rest of the world -- right? So,
9 if the safeguard would be not renewed, then
10 despite the direct benefit to Canada, which is a
11 benefit to Heliene and Silfab, what we see is
12 that the price in the U.S. will adjust down,
13 therefore compressing margins overall.

14 So that is something that we'll need
15 to consider in our business plans and how it
16 would -- in the possible presence of no tariffs
17 for the rest of the world, what would that do in
18 terms of demand and supply and compression of
19 margins?

20 MR. STOEL: Mike, I want to emphasize
21 that I think both companies are planning on
22 expanding their investments in the United States,

1 but just being in Canada, the tariff on Canada
2 takes away monies that are destined for U.S.
3 manufacturing.

4 There's no plan from any of the
5 companies, including, as you heard from Mr.
6 Ambrose earlier, for Canadian Solar, to expand
7 the production capacity in Canada. So, all the
8 dollars that are being paid in tariffs, whether
9 it's on solar cells if the TRQ is expanded or if
10 the tariff is not rescinded with respect to
11 Canadian exports, those are simply taxes on
12 American manufacturing.

13 MR. POCHTARUK: Does that respond to
14 your question?

15 MR. GAGAIN: Yes, that was responsive.
16 Thank you very much.

17 I think at this point, I don't have
18 any further questions. So, I'm going to turn it
19 over to Mr. Martyn from USTR at this point.
20 Thanks.

21 CHAIR MARTYN: All right. Thank you
22 very much. I just have one question. It sounds

1 to me like your proposal for a TRQ is to set the
2 TRQ at a level where the tariff would never apply
3 to a single imported cell. So, if that is the
4 objective, what is the point of having a TRQ?
5 Shouldn't you be recommending that we just
6 eliminate the tariff on cells?

7 MR. MAGNUS: John Magnus from Maxeon.
8 That's certainly what we've recommended. And if
9 you feel obliged to stick with the TRQ structure,
10 then it should be expanded to account for all
11 existing and announced MODCO capacity in the
12 United States.

13 MR. STOEL: We would agree with Mr.
14 Magnus's comments. Thank you.

15 CHAIR MARTYN: All right. Thank you.
16 That's the end of my questions. I see that Mr.
17 Mroczka has a question, so please go ahead.

18 MR. MROCZKA: Oops. Sorry about that.
19 Yeah, my question is for Mr. Ambrose. Where I
20 thought you were going in your testimony was in
21 addressing Petitioner's comments about some of
22 the concerns raised about Canadian Solar, but you

1 didn't quite get there.

2 And so, I do want to kind of circle
3 back to that. I think the main concern that is
4 out there is about a potential circumvention
5 threat should an exclusion be given to Canada
6 through Canadian Solar.

7 Kind of to put you on the spot, but
8 what assurances can you provide that that will
9 not be the case or that will not happen should
10 there be an exclusion granted?

11 MR. STOEL: Hi, Victor. Good to see
12 you. This is Jonathan.

13 MR. MROCZKA: Hey, John.

14 MR. STOEL: Happy New Year to you, my
15 friend. Wanted to just answer briefly, just
16 because some of this information is confidential,
17 but it is in the ITC record. And that is the
18 size of the Canadian Solar facility in Canada had
19 already diminished before the ITC's original
20 investigation. So, we're talking about a very
21 small facility up there.

22 And, as Mr. Ambrose testified, the

1 company really has been focused almost entirely
2 on research and development in Canada. So, I
3 don't want to repeat some of my clients' rhetoric
4 from their testimony. The other clients are good
5 to use rhetoric. I'm the studious lawyer here
6 before you.

7 But the idea Canadian Solar is
8 preparing to make some big move in Canada that
9 would somehow threaten the U.S. industry, it's
10 not logical and it's not true. And, as you heard
11 from Mr. Ambrose, in fact, the company is very
12 focused on the U.S. industry and developing and
13 promoting the U.S. solar industry, including
14 looking at U.S. manufacturing operations.

15 So, I think that's really the
16 important points for the Committee to consider.
17 But with that, I want to make sure Mr. Ambrose
18 has a chance to respond as well.

19 MR. AMBROSE: Sure. I would be happy
20 to. I think, first and foremost, circumvention
21 is illegal. And I think we dealt with that anti-
22 circumvention policy issue earlier this year as

1 part of the industry. So, first and foremost, we
2 don't do anything that's illegal.

3 Secondarily, we wound down our
4 manufacturing operations to just an R&D facility.
5 So, any threat we could pose would entail an
6 entire rebuild of our manufacturing facility,
7 which we have no intentions of doing.

8 As was articulated earlier in the
9 testimony, it's actually more cost-effective to
10 do business in the U.S. than it is in Canada.
11 So, for those reasons, we should pose no threat
12 to the U.S. marketplace.

13 MR. MAGNUS: John Magnus from Maxeon
14 just adding that the very same considerations
15 apply in Mexico. The size of Maxeon's -- the
16 factory there is a publicly known thing, and it
17 is threatening to exactly nobody in the domestic
18 industry.

19 CHAIR MARTYN: All right. Thank you
20 very much.

21 Dr. Heerman, you're the next in line.

22 DR. HEERMAN: Thanks, Mr. Martyn.

1 Just want to follow up on some of the comments
2 that you all have just recently made about
3 domestic production both in Canada and then
4 Mexico. You both talked about it being more
5 cost-efficient, or at least the Canadians have
6 talked about it being more cost-efficient, to
7 invest in production in the United States.

8 Mr. -- I'm sorry; I forget the name of
9 the gentleman from Maxeon -- talked about
10 investing in production in the U.S. as well as
11 investing in production in Mexico. How do those
12 safeguard tariffs play into the decisions for
13 Maxeon to expand in both the U.S. and in Mexico?
14 And then, also, can you talk about some of the
15 factors that make it more cost-effective to
16 invest in the United States for manufacturing?
17 Thank you.

18 MR. MAGNUS: John Magnus from Maxeon.
19 The biggest factor with respect to the United
20 States is the tax incentives that Congress is
21 trying to enact at the moment. And should that
22 happen, it would justify substantial investments

1 in U.S. production. The location of those
2 investments could certainly be affected by what
3 happens with respect to the safeguard measure.

4 And the ability to serve the market in
5 the southwestern United States with modules
6 assembled across the border in Mexico is a very
7 important puzzle piece.

8 MR. STOEL: This is Jonathan Stoel.
9 Ms. Heerman, just responding as well. I mean,
10 two things. One, I think, as John very well
11 said, we really are supporters of the
12 administration's efforts with Build Back Better.
13 We think that's critical, as SEIA and ACP
14 testified very well this morning, and I really
15 hope that gets done. All the companies on the
16 Zoom today with you are strongly supportive of
17 that.

18 And then the second thing is you
19 really do need to take a holistic approach at
20 what supports U.S. manufacturing. As Mr.
21 Pochtcharuk talked about and I did, the Section 301
22 tariffs are really tough. That's a really big

1 tax on American manufacturing.

2 There are certain products like solar
3 glass and other things that we've explained to
4 USTR and to the administration you simply can't
5 get from other sources. And so, you're just
6 imposing a tax on American manufacturing through
7 those taxes. And I commend USTR Tai and others
8 as you look at that, possible new exclusions
9 under 301.

10 So, I think you need a holistic
11 approach to what makes sense for U.S.
12 manufacturing. And I can say for the three
13 companies from Canada, all of us would be very
14 pleased to discuss that with the Committee moving
15 forward and try to provide suggestions if those
16 would be helpful to you. Thanks so much.

17 DR. HEERMAN: So, just to clarify, in
18 the absence of other policy changes, the
19 safeguard tariff itself isn't what makes
20 production in the United States more cost
21 competitive or not? It isn't a driving factor on
22 U.S. investments?

1 MR. MACCARIO: I may be able to add
2 something, Dr. Heerman. So, in our case, most of
3 our customers are U.S. residential. They want a
4 U.S.-made product. Most of them are aware that
5 Canada is not part of the United States yet, and
6 they do want something produced in the U.S. So,
7 it's as simple as that, serving what the customer
8 wants.

9 MR. MAGNUS: John Magnus for Maxeon.
10 I think what you've seen over nearly four years
11 is that import relief was sufficient to catalyze
12 some investment in module assembly and none in
13 cell-making. In fact, cell-making, you saw
14 disinvestment and fab closures.

15 And that's a pretty good indication of
16 what import relief can get you. The
17 announcements that you're hearing, which are SEMA
18 dependent, are a pretty good indication of what
19 affirmative incentives can get you.

20 CHAIR MARTYN: All right. Thank you.

21 Ms. Negus?

22 MS. NEGUS: Hi. Yes. This is Olivia

1 Negus representing Department of Labor. I had a
2 question specifically for Mr. Magnus from Maxeon.
3 I was wondering if you had any job creation
4 figures associated with your planned expansion of
5 production of cells and modules in the U.S.

6 Thank you.

7 MR. MAGNUS: I should have -- they're
8 not in my notes for this, but I will collect that
9 before this Panel is over and either speak up
10 again or put it in the chat. It's a large
11 number, but I don't want to get it wrong. So, if
12 I may have about 60 seconds, I'll dig it out.

13 MS. NEGUS: Okay. Thank you.

14 CHAIR MARTYN: All right. Mr. Amdur?

15 MR. AMDUR: Thank you. I just want to
16 go back to one of the questions that was provided
17 to the Panel participants prior to the Panel.
18 And it's probably more relevant to the
19 representatives from Silfab and Heliene since
20 they're -- so I understand you're a module
21 producer in the United States.

22 And, basically, the question was about

1 how the ITC in its extension review report
2 recommended changing the tariff rate quota on
3 solar cells from an annual quota to quarterly
4 quotas. And how would you expect that to affect
5 imports of solar products in the United States
6 and prices in the U.S. market?

7 MR. POCHTARUK: If I may, I don't
8 think it makes a difference to us. You know,
9 it's really up to you if you need to administer
10 it quarterly versus yearly. When you look at the
11 imports monthly, I would say they're pretty
12 regular. There is no seasonality to it.

13 So, in our case, we don't see any
14 difference, really, of having that volume
15 allocation be quarterly or yearly. I mean, for
16 example, right now we are in the beginning of
17 January, and we are selling May. Right? So, we
18 are already buying cells that will be shipped by
19 container to the U.S. that will arrive in late
20 April for manufacturing in May. So, our planning
21 goes four to five months ahead.

22 MR. MACCARIO: Yeah. I just want to

1 add that we are purchasing a lot of cells that
2 currently we are not making. So, there is the
3 possibility for others that are fully integrated
4 to perhaps try to game the system and to go first
5 past the post and introduce a lot of product and
6 taking all the quota.

7 I don't know which one of the two is
8 a better -- perhaps the quarterly is better, but
9 I don't really have a solution to that problem.

10 MR. AMDUR: Okay. Thank you.

11 MR. STOEL: Mr. Amdur, this is
12 Jonathan Stoel. Just one point because of Mr.
13 Maccario's testimony. I mean, if you had a
14 binding TRQ, to Mr. Martyn's question earlier,
15 where unfortunately you started having attacks,
16 then I think, frankly, having some mechanism to
17 ensure that folks like the two gentlemen on the
18 call don't have pending attacks is key.

19 So, I think if having something
20 quarterly would give you more flexibility to
21 avoid that situation, that would obviously be
22 helpful for the broader U.S. manufacturing

1 industry. And we thank you for thinking about
2 this in advance. We know how much work Customs
3 has to do to administer all these things. So,
4 thanks so much.

5 MR. AMDUR: No, thank you.

6 CHAIR MARTYN: All right. I think
7 that's the end of our questions. Is there
8 anybody else from the TPSC who has a question? I
9 said from the TPSC, John.

10 All right --

11 (Simultaneous speaking.)

12 MR. MAGNUS: I hit the wrong button.
13 I have a jobs number if this is an okay time for
14 that.

15 (Simultaneous speaking.)

16 MR. MAGNUS: -- direct jobs, estimated
17 direct jobs, 1,700.

18 CHAIR MARTYN: Thank you very much.

19 MR. AMBROSE: You're on mute, sir.

20 CHAIR MARTYN: Thank you. With that,
21 we will end Panel 3 and move on to Panel 4. So,
22 thank you very much, gentlemen, for coming to

1 speak with us today and for all -- yes? Oh. I
2 see. That was a wave. All right.

3 Thank you for coming to talk to us and
4 for your testimony, which has given us a lot to
5 think about. And so, thank you, and have a good
6 rest of the afternoon.

7 MR. STOEL: Thanks so much.

8 MR. GAGAIN: Thanks, everyone. And
9 now we'll pause for about three minutes while we
10 change to Panel 4. Thanks.

11 (Whereupon, the above-entitled matter
12 went off the record at 2:09 p.m. and resumed at
13 2:12 p.m.)

14 MR. GAGAIN: Thanks. Let's resume.

15 So, we'll now proceed with our last
16 panel for today, which is Panel 4. We will hear
17 from the Embassy of Canada, Government of Canada.
18 We'll hear from the Government of Mexico. And
19 we'll hear from the Trade Remedies Authority of
20 Vietnam, Government of Vietnam.

21 We will proceed in that order.

22 Each of the three participants has 10

1 minutes to provide testimony. Ronalda Smith from
2 the USTR will track your time. As you proceed we
3 request once again that you identify your name
4 and title, similar to how we proceeded with the
5 earlier panels.

6 Ms. Ouellet, is the Government of
7 Canada ready to proceed?

8 MS. OUELLET: Yes, we are. Thank you.

9 MR. GAGAIN: Okay. Please go ahead.

10 MS. OUELLET: Good afternoon. My name
11 is Annie Ouellet. I'm the Counsel for Trade
12 Policy at the Embassy of Canada here in
13 Washington. I'm appearing today to provide
14 Canada's views on this matter. My appearance
15 does not constitute an express or implied waiver
16 by the Government of Canada of any applicable
17 diplomatic immunities or privileges.

18 The Government of Canada's clear
19 position in this investigation is that if the
20 Trade Policy Staff Committee recommends that the
21 President extend the safeguard measure, then it
22 should also recommend to the President that

1 imports from Canada be excluded from any
2 extension.

3 Today I would like to begin by
4 underscoring that President Biden and Prime
5 Minister Trudeau have expressed their commitment
6 to work together to address the climate crisis
7 and facilitate secure and resilient North
8 American supply chains for critical growth in
9 industry. We are like-minded partners, building
10 a competitive and innovative North American green
11 energy future.

12 The solar sector is a key example of
13 how a strong partnership between Canada and the
14 U.S. can lead to de facto deployment of nuclear
15 technology, to the development of a robust
16 manufacturing sector, and to the creation of new
17 jobs. This is evidenced by the fact that over
18 the past four years the Canadian solar industry
19 has invested more than \$100 million to develop
20 manufacturing facilities in the United States,
21 creating hundreds of American jobs, and including
22 U.S. solar module technology.

1 These investments will create an
2 additional 1.7 gigawatts of solar module
3 production capacity in the U.S. by next year. It
4 is our sincere hope that the Canadian and U.S.
5 solar industries will continue to expand their
6 partnerships for years to come.

7 However, the safeguard tariff imposed
8 by President Trump in February 2018 threatens our
9 industries' job prosperity. To start, President
10 Trump should never have imposed a safeguard
11 tariff on imports from Canada.

12 In the original investigation, the
13 U.S. International Trade Commission found under
14 the NAFTA Implementation Act that imports from
15 Canada did not constitute a substantial share of
16 total imports, and that they did not contribute
17 importantly to any serious injury caused by total
18 imports.

19 As a result, the Commission's majority
20 recommended that Canada be excluded from any
21 safeguard action. But President Trump
22 disregarded this finding and unilaterally imposed

1 a tariff on Canada.

2 Moreover, for the past four years,
3 Canadian and U.S. module manufacturers alike have
4 been hurt by the tariff. You heard earlier this
5 afternoon from Heliene and Silfab, Canadian
6 companies that manufacture solar modules in
7 Canada and in the United States. Both companies
8 sell small quantities of their Canadian-made
9 modules into the United States.

10 These companies also have invested in
11 and support U.S. module manufacturing facilities
12 in Minnesota, Washington State, and Florida.
13 Unfortunately, the tariff currently being applied
14 hinders potential future investments from
15 Canadian companies in U.S. solar manufacturing.

16 This extension proceeding now provides
17 an important opportunity for the Biden
18 Administration to revisit this issue and, by
19 doing so, to help both industries. The President
20 has the authority under U.S. law to exclude
21 imports from Canada from the safeguard measure.
22 Moreover, under the Canada-United States mutual

1 agreement, the United States is in fact required
2 to exclude imports from Canada. We have detailed
3 in our written comments submitted on December
4 15th, the legal basis for such an exclusion.

5 In addition, there is even stronger
6 factual support now than in the original
7 investigation to exclude Canada from extended
8 safeguards, which I will take the opportunity to
9 speak to now.

10 First, Canada's share of total imports
11 is minimal and declining. Once again, imports
12 from Canada do not constitute a substantial share
13 of imports.

14 Second, there has been no injury,
15 serious or otherwise, caused by imports from
16 Canada. On the contrary, as I've already
17 mentioned, Canadian companies have invested
18 millions of dollars in the U.S. economy, built
19 and expanded U.S. solar manufacturing, and
20 created hundreds of American jobs. Lifting the
21 safeguard tariff on imports from Canada would
22 benefit the U.S. industry producing solar

1 products to additional investment opportunities
2 from Canada.

3 Third, Canadian modules are high-
4 valued products made in a U.S. ally country by
5 industry partners employing high labor standards.
6 These Canadian products present no threat to the
7 U.S. industry.

8 This illegal and harmful tariff on
9 solar panels from Canada is a critical issue for
10 my government and is even more pressing now than
11 four years ago. In fact, the safeguard tariff is
12 the subject of Canada's first state-to-state
13 dispute against the United States under Chapter
14 31 of the Canada-United States-Mexico Agreement.
15 Canada urges the United States to act quickly to
16 comply with its legal commitments and remove the
17 tariff.

18 For all of these reasons, the
19 Government of Canada renews its request to be
20 excluded from any extended safeguard measures.
21 Our industries are linked. Our companies, our
22 workers, our clean energy goals, and our

1 challenges are similar. Our measures must be,
2 too.

3 Thank you for the opportunity to
4 appear today. Counsel for the Canadian industry
5 and the Government of Canada provided answers to
6 the advance questions posed to Canada earlier
7 this afternoon.

8 I'm available to answer any additional
9 questions alongside our outside counsel, Jonathan
10 Stoel of Hogan Lovells.

11 Thank you.

12 MR. GAGAIN: All right. I apologize,
13 I had some connectivity issues just then.

14 If the Government of Canada has
15 concluded, we will move to the Government of
16 Mexico now.

17 MR. REMIS: Can I start? Can you hear
18 me?

19 MR. GAGAIN: Yes. Please proceed.

20 MR. REMIS: Okay, thank you very much.

21 And thank you for the opportunity to testify
22 before the United States Trade Policy Staff

1 Committee today.

2 My name is Cesar Remis, and I am the
3 head of Mexico's Office for the Implementation of
4 the USMCA at the Embassy of Mexico in the U.S.
5 In my brief statement I plan to focus on two main
6 issues:

7 First, that currently exports from
8 Mexico to the U.S. are minimal, therefore do not
9 constitute a threat to the U.S. industry.

10 Second, we will show that the imports
11 from Mexico do not meet the requirements
12 established in the USMCA to impose them as
13 safeguards. Therefore, they must be excluded.

14 The actual levels and downward
15 strength of imports from Mexico indicate that
16 they do not represent a threat to the domestic
17 industry in the U.S. For instance, in 2020,
18 Mexico's share of total U.S. imports of CSPV
19 product represented only 1 percent of imports.
20 And between 2015 and 2020, U.S. imports from
21 Mexico decreased in terms of value by more than
22 90 percent.

1 Mexico's position is that if the U.S.
2 decides to extend the safeguard, it must carry
3 out exclusion analysis provided for in the USMCA
4 and Section 301(a) and 301(b) of the USMCA
5 Implementation Act, which established the
6 obligation to exclude imports from other parties
7 from the application of a safeguard unless
8 affirmative determinations are made concerning
9 two conditions:

10 First, that imports from that party
11 account for a substantial share of total imports,
12 and;

13 Second, that those imports also
14 contribute importantly to the serious injury.

15 Imports from Mexico did not meet any
16 of those requirements. Imports from a party
17 account for a substantial share of total imports
18 if that party is one of the top five suppliers of
19 the investigated product.

20 From 2018 to 2020, imports from Mexico
21 did not represent a substantial share of total
22 imports because Mexico was not among the top five

1 suppliers in two of these three years, 2019 and
2 2020, and moved further away from the five
3 suppliers each year.

4 In 2018, Mexico was the fifth largest
5 supplies. In 2019, it was the sixth largest
6 supplier. And in 2020, it was at the eighth
7 place.

8 To decide if imports from a party
9 contributes to quotas to the serious injury,
10 investigating authorities shall carry out a 4-
11 step analysis.

12 The first step is to analyze the
13 import share and its changes, and the level of
14 imports and its changes.

15 During the three years following the
16 imposition of the safeguard measure, 2018 to
17 2020, the value of imports from Mexico decreased
18 considerably in terms of value reaching their
19 lowest point in 2020. However, the decreasing
20 trend of imports from Mexico did not begin with
21 the imposition of the measure in 2018 but,
22 rather, it started in 2015.

1 The value of imports from Mexico
2 continued to decline during the three years
3 following imposition of the measure at
4 significant rate, going from \$301 million in 2018
5 to \$89 million in 2020, a 70.6 percent decrease.

6 Moreover, between 2015, the year when
7 the decline of Mexican imports started, and 2020,
8 the decrease in the value of imports from Mexico
9 reached 90.3 percent.

10 Furthermore, Mexico's share of total
11 U.S. imports also decreased drastically from 11.4
12 percent in 2018 to 1.3 percent in 2020.

13 In the final report of essential
14 review, the ITC agreed that the import of CSPV
15 modules from Mexico and Mexico's market share
16 declined from 2018 to 2020.

17 The second step to decide if imports
18 from a party contribute importantly to serious
19 injury requires an additional examination that
20 involves comparing the import trend from a party
21 and the total imports. Specifically, the USMCA
22 provides that the party normally shall not be

1 deemed to contribute importantly to serious
2 injury if the growth rate of imports from a party
3 is officially lower than the growth rate of total
4 imports from all sources.

5 This is clearly the case. While
6 imports from Mexico decreased by 70 percent
7 between 2018 and 2020, total imports grew by 154
8 percent, 154 percent in the same period.
9 Therefore, the growth rate of Mexican imports was
10 officially lower than the growth rate of total
11 imports in that period.

12 Mexican imports did not contribute a
13 substantial share of total imports, and did not
14 contribute importantly to any serious injury
15 caused by total imports. Therefore, according to
16 the U.S. law and the USMCA, the committee should
17 recommend to the President that Mexico be
18 excluded from any extended safeguard measures.

19 If Mexico remains covered by the
20 measure and is not compensated, my Government
21 will not -- will have no alternative but to
22 (audio interference) at the level of our trade

1 damages according to Article 10.2.6 of the USMCA.

2 Finally, Mexico understands that for
3 the Biden Administration climate considerations
4 are an essential element of U.S. foreign policy
5 and national security. Nevertheless, extending
6 the safeguard measure to USMCA trading partners
7 would put the U.S. climate agenda at risk. We
8 believe that the only way for the North American
9 region to remain competitive is by deepening the
10 integration of our supply chain, rather than
11 isolating production.

12 Therefore, our manufacturing platform
13 must continue to complement each other by working
14 together to make trade easier.

15 Thank you for the opportunity to
16 address you today.

17 MR. GAGAIN: And thank you very much
18 for your testimony.

19 Mr. Son, please, from the Government
20 of Vietnam, are you ready to proceed?

21 MR. SON: Yes. Thank you.

22 MR. GAGAIN: Okay, thank you. Please

1 go ahead.

2 MR. SON: Thank you very much, Michael.

3 Good afternoon, everyone. My name is
4 Son Bui from the Trade Office, Embassy of
5 Vietnam.

6 And, first of all, we would like to
7 appreciate the opportunity to provide comment on
8 behalf of the Government of Vietnam for the
9 consideration by the USTR to TPSC hearing today
10 concerning the safeguard measure on CSP sales and
11 modules.

12 Firstly, it should be emphasized that
13 any expansion made by the USTR must be consistent
14 with the U.S. obligation under the WTO.

15 In this regard, we would like to note
16 that in case the U.S. decides to expand the
17 current safeguard measure, other WTO measures,
18 including Vietnam, can exercise our right of
19 suspension for compensation on the adverse effect
20 of the measures on trade in accordance with
21 Article 8 of the WTO Agreement on Safeguards,
22 which might negatively impact U.S. exports.

1 More importantly, both safeguard
2 expansion and retaliatory were supposed to be on
3 a variety of different industries, would
4 interrupt our efforts to recover from the
5 pandemic losses both in the U.S. and relevant
6 economies.

7 Secondly, the safeguard carried on
8 solar panels is a no-win measure which not only
9 adversely affects the exporting countries to the
10 U.S., but also causes detrimental influence on
11 the market -- on the U.S. market. Owing in part
12 to the safeguard tariff, solar panel prices in
13 the U.S. are the highest in the world.

14 The U.S. domestic industry can supply
15 only a fraction of the demand for solar panels in
16 the U.S. And most of the U.S. production is
17 dedicated to residential and commercial
18 applications. Utilities tell developers those
19 are reliant on imported solar panels.

20 The continued application of safeguard
21 duties on imported solar cells and panels hinders
22 growth in the U.S. solar energy sector.

1 Furthermore, the tariff then cut growth not only
2 in the solar cell sector but also in the broader
3 solar industry that depends on the deployment of
4 solar energy.

5 The short-term protection given to
6 domestic solar cells and panel manufacturers in
7 the form of tariffs might become a trade-off for
8 the long-term goals of development.

9 Finally, we are aware that the
10 President committed to achieve a carbon-free
11 power sector by 2035 and net zero emissions by no
12 later than 2050. To meet this goal, the
13 Administration plans to increase clean
14 electricity from current 38 percent to 100
15 percent in 15 years, not only within U.S.
16 borders.

17 The Administration also needs and
18 encourages global development of clean, renewable
19 energy in a common effort to address climate
20 change challenges, as said clearly at the COP26
21 meeting recently in Glasgow, Scotland.

22 Toward achieving this goal, it is

1 critical to ensure solar energy is an
2 economically viable energy source with aggressive
3 growth. The proposed expansion of the current
4 safeguard, with harmful impact on solar energy
5 sector, both in the U.S. and other countries,
6 would hinder the present administration's plan to
7 realize the promise.

8 From today's hearing I guess the
9 option is now between requests of some companies
10 proposing expansion, and the other side is
11 economic and environmental benefits of opposing
12 parties, which are more than double in number.

13 In the broader context of the whole
14 economy, I believe today's participation pattern
15 really reflects significantly different levels of
16 interest which grow and impact on them. Taking
17 into consideration only above agreements, Vietnam
18 respectfully requests that the TPSC not expand
19 the current safeguard measures against CSPV cells
20 and modules.

21 We received two questions from TPSC,
22 and we will be happy to share answer today or

1 email you later for your kind consideration.

2 Again, thank you very much for this
3 opportunity to provide our comments.

4 Thank you.

5 MR. GAGAIN: Thank you very much for
6 your testimony.

7 We'll now move to the question and
8 answer session. And I want to begin with the
9 Government of Vietnam.

10 As you indicated at the end of your
11 testimony, we did pose two advance written
12 questions to the Government of Vietnam. And we
13 would like to hear your answers to those
14 questions during this hearing. So, if you could
15 please provide some detail.

16 Just as a quick recollection, the
17 first question was, in your written comments at
18 page 2 you contend that the safeguard measures
19 applied to solar panels is not saving U.S. jobs,
20 and that these duties prevent job growth in the
21 cell sector and the power industry that's
22 depending on the deployment of solar energy, when

1 in its report the ITC found that the domestic
2 industry's employment indicators for module
3 production all increased between 2018 and 2020.

4 So, I was just wondering if you could
5 reconcile your position that the safeguard
6 measure applied to solar panels is not saving
7 U.S. jobs in light of the ITC's findings that
8 employment indicators for module productions
9 increased during the past few years?

10 Thanks.

11 MR. SON: Sure. I would like to share
12 answers to those two questions at the same time.

13 Firstly, it should be noted that the
14 U.S. ITC findings on the domestic industry's
15 employment indicators are compiled from data
16 submitted in response to the Commission's
17 questionnaires. In the page 36 of the U.S. ITC's
18 report, the Commission indicated that the
19 Commission sent U.S. producers' questionnaires to
20 64 firms, but the Commission received usable
21 response from 14 firms only.

22 And, thus, it is doubtful that the

1 U.S. ITC's data may not be representative enough
2 for the whole U.S. solar industry.

3 Secondly, the Government of Vietnam we
4 refer to the national solar jobs census by the
5 Solar Foundation as the main source for our
6 dealing. Accordingly, we formed the safeguard
7 investigation in 2017.

8 Employment in the broader U.S. solar
9 industry were expanding rapidly, growing by 178
10 percent from 2010 to 2016, or by more than
11 160,000 jobs; to be precise, from 93,502 to
12 260,077 jobs. And the Solar Foundation has
13 predicted the trend to continue, expecting solar
14 employment to reach 263,293 jobs by the end of
15 2018.

16 However, under the safeguard action,
17 the U.S. solar industry did not reach its full
18 potential. In 2017 and '18, the U.S. solar
19 industry lost jobs for the first time since 2010.
20 The total number of jobs increased modestly in
21 '19, but declined again in 2020.

22 The COVID pandemic no doubt

1 contributed to the more rising job losses, but
2 the overall trend following the high mark of
3 2016, the year before the safeguard petition was
4 filed, reserved -- reversed years of significant
5 growth in solar industry employment.

6 And that is the reason why the
7 Government of Vietnam views that safeguard tariff
8 on solar panel are not saving U.S. jobs. In
9 fact, the tariff prevents growth not only in the
10 solar sector but also in relevant sector.

11 So, those are our replies to your
12 questions. Thank you. And we'll be happy to
13 email you details later.

14 MR. GAGAIN: Okay. Thank you for your
15 responses.

16 At this point I do not have further
17 questions for the panel, so I'm going to turn it
18 over to Mr. Martyn now. Thank you.

19 CHAIR MARTYN: I do not have any
20 questions either. So, I will look to our
21 colleagues from the TPSC to see if any of them
22 have questions. Please raise your hands if you

1 do.

2 All right. I am seeing no hands. So,
3 I will take that to mean that there are no
4 further questions.

5 And, therefore, I will thank the
6 members of this panel, the representatives of the
7 Governments of Canada, Mexico, and Vietnam for
8 their presentations today. And hope that you all
9 have a good rest of the day.

10 And, with that, I think that also ends
11 this hearing. So, I will once again at this
12 point not thank individual panels but all of our
13 witnesses and all of the interagency participants
14 who have listened and asked questions.

15 All of the testimony has been very
16 useful to us. We will be considering it very
17 carefully and moving quickly to make a
18 recommendation to the President.

19 Repeating what we said at the
20 beginning of the session, we will not be asking
21 for or accepting additional submissions of
22 factual information after the end of this hearing

1 other than what has been recorded by the court
2 reporter, so we do not need anything more.

3 And, with that, we are finished. So,
4 again, thank you everyone.

5 Mike, are there any more
6 administrative details or is that from your
7 perspective as well?

8 MR. GAGAIN: No, I believe that's it.

9 Well, do we want to mention anything
10 about post-hearing submissions because there were
11 certain suggestions throughout the hearing about
12 that?

13 CHAIR MARTYN: Thank you, yes. We will
14 not be, again, asking for post-hearing
15 submissions or accepting post-hearing
16 submissions.

17 The one exception will be that two of
18 SEIA's witnesses had their testimony seriously
19 garbled by transmission problems. And for those
20 two individuals we will be taking a copy of the
21 written statements so that the transcriber can
22 make use of those to correct any problems that

1 crept up because of the transmission
2 difficulties.

3 So, again, I want to thank you very
4 much. And I do not have a gavel, so I will just,
5 I guess, metaphorically gavel us out and say
6 thank you to everyone. Bye.

7 (Whereupon, the above-entitled matter
8 went off the record at 2:39 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

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Silicon Photovoltaic Products

Before: USTR

Date: 01-04-22

Place: teleconference

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