

Statement of James P. Durling

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Good afternoon. My name is James Durling, appearing today on behalf of KOPIA and its member companies.

KOPIA wholly endorses the arguments made by the other respondent parties. Their briefs and their testimony today demonstrate unequivocally the Commission should reach a negative injury determination when analyzing global imports. With my testimony, I would like to address the novel issue of the Korea exclusion under the KORUS FTA.

Although the Commission has never before addressed this statutory provision, the language is quite clear. The Commission must determine whether Korean imports considered alone are themselves a “substantial cause” of serious injury. Notwithstanding Solar World’s disingenuous argument to the contrary, the statute states unambiguously that the Commission “shall” make this finding and report it to the President.

Note that Congress used the same “substantial cause” standard that governs global safeguards. The statutory definition of this key phrase shows that

“substantial cause” means a cause that is both (1) “important” and (2) “not less than any other cause.” Both parts of the test must be met; but in this case, Korean imports do not meet either part of the standard.

At the outset, I note that this analysis only becomes necessary if the Commission has already made an affirmative determination for global imports. And I also stress that we do not argue that other imports are a “substantial cause” of any injury; they are not. Rather, our point is that if it reaches the Korea exclusion issue, the Commission must consider the Korean imports relative to the imports from other countries to determine if Korean imports are themselves a “substantial cause.”

The volume of Korean imports was not “important.” The volume and market share of Korean imports were modest throughout most of the period. The somewhat larger increase in 2016 can be explained by Korean imports that (1) went to the utility segment in which the domestic industry has never competed, (2) represented a special technology that domestic producers could not offer, and (3) consisted of 72 cell modules at a time the domestic industry was completely sold out of this particular product. Together these three factors accounted for over 95 percent of the volume gain by Korean imports in 2016. Not surprisingly, this gain in 2016 occurred largely by taking market share from other import sources, not from the domestic industry.

The prices of this limited volume of Korean imports were also not “important.” The average unit values of imports from Korea were consistently higher than other sources, and Korean imports generally oversold domestic pricing.

Nor were Korean imports a cause “not less than any other cause.” There were several other more important specific causes. Two of these alternative causes were discussed earlier today: (1) the impact of bad business decisions by the domestic producers, and (2) the factors other than global imports that largely explain price declines.

But when considering Korea alone, the Commission must also consider the role of imports from countries other than Korea. Korean imports are a much less important cause than imports from other countries from several perspectives. First, the volume of Korean imports has been consistently much smaller than other imports. Second, the prices of Korean imports were higher than imports from other sources, and the pattern of underselling was very different.

Third, we have submitted an economic model that quantifies the relative impact of Korean imports compared to imports from the rest of the world. Professor Edward Balistreri used an analytic framework commonly used by the Commission to compare and quantify the relative impact of these two different import sources. His base-line scenario shows that Korean imports represented only

8.5 percent of the total effect compared to imports from other countries. Professor Balistreri is here today to answer any questions about his report.

Finally, Korean imports also cannot be a “substantial cause” of any threat of serious injury. The same reasons that prevent Korean imports from being a substantial cause of current serious injury also apply to any possible future threat. The volume and prices of Korean imports considered alone are not a threat. Moreover, if imports from other countries are restricted, doing so would leave so little supply in the U.S. market that Korean imports could not be a threat. Even if domestic capacity tripled and all Korean capacity were redirected to the U.S. market – both extreme assumptions – there would still be a shortfall in the U.S. market and no conceivable threat to the U.S. industry.

For all of these reasons, the Commission should find that Korean imports considered by themselves are not a substantial cause of any serious injury or threat. Thank you.