UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	**) Investigation Nos.:**
FABRICATED STRUCTURAL STEEL FROM	**) 701-TA-616-617 AND 731-TA-1432-1434**
CANADA, CHINA AND MEXICO	**) (FINAL)**

REVISED & CORRECTED

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	)	(Final)

Tuesday, January 28, 2020

Main Hearing Room (Room 101)

U.S. International

Trade Commission

500 E Street, S.W.

Washington, D.C.

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

Commissioners Present:

Chairman David S. Johanson (presiding)

Commissioner Rhonda K. Schmidtlein

Commissioner Jason E. Kearns

Commissioner Randolph J. Stayin

Commissioner Amy A. Karpel

Staff:

William R. Bishop, Supervisory Hearings and Information Officer

Tyrell Burch, Management Analyst

Jordan Harriman, Investigator

Stamen Borisson, Investigator

Pedro Cardenas, International Tade Analyst

Lauren Gamache, International Economist

Joanna Lo, Accountant/Auditor

John Henderson, Attorney/Advisor

Douglas Corkran, Supervisory Investigator

CONGRESSIONAL APPEARANCES:

The Honorable Richard Blumenthal, United States Senator, Connecticut

The Honorable Steve Daines, United States Senator, Montana

The Honorable Rick Crawford, United States Representative, 1st District, Arkansas

The Honorable Kendra S. Horn, United States Representative, 5th District, Oklahoma

Opening Remarks:

Petitioners (Christopher B. Weld, Wiley Rein LLP)

Respondents (Matthew R. Nicely, Hughes Hubbard & Reed LLP)

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

Wiley Rein LLP
Washington, DC
on behalf of
American Institute of Steel Construction, LLC

Rick Cooper, Chief Executive Officer and President, W&W/AFCO Steel

James E. (Jed) Downs, President, Qualico Steel Company, Inc.

Peter Labbe, President and General Manager, Cives Steel Company, New England Division

Hollie Noveletsky, Chief Executive Officer and Owner, Novel Iron Works Inc.

Kevin Reynolds, Senior Vice President, Sales and Estimating, W&W/AFCO Steel

David Zalesne, President, Owen Steel Company, Government Relations Chairman, Board of Directors, American Institute of Steel Construction

Dr. Seth T. Kaplan, President, International Economic Research LLC

Travis Pope, Economist, Capital Trade, Inc.

Alan H. Price, Christopher B. Weld, Tessa V. Capeloto, Adam M. Teslik - Of Counsel

King & Spalding LLP
Washington, DC
on behalf of
Banker Steel Company ("Banker Steel")
Chet McPhatter, President, Banker Steel
J. Michael Taylor - Of Counsel

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders:
Sidley Austin LLP
Washington, DC
on behalf of
ExxonMobil Chemical Company
Gulf Coast Growth Ventures, LLC
Paul J. Guilfoyle, Venture Executive, Gulf Coast Growth Venture Project, Exxon Mobil Corporation
Gindi E. Vincent, Senior Counsel, Exxon Mobil Corporation
Richard L.A. Weiner, Rajib Pal, Alex L. Young, Weijia Rao - Of Counsel

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

Gilliland & McKinney International Counselors LLC
Washington, DC
on behalf of
Corey, S.A. de C.V.

Javier Salas, Vice President, Corey, S.A. de C.V.
John Kelly, Vice President, The Related Companies L.P.
Sheridan S. McKinney - Of Counsel

Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP
Washington, DC
on behalf of
Jinhuan Construction Group Co., Ltd.
Wison (Nantong) Heavy Industry Co. Ltd.
Shanghai Matsuo Steel Structure Co., Ltd.
Yanda (Haimen) Heavy Equipment Manufacturing Co., Ltd.
Shanghai Cosco Kawasaki Heavy Industries Steel Structure Co., Ltd.
(collectively, "Chinese Respondents")
Dickerson Enterprises, Inc.
Steel Construction Group, LLC
(collectively, "DEI")

Sid Dickerson, Vice President, Dickerson Enterprises, Inc.

Maggie Zhao, Business Development Account Manager,
Wison Petrochemicals (NA) LLC
Xuanmin Zhang, General Manager, Shanghai Matsuo Steel
Structure Co., Ltd.
Max F. Schutzman, Ned H. Marshak, Jordan C. Kahn, Eve
Q. Wang - Of Counsel

Arent Fox LLP
Washington, DC
on behalf of
Canadian Institute of Steel Construction
Canam Buildings and Structures, Inc.
Industries Canatal, Inc.
Walters Inc.
(collectively "CISC")
Ed Whalen, President & Chief Executive Officer,
Canadian Institute of Steel Construction
Walt Koppelaar, Executive Vice President of Sales
& U.S. Operations, Walters Inc.
Kevin Guile, President, Supreme Group
Martin Savoie, Vice President of Operations,
Beauce-Atlas
Serge Marcoux, Vice President & Chief Financial
Officer, Beauce-Atlas
Serge Dussault, Senior Vice President, Canam Buildings

and Structures, Inc.
Dan Rooney, President and General Manager, ADF International
Lise-Andree Lessard, Director of Finance, Groupe Canatal
Mario Giguere, Controller, Groupe Canatal
Joseph Posteraro, Director of Projects & Contract Administration, Industries Canatal, Inc./Canatal Steel USA Inc.
Robert M. Grillo, Account Executive, Industries Canatal, Inc./Canatal Steel USA Inc.
Nicolas Leclerc, Director of Operation, Metal Perreault, Inc.
Sabrina Kanner, Executive Vice President, Design & Construction, U.S. Office Division, Brookfield Properties
Ross Templeton, Political and Legislative Director, Ironworkers Political Action League
James P. Dougan, Vice President, Economic Consulting Services LLC
Susannah Perkins, Staff Economist, Economic Consulting Services LLC
Nancy A. Noonan, Matthew M. Nolan, Leah N. Scarpelli - Of Counsel

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

Hughes Hubbard & Reed LLP
Washington, DC
on behalf of
Cornerstone Building Brands, Inc. ("CBB")
Building Systems de Mexico, S.A. de C.V. ("BSM")

Matthew Thiem, Vice President - Legal, Cornerstone Building Brands, Inc.

Bradley Graham, Division Counsel, Cornerstone Building Brands, Inc.

Andrew Smith, Controller, Buildings and Components, Cornerstone Building Brands, Inc.

Mark Golladay, Consultant, Cornerstone Building Brands, Inc.

Mark Detwiler, Lead R&D Engineer, Buildings, Cornerstone Building Brands, Inc.

Matthew R. Nicely, Dean A. Pinkert, Daniel M. Witkowski - Of Counsel

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

Curtis, Mallet-Prevost, Colt & Mosle LLP
Washington, DC
on behalf of
BlueScope Buildings North America, Inc.
Butler de Mexico, S. de R.L. de C.V.
(collectively, "BlueScope")

Greg Pasley, President, Butler Manufacturing

Mishca Waliczek, General Counsel, BlueScope Buildings North America, Inc.

Christopher Dunn, Daniel M. Porter, Gina M. Colarusso - Of Counsel

REBUTTAL/CLOSING REMARKS:

Petitioners (Alan H. Price, Wiley Rein LLP; and Dr. Seth T. Kaplan, International Economic Research LLC)

Respondents (Nancy A. Noonan, Arent Fox LLP; and Ned H. Marshak, Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP)

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P R O C E E D I N G S

9:30 a.m.

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

CHAIRMAN JOHANSON: Good morning, on behalf of the U.S. International Trade Commission I welcome you to this hearing on the final phase of Investigation Nos. 701-TA-615 to 617 and 731-TA-1432 through 1434 Final, involving Fabricated Structural Steel from Canada, China and Mexico.

The purpose of these final investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by recent imports of Fabricated Structural Steel from Canada, China and Mexico.

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

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be given directly to the Secretary.

Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information.

Please speak clearly into the microphones and state your name for the record for the benefit of the court reporter and for those sitting in the back of the room. If you will be submitting documents that contain information you wish classified as business confidential, your request should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Yes, Mr. Chairman. With your permission we will add Neil J. Reynolds with King and Spaulding to page two of the witness list. I would also note that all witnesses on Panel One have been sworn in. There are no other preliminary matters.

COMMISSIONER SCHMIDTLEIN: Very well. Will you please announce our first Congressional Witness?

MR. BISHOP: Our first Congressional Witness is the Honorable Richard Blumenthal, United States Senator from Connecticut.

STATEMENT OF SENATOR RICHARD BLUMENTHAL

SENATOR BLUMENTHAL: Thank you, Mr. Chairman and Commissioners. Good morning. I'm very pleased and honored to be here my first time before the ITC and this matter is very important to our nation and to the State of Connecticut which I represent in the United States Senate so I really appreciate all your good work and attentiveness and care on this issue.

I'm here to urge strongly that you grant domestic fabricators relief against this unfairly traded, fabricated structural steel imports from Canada, China and Mexico. Many small and mid-sized businesses and their hardworking, skilled employees in Connecticut and across the country are depending on the ITC's swift, fair action to correct these practices before more jobs are lost and businesses close.

Connecticut businesses have the resources and skilled workers in a fair fight to succeed but currently they are in an unfair fight. The cases before you are critical to ensuring that companies and workers in Connecticut and really across the country are given a fair, level playing field.

The eight dedicated steel fabricators in Connecticut that are certified by the American Institute of Steel Construction are essential to our economy. One of the largest of these quality fabricators is United Steel, founded in 1974. United Steel provides fabricated structural steel projects like the new Sandy Hook Elementary School built to replace the school that was the site of the horrendous tragedy in our state and the University of Connecticut Innovation Building, site of great progress.

By providing world class products at competitive prices the company has grown over the years to become a very significant employer in the East Hartford and Greater Hartford Region and it's just one of a number of these companies that depend on a level playing field.

In fact, United Steel and other structural steel companies must be allowed to continue to thrive but dumped and subsidized fabricated structural steel imports from Canada, China and Mexico are making that task increasingly difficult and in increasing numbers of cases actually impossible.

In fact, I was troubled to learn that just two weeks ago United Steel was forced to lay off 26 workers in one day. The company told my staff that these layoffs are directly attributable to dumped and subsidized fabricated steel from the countries under investigation and are the subject of this hearing. Let me repeat, twenty-six workers were laid off in one day due to unfairly traded imports.

Layoffs like these are not only devastating to workers but also to their families and communities. They are good-paying manufacturing jobs with competitive benefits that support and provide dignity to thousands of middle class Americans. United Steel is hardly alone.

As the evidence demonstrates a number of domestic fabricators are losing projects, revenue and workers to imports from each of these countries under investigations despite having the capacity and willingness to supply projects throughout the United States. These losses will surely continue without ITC relief.

All three countries under investigation are heavily export oriented, shipping historically large volumes of fabricated structural steel to the United States market over the last several years. Our market is open and attractively priced, providing Canadian, Chinese and Mexican fabricators with every incentive to ship greater volumes of dumped and subsidized fabricated steel to the United States market.

So without ITC action there will be continued losses, continued job losses and business losses with negative impact on the overall economy and weakening our manufacturing infrastructure base. That base is critical to our national security. We all want America's infrastructure to be built by America's workers using American steel but the American workers and businesses need our help simply to have a fair, level playing field. That's all they are asking you to assure.

So I strongly and strenuously urge corrective action by the ITC and thank you very, very much for giving me this opportunity to be with you today. I know it's a busy day for you and I really want to thank you for allowing me to be before you. Thanks so much.

CHAIRMAN JOHANSON: Thank you, Senator Blumenthal for appearing today. Do any Commissioners have questions for Senator Blumenthal? No Commissioners do? Thank you again.

SENATOR BLUMENTHAL: Thank you, sir.

MR. BISHOP: Our next Congressional witness is the Honorable Steve Daines, United States Senator from Montana.

STATEMENT OF SENATOR STEVE DAINES

SENATOR DAINES: Good morning. Thank you Chairman Johanson and Members of the Commission for the opportunity to testify regarding the fabricated structural steel case that's before you.

I'm here today to talk about the impact that this decision would have on the community of Great Falls, Montana. ADF International's state-of-the-art fabrication facility in Great Falls supports hundreds of good jobs and has resulted in tens of millions of dollars in investment in the community.

The facility specializes in both heavy and intricate steel components, high volume projects as well as conventional steel structures. It's precisely the type of jobs and products necessary to build and improve our infrastructure. The integrated nature of the North American Fabricated Steel Structure Industry makes the flow of inputs across the border essential to the viability of companies like ADF International.

These duties would substantially increase costs, place jobs at risk and threaten plans for a significant expansion in Great Falls that could create dozens of new high-paying jobs and result in millions of dollars in new investments. Let me say that again, these duties would substantially increase costs, place jobs at risk and threaten plans for significant expansion in Great Falls.

Great Falls, Montana is a community that struggles to continue to create good, high-paying jobs. These duties literally put these jobs at risk. With ninety-five percent of the world's population outside the United States, reducing barriers to trade and opening markets is critical.

I say that as someone who has spent most of my private sector career of 28 years involved in global operations. I spent five and a half years living in China working for Proctor and Gamble as we were launching American Products into that market. I managed Asia-Pacific for a software business for 5 years. I had offices in Tokyo and Sidney.

It's critical. Whether it's a manufacturer like ADF in this instance or farmers and ranchers who ship their wheat, their beef or other commodities overseas, Montanans know how important trade is to our State's economy and that's certainly evident in this case.

I urge the Commission, I plead with the Commission to give full consideration to the impacts these duties would have on communities like Great Falls, Montana and oppose this Petition. Thank you for the opportunity to testify on this very important matter.

CHAIRMAN JOHANSON: Thank you, Senator Daines for appearing this morning. Do any Commissioners have any questions for Senator Daines? None do. Thank you, again.

MR. BISHOP: Our next Congressional witness is the Honorable Rick Crawford, United States Representative from the First District of Arkansas.

STATEMENT OF REPRESENTATIVE RICK CRAWFORD

REPRESENTATIVE CRAWFORD: Good morning, Chairman Johanson and Members of the Commission. Thank you for your work to ensure that U.S. Trade Laws are being fully and fairly enforced.

I'm here this morning because I'm concerned that fabricated structural steel imports have materially injured the Domestic Industry through unfair trade. Trade orders are both appropriate and necessary to address this injury.

I'm proud to represent the workers and businesses of the First District of Arkansas. As you know from my prior testimony at this Commission, steel has played a pivotal role in my district for decades. We are home to several of the most advanced steel manufacturers in the world from producers of upstream steel products like steel beams to downstream products such as fabricated structural steel.

We do it all. We do it well. Steel workers in Northeast Arkansas are productive and innovative and can outcompete anyone so long as they have a level playing field. That's what we're asking from you today. To hold Chinese, Canadian and Mexican fabricated structural steel producers accountable.

Right now these producers are not being held accountable. They are sending significant volumes of unfairly traded fabricated structural steel to the U.S. Market which are harming our producers and workers. The last two years should have been good ones for the Domestic Industry. Construction spending was healthy and major projects across the country were underway.

However, instead of being built with domestic fabricated structural steel, too many of these projects were being built with dumped and subsidized imports. The Domestic Producers here today will tell you that their performance was far from where it should have been and where it needed to be due to unfairly traded imports.

Domestic fabricators and their workers are not only the ones who suffer from this unfair trade. The domestic steel mills that make the steel inputs for the fabricators are also impacted. Every ton of fabricated structural steel that goes to imports means a ton of fabricated structural steel that is not produced in the United States. This means less steel is produced from U.S. Steel Producers like those in my district.

The entire steel supply chain is hurt. The domestic fabricated structural steel industry is being harmed by unfairly traded imports. Let's not wait until things get worse before imposing much needed trade relief. I'm confident that the Commission will carefully consider the record before you in this case and after fully reviewing the facts will agree that the Domestic Fabricated Structural Steel Industry is being injured by dumped and subsidized fabricated structural steel from Canada, China and Mexico and that trade relief is needed. Thank you.

CHAIRMAN JOHANSON: Thank you, Representative Crawford, for appearing here today. Do any Commissioners have questions for Congressman Crawford?

(No response.)

CHAIRMAN JOHANSON: None do. Thank you.

MR. BISHOP: Our next Congressional witness is The Honorable Kendra S. Horn, United States Representative from the 5th District of Oklahoma.

STATEMENT OF REPRESENTATIVE KENDRA S. HORN

REPRESENTATIVE HORN: Thank you. Good morning. I want to begin by thanking the Commission for holding this important hearing today on the impact of the dumping of fabricated structural steel imports into the U.S. by subsidized Chinese companies moving through Canada and Mexico.

I appreciate the opportunity to testify before you on this important issue. Free and fair trade, and ensuring a level playing field for U.S. manufacturers and workers is why I am here today.

I am proud to represent Oklahoma's 5th Congressional District, a district that covers most of Oklahoma County and Central Oklahoma, as well as Pottawatomie and Seminole Counties. With more than a dozen fabricators employing more than 1,700 workers, steel fabrication is an important industry in Oklahoma.

One of these fabricators, W&W/AFCO, has been a bedrock company in our community for more than seven decades and is represented by one of the witnesses here this morning.

W&W/AFCO first opened in Oklahoma City in 1945, and has heavily invested in our community ever since. The producer's facility, workers, and products are second to none, which is why W&W/AFCO's fabricated structural steel can be found in structures in Oklahoma and across the country. These include, for example, the Las Vegas Convention Center, the New Oklahoma City Convention Center, and Chesapeake Energy Arena.

Over the past few years, a strong economy and increased construction demand means that W&W/AFCO and other domestic fabricators should be thriving. However, the industry has failed to benefit from these positive market conditions.

Instead, domestic fabricators are losing projects and revenue to dumped and heavily subsidized imports from China, moving through Canada and Mexico. This has significantly harmed domestic steel fabricators and the many workers that depend on these well-paying fabrication jobs to take care of their families and contribute to their communities. These include many of my constituents.

Severe price undercutting by China, Canada, and Mexico, causes many domestic producers to forego bidding on projects if they know they will be up against imports from these countries.

Equally concerning is the fact that many domestic fabricators often have no choice but to bid projects at cost, or even at a loss, in order to win a bid. Unfortunately, this untenable choice is necessary for domestic fabrication facilities to keep their doors open and their workers employed.

We need to level the playing field. The need to address severe price undercutting is made all the more urgent by the strong U.S. demand for steel in recent years. We play by the rules of fair trade, and we should demand no less from other countries, including the three subject to these investigations -- China, Canada, and Mexico.

I want to close by once again thanking the Commission for its hard work on this case, and know -- and I know that the structural steel fabricators in Oklahoma, and the many workers there are also grateful and urge you to take action to address this issue.

Thank you.

CHAIRMAN JOHANSON: Thank you, Congresswoman Horn for appearing here today. I will let all the lawyers in the room know that I was speaking with Congresswoman Horn before today's hearing and she at one point practiced Customs law, and she knows all about the Harmonized Tariff Schedule, which I was very impressed with.

So thank you again for being here today. We appreciate you testifying on behalf of your District. Do any Commissioners have questions for the Congresswoman?

(No response.)

CHAIRMAN JOHANSON: None do. Thank you, again.

REPRESENTATIVE HORN: Thank you very much.

MR. BISHOP: Mr. Chairman, that concludes Congressional testimony for the day.

CHAIRMAN JOHANSON: Alright, we will now begin with opening remarks by the Petitioners.

MR. BISHOP: Opening remarks on behalf of Petitioners will be given by Christopher B. Weld of Wiley Rein. Mr. Weld, you have five minutes.

OPENING STATEMENT OF CHRISTOPHER B. WELD

MR. WELD: Good morning, Chairman Johanson and members of the Commission and staff. I am Chris Weld, counsel for Petitioner.

We are here today in an effort to restore fair trade to the fabricated structural steel market in the United States. The Period of Investigation in this case coincides with an extended economic expansion in the peak of the business cycle for the nonresidential construction market which drives demand for fabricated structural steel.

The domestic industry's performance should have improved dramatically across all indicators, but it did not. Instead, unfairly traded imports from Canada, China, and Mexico reached historic levels during the period, robbing the domestic industry of the benefits of the strong economy and construction market.

Subject imports undersold domestic producers throughout the POI, resulting in lost projects, a cost/price squeeze, and reduced gross profit and operating margins.

In the context of the business cycle which the statute directs the Commission to consider, the domestic FSS industry is materially injured.

The statutory factors that the Commission normally considers have been met in this case. The Commission should analyze all subject imports on a cumulative basis. FSS from each of the subject countries is interchangeable both with each other and with the domestic like-product, and competes in the same geographic regions.

Subject imports in the domestic like-product are sold through the same channels of distribution that were simultaneously present throughout the U.S. during the POI.

In terms of volume, subject imports were at high and injurious levels throughout the POI. From an historically high base in 2016 and 2017, subject imports increased by 8.1 percent in 2018 to approximately 878,000 tons.

Subject imports accounted for nearly 30 percent of the market in each full year of the POI. This volume is significant both absolutely and relative to consumption.

The price effects of subject imports are also significant. Pricing product data from the preliminary phase showed predominant underselling. The bid data collected in the final phase confirm the pervasive underselling, showing that subject fabricators underbid domestic fabricators in 25 out of 33 instances.

In all but one of the 16 projects that subject imports won in head-to-head competition against the domestic fabricator, the subject fabricator underbid the domestic fabricator.

This overwhelmingly demonstrates that subject imports only win projects from domestic fabricators by underselling. As you will hear from domestic industry witnesses this morning, this pervasive underselling depressed and suppressed prices, as domestic fabricators were forced to lower bids and forego price increases to compete with subject imports or else lose the sale because of price.

These adverse price and volume effects have had an injurious impact on the domestic industry. During a boom period when fabricators needed to capture as much work as possible at higher profit margins to sustain operations during the next downturn, the industry lost an enormous volume and value of business to subject imports.

This was volume that the domestic industry could have supplied as it operated there only 65 percent or less of capacity utilization during the period.

This lost volume and value had a significant impact on the industry's financial performance. Gross profit margins and operating margins fell, with gross margins declining by 2.7 percentage points during the three full years of the POI.

The declines in profitability are even sharper when the data of firms that should be excluded from the industry are removed. This caused the industry to cancel or delay investments, hire fewer workers, cut back on compensation, as subject imports prevented it from reaping the benefits of the strong economy.

In the context of the peak of the business cycle, these adverse effects are substantial evidence of material injury. As will be demonstrated this morning, the domestic industry would have performed significantly better than it did but for the historically high and increasing volumes of unfairly traded subject imports.

For these reasons, on behalf of the domestic industry and its thousands of workers, we ask the Commission to make affirmative determinations with respect to all subject imports, and to restore a level playing field to the U.S. fabricated structural steel market.

Thank you.

MR. BISHOP: Thank you, Mr. Weld.

Opening remarks on behalf of Respondents will be given by Matthew R. Nicely of Hughes, Hubbard & Reed. Mr. Nicely, you have five minutes.

OPENING STATEMENT OF MATTHEW NICELY

MR. NICELY: Good morning. I'm Matt Nicely of Hughes, Hubbard & Reed, appearing on behalf of Cornerstone Building Brands, whose subsidiary NCI Group is one of the largest fabricated structural steel producers in the United States. I speak this morning on behalf of all Respondents.

Petitioner's overblown rhetoric is belied by a sober analysis of record facts. Moreover, the inconsistent positions the Petitioner has taken before Commerce and the Commission undermine its credibility.

Petitioner wants you to analyze the domestic industry producing a like-product that is co-extensive with the scope that that industry is far larger than the Petitioner intended. It includes the companies that produce FSS components for pre-engineered metal building systems, or PEMBs, the largest of which are NCI, BlueScope Buildings, and Nucor Building Systems, the latter of which declined to complete a U.S. Producer Questionnaire.

These companies are large FSS producers that do not directly compete with any of the Petitioning companies, yet they got roped into this case because the Petitioner adopted a broad scope that includes FSS for PEMBs. The scope excludes PEMBs themselves, but not the FSS used to build them.

You cannot exclude from the domestic industry

U.S. production of this FSS, whether sold as components or part of a building kit. The companies that produce such FSS do not produce buildings; they produce components.

Furthermore, Petitioner defines FSS, subject to the scope of this case, more broadly than the industry normally defines it. Not only does it include FSS used in PEMBs, it also includes FSS used in modules and assemblies. It also includes not merely load-bearing FSS, but any steel that is part of a structure.

In Petitioner's words, the scope includes, quote, "steel products that have been fabricated for erection or assembly into structures." Commerce has now accepted this scope. Petitioner must live with the like-product consequences of defining the scope so broadly.

The Commission staff understood this. So the prehearing report accurately aggregates all reported U.S. production of FSS that is like the scope. And no matter how the Commission looks at this case, whether you find a single or multiple like-products, or whether you cumulate or decumulate imports from the three subject countries, you will not find the domestic industry producing a like FSS product has been or will be materially injured by subject imports.

Based on aggregated questionnaire data over the full years of the POI and the domestic industry increased its production and its shipments. It increased both net sales and U.S. shipment AUVs, and at a faster rate than unit COGs.

Its gross profit, operating income, net income, and capital investments all grew, and the industry gained market share throughout the POI. Meanwhile, subject imports' market share was flat. And where any one country gained, the U.S. industry gained, too, at the expense of nonsubject imports or one of the other subject countries.

The industry laments its under-utilized capacity, but also complains about the skilled labor shortages. Plainly the record does not support a finding that subject imports had any material adverse volume or price effect, or that they otherwise had an adverse impact on the domestic industry's performance.

The industry is not materially injured by subject imports, and shows no sign of vulnerability. The statutory threat criteria also indicate no threat of injury in the imminent future.

Faced with aggregated data that do not support their case, Petitioner depends on allegations of lost sales and lost revenue based on bid data. Given the overall data collected showing improving industry performance, this anecdotal evidence is insufficient to support a finding of significant adverse price effects. Not only are the anecdotes few in number, but the collected bid data are largely for the building projects, not the sale of FSS alone.

The Commission itself characterized such comparisons as meaningless in the 1988 Investigation of this very product. It cannot be inferred from such data that imported FSS prices drove project purchasing decisions. Further, none of these bid data are relevant to the large PEMB market where bidding is seldom used.

Petitioner's case amounts to nothing more than conjecture that but-for imports the industry might have performed better. They claim that at the same point in a prior business cycle, the industry was doing better than it is today. This certainly cannot be used as a justification to go affirmative when the Commission specifically rejected such business cycle comparisons in the most recent Softwood Lumber case.

In any event, Petitioner has not demonstrated here that the data from the prior business cycle is probative of how the U.S. industry should have performed during this POI. Petitioner has not and cannot meet that burden.

Data from the POI speak for themselves. The Commission should issue a negative determination.

Thank you.

MR. BISHOP: Thank you, Mr. Nicely.

Would the panel in support of the Imposition of the Antidumping and Countervailing Duty Orders please come forward and be seated.

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

(Pause.)

CHAIRMAN JOHANSON: You may begin whenever you'd like.

STATEMENT OF ALAN PRICE

MR. PRICE: Good morning, good morning Chairman Johanson and members of the Commission. I am Alan Price, counsel for Petitioners. The domestic like product is co-extensive with the scope and includes FSS for modules, FSS PEMB components and solar power beams. The Commission's analysis begins with the scope, and the scope covers all of these products.

There are no clear dividing lines, and we will address -- we address each of the Commission's factors in detail in our brief. The Commission is required to cumulate for material injury if there is a reasonable overlapping competition, and again as we explain in full detail in our brief, each of these factors supports cumulation as is set out in the brief.

There are several key conditions of

competition. First, price is decisive in the bid process. Competition occurs for all types of projects, large and small, commercial and industrial. Negative impacts spread throughout the market. The domestic industry's available capacity is substantial. It is operating at low levels of capacity utilization and measuring capacity on a tons per year basis is accurate.

Subcontracting is also common. If there are unforeseen schedule adjustments, of course fabricators will prefer the lowest priced subcontractor and often confront "make by" decisions when competing against subject imports. Critically, the POI overlaps with the peak of the business cycle, which masks some of the harmful effects of the subject imports.

Subject import volumes declined somewhat because of the petitions in the interim period, leading to some improvements more representative of the business cycle. Turning to the business cycle, here you can see where the POI fell in terms of the business cycle, about where it was at the last peak just before the financial crisis. So you would expect similar performance, all else being equal.

But all else was not equal. Here you can see a comparison of subject import volumes at the previous peak in blue, and during the POI in red. Subject import volumes were still historically high even when you compare the unadjusted 2006-2008 volumes to the adjusted POI volumes in the staff report.

Subject imports accounted for around 30 percent of the market annually. Given price-based competition, where the industry has substantial available capacity, this is effectively a ton for ton replacement and is significant. All of the relevant information in the record shows significant underselling. This is not an impossible analysis as Respondents are claiming. The preliminary pricing product data is still probative. It shows underselling in nearly all quarterly comparisons.

The Respondents suggest that you couldn't use pricing products and asks that the Commission just get bid data, something we disagreed with. But the Commission listened to the Respondents and asked for just big data. So what does it show? It shows significant underselling. In fact, it shows that subject imports essentially do not win unless they are first underselling.

Now of course Respondents seem to want to walk away from the very approach that they suggested. The purchasers confirm the significance of underselling by reporting at least 64,000 tons that were purchased instead of domestic FSS with price being the primary reasons. For proprietary reasons discussed in our brief, we think the actually number is far higher.

But even taking the number on its face, the Commission has viewed similar volumes relative to this market size as significant. Finally, AUVs also confirm underselling, despite some potential product mix issues. Because price is decisive, fabricators had to reduce prices below what they would have otherwise been able to obtain for sales. As a result, the COGS and its sales ratio increased and gross profit margins declined at the peak of the business cycle, when you should have seen the opposite trends.

As Dr. Kaplan will explain in greater detail, the industry is materially injured in the context of the business cycle. The volume and value of lost sales was significant. Price depression and suppression was significant. This resulted in declining operating margins and underperformance relative to previous peaks in the business cycle.

Here, you can see the significance deviation from the domestic industry's performance relative to previous peaks in the business cycle. The left-hand chart shows historical non-residential construction spending in blue, and median operating profit margins in red. As you can see, it tracks closely until just before the POI, when operating margins fall despite increasing non-residential construction spending.

On the right, you can see a comparison of the median operating profit margins from 2006 to 2008 in blue and during the POI in red. As we detail in our economic submission attached to our brief, this deviation had significant financial implications for the domestic fabricators.

Evidence of injury is even more clear if the Commission excludes certain parties from the data set or focuses on the merchant market. Details are largely proprietary, but we explain in detail in our brief why NCI and Blue Scope data appear to be misreported and should be excluded. Regardless, the Commission should focus its analysis on the merchant market. The final staff report should report industry data with their excluded in relevant tables, to make sure the Commission has the option for all appropriate analyses.

Subject imports also threaten further material injury if relief is not granted. Now I'd like to turn to our first witness, Mr. David Zalesne of Owen Steel.

STATEMENT OF DAVID ZALESNE

MR. ZALESNE: Thank you, Alan. Good morning Mr. Chair and Commissioners. My name is David Zalesne. I'm the president of Owen Steel Company based in Columbia, South Carolina. I'm also the chair of Government Relations Activities for the Board of Directors of the American

Institute of Steel Construction, and I served as chair of the AISC Board from 2017 to 2019, during the period of the current investigation.

I want to thank you for this opportunity to testify on the significant injury caused by unfairly fabricated structural steel imports from Canada, China and Mexico, and start the Petitioners' presentation by providing some background on our product and our industry.

As the name of the product suggests, fabricated structural steel is the result of a manufacturing process that turns steel mill material into components for the structures of commercial buildings, industrial facilities and institutional and public infrastructure projects like hospitals, research labs, airports and courthouses.

Structural steel fabricators like Owen Steel provide the critical intermediary role in the structural steel supply chain, between steel mills and general contractors, and project developers and owners. The fabrication process takes place in plants that are uniquely designed for steel fabrication, with equipment, tools and trained workforces who cut, drill, fit, form and weld components together to meet the plans and technical specifications for each project.

Fabricators range in size from very large companies with national footprints to many small and medium-sized family-owned businesses serving local and regional construction markets throughout the country. Owen Steel and our domestic competitors who are here today compete directly with subject imports for projects throughout the United States along the East Coast, the Gulf Coast, the Pacific Coast and the northern border.

Most domestic and imported fabricated structural steel products are entirely interchangeable, and projects are awarded almost solely on price. So when domestic fabricators are forced to bid work against fabricators whose products are dumped or subsidized into the market, we either lose the work or get it at reduced and often unprofitable prices. In my position on AISC's Board, I've heard from fabricators of all sizes and form all parts of the country about subject imports, whether the project is a 50,000 ton high-rise in New York, a 500 ton public school in Kansas or a petrochemical plant in Texas.

Jobs that would have been routinely awarded to domestic fabricators five years ago are now being bid aggressively by fabricators from Canada, China and Mexico. Domestic fabricators also see the impacts of market displacement, as fabricators are forced to go hundreds of miles away from their traditional markets to bid on projects because import competition has driven them out of their traditional markets. The industry feels the harmful effects of subject imports everywhere.

For a century of American history, domestic steel fabricators built America's great critical infrastructure projects. There was plenty of domestic capacity and plenty of skilled, well-trained and well paid American labor. Notwithstanding arguments Respondents have made, there is still domestic capacity today, although it is at risk due to the subject imports.

The data you have in your report on the industry's capacity utilization levels are a realistic depiction of availability to satisfy domestic demand. Any claim that an industry working at 60 percent utilization is capacity-constrained is absurd. As you'll hear from others on the panel this morning, it is also unsustainable for the industry.

Owen Steel and other domestic fabricators saw a strong market emerging a few years ago, and invested in capacity, equipment and workforce training to take advantage of it. Instead of a return on that investment, we have been forced to lower prices to unprofitable levels, take smaller projects from other domestic fabricators or leave spare capacity unused.

In 2014, Owen acquired a plant in Wilmington to support expansion opportunities in growing markets. We thought this investment was well-positioned to take advantage of demand in the middle of key construction markets. Instead, we've watched major jobs shipped in from the subject countries right past us, as we've chased after small jobs to keep the facility busy.

Fabricators across the United States have been subjected to illegally dumped and subsidized imports for years, losing project after project to imports from China, Canada and Mexico. The returns on the investments that companies like Owen Steel have been able to make in recent years are simply not commensurate with the strength of the economy around us.

The last few years should have been opportunities to grow, improve, hire and train new workers. Instead, fabricators throughout the country have struggled under the pressure of subject imports, for smaller jobs at lower prices, often just to cover costs and keep existing facilities running. Left unchecked, dumped and subsidized imports from Canada, China and Mexico will continue to gut the domestic fabricated structural steel industry, leaving the domestic industry with no ability to build America's biggest and most critical infrastructure and private sector steel construction projects.

On behalf of Owen Steel and our 300 employees in South Carolina and Delaware, as well as the other domestic steel fabricators and their thousands of employees throughout the country, we urge you to find that imports from the subject countries have injured our industry and continue to threaten further material injury. Thank you.

STATEMENT OF RICK COOPER

MR. COOPER: Good morning. I'm Rick Cooper, Chairman and CEO of W & W/AFCO Steel. Thank you for this opportunity to discuss how unfairly-traded Canadian, Chinese and Mexican imports of fabricated structural steel are severely harming my company and its 2,600 employees. W & W/AFCO Steel is a domestic fabricator of steel structures and components. We currently have seventeen fabrication facilities across Alabama, Arkansas, Colorado, North Carolina, Oklahoma, Texas and Virginia. W & W and AFCO have been in business for a combined 178 years. W & W Steel was founded in 1945 and AFCO Steel dates back to 1909.

I wanna start off by explaining how the bid process in our industry works and how it leads to fierce price competition. Fabricated structural steel is sold on a project-specific basis and through a highly competitive bid process in which price is the determining factor among technically-compliant bids. The preparation of an initial bid is a complex undertaking, requiring extensive engineering knowledge and exacting attention to detail. It can take hundreds of hours to prepare just one bid.

After an initial bid is submitted, multiple rounds can follow to winnow down the competition and drive down prices. Contractors will frequently ask bidders to meet or beat the subject import price during this process. A contractors' plans may get refined and bids will be modified accordingly during this process.

From start to finish, the bidding process can take anywhere from three to four months to more than six months, depending on the project size. If we win a bid, we typically lock in our steel prices at that time. However, winning a bid is happening with increasingly less frequency and, even when we do win, it is often at a loss. Dumped and subsidized fabricated structural steel imports are to blame.

W & W/AFCO competes head-to-head with fabricated structural steel from Canada, China and Mexico on projects bid, big and small, throughout the United States. I'd like to focus first on China, given what I understand you'll hear from respondents today. Although the import data may be showing declines in Chinese volumes, we certainly aren't seeing it.

There could be several reasons why. One of these is that significant volumes of Chinese fabricated structural steel is modularized in third countries, which I'm not sure is reflected in the import data. What is absolutely clear is that we are losing countless jobs to the Chinese. One of these jobs is the L.A. Ram Stadium. In 2016, we lots a 20,000 ton project for the roof of the stadium to the Chinese. I understand that in their prehearing brief, Chinese fabricators argue that the domestic fabricator who won the bid, selected Chinese product to meet sizing and scheduling requirements. They claim that no domestic fabricator was capable of meeting these requirements.

These claims are wrong. First, W & W/AFCO absolutely had the capability of performing this project. We have crane-lifting capacity of 180 tons, even though the project had no pieces approaching this weight. Our facility in Oklahoma City has 700,000 square feet under roof and a 26-acre handling yard, so no issues with plant layout.

The schedule for this project was so far out that this wasn't an issue either. The project was specified to American Institute of Steel Construction Guidelines, even the compression ring components. Any supposed limitation on our ability to complete this project is nonsense. We've done far more complex and technically demanding stadium projects, including the Dallas Cowboy Stadium and the new Texas Ranger Stadium. W & W/AFCO bid on the Rams project, along with other domestic fabricators.

We were initially informed that we were awarded the project based on qualification. However, after significant budget overruns to the stadium unrelated to the roofing phase of the project, I was informed that the owner wanted us to guarantee our price. Because the design was far from finalized, I would not guarantee our pricing. As a result, the project was awarded to Schuff Steel, another domestic fabricator. However, Schuff served only as the erector as the project's owners' representatives solicited Chinese pricing for the fabrication portion in order to save money. The owners' rep assigned Chinese pricing to Schuff and included it in Schuff's contract. The fabrication portion was awarded to Chinese fabricators because we could not meet their price.

To be clear, if we had been able to match the Chinese pricing, we would've been awarded the job, but we were unable to come close. We simply couldn't compete based on the price and the owners knew it. We didn't lose the L.A. Ram Stadium to the Chinese because of scheduling constraints, availability or capability. We bid this project at a competitive price and have all of the cost data to compare with the Chinese pricing.

As I testified back in February, and I stand firmly behind my words, it was the cheapest pricing that I have ever seen from any country. We could've donated 100% of our labor to fabricate the job, 100% of our production detailing just to get close to the Chinese pricing. We lost this job because of price.

You will hear this afternoon that price isn't nearly as important as other factors such as quality, timely delivery, etcetera.

This argument is not credible and is not consistent with how the industry works. Preparing a bid is timely and costly, so if you're not qualified to perform a job or unable to do so, it doesn't make sense to go through the process. And if you do, you will get winnowed out fairly quickly so that, by the time of the final round comes, it's all down to price. Other purchasing factors simply don't matter at that point.

Winning business and keeping our workers employed has been costly. Either we have been forced to lower our price to meet or beat the import price, or we've had to focus on smaller, less-profitable projects. The result is the same either way, significant injury to my company and its workers. Our costs have gone up in part because we have been driven into these smaller projects and have had to prepare more bids to compensate, which is an expensive endeavor.

We have been unable to pass along these increases to our customers given the downward pricing pressure from subject imports. The investments that we have made have failed to earn adequate returns while we have declined to make others, despite relatively strong demand during the investigation period.

As I mentioned earlier, W & W/AFCO has been in existence for a combined 178 years and we hope to be around for many more. But trade relief is desperately needed by our industry and it cannot come soon enough. On behalf of W & W/AFCO, our workers and their families, we ask you to help prevent further harm to our industry by making an affirmative determination in this case. Thank you for your time and attention.

STATEMENT OF HOLLIE NOVELETSKY

MS. NOVELETSKY: Good morning. My name is Hollie Noveletsky. I am CEO and owner of Novel Iron Works in Greenland, New Hampshire. Thank you for the opportunity to testify. I'll focus my comments on how Novel and its employees have been injured by unfairly-traded fabricated structural steel from Canada, China and Mexico.

Novel is a third-generation family-owned steel fabricator that's been producing structural steel for more than sixty years. Founded by my father in 1956, my son Josh Noveletsky is now president, and I now have a two-year-old grandson, and my hope is that someday Novel will become a fourth-general company. However, if dumped and subsidized Canadian, Chinese and Mexican fabricated structural steel are permitted to continue to enter our market, I have real concerns whether Novel can survive that long.

In the current market, no matter what we offer, if we can't meet or beat the import price, we almost always lose the sale. And this is unfortunately happening with greater frequency. Subject producers like the Canadians are selling structural steel in the U.S. market for roughly 10 to 15% below our bid, which is already at or below cost. And in some cases, they're coming in at 30% of our price. As a result, we are now completely shut out of certain markets. This includes public schools projects in Massachusetts. These public funds to build these schools were all going over the border, making it even pointless to bid.

We are fully capable of fabricating and erecting these public-funded schools. We lose these projects solely based on price. Some will argue that the U.S. capacity's maxed out and we need foreign fabricated structural steel. I know that in New England, we have ample capacity to meet the needs of the construction industry. Novel is producing significantly below capacity.

There are times in construction, as we all know, that project schedules change and push into another scheduled project. During those times, our domestic competitors together to subcontract work, and yes, I am aware that in rare cases, certain domestic producers subcontract work to foreign fabricators, but I can guarantee you that they do so purely on the low price, not on quality, capability or capacity.

We are ready, willing and capable to supply all types of steel projects and would be able to do so in a fairly-traded market. But we are now being forced out of many of the larger projects. We know we can't compete against the dumped and subsidized import prices, making it futile to bid. Because subject imports have pushed us out of larger markets where we typically saw four or five bidders, we've had to pursue smaller projects in smaller markets with lower margins. These projects generally have ten or more fabricators bidding, and although they are less profitable than the larger projects, the import competition remains just as fierce.

We are not losing sales to subject imports. We're losing substantial revenue. The use of multiple bidding rounds facilitates this intense price competition. As general contractors use the subject import price to drive down our bid round after round. It's not unusual for us to lower our bid to below raw material costs and labor simply to win sales and keep our facility running. However, even then, sometimes we simply can't go that low.

These losses shouldn't be happening, especially not in a period of healthy demand, as we've seen since 2016. Although U.S. construction spending has been strong since the start of the investigation period, Novel has been unable to benefit. Instead we are losing project after project to subject imports and have seen our production profits and employment numbers drop.

When I testified at the staff conference, I noted that in 2018, our profits plummeted to a before-tax of $300,000 on gross sales of $32 million. As an update, in 2019, we lost $100,000 on total gross sales of $41 million. This is due to subject imports, as a result of the distortion of the U.S. market, we have had to postpone much-needed equipment updates and our capital investments over the past few years have been scaled back to a fraction of what they were before.

These negative impacts are not what keep me up at night. What has been particularly difficult is the injurious impact of unfairly-traded Canadian fabricated structural steel and our workers and their families. Our employee headcount is down. These lost positions represent solid middle-class manufacturing jobs. Wage increases, healthcare insurance contributions and profit-sharing have been negatively impacted.

We've been put in the painful position of having to choose between investing in much-needed equipment or investing in our employees. We lose either way. Without trade orders in place, conditions of the domestic industry will inevitably go from bad to worse.

Canadian fabricators became even more aggressive after Commerce's negative preliminary determination. Canadian fabricators that we've never heard of or seen before are coming out of the woodwork and underbidding us on projects. If orders are not imposed, Novel may not last much longer. Our survival is at risk.

On behalf of Novel, its employees and their families, we urge you to find the unfairly-traded imports of fabricated structural steel from Canada, China and Mexico are injuring the domestic industry and give us a fighting chance. Thank you.

STATEMENT OF CHET MCPHATTER

MR. MCPHATTER: Good morning. My name is Chet McPhatter and I'm President of Banker Steel Company. I oversee the day-to-day production operations of the company, including marketing and sales efforts. I have worked for Banker Steel since 1997. Banker Steel manufactures fabricated structural steel for use in commercial construction projects in the United States.

We were founded in 1997 with just a few employees. Since then, we have become one of the largest domestic fabricators in the U.S. We now employ more than 400 workers at our facilities, which are located in Lynchburg, Virginia, Orlando, Florida and South Plainfield, New Jersey. We compete for projects nationally with a focus on New York, the Northeast, Florida, the Southeast, and all along the Atlantic Coast region. At Banker Steel, we have a highly skilled and committed workforce, which includes members of the United Steelworkers Union.

We're a great company, we are proud of our employees and our projects. We produced the structural steel used in the Freedom Tower in New York City, the Washington Nationals baseball stadium and MGM National Harbor in Maryland, among other projects.

As you have heard from others in recent years, the domestic industry has been forced to compete with unfairly-priced imports of structural steel from Canada, China and Mexico and Banker Steel has lost several large projects to these imports. Even when we want to bid in the face of subject competition, we had to reduce our prices substantially to meet their low pricing levels.

Let me describe some of the experiences. Starting with our involvement in the Hudson Yards Project. The Hudson Yards Project is located on the west side of Manhattan and is the largest private real estate development in U.S. history. In 2013, we won the bid for the structural steel used in the platform underlying Hudson Yards. The platform provides a foundation for the above-grade construction at Hudson Yards, which includes several high-rise towers. We provided 25,000 tons for the Hudson Yards platform, which made it our largest project at the time. Because we completed the platform successfully, we expected to compete for and win some of the above-grade work at Hudson Yards. We lost that work, however, because of the subject imports.

To take one example, one of the first structures in Hudson Yards was Tower A, which required approximately 90,000 tons of structural steel. Due to our work on the platform, the developer asked us to provide budget pricing for Tower A while it was being designed, which we provided several iterations. However, to my knowledge, no domestic fabricators were given an opportunity to bid the final design. Instead, the developer purchased milled steel from China and shipped it to fabricators in third countries, including Corey from Mexico.

The steel was then imported into the U.S. and shipped to New York at a cost well below the prices we offered during the budget phase. Similarly, the bid for the 15,000 tons of steel used in the retail center at Hudson Yards was awarded to the Canadian fabricator, ADF, who again offered below-market prices to the developer.

Finally, in 2018, we decided to make an aggressive bid to supply 25,000 tons of steel for the tower at 50 Hudson Yards. The bid was awarded, however, to the

Mexican fabricator, Corey. When we learned about the price, we were shocked because it was well below our own cost of producing the steel.

In summary, the largest private real estate development in U.S. history was built primarily with foreign fabricated steel, most of it imported from the subject countries at below-market prices to the detriment of the domestic industry.

The Hudson Yards Project is just one example, although a very important one, of the harmful impact that the subject imports have had on our industry. At the end of 2018, for example, Banker Steel lost another bid for the production of structural steel for Two Manhattan West, a 50,000 ton high-rise in New York City. We were a finalist for this project, but could not compete with the very low pricing offered by the Canadian supplier, the Walters Group, which won the bid after we refused to offer further price cuts. We understand that the low prices offered by Walters were based on subcontracting much of the fabrication work to Chinese and Mexican fabricators.

Based on the public brief in this investigation, I understand that counsel for the subject imports claim that we did not lose these sales because of price, but because we did not meet the needs of the developer. I do not believe that to be the case based on the circumstances under which these projects were awarded.

On Hudson Yards, it does not make sense that a developer would've chosen Banker Steel to provide the structural steel for the platform, which is quite literally the foundation of that project, but not consider us capable of supplying the steel for the above-grade structures. Nor would the developer have asked for pricing from Banker Steel on Tower A if it thought us incapable of performing the work. Similarly on Two Manhattan West, the structural steel contractors only awarded to Walters after we held firm on our price and refused to make further cuts.

In my view, the determining factor is clear, price-price-price. The importance of price on these bids is also demonstrated by our experience on projects where we actually did win the bid. In July, 2018, we were awarded the bid for the project at 66 Hudson Boulevard in New York, but we were forced to reduce our price significantly to compete with the low pricing offered by Canadian fabricator.

In fact, after making what we understood was our final bid, we were asked to come to a meeting with a prospective customer in New York. We arrived and were placed in a room while representatives of the Walters Group, our Canadian competitor on the bid, were placed in another room. Ultimately, we were told that we needed to beat their price to win the bid. We did beat their price, but lost substantial revenue. Again, when we competed with the Canadian producers, the deciding factor was price.

In sum, the low price fabricated steel imports from Canada, China and Mexico, have negatively impacted our sales and profitability. Before duties were imposed in this case, we lost a number of projects to subject imports and had to cut our pricing for the bids that we did win. This impacted our bottom line, return on investment and prevented us increasing our capacity utilization, which has affected our ability to expand our sales and production levels.

Fortunately, the impact of the investigation has been positive and in 2019, I am pleased to report that we were awarded the bid to produce the structural steel for a large commercial and residential complex at South Station in Boston, Massachusetts. Their net process, the developer inquired about the duties that would be imposed on the Canadian imports if the orders were issued. I believe that the developers' concern about the duties opened the door and allowed us to compete on a fair basis with the Canadian imports.

In my view, imposing duties on the subject imports will help address the unfair trading practices of Canada, China and Mexico and will level the playing field for the domestic industry. I respectfully ask you to issue an affirmative determination which will help us deal with the unfairly-traded imports from these three countries. I appreciate the opportunity to appear before you and look forward to any questions you may have.

STATEMENT OF JED DOWNS

MR. DOWNS: Good morning. My name is Jed Downs. I'm President of Qualico Steel, a structural steel fabricator based in Webb, Alabama. I appreciate the opportunity to be here this morning to tell you how my company is being injured by unfairly traded imports from the countries under investigation.

Qualico's a family-owned company started by my father in 1976. It began on a dirt road in south Alabama with a simple goal of providing great service and a quality product. With just enough money to buy a welding machine, a grinder and a torch, my father was able to win his first project.

With hard work, and persistence, he soon purchased a dilapidated cotton gin, as he was proud and grateful to have a roof over his head. I was fortunate enough at 12 years old, to be available to help him during my time off from school on the weekends and the holidays.

Since then, the company has grown into a major structural steel fabricator, of medium to large size industrial projects. We have two facilities in Alabama, totaling 550,000 square feet in fabrication space. In 1995, we opened a third facility in Midlothian, Texas to better service our projects in central and west -- in the central and western half of the country.

I was honored to host the Commission staff at our Texas facility in November. Our primary focus is the industrial market, and selected commercial projects across the southeastern United States. Up until a few years ago, my primary competitors for projects in the industrial market were other domestic fabricators. But then starting in 2016, we began to see increasing volumes of Chinese imports.

These imports have pummeled Qualico, and other fabricators in the region, entering the market at prices as much as 35 to 50 percent below our prices. We simply can't compete at those pricing levels, which are well below our cost. Chinese imports are taking the large volume projects and leaving us with the scraps.

Often, what will happen on a large industrial project is that we will get some portion of the first phase of the project, because the purchaser needs to purchase this portion quickly. We will produce the fabricated steel, and then ship it to a modular yard for modularization.

But then, the subsequent phases will be comprised of Chinese product because of the low price. In the end, both our product in modular form, and the Chinese product in modular form, are being used on the same project. But the

Chinese were getting upwards to 75 to 80 percent of the total volume of the project because we can't beat their price.

Unfortunately, the Chinese are also bidding off smaller jobs as well. We're currently bidding an 800 ton project, where we are competing against a Chinese fabricator. I'm also seeing Mexican fabricators bid on projects in the market as well.

If I know that the fabricator is -- if I know that a fabricator from either China or Mexico is bidding a project, I will either not bid the project, or if we need work for our people, I will make sure that our prices are rock bottom, even priced below cost, thus being willing to take a loss on the project.

It is the only way I have a shot at winning the job, and ensuring that I can keep my shop running and my workers employed. As a result of these unfairly traded imports, we have not been able to sell enough work to operate at full capacity. The work we have been able to sell, has been at significantly reduced prices. This has negatively impacted our profits, which have steadily declined since 2016.

This obviously, results in lower take-home pay for our workers, who work less hours and get less bonuses and receive less year end profit sharing. This is no way to run a thriving business. In fact, many of my domestic competitors have left the industrial market because of unfairly traded imports.

I will say that things have improved somewhat, after the trade cases were filed earlier last year. I started getting second looks from customers who weren't previously giving me a chance. But if trade orders are not imposed, any recent improvement because of these cases would quickly evaporate.

Without trade relief, my expectation is that the imports from all three countries will continue to accelerate. More and more domestic fabricators who are currently servicing the industrial sector will be forced out of the market, and potentially out of business.

As I noted at the outset, Qualico's a family company owned and now in its third generation, as both my son and my son-in-law have joined the company. Without trade relief, I fear we will not make it to the fourth generation. On behalf of my company, its 300 workers, their families, I urge you to make an affirmative determination in these cases, thank you.

STATEMENT OF PETER LABBE

MR. LABBE: Good morning. My name is Peter Labbe. I am the President and General Manager of Cives Steel Company, New England Division in Augusta, Maine. I worked for Cives for more than 16 years, and I'm currently responsible for the overall operations there.

Our main location serves all of New England's structural steel needs from high-rise and commercial structures to airports, hospitals, nuclear power plants and more. I would like to thank the Commission for the opportunity to be here today.

As will become clear today, our industry needs relief from unfairly traded imports from Canada, China and Mexico. While my primary responsibilities are focused on New England, Cives has seven other divisions in New York, Virginia, Mississippi, Georgia, Indiana, Idaho and Arizona.

And we are seeing intense competition from subject fabricated structural steel imports throughout the market. Cives fabricated structural steel for buildings and other structures across the United States, including Children's Hospital in Boston, Turner Field in Atlanta, and Reagan National Airport, right here in Washington, D.C.

We also fabricate for less glamorous structures such as schools, distribution warehouses, light manufacturing plants. Until recently, we have been able to get a fair price to keep our employees busy and make sure they are well compensated for the great work that they do.

But dumped and subsidized imports have become a game changer. We have lost a significant number of major projects to subject imports over the investigation period, and we've had to lower prices to compete on others. As one example, our fabrication plant in Maine lost a bid to a Canadian fabricator on a 15,000 ton facility in the northeast for a U.S. defense contractor.

The new facility will house the construction of nuclear submarines for the U.S. Department of Defense. As a result of this lost project, we suffered a stoppage of new hires, reduced work weeks and employee lay-offs at our facilities.

As another example, a loyal customer of our mid-south division in Mississippi started developing a large, new LNG facility last year using Chinese structural shapes with no intent of even soliciting bids from domestic fabricators, solely due to price.

Although Cives has enjoyed a long relationship with this customer, they, like others, are switching to dumped and subsidized imports. We are losing projects like these because of price. You may hear this afternoon that purchasers are buying subject imports for other reasons, including that domestic fabricators don't have enough availability in their shops. In my experience, this is simply not true.

Cives has an extensive in-house training program that allows us to hire and maintain as many workers as we need as long as the work is there. We are also proud to employ experienced steel workers and iron workers, who are the best and most efficient in the world.

We don't lose projects because we don't have the work force. We lose projects when we can't meet unfairly traded prices. In addition to significant lost sales, we've been forced to decrease our prices to the point where we have taken a loss on projects.

Pricing pressure is intense in the bid process. With multiple rounds of bids for projects, contractors frequently tell us where we stand relative to our competitors. We know that by the final round in the process, all bidders are qualified.

The final decision is made on price. And if we don't come down, we lose. Plain and simple. When forced to choose between taking a hit on price, and losing the work entirely, we go as low as we possibly can to keep our facilities busy and our employees on the job.

But since we are an employee-owned company, with profit sharing arrangements, lower prices translate directly into lower pay for our workers and their families. This is unacceptable, particularly when we are at a high point in the business cycle. Instead of expanding our operations and hiring more workers, we've been forced to limit or forego desired investments and capital improvements.

If conditions do not improve, and soon, I fear that plant shutdowns and significant layoffs may be next. That is why I'm here today, to do all that I can to prevent that from happening. While foreign producers may argue that their fabricated structural steel is different from ours, this is false. These products are entirely interchangeable.

The fact that we have lost so many projects to subject imports confirms this. The domestic industry can also produce the full range of fabricated structural steel products, including for modules.

In fact, Cives has a facility on the Mississippi River that allows us to ship large modules for industrial projects via barge, to service the Gulf Coast and other regions throughout the United States. Typically, we produce the fabricated steel at our plant and then ship it to a modular yard, close to the job site where the plumbing, electrical and other components may be incorporated into the assembly.

The module is then shipped a short distance to the job site where it is installed. The Canadians and Chinese use a similar method in that their fabricated steel is produced, and then shipped to a module yard. My understanding is that Chinese fabricators are often using modular yards in third countries for assembly work. While we would like to produce more fabricated structural steel for modules, fierce competition from subject imports has prevented us from doing so.

In closing, on behalf of Cives, its workers and their families, we urge you to find that the domestic industry is injured, and that subject imports are responsible for that injury, thank you.

STATEMENT OF DR. SETH KAPLAN

DR. KAPLAN: Good morning. I am Seth Kaplan of International Economic Research, and first I'd like to turn to the established facts in this investigation.

First, the domestic industry has large amounts of unused capacity.

Second, the domestic product and subject imports compete head to head on the basis of price.

Third, projects won by the subject imports were underbid.

And fourth, the domestic industry's performance was suppressed at the peak of the business cycle.

These facts were established by the Commission, and the Commission's record by the staff, and are cited to the staff report. I will note that every one of these established facts has been challenged by Respondents, and I think the reason they have challenged is because these facts lead inexorably to the conclusion that the subject imports have had significant and material effects on the domestic industry.

The next slide poses two questions that I've asked, and the Commission often asks, as well: Have subject imports lowered prices, diminished domestic shipments and market share, negatively affected employment, and suppressed domestic profits and margins? And, is this particularly injurious in the context of the business cycle?

Let me turn to answering parts of these questions. First, the subject imports undersold and suppressed prices, and this is demonstrated in the staff report. The vast majority of projects won by subject imports were underbid and, as stated by the witnesses on this panel, the lowest price wins. And the record shows that when imports win, they underbid.

Second, purchasers confirm that subject imports won the projects because they were lower priced. Once again, cited to the staff report.

Third, subject imports overwhelmingly undersold in the preliminary phase pricing product comparisons. You have several different avenues at which to assess pricing. The Respondents have you believe it's a three-legged stool and they're trying to pull one out. I will tell you, you have a 27-legged stool, and that if one or two of the stool legs seem less probative, that you have a combined set of information that will lead you to this conclusion.

Finally, the domestic industry experienced a cost/price squeeze over the Period of Investigation. Gross margins fell. I'd be happy to discuss the unit issue of margins, if you'd like during questioning.

With respect to volume, there has been documented lost projects. The bid data is from purchasers' documents, a significant volume of subject won by the subject imports that were underbid by domestic -- that underbid domestic bidders. The witnesses have testified to particular instances, and I am sure they encourage your questions to go over these very large projects that were lost to dumped and subsidized imports.

The volume of FSS in the documented lost projects and the projects discussed today is a significant share of the market in and of itself.

Now let's return to the volume effects due to underbidding. The record of documented subject wins shows that imports must underbid to win a project. That's from the record. Documented subject wins are a sample of all subject project wins.

Just as, for example, pricing product underselling comparisons are only a small sample of all potential price comparisons, usually the coverage is but a fraction of the total product sold.

Just as the Commission reaches the conclusion regarding overall market selling from the sample they collect in the pricing product analysis, the Commission can reach a conclusion regarding lost project bid from the project underbidding analysis.

The information you learn about how projects are won and how underbids occur in the projects you have in your staff report tells you something about how projects are won and projects that you don't have in your staff report, and you can't because there's too many of them. You do your best. The staff did a wonderful job of herding cats. There's a lot of producers. There's a lot of projects. There's a lot of bids. And so you can only take a sample, which you did. And it shows one thing.

So the volume effects due to underbidding show that imports compete head to head for domestic projects based on the lowest bid. If a share of the subject imports that undersold was even a fraction of the share in the bid data, the volume of lost projects would be significant.

What I'm saying is, is that in the bid data imports won because they undersold. And I'm saying if you don't have bid data for other projects that you see the import share, you could conclude a significant portion of those were won because they were underbid.

We have taken a share as an example. We haven't affected this and looked at it all as a volume effect, not a price effect. There's been lots of evidence of price suppression and underbidding causing prices to fall, but if we just look at it as a volume effect we could see that an additional share of the market would have significant effects on the domestic industry. And is that realistic?

Well, the next slide shows how competition works in this market, and the white area, that sea of white, is projects that are won solely because of price. So these are projects at the margin. What would quantity move by a small price change? Is there a lot of volume like that? Or just a little volume?

And the answer is, there's a lot of volume. The testimony here is, on a project by project basis small changes in price move shipments. And in the head-to-head sales between the domestic industry and the subject imports, it is completely realistic that small price changes could move share by a significant amount.

In this case, we choose a 5 percent change, 5.7, and the next slide shows what that would do to the domestic industry. Production would be up by a couple hundred thousand tons, but capacity utilization rises, market share by quantity rises, by value rises, the number of workers rises, and I want to point out this is an industry that's atypical of the Commission. We're talking near 20,000 workers. The Commission usually looks at more capital-intensive industries with maybe thousands of workers, maybe less. 20,000 workers across the country. It has huge employment effects in this industry. Operating income would increase, and operating margins would increase.

Has the domestic industry underperformed at the peak of the business cycle? And the answer is yes. FSS demand is a function of construction spending. Everyone -- non-res construction, everyone agrees that that is a good indicator. It was at its peak during the business cycle over the POI.

Domestic profitability was suppressed during the POI as compared to historical median operating margin viewed over the business cycle. This is a bad business cycle for this industry. And it's a really cyclical industry.

And what's the difference between now and then? One of the major differences is that there is a large share of subject imports dumped into this market during this cycle and not during last cycle. And what has that done? It has taken share, but it has suppressed profits. And this is an industry that needs to make profits during the high times to protect itself over the industry down times.

So the graph shows this. You've seen this earlier. But what you see is that the performance relative to construction demand is lower from a margin standpoint.

Finally, I'd like to talk a little bit about market share and about the significance of volume in this industry. The statute asks whether subject imports cause domestic injury -- injury to the domestic industry, and then the first factor they ask you to look at is volume. And that volume factor has to look at whether it is by itself in and of itself absolutely, or is its share significant? And then it says, "or" its increase is significant.

So it can be significant in and of itself, and it can cause injury in and of itself, and my question -- or what I am addressing as an economist is when would that volume in and of itself be significant and injurious?

The first question I would ask: Is it large? It's 30 percent of the market in this case. In and of itself, it is a large share.

The second question I ask: Are the imports and the domestic product highly physically substitutable? Are these products fungible? Do they compete against each other? And the answer is, they're all built to spec. And at the end of the day in the final bid, they are identical projects bid on price with qualifying suppliers, and the staff report supports that.

Third, do the purchasers look to small changes in price to make a purchasing decision? And the answer is, yes. This is head-to-head competition, project by project, penny by penny, and the lowest bid wins. And you see that, and that the imports won when they were lower of all the projects that we've identified. So it is highly price sensitive.

And finally, is the evidence of economic substitutability strong? Are there lost sales? Yes. Did the lowest import bids win? Yes. Would relatively small changes in market share have significant effects on trade, financial, and employment indicia? Yes.

This industry has been negatively affected due to the volume of subject imports, and certainly when you consider the volume, the price suppression, and the price effects, you get effects on the trade data, the financial data, and the employment data which are all economically significant and you will determine whether or not they are material.

That concludes my presentation.

MR. PRICE: Thank you. We will now reserve -- that concludes the presentation of the domestic panel. We'll reserve the remaining time available for rebuttal.

CHAIRMAN JOHANSON: All right. Thanks to all of you for appearing here today. We will now begin Commissioner questions with Commissioner Kearns.

COMMISSIONER KEARNS: Yes. Thank you all for appearing here today. We appreciate all of your testimony. I guess I want to start with the bid data. Respondents argue that the bid data are unreliable because they do not itemize FSS and instead include things like FSS onsite assembly services and other non-FSS components. The Commission does not appear to have encountered such bidding data in past cases, at least not since the 1988 FSS case.

My question is can we rely on the bid data, even though the bids generally do not itemize FSS and include services like onsite assembly?

DR. KAPLAN: Let me start out as kind of an economical review of this. The first point is you do have other information, the underselling data, and as Mr. Price pointed out, the Respondents did not want to collect pricing product data in the final, and insisted on collecting bid data and this is what we have.

But the bid data does show comparisons where there are direct comparisons just on the FSS, and they support the conclusion we've reached. Also, the data show that of the information and we will report this in our post-hearing brief, that there is a direct relationship between the lowest price of the FSS bid in a group and the lowest price offered for the total project.

So what we have seen is the variation in the bid is coming from the FSS, and not from the erection services based on the statistical analysis of the data in your record. I am going to now hand it off to the members of the panel, to explain why my statistical result and my economical result is supported by the way the industry works, and why you see the pricing moving due to FSS and not moving due to erection in the samples that have both, and there's other ones that don't, and you do have your pricing products. But --

MR. COOPER: Rick Cooper with WWAFCO. When we bid a project installed, meaning that we also include the erection in our bid, the breakdown is typically the fabrication itself, the FSS is worth 70 to 80 percent of the total price, and the balance would be 20 to 30 percent would be the field erection. Those numbers remain pretty constant across the country for a typical project.

We also, I'll also add, it's standard industry practice for our customers to ask for a breakdown for those numbers. So they are comparing our FSS price and our erection price to the other bidders in the market. So we expose both of those price components.

COMMISSIONER KEARNS: Before I hear from other witnesses, but in general what we're seeing in the bidding does not itemize the two. So is what you just said consistent with that or what am I missing there?

MR. COOPER: I'm not sure what I'm missing. I don't 100 percent understand the question.

COMMISSIONER KEARNS: I think you just said you tend to give your customers information on both the FSS and on the erection services separately.

MR. COOPER: Correct.

COMMISSIONER KEARNS: But what we've seen in our data overall is that we don't have those things itemized in the bids at least. Maybe they are discussed with purchasers outside of the bid, I don't know. Or maybe --

MR. COOPER: Well, in a lot of for example the industrial projects, we bid fabricate and furnish only. We don't bid the installation of those typically. So you're probably going to have both of the data. I'm not familiar with how the data was accumulated and presented to you all. So I'll let --

MR. McPHATTER: Chet McPhatter, Banker Steel. I mean typically we're using the same erectors, same subcontractors. We know where those numbers are as we're bidding the projects, and like Rick was saying, we can get feedback as we -- as the jobs are sold, as far as where those numbers end up from a fab and erection standpoint.

COMMISSIONER KEARNS: Okay, and I've been -- I welcome everyone to speak more on this. But one subquestion on this too is I was wondering to what extent when you put together a bid, if it is itemized how much those items really matter? I mean I was thinking the other day of, you know, we asked somebody to help us with landscaping services at our house, and you know, you got a total bid and they break it down. This is what it's going to cost to, you know, trim the shrubs, you know.

But I don't really put a lot of stock that that's actually, you know, the number for this component versus that component. I think there's a little bit of art to it. Is it the same in this industry? I mean what you seem -- what you just suggested suggests otherwise, that because you're subcontracting some of those erection services, that item is a pretty solid, reliable figure, not just sort of a hocus-pocus let's just say this much for erection services. Is that right?

DR. KAPLAN: When a check is being written to two different people, they tend to focus on it pretty carefully. When it's one person and it's some -- there's -- another point as well on the bid process is that it depends at what stage you're at. At some stage, someone might know the breakout, and then the person filling it out later is looking at a total.

But I think the key to this is that the variation comes in the FSS, and not in the erection as was explained, that other members of the panel explained.

MR. LABBE: Peter Labbe with Cives Steel. We bid the project and we also solicit bids from the erectors that are in each market. So the pricing from those erectors is very well known, and we typically report that through the bid process. In the bid documents there's a breakout for what the erection value is.

That can be done even if -- that needs to be done even if you self perform. The majority of the work is not self performed. It is bid out through a bid process. So it's a very well known value. I can't explain why the customers wouldn't have reported that broken out, because in my experience they most certainly have that data.

DR. KAPLAN: Also Seth Kaplan. I wanted to add that you're dealing with now domestic erectors that are competing against each other with similar costs. On the FSS side, you're dealing with someone who's using American steel and American labor, and if it's Chinese, someone who is known to be dumping at over 100 percent.

So where would you expect the variation to be? In the FSS or the erection costs? So there's more logic that tells you where to turn, as well as in fact the structure of the bids in the competition that these gentlemen have discussed, that would tell you and lead you to give more credence that the FSS is what is driving this.

COMMISSIONER KEARNS: Right.

MR. DOWNS: This is Jed Downs. I'm sorry. Go ahead, Mr. Price. This is Jed Downs, Qualico Steel. To say that another way, the import countries are sending the fabricated steel over here. They're not sending imported erection or installers. They're using the domestics. So we're using that same field. The difference has to be, clearly is, in the FSS product.

MR. PRICE: Alan Price, a couple of things. As discussed with our clients here, if you're installing in New York, you're all going to the same unionized, same union, same unionized labor. It is essentially a constant that is what the cost is in the market. That's not where the variation is. The variation is principally in the FSS, and they'll break apart the contracts and reorganize who is assembling what just based upon that, to get the lowest delivered price in many instances.

Turning to the way this case, the data you have in the record for a little bit, the record clearly shows whether it's the whole project or where you have breakouts, the imports are only winning where they're underselling, okay. Secondly, as I said, this is the way that we had asked for pricing products. But the pricing products we have from the prelim show that the FSS is what's being undersold. AUVs show you the FSS is being undersold.

In discussing what a project is, there's a little bit of a nomenclature issue between what we will say and sometimes what the staff report says and what the

Respondents say. When the bid is put forward, it's the -- and it has a combination. It would be a fabrication package with the FSS, with the FSS being 70, 75 percent of the value.

The Respondents have tended to muddy that, because what's a project? Is the project the $23 billion of a project in New York, which one project actually is when you look at the entire project ultimately? Or is it just this component of it, and we have to look at the component?

Finally I would say as a legal matter, the Commission actually has looked at a lot of situations where there are mixed goods and services being offered since this case was first argued in 1988, and the Commission has recognized that it can put weight on pricing when there are mixed goods and services, since then it's not just throwing up your hands. Clearly, that's what the Respondents are arguing for, after they have put the Commission in that position.

COMMISSIONER KEARNS: Okay.

MR. COOPER: Mr. Kearns, in my testimony, I referenced the Los Angeles Rams new football stadium. The comparison I was making was apples-to-apples. It was FSS coming from China and FSS coming from our company. We actually were provided the offer, the actual offer from the Chinese fabricator that won the project by the owners' construction manager for us to review.

We did a side-by-side comparison of just our fabricated pricing compared to their fabricated pricing. And I actually spoke with that construction manager last week just to confirm the numbers again, and he again confirmed that we were beat over $50 million.

COMMISSIONER KEARNS: Okay, thank you. And Mr. Price, if you can, post-hearing, provide us with some of those cases. And I'm also think it might be helpful, I don't know if there are cases like this, but if there are cases where we looked at pricing, not so much bid data, but pricing, sort of downstream, maybe at a retail level, because we couldn't find it at that, you know, at the higher level of trade, because it seems to me like that's sort of analogous to the situation we have here. In other words, you know, even if it may've been bought or sold, imports, you know, three or four times, and we can only, for some reason, rely on the price downstream through retail or so forth, you know, that might be helpful, if there are instances like that.

MR. PRICE: Okay. Happy to address this in post.

MR. MCPHATTER: Chet McPhatter, one more comment about the erector price. You know, a lot of our jobs that we're bidding, the insurance is being purchased through the owner of the contractor, so they need to know the value of the erection portion of the job to understand what that is gonna cost them on the insurance side, so we feel very good about the erection numbers when we see them, and easily comparable against the fad number, once you have that.

COMMISSIONER KEARNS: Okay, thank you. My time is up.

CHAIRMAN JOHANSON: Commissioner Stayin.

COMMISSIONER STAYIN: The Canadians suggest that the design engineering --

MR. BISHOP: Commissioner, could you lift your microphone just a bit, please? Thank you.

COMMISSIONER STAYIN: How's that? Okay. The Canadians say that design and engineering services offered are significant in terms of the price of the overall bid. They seem to think that that plus the installation or erection are important in the overall price. When you submit a bid, do you also, are you also involved in the design and engineering part of the project? And ultimately, in the erection and installation? Is this all part of what you do? Are we talking apples-and-apples? Are we talking about two different types of offers and bids?

MR. LABBE: Peter Labbe with Cives Steel. To speak directly to the Canadian claim, in New England, I compete almost exclusively against Canadian fabricators. We bid the same exact projects. We provide the same exact services, Cives has their own engineering staff, their own design staff, similar to the Canadian competition. We are absolutely apples-to-apples on what we're providing. The project provides us a set of drawings with design criteria to a certain specification. And we have to build the building to that design criteria and specification.

As far as the erection portion of it, I'm soliciting pricing from the exact same erectors that my Canadian competition is, their local erectors in the New England market, and we are both soliciting pricing from the same erectors, and I'm very confident that we're all getting similar pricing from those erectors. So I would, to that claim in particular, we provide the same exact services, we're absolutely apples-to-apples. Thank you.

MR. COOPER: Commissioner, Rick Cooper with W & W/AFCO. We absolutely furnish the same services that the Canadians are claiming that they have a special niche in. We actually have an in-house design engineering firm and our engineers are licensed in, I think, 38 states. So we absolutely have that breadth of services that we offer. And everyone at this panel does.

MR. ZALESNE: If I could just add--David Zalesne--Owen Steel has probably built more high-rises in New York City since the 1980s than, with all due respect, almost everybody in the domestic industry. And we have a tremendous experience with high-rise engineering, connection, design, the work that goes into it.

We will be brought into meetings and have numerous discussions with contractors to provide the very same services in the scoping discussion. "How do you build this?" "How do you wanna propose to do that?" "How would you build this?" At the end of the day, it comes down to pricing. And the same stories that everybody else has told you here this morning is exactly how these end up.

And by the way, we have no objection if somebody comes in and has a better engineering scheme and can come up with something that a customer likes more, regardless of where that engineer is positioned. Our problem is the price at which they're selling it back into the marketplace. So we're not -- the engineering -- people have engineering schemes -- we're just bidding the same packages with the same scope of work with the same level of engineering and connection design that the customer is buying, regardless of which source they're buying it from.

MR. PRICE: Alan Price, Wiley Rein. One of the things we've -- in discussing this with the clients is, one is that some designs are very laid out, very specific, but there's always some detailing required, that's standard. That's what this industry does. It's part of the FSS itself, that design. Sometimes, as they talk it through with various folks in the various rounds of qualification and bidding and their multiple rounds of bidding that end up going on here.

The contractors are talking to our clients who are very free at saying, "Hey, this person has a better, you know, better design on this, can you do that?" Of course, they all then do it. Because that information is freely conveyed throughout this. And any differences in erection plans are freely conveyed so that everyone ultimately has basically got the exact same package more or less, when it gets down to the final phases.

MR. MCPHATTER: Chet McPhatter, Banker Steel. I'll add, with the design, there's not a whole lot of variables in what we do. We're bolting or welding. You know, the technologies are the same, so it's not like somebody's gonna come up with some new way to fabricate the materials. It's really just minor tweaks to connections and that type of thing. And that's what we all do all day every day.

MS. CAPELOTO: Tessa Capeloto, Wiley Rein. I would also just point you to Page 225 of the staff report where most purchasers did report that there were only "sometimes or never" significant differences other than price, when you look at U.S.-produced fabricated structural steel and Canadian fabricated structural steel.

COMMISSIONER STAYIN: Okay. I'd like to speak also to the issue of capacity. The respondents have suggested that the U.S. industry has very little, if any, available unused capacity during the POI due to unavailability of skilled workers. Do you in fact have a problem in getting the work force, the labor force, that you need to be able to respond and do the work that you now offer? The capacity issue.

MR. LABBE: Peter Labbe with Cives Steel. In my experience, we have no shortage of work force availability. We offer very well-paying jobs, skilled labor jobs, provide training for our employees, great benefits. We're often pulling people from relatively less-paid service industries, bring them into our facilities, giving them the training that they require to become skilled labor, and we have had no issues drawing those people into our facilities and getting them trained.

MS. NOVELETSKY: Hollie Noveletsky. We also work very closely with the local high schools and community colleges and we'll take people and train them as welders. They also note that they have a backlog of students waiting to be taught welding. So we will take them in and train them ourselves. And then I'd also like to just point out that Senator Blumenthal had talked about United down in Connecticut just laying off 26 skilled employees. And then the Summit, which is a couple towns over from me, announced about a month ago, they're closing their doors in two months, they're laying off all their employees. So there are this untapped pool of applicants.

MR. WELD: Chris Weld with Wiley Rein. I'd also note that the interim data on PRWs shows an uptick in 2019 of about 2.7%, so when the petitions were filed, domestic fabricators had some breathing room, were able to get some projects and second looks at some projects they weren't able to get. Prior to the petition being filed, they didn't have a problem finding additional labor. They were able to increase their PRWs by almost 3%. So labor shortages were not an issue.

MR. COOPER: Rick Cooper, W & W/AFCO Steel. I agree with Peter. We have 17 plants as I mentioned, spread across the country. And we pay a real-living wage with real benefits, and we've had absolutely no trouble finding skilled workers and workers ready to go to work over this period.

MR. DOWNS: Jed Downs, Qualico Steel. I echo what these gentlemen are saying, and lady. We currently have, my HR tells me we have people that are wanting to be trained and we have intensive training process also that we go through. And as you know, the U.S. has began encouraging throughout the country blue-collar manufacturing-type jobs, and that's become a proud career now.

And as Rick alluded to, it gives a very good living wage, a good wage for people to put a roof on their head, food in their mouth, and feed their families. And we're proud to do that, and we have trained a lot, and we continue to have the ability to train. And a lot of it is these young kids coming out of high school, don't want to go to college. They want to work in a business like ours, use their hands, don't wanna sit behind a desk.

We don't have a problem with fulfilling the labor. We can train them up and be productive in a matter of a month to be carrying a load at their position, and then they begin learning it more and more, so we do not have a problem of capacity or work force.

DR. KAPLAN: Seth Kaplan, IER. Two points. The first is that there is a minor manufacturing recession going on right now. Industrial production has been falling. There are people in the labor pool. The second part, and in many of these communities there are other manufacturing facilities that may have closed in the past as we've all seen with the manufacturing problem that's in the United States. Those workers are in the service industries and would much prefer to get back into the manufacturing industries because of the higher wages and the better benefits.

Finally, I wish to emphasize the point that was just made, that the training process for skilled labor is moderate in length. We just heard a mention of training folks up in one month and then they get better and better. I was talking to Rick, training folks in two months; so this is not a five year lag of sending people off to become with this extensive training to create shortage.

The industry has been very responsive and understands this because they have gone through up and down cycles so they understand what it takes to train people when demand increases and the same thing is going on now.

COMMISSIONER STAYIN: Let me just ask, just following up with Dr. Kaplan. Are you saying that to have a skilled welder that it is something that can be quickly trained in a month or two?

DR. KAPLAN: I will leave it to the experts. There is a variety of --

MR. ZALESNE: David Zalesne. I appreciate the question because I think it's an important question and you've heard everyone up here today talking about the jobs and the people they have been working with for generations and their families and their shops.

I'm going to say a word about our industry, okay, as former chair of AISC, we as an industry have focused on this problem and so the headlines you read about shortages in the construction markets and the sort of amorphous claim from the people who took 30 percent of our market to come in and say we don't have the people to support our market is a little misleading.

We as an industry have focused on this and we as a trade association have worked with trade schools, universities, steel day programs to bring people into the plant, to create training programs for our industry and for our people. Fabricated structural steel shops in the United States have a program in place to address the types of headlines you read and would pick up in other environments and every one of us has sat here today and told you that we have the capacity to do it. We have the space to do it and we're willing to invest in more if we know the work is there. So I appreciate that question.

COMMISSIONER STAYIN: Thank you very much. I have run out of time and will pass it to my colleagues.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: Thank you. I have a few followup questions from the other Commissioners' questions with respect to the price and bids in particular.

Can you tell me what's typically included in a bid? You talked about FSS and erection, fabrication services but is there something else in there that is typically included? Other products or other types of services? Sort of itemize it -- what would be in a typical bid?

Mr. MCPHATTER: Chet McPhatter, Banker Steel. Obviously, with fabricated materials you have raw materials. You have detail and engineering, you have freight, bolts, you know miscellaneous materials that you need to produce a job. That's kind of the fabricated structural steel end of it and then the erection end of it is the other major piece of it.

MR. TAYLOR: Michael Taylor, King and Spaulding. One important thing to realize too though is when they are bidding it is often and most typical on a delivered basis so also that is something important and maybe the other Panelists can talk about that in their experiences.

But when you're coming in and you're seeing under-pricing and underselling on a delivered basis from overseas when most of these folks have operations close by or are able to deliver. The freight component is just remarkable when you take that into account.

MR. COOPER: Rick Cooper, W&W AFCO. From a pricing standpoint, fabricated structural steel, the detailing that is part of that, the transportation as Chet mentioned is part of that. That part of our offering is typically 85 to 90 percent of our FSS pricing, exclusive of erection. We also buy roof deck from suppliers. Floor deck as well for the floors in a structure.

Those suppliers will bid the entire domestic fabricators that are bidding on a project so we all have the same pricing. The Canadians typically will use the same suppliers as well so they are apples-to-apples with us. The Chinese, that's a different case but it again is probably 85 to 90 percent of it is just fabricated structural steel of our price.

MR. ZALESNE: David Zalesne. I want to answer the question and I appreciate the question but I want to make sure everybody is focused on the product that we in our plants work through is fabricated structural steel. There are customers who want to buy that in different forms and with different things and I will go back to Commissioner Kearns' example of his lawn bid.

When we come in to, when somebody comes in and bids a lawn-care package, the main thing that we're talking about in this environment would be say that the sod and the grass that you're putting on the ground.

You can buy other things associated with that as you see in an itemized thing but you can very clearly see where the fabricated structural steel is in a bid and you can very clearly, we're all talking about it whether it comes in the form of a building that starts with anchor bolts and finishes at the antennae at the top of the building.

Or whether you're talking about a box which people refer to as a module so you can put other components into it or whether you're talking about some of these other definitions that everybody wants to throw around, at the end of the day we're processing fabricated structural steel through the plants and you can very clearly focus if you drill down into it. Again, we don't.

I don't know all the things, how it's all presented to you guys but you know what the grass costs. You know what the steel costs in this and these are very sophisticated buyers on these big projects and they know exactly what they are buying and where the fabricated structural steel is.

So I would say what we're selling is a common element across various different contracting forms and so there are maybe different ways that people want to buy it but the fabricated structural steel is a common element and a common product regardless of the delivery system or the type of project for the contracting language.

So I think you can answer the question by saying yes, there may be some other things in a contract but really what our plants do and what our industry is and what our industry is built on is fabricated structural steel.

COMMISSIONER KARPEL: Thank you. I'm just thinking of the staff report and the information we have in the pricing section and what it says about the bids being for a complete project and may include FSS but other services and potentially other products.

What is on the record or could you put on the record that would help us sort of document and understand what you've been saying here, that the FSS is sort of the factor that changes from bid-to-bid? You are all using the same erection contractures, you're paying them union wages. What can you sort of give us that would lay out in a documented fashion that we could then rely on to substantiate these examples that I found particularly helpful from the industry representatives.

DR. KAPLAN: We'll address that in the post-hearing brief. I think that the major elements that were talked about or the FSS and the erection. We had noted that the erection costs were domestically provided on some of these other minor items was just noted the same thing, that the variations coming from the competition of the FSS, but we will provide information from ourselves and I will take a look at the bids more carefully again to see if I could help you in that.

I will note that there are bids that just include the FSS and they support our position of underbidding and that when you do look at the overall bid package that there is an incredibly strong relationship between the FSS component and the total bid price. The correlation is astoundingly high and for those who like statistical evidence we will provide that as well.

COMMISSIONER KARPEL: This is a follow up to that, so I assume you have the bids offered by the U.S. Competitors in these projects? I think some of you have also mentioned that you have seen bids provided by foreign producers and importers competing against you in a particular bid, I mean to the extent that you can sort of show us that the two are containing similar components and similar percentages and I think that would also go to substantiate what you said as well, that there is some ability to do that.

DR. KAPLAN: We'd be hoping to do that. In this case I believe the purchasers were the ones that provided the data so we had less control over -- if you think of a pricing product case, it's provided directly by us and we can tell you about what we put in the questionnaire. So that's why we wanted pricing products again.

It's another reason we had confidence in them and you could come audit us and talk to us about it and we were very disappointed when the Respondents suggested moving to the bids and eliminating the pricing products which disadvantages the Commission and their evaluation. We do believe the record fully supports this and we will provide the information for you on your underbidding analysis.

COMMISSIONER KARPEL: Thank you. I appreciate that. Another related question -- some of you have given some testimony about learning about competitors' bids when you lost a bid? I guess I wanted to understand a little bit more about how transparent that information is in the market. Is this sort of one-off market intelligence or is it fairly common that when you lose a bid the builder will tell you "yeah you lost the bid because of this other bidder." And this is what the contract terms were that they agreed to that outbid you?

MR. McPHATTER: I am Chet McPhatter, Banker Steel. You know, after you've -- especially on larger projects, you've spent months typically putting these bids together and working with the customer -- and a lot of us have the same customers -- and, you know, after spending all that time and working through it and not getting it, they typically will give you some feedback on why you didn't get the job. You know, they'll tell you how sorry they are that they couldn't give it to you, and walk you through what, what the other competitor did.

MS. NOVELETSKY: Hollie Noveletsky. I just wanted to reinforce that we try very hard to find out what the winning bid was so that we can get feedback in our bidding process and in our estimates.

And, depending on the relationship, they will tell you what the winning bid was. So we work very hard to get that information.

MR. LABBE: Peter Labbe with Cives Steel. Just to kind of continue on on what my two colleagues said, that feedback is always in the form of price. We very -- I don't know of an instance where I got feedback on a bid where there was something other than price that was the deciding factor.

So I think the feedback -- and they can correct me if I'm wrong -- but the feedback we receive is what the price was that they bought it for.

MR. DOWNS: This is Jed Downs, Qualico Steel. I would say this also, is that whenever you hear the same feedback from multiple customers who are buying the work we're serving, you hear the similar to same feedback from the same -- you know, percent that you were beat by a foreign, I mean subject imports, one of these subject imports, you know, it begins to add up and certainly be validated. It's only as good as the information they give us, but at the same time it's validated by repetitiveness.

MR. PRICE: Alan Price, Wiley Rein. Just to add one point. On one project, we actually have in the record one of the projects we've talked about here, the actual foreign bid, our costs on it, the blueprints, you know, just everything in the job. And so, and so it's all there in detail.

Also, the one thing I'll say is, one of the things we've noticed is, in one case sort of a creative attempt to mix and match the beginning of the bid and the end of the bid in order to say, oh, it wasn't price when it was. And we'll detail all of that in the posthearing brief.

MS. NOVELETSKY: Hollie Noveletsky. I just wanted to say that in the bidding process, at the end when there are just a few bidders left, we get called in and it's a sit-down, one-to-one to go over the whole bid package to make sure that they are -- we are bidding apples to apples against the competitors. And I think that somebody had mentioned it's usually one in one room and one in the other room, and they're going over it line by line. So it is always price at the end.

MR. McPHATTER: Chet McPhatter again. We also bid multiple customers sometimes as well, and the customer that does not get the job will give you some feedback also.

DR. KAPLAN: One point about price suppression and the bidding process -- Seth Kaplan, IER -- is that in the record in this case the original bid was not part of the questionnaire. So in some cases, the original bids asked for in the final bid, and you can see how far prices were suppressed, in my discussions with members of the panel prices often came down by double-digits from the original bid to the final bid.

So you saw significant price suppression through this process, and that is not captured by the way the bids are reported. But we will provide information on that, as well, in the posthearing brief.

COMMISSIONER KARPEL: Thank you.

CHAIRMAN JOHANSON: I would like to thank all of you for appearing here today.

I am going to go back to the whole issue of labor, which was already asked by one Commissioner, but I wanted to bring that subject back up.

The Respondents in their joint brief from pages 9 to 11 provide a number of statements, most of which are in brackets, which discuss the labor situation facing the domestic industry and they contend that the labor situation is indeed very tight.

The Respondents also provide at their first exhibit of their joint brief an article from Modern Steel Construction, which apparently is the publication, and that article, the title of it is "2018 Construction Outlook Remains Strong; Workforce Shortages and Infrastructure Funding Are Still A Concern."

Could you all talk a bit more about the labor situation, or perhaps what might be more helpful could you perhaps try to find information you could put into the record describing how you all are indeed able to find a significant number of workers?

Because, again, this is something which was raised by the Petitioners. They've put a lot of ink into it. And what you all are saying is so -- varies so much from what they're stating, it's kind of hard for us to grapple with it.

Mr. Kaplan?

DR. KAPLAN: We'd be happy to do that. Seth Kaplan IER. There's two ways to look at capacity. One is, is there a problem on the output side? And the other is, is there a problem on the input side?

They've chosen -- and when you have capacity shortages, as you've seen, you know, in all these other steel cases, everyone talks about the output side. People have stopped bidding. These guys have not stopped bidding for new projects.

You know, there's incredible delays in getting stuff done? There's not incredible delays in getting stuff done. So from the output side, you don't see that constraint. From the -- and these guys built way more in the past cycle.

On the input side, you do see changes in the number of workers when output goes up. So as you see in the interim period, there's more workers in some of the interim periods than there are in some of the full-year periods.

So you've seen variation. But I guess the question is, is has anyone not been able to produce a project, or refuse to bid because there's a labor shortage? And then the question is, is it industry-wide? So, you know, there's like four buses after a basketball game show up at a 7-11 and they drink all the slushies, you know, there's 12 other 7-11s around. There's more slushies in the area. So you're looking at an industry-wide issue.

And if you have one firm that says that, that doesn't talk about the industry as a whole. And the industry is here telling you it is not a problem.

MR. WELD: Chairman Johanson, Chris Weld from Wiley Rein. In addition to the testimony that you heard this morning from the domestic industry in terms of there being no issue with respect to labor, the staff report on page 27 provides some very I think instructive information in terms of this issue in terms of supply constraints.

The vast majority of the U.S. producers and importers reported 97 out of 118 U.S. producers and 51 of 53 importers reported that they had not refused, declined, or been unable to supply fabricated structural steel since January 2016.

So I think the record from the 118 usable U.S. producer responses and from the importers shows that there are no significant supply constraints, and that is certainly labor is not an issue. So we think that your staff report speaks to this issue.

We would also be happy to, posthearing, put some additional information on the record about this.

MR. LABBE: Peter Labbe with Cives Steel. So you have to be a little careful when you take those statements like "construction worker shortages." They may be referring to field labor for the erection services, as well; on-site construction labor. What we are attracting and what we are hiring is manufacturing positions. And as I stated before in my testimony, we've had no issue with attracting a lot of times service workers that may be paid less wage and not have the correct benefits. We've had no trouble attracting those into the manufacturing sector and training them through our training programs to grow our workforce.

MR. COOPER: Rick Cooper, W&W/AFCO. That's a good distinction that Peter just made. I think what the press report on for as far as construction labor shortages are actually at the job site. It would be laborers, construction, concrete carpenters, everybody that's working on the field side. Again, we're a manufacturer with regard to fabricated structural steel, and our panel has had, and the industry has no trouble attracting workers to join our workforce.

And I also would like to see a -- I think we could probably furnish a list from the major construction companies in the United States to help you with this, help frame this picture. I don't think we will find one that says that the domestic FSS industry cannot supply a project because of schedule or a lack of manpower, lack of labor.

CHAIRMAN JOHANSON: Alright, thanks for your responses there. Once again, if you could refer again to pages 9 to 11 of the Joint Respondent's brief, they do discuss at some length what they perceive as labor shortages in the domestic industry. If you all could respond to that a bit further in your posthearing brief, I would appreciate it.

Are there product certifications that are specific to fabricated structural steel? And if so, can such certifications assist in identifying in-scope structural members of pre-engineered metal building systems?

MR. PRICE: So let me say it this way, which is the metal building systems requirements for the fabricated, for the structural components are typically built to two standards. One is the actual AISC standard, correct? Right. So, and the there is the AISI standard for one set of items called perlins, okay. Those are the standards that are for the fabricated components. There are -- anyway. Anything else?

MR. WELD: Just Chris Weld with Wiley Rein. Just to add to that, the Metal Building Manufacturers Association provides guidelines for complete metal building systems. The guidelines itself state that for the structural components of PEMBs, that they need to meet AISC and I believe there's one other, AISI standards.

So the MBMA guidelines specifically point to AISC guidelines with respect to the FSS components or structural components of PEMBs. We did put that information on the record in the prehearing brief.

CHAIRMAN JOHANSON: Is certification a factor in determining whether a product is properly included in the scope?

MR. WELD: Chris Weld again from Wiley. Our scope did not reference AISC standards. We did for the explicit exclusions that we have enumerated in our scope. We did refer to, for example for pre-engineered, complete pre-engineered metal building systems, we referred to MBMA guidelines for the exclusions with respect to joists and decking. We referred to guidelines with respect to those products as well. But in terms of what is included in the scope, the written narrative is what controls, and we did not refer to AISC standards.

CHAIRMAN JOHANSON: Okay, thank you Mr. Weld. At page 45 of their prehearing brief, Joint Respondents note that only 3 of 28 responding purchasers indicated that domestic producers have lowered their prices. Could you all discuss how this -- could you all just please discuss the arguments they provide either now or in the post-hearing?

MR. WELD: Chairman Johanson, could you repeat that question please?

CHAIRMAN JOHANSON: Yeah. At page 45 in the prehearing brief, Joint Respondents note that only 3 of 28 responding purchasers indicated that domestic producers have lowered their prices. How does this go back to your argument?

MR. TESLIK: Commissioner Johanson, I think we can discuss this in greater detail post-hearing. But I think there are some instances, because the bid data doesn't actually request initial and subsequent bids. There's some, a little bit of inconsistency there and we can point some out with more specific examples post-hearing.

CHAIRMAN JOHANSON: All right. I'll look forward to reading that in your post-hearing brief. My time is about to expire. Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Okay, thank you very much. I'd like to thank you all for your testimony as well. I have one question before I want to move to the

PEMBs. Staff pointed out that apparently at the staff conference last February, Dr. Kaplan in your closing remarks or part of the closing remarks for Petitioners, you stated that if the Commission were to rely on overall bid data that includes out of scope components, that the Commission "will get it remanded in a tenth of a second."

So my question for you today is are you comfortable with the Commission relying on the bid data that we have in the record, in order to make our decision? If you are, how does it differ from what you were talking about when you made that statement?

DR. KAPLAN: If I made that statement, I was talking about complete reliance on one data set, and in this investigation, you have multiple data sets to look at and several ways to infer what's going on in the pricing, including the bid data, some of which does not rely on out of scope elements. The testimony today about the share of erection in the bid data that may, that does, information from the pricing products during the original investigation, testimony about the bidding process and individual bids which we will provide you in the post-hearing brief, averaging at values, statements from the purchasers' questionnaires, compilations from the purchasers' questionnaires about their opinion of prices.

If you look at all of that, I think you could only reach one conclusion regarding pricing in this investigation with respect to whether there has been -- as well as, I might add, the financial data, which shows a cost-price squeeze. So there's always issues, potential issues with data, and that's why when reaching the conclusion, I think, I have myself and I've noted the Commission in the past, relies on all the information available in the record and doesn't, if they don't have to, rely completely on one item.

Of particular interest, for example, is the Commission doesn't like to rely on AUVs. But AUVs are cited in opinions on occasion as other supportive evidence. So I would suggest the Commission follow its usual practice of evaluating all the evidence on the record, to reach a determination that there has been underbidding, underselling and price suppression and depression.

COMMISSIONER SCHMIDTLEIN: Okay. So I know in your submission, you point out the four bids that do have the FSS broken out I believe, and you use that to extrapolate to the rest of the -- to the bids. So my question is how do we know those four bids are representative? Why should we assume that they are representative of all bids?

DR. KAPLAN: Well first, there is other information to -- there were four bids, but there were many bidders, and what that bid -- what that showed was is that the lower the price of the FSS, the lower the price of the bid. We also have information about underselling in the bids that contain subject imports, and I can't go on the exact number of instances. But those are supportive that the bids that were won by the imports were always lower.

COMMISSIONER SCHMIDTLEIN: But given that this is such a project-specific industry, right, with different parameters for each project, why should we assume that the four bids where the FSS is broken out and it shows that the FSS was lower, why should we assume that that's the case across all of these different types of bids?

DR. KAPLAN: It's also consistent with the testimony you've heard that has been uniform of every single witness here, that when they get called into the room at the end, the only reason they're told that they lost was price. But the multiple rounds of bidding beats out the people that can't compete for the project, leaves only the competitors, and the final project is decided on price.

Then in our analysis of using that information, I did not assume that of the remaining bids and share of the imports that were not covered by them, all were awarded because of lower price, although the evidence seems to support that. I only took a small share of that. So I was very conservative in my application of the information from those bids to the remainder of the market. It showed that even a small part could be -- have deleterious and material effects.

I think there is also some analogy, but to the pricing products, where the Commission doesn't have a complete record, oftentimes has low coverage, has issues with the broadness or narrowness of the definitions, and yet the Commission understands that even subject to the non-perfection of the defining of the products, that inferences could be drawn.

In this case, the inferences can be drawn because the evidence is so consistent across the lowest price winning the project. I encourage you to ask any more information about that from the witnesses here. They have an enormous amount of information on a project basis, that that is the way the market works.

COMMISSIONER SCHMIDTLEIN: So in the prior case on FSS, the Commission found that it couldn't rely on data that included other components besides FSS. So do you think the record is different here? There wasn't testimony back then from witnesses talking about the way the industry worked?

MR. ZALESNE: David Zalesne. I can't speak to what the record looked like in 1988, but I can tell you that the level of detail that these, the buyers of these projects require us to break out is much more sophisticated even in the last five years than it was before, precisely because they have more transparency in what offshore pricing can bring them and we don't.

So what has happened to create this scenario where suddenly 30 percent of the market is coming in from these three subject companies, is exactly the scenario that's consistent with whether it's four cases or 14 stories that you've heard here before. You're seeing time and again the other factors being more or less equalized depending on markets.

The cost of bringing labor to New York City or the cost of bringing labor to Florida, or the cost of local labor where the project is being erected is relatively stable. The cost of -- the other things that you, other bells and whistles you might want to see added into a bid are broken out. So it's very clear, and again I don't know how the purchasers are sharing why they made they made their purchase decisions with the staff or how they responded to the questionnaires.

But the data is available to be able to demonstrate, and that's I think what Dr. Kaplan's talking about here, is when you drill down into whether, however big the data size is, you're seeing the same things. The other things that are not FSS are very capable of being stripped out and zeroed out in terms of the factor of how you're looking at pricing, and the fabricated structural steel is the product that we're selling and the product that the competitor sitting behind us are selling.

This is what are making, driving the price differentials, and this is what's driving the buy decisions in our marketplace. We've seen it time and again, whether we're sitting in the same room and told to get their number, and then you have the option to call their bluff, that we're saying no, we're going to walk out and you lose the bid. Or you say okay, I'll get to their number and you take it below market.

You don't know. We don't know what goes on behind the curtain there in that bid, except for what we see in the pricing. You ask the question -- almost every Commissioner has asked the same question, how do you know? We know by what we see happens in these bids. We know we spend months and months sitting in these rooms. We bid the project, we know what it costs to erect, we know what every other component of these bids are, and our customers know it because they're very sophisticated buyers and they're drilling down and they're looking very closely at what every component of everything in building is going to cost.

The fabricated structural steel that we're seeing coming in at these numbers and you see the margins that Commerce found on the data, right? It's just not sustainable to be able to compete in a highly competitive market with those kinds of differentials that you're seeing from the countries that are the subject companies, countries.

COMMISSIONER SCHMIDTLEIN: Okay, thank you. Mr. Price.

MR. PRICE: Yeah, Commissioner Schmidtlein, I'll address the differences in more detail in our post-conference, in our post-conference brief.

(Simultaneous speaking.)

COMMISSIONER SCHMIDTLEIN: Okay. I invite you to do that.

MR. PRICE: Our post-hearing brief. The one thing I would say is that was a prelim. There was really very, very limited data. There was really very, very limited information developed in that case. Here, you have a much more developed record on a variety of different, on a variety of different issues here too.

And so you have more testimony, you have many more questionnaire responses from domestic producers saying the same similar things. You have far better coverage. So overall I would say it's a very different record, and we'll go through that.

COMMISSIONER SCHMIDTLEIN: Okay, all right.

Thank you. My time has expired. Thanks.

CHAIRMAN JOHANSON: Commissioner Kearns.

COMMISSIONER KEARNS: I guess just picking up where you left off there Mr. Price, you mentioned that that was a prelim. It was also before American Lamb too, is that right?

MR. PRICE: Correct, okay. It was until the legal standards fundamentally changed following American Lamb or the understanding, the understanding of it. So we'll --

COMMISSIONER KEARNS: And related to that, I mean I need to go back and read that case. But from what I've heard about it in the last few days, it sounds like we basically said we just don't have good data, so we're going negative. But it seems to me like, as I think Dr. Kaplan said earlier, like that's not the right approach. Like maybe the data here is harder and there's more noise in the data here than we have in some other cases.

But and I'd ask Respondents to comment on this as well. But I mean we've got to do the best we can. We can't just throw up our hands and say gosh, this is a tough one, right?

MR. PRICE: Yeah, I agree and generally, you know, the Commission just like the Commerce Department has to use the facts available before it, right? Just because the facts are complicated and different and messy doesn't say oh, you know, that's it, we're done. Unfortunately, one of the reasons why there is limited is that we didn't get some of the data sets that we had requested to be put together for the final determination. That doesn't mean it -- that doesn't mean that's an excuse for them saying "never mind."

COMMISSIONER KEARNS: Okay, Dr. Kaplan.

DR. KAPLAN: This is my -- well it's in the single digits, not the first time. But this is the -- this is the Respondent example of the hutzpa defense again. You walk in and say don't collect the data that will get you the information you need. Collect this type of data and then walk in and say lookit, you've collected the data I asked and now you can't make a decision, after like opposing the data that allows you to make a decision. Now I think you have more than enough data to make the decision, but it seems no small irony that their defense is based on rejecting a data set that you had in the prelim that would have given you more information, and I think you could use now. But to handicap us based on their choice of data and the rejection of ours seems to be, you know, problematic from our perspective for sure.

But once again, I think you have a much richer data set, lots of information and as we have noted with

Commissioner Karpel, that we would be more than happy to provide additional information. And if you after the hearing felt that we can give you information that would help you in this determination, we would be more than happy to provide it.

COMMISSIONER KEARNS: Right, and I guess I'll tee off of that. First, I just was corrected. American Lamb was '86, so I was wrong about that. But in terms of additional information, I think one thing I would ask is -- so as you've -- as the witnesses have heard, we don't from the purchasers have very many cases of itemized bids here.

So I guess you guys can help us with this post-hearing if you want or now, what should we be requesting? Who should we be requesting it from? I mean we could ask the purchasers again for itemized information. I don't know if that's the right approach. I don't know if you all can provide us with the information that you provided to purchasers.

I guess the shortcoming of that is what about, what did the foreign producers or what did the importers, what information did they provide? So any thoughts you have on what we can with that. Another thought on this is well, as Ms. Noveletsky said and others have said, you know, the final bidding is often done in meetings. Any contemporaneous notes you have or emails you have that help establish that the reason why you all lost bids is because of price and the price of subject imports, that would be helpful as well.

MR. PRICE: We'll be happy to, we'll be happy to address all of those. This is a -- we will get you what we can and make suggestions and suggestions that are realistic given the schedule in this case now that exists, because that's part of ^^^^ it's just a practical issue. This is hey, I'm sitting here representing three domestic producers of widgets. This is a very large industry, and Commission staff only sent out questionnaires to a sample of it and it's still probably one of the largest questionnaire collections I've ever seen.

And so there are just practical components to this both for us and the Commission staff at this point in time.

DR. KAPLAN: Yeah, I point out -- Seth Kaplan, IER -- that I think given the multiple sources of information you have, you have all the information you need to make a reasoned decision, justified by many data points and many sources. But we will supplement that and given that these sources are reaching these same conclusions, we have little doubt that our supplement will support the conclusions we've reached, that are consistent across the different data sets that you already have.

COMMISSIONER KEARNS: Okay. We're going to move on, but Mr. Price.

MR. PRICE: Actually, one point I just want to come back to is a large portion of the Respondents' cases, first saying you know what, 60 percent of the bid, of the project is essentially non-subject. That's just dead wrong from the data, from what the testimony you have here. It's roughly, you know, at 75 percent that's subject. So you're talking about a much smaller component than they're making it sound.

Not only are you hearing testimony on that, but the data from the data sets you have confirm that, and when Mr. Kaplan did his estimations, he pulled it and he pulled it in the most conservative way against us in doing -- in performing that analysis, which confirms what our testimony is, which is -- so I just want to point out that it's not mostly services and somehow little FSS. It's mostly FSS with a little bit of services.

COMMISSIONER KEARNS: Okay, and this isn't where I wanted to go right now, but since we're there, can you comment on page II-10 of our staff report? We have the average reported cost shares for some of the uses, and there seems to be a very wide range here, including I mean wind turbines, one percent; L&G 1.5; power plants 5.2. We've been hearing from the PPM folks, this says 36 percent there.

So what do you have to say about that?

MR. PRICE: So let me just say FSS -- so you're talking about the entire wind turbine project. Wind turbines are not in these scopes, okay? Just, you know. So it kind of depends on what you're, you know, what these --

COMMISSIONER KEARNS: Erection services aren't ever in the scope, right?

MR. PRICE: Correct. But to sort of pull in wind turbines and say somehow or other that these vast gaps are not, FSS is principally not going into these types of services in a project. They're talking about the entire project, not the bid for this set of components.

COMMISSIONER KEARNS: But PPMs are in the scope.

MR. PRICE: Correct.

COMMISSIONER KEARNS: And would include things besides FSS.

MR. PRICE: And we will address that post-conference.

COMMISSIONER KEARNS: And I just gave the number for PPMs.

MR. PRICE: Yep, yep.

COMMISSIONER KEARNS: Which was 36, which is less than half what you said is the consistent number.

MR. PRICE: Metal building system. So let me just suggest that we'll have to also look at the data there, because many of the statistical analyses they have in the way they form that data set is very -- we fundamentally disagree with it.

COMMISSIONER KEARNS: So this gets to the question I actually wanted to ask eight minutes ago, which is, I mean one of the U.S. producers has stated that the FSS industry provides man hours, not tons of steel. Is the distinction between assembling FSS in a FSS factory versus assembling and erecting structures on site using FSS somewhat of an artificial distinction?

In other words, if I join two FSS pieces together at an FSS factory, the output is FSS. But if I ship two pieces of FSS to a construction site and join them together, is that FSS or is that part of the finished structure using erection services?

And the reason why I ask is, for one thing, it helps us with the bidding, thinking about the bidding information, right? Because maybe I can be a little bit less concerned about the bidding information if this, you know, this erection service isn't some totally foreign concept, but it's basically the exact same thing you would've done at the FSS factory, it's just that you chose to do it later. I mean, to some extent, you're putting things together either place, right?

MR. PRICE: Yeah, so it's a good question and its one I hadn't thought of before, so let's respond in the post-hearing brief, because I think it's a very valid question.

COMMISSIONER KEARNS: Okay, well, then, while you're at it, maybe post-hearing, if that distinction is somewhat artificial, which would I think help you on the bidding thing, isn't it essentially between PEMBs and PEMB components also artificial? If so, shouldn't the domestic like product include PEMBs and not just PEMB components? And if it shouldn't include PEMBs, why does it include PPMs?

That appears to be an arbitrary distinction within the scope, without any clear dividing lines. The Commission has in the past expanded the domestic like product beyond the scope, why shouldn't it do that here? So it seems like we've got all these different categories of things.

All of it is about manpower and putting things together, but we have all these distinctions that are creating problems with our bidding data, with the domestic like product. So helping us understand that, and to the extent you can do it before the post-hearing brief would be helpful, because I think, obviously, everything follows from this, right?

MR. PRICE: So let me go through each of them.

There are arguments as to why each of these are separate like products, which we can, you know, and why those are reasonable dividing lines. If you want, we can start working down that line of questions, but you know, it --

COMMISSIONER KEARNS: Well, my time's up. Maybe what we do is come back to that when I come back --

MR. PRICE: Okay.

COMMISSIONER KEARNS: I appreciate that. Thank you.

CHAIRMAN JOHANSON: Commissioner Stayin.

COMMISSIONER STAYIN: In terms of market share, the domestic industry increased its market share by quantity from 61.1% to 63% from '16, over the period. In the interim period, it increased to 67.8%. Subject imports share the market by quantity, remain relatively flat and the value decreased by 0.8%.

The argument that the respondents make basically is that the U.S. industry has increased its market share, both in quantity and in value, whereas the imports have remained relatively flat. So to the extent that there has been injury, the argument is that injury is caused by something other than these imports. Will you comment on this, please?

DR. KAPLAN: Seth Kaplan, IER. The question I'm addressing is, in each year of the period of investigation considered by itself, given the underselling and underbidding and lost sales, would the domestic industry have had higher profits and higher shipments?

So the difference between what we see and what we've lost is the injury at a point in time over that year. And we think that's a lot. We think we could've made, when they're 30%, we could've made a lot of that 30% in '16 and '17 and '18. And we think the pricing of that 30% lowered our profitability in '16, '17 and '18.

And so over time, our market share went up a bit and that's what you're referring to. What I'm saying is that in every single year, we should've been here. We should've had more, and the reason we didn't get more is because we walked away because the price was too low. We took a lower price and took the job and got hurt in profits. And we see that in why we aren't performing well at the top of the cycle.

And the evidence to that is not an abstract notion is in the lost sales, and the evidence that's not an abstract notion is the testimony that we had to lower our prices and that we walked away from projects. So that is our view that at the top of the cycle, we aren't doing as well and that lost sales and lost revenues are in themselves, they but for a concept.

What is a lost sale that's documented, but an instance where the domestic industry would have garnered the sale and what is a lost revenue except an instance but for our revenues would've been higher. And we think the record shows that there's an enormous amount of that going on, some of it observed and some of it happening that is not documented instance by instance because of the way the market functions.

There was a recent case involving fittings where the Commission in its opinion said, but of it, the Commission was gonna, that industry would be doing better. We look at the conditions of competition. And that's why I started with those conditions of competition. It's head-to-head, project-by-project, penny-by-penny who wins this. It's not some inchoate market determination where there's lots of buyers and lots of sellers and you can't trace this stuff.

We have specific testimony about projects and specific testimony about the way the market works, and that's unrebutted. Everybody says it's a project-by-project basis and the record shows that the winner is by price. And so I think that information allows you to conclude there's injury despite the fact that import penetration went up. And I think the statute recognizes that. They don't say, "Let's look at the significance of imports, let's look at the increase in imports relative to consumption or production."

There is a first statement that says, "Look at the volume of imports," absolutely, "and as a share of production and consumption." And then it says "or", it's a disjoint. We're saying the first part here is both significant and it's a causation mechanism which channels injury to the producers in the domestic industry.

MR. COOPER: Rick Cooper, W & W/AFCO. The last comparable construction cycle to the one we're in, or the one that we're in in the subject period was 2006 through 2008. We had, our industry had 90+% market share at that point in time. Our margins were considerably, materially higher than what they were through this period.

And we were able to strengthen our balance sheets through that period, strengthen our financials to go into that downturn, which was extreme, obviously, but the industry was very well-prepared because we were able to realize the benefits of a really robust market place in 2006 through 2008 by having over 90% of the market. We have much less than that today. So a small percentage increase in market share over the subject period really is immaterial.

MR. PRICE: Alan Price, Wiley Rein. Let me just go back to a statutory point for a second. So in evaluating relevant factors under the statute volume, in evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise or any increase in that volume, either absolutely or relative to production or consumption is significant. The fact that it's disjunctive means that you don't have to have increases.

The question is, is the volume significant? The volume here is significant. I would say the volume here is significant on the 30% calculation, based upon the staff report and just like we're doing scaling in various places, they're doing scaling in various places, right? Or it's 20%. This is a significant volume, particularly where there is substantial and significant, you know, sales where everyone is basically head-to-head competition going on, bid-by-bid, project-by-project.

So these are very substantial, these are very important and what I would say here is that the record here shows that there is a volume effect, we would've done better as Mr. Kaplan has said. And you can see pricing, then you can see impacts here, because this industry is performing far worse than it did in the last strong business cycle.

DR. KAPLAN: If the Commission wishes to look at trends, and they could certainly find that the underbidding has caused operating profits to decline over the three years of the period of investigation in the largest upcycle since the pre-recession housing surge. So if the Commission wants to in addition, as they always do, look at these trends, the pricing data, the suppression of the profit margins and the decline in the operating profits, during an upswing in the cycle, given the high level of competition and the large volume of imports, shows that there is material injury over the trend. I would say substantial injury as an economist. You guys are --

MR. PRICE: Yeah, let me just hit this one. Personal, there's also a significant gross profit margin decline going on, again, seeming inconsistent with what you would expect in a strong period. As we have explained, when you -- the data set, whether you're applying the captive consumption provisions or in the various exclusions and so forth, both as a condition or competition or applying the statute as saying that there -- or looking at the problems in the data set, then the injury is more clear in the merchant market, what would be characterized as the merchant market or what would be here or with the proper, the reported data set from several of the manufacturers out there.

MR. ZALESNE: David Zalesne. If I could, just stepping back from the U.S. Code and the economic analysis for a second to kind of how this works in real life, if we're bidding a project and we're faced with the threat of off-shore competition from one of the subject companies, you have to make a decision. Are you going to get to that price? Or are you going to walk away from the job?

And what you've heard in the testimony is, people do both, right? They'll walk away from the job, or sometimes they'll get to the price. If you get to the price to make the decision to keep your shop busy, your market share number really isn't going to move that much.

I might -- you might be able to maintain a relatively stable market share, but to follow up on the point Alan was just making, and Seth would make from an economic standpoint, if you're doing that at artificially suppressed prices, if you're doing that in a -- if you're maintaining your market share but at artificially suppressed prices, that's an unsustainable economic model.

And when this started, we would see this in the biggest of projects, the very big projects. But you're heard testimony today about 800 ton projects. In the structural steel world, that is a relatively small project.

So the trend, as you start to see moving from just the very biggest of projects to mid-sized projects to medium-sized projects, whether it's in a building in New York, or a school in Massachusetts, or an 800-ton project in Alabama, what you're seeing is penetration which ultimately will be unsustainable to even maintain market share.

And again, these deliveries may happen in a period after the date of the original bid sale. It's not like we just bid the job and all of a sudden all the steel is delivered. So there are some -- I would suggest to you that in looking at these various factors in the economic data, that the market share would be a little bit less relevant in this context in terms of exactly where the tend is going because you can make a decision to maintain market share at an artificially low price and still sell the job, but still end up in the long run having a problem with your, not just a single company but the industry as a whole.

And again, I think the trend we're seeing is smaller and smaller projects, farther and farther, deeper and deeper market penetration both geographically and in types of projects, and that's an unsustainable model if you're going to maintain market share at artificially low prices.

MR. LABBE: Peter Labbe with Cives Steel. I just wanted to kind of practically tell you my position without statutes or anything like that.

In the last great up-cycle in our market, we had much more of the market share. We were able to raise prices. We were able to raise margins. And we were able to prepare ourselves for the inevitable downturn in the construction market.

So we were in a much better place as a company going into the last down-cycle so that we could keep our people employed. We could go chase cheaper work, if we needed to to put the hours in our shop so that our people kept their jobs and their benefits.

We are not in that position right now because during the POI the subject imports chopped our ability to raise margins. So I know our market share was flat, and our margins stayed whatever the data shows you there, but I'm telling you we should be in a much better position today to weather the next down turn, and we're not.

COMMISSIONER STAYIN: Alright, thank you very much. That's the end of my time. I appreciate your answers.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: Thanks. I just wanted to ask a quick follow-up question. I think it was Commissioner Kearns who had cited to page 2-10 of the staff report and asking about the percentages of end products that FSS makes up.

I also had that question. And then I started reading page 2-11 of the staff report. One of you also mentioned that there maybe is a terminology issue with the word "project." And it struck me that the word "project" as used on page 2-10 is different than the word "project" used on page 2-11. And I wondered if you could either speak to that now, or just take a closer look and address this in your posthearing, but I feel like they even mention "land" on page 2-10. So land is clearly not part of an FSS plus erection services component of a project.

DR. KAPLAN: Seth Kaplan, IER, that section is typically used as a precursor to the elasticity of demand discussion. And the idea is that the lower the cost share, the more inelastic the product is.

I think economists for Respondents and I both agree that demand is inelastic, but that is what the discussion is about. And your point is extremely well taken. It's what share of the final thing it is.

And so if there's a $23 billion something that's being done, and you're like one-tenth of one percent of it, your price change is not going to affect the demand for that final project, writ large. It's not a project in the sense of an FSS bid project. And I think you've hit the nail on the head. And I think the reason it's there is because it's in every single staff report in Chapter 2, there is a discussion of the cost share and it's all about the elasticity and how price sensitive the product is given the final demand for the product.

So, right, small, tiny share, it's not going to affect the demand for the final product, a larger share it will, but very different than what you're talking about FSS projects that we've been discussing.

MR. PRICE: The simple answer is, you're correct. There is a fundamental difference.

COMMISSIONER KARPEL: Another follow-up. And again, we have lots of questions, so this is better for posthearing, but I wondered if maybe another factor that we should be considering in the price analysis is an example that was given about Schuff Steel, and that they were a U.S. producer that won a contract, but then subcontracted for Chinese steel in that project. And I'm curious how often that happens? And are we really capturing -- have we really captured that in any of the pricing data? Because I think that would still show up as a bid won by a U.S. producer, but then there's a foreign producer element of completing that project. So...

MR. PRICE: So there are projects we know that are clearly 100 percent foreign, 100 percent domestic. There are some like that. There are some with, I'm not sure if the bid data allows you to get to that specific. That particular set of bids, that bid, though, and how it's described in there, fundamentally the way some of that question-- some of what you're seeing from the purchaser was not very accurate because, talking to the client here, is that they conflate an A bid with a B bid. So it originally was awarded to W&W with domestic fabrication. The bid changed fundamentally. The project changed because there were -- without going into detail. There were horrendous design problems with that stadium because it was too big, and too tall, and it was right in the LAX flight path. So there were just all kinds of problems there.

Then the owner, as Rick explained, basically said we've got to save every dollar we can. The stadium was still being built, but we have to save every dollar we can. Rick wasn't willing, as the design moved along, to say I'm going to keep that original bid because the price of what had to be fabricated fundamentally, you know, was fundamentally changing in design, okay, and became more specific as it --

MR. COOPER: Correct, but the -- the comparison that we have with the Chinese bid that we have in our possession is apples to apples with the price breakdown that we've given. And I think it's -- go ahead, Alan.

MR. PRICE: Yes, no, go ahead.

MR. COOPER: Well, and I don't know where that is. I don't know if that's a matter of record yet or not.

MR. PRICE: Right. So the bottom line, though, on all of this, let me just hit this in one second, is that there are some bids that have some mixed componentry in it, but most of the bids, if it's principally a domestic bid, was a domestic fabricated product, there may be -- and, you know, most of the foreign bids are principally foreign-fabricated product. There are some foreign bids, by the way, that contain a mixture of subject countries in them because they actually have been bid there. And we can go through the specific bids. Some of them are public. Some of them are not. But there's a mixture of some Canadian and Mexican bids out there, for example, on some very prominent projects. So we can address that more in the brief.

COMMISSIONER KARPEL: So it's not -- so it's not common that a U.S. producer would win a bid and then use imported FSS to fulfill whatever the contract terms end up being?

MR. ZALESNE: David Zalesne. If I could answer that quickly, the full-member fabricators that are the Petitioners are not in the business of brokering steel around the world, okay? We're not brokers. We understand why people want to buy cheaper steel. We understand all the economic impacts. But our membership, the Petitioners here, are companies that make the product domestically.

And, yes, there are times when companies will do cross-border transactions because of certain, whether it be a schedule issue, or a price issue, or other things that happen, but that's not the business model that the American structural steel industry was built on, and that's not the businesses that the Petitioners in this case are in.

So there are people who will broker steel, and there are people who will make that, and they don't actually do anything other than broker steel. They don't make anything. They don't produce anything. If, as part of a bid, a component is bought offshore for whatever reason it happens -- we're not going to say it doesn't happen -- but the vast majority of the data that you will see and the data that drive this, it's either fabricated here, or it crosses the border. And you can tell fairly quickly whether it's coming across the boarder, regardless of how some of these prices are structured, and you can see if it's coming across the border or you can see if it's fabricated here.

So I think the model that we're talking about here is what goes on in domestic fabrication shops.

COMMISSIONER KARPEL: Thank you for the clarification.

So I want to turn to a different question. I want to better understand how the domestic industry is calculating or arriving at its capacity figures. The Respondents had some discussion in their brief, in particular the Economic Consulting Services had an analysis suggesting that the capacity was overstated. I wondered if you could respond to that.

MR. ZALESNE: I'm sorry, I was taking a breath.

When you measure capacity, when a fabricator says we have the capacity to do 20,000 tons a year, you're taking into account what your labor is, what your square footage is, what your crane capacity is, you're taking all that into account to figure out what you say your capacity is.

And everybody in this industry -- I heard, you know, one of the Commissioners cited some language about selling manhours, and all that -- people can talk about all sorts of different metrics in the industry, but everybody posts on their website both domestic and offshore what their tonnage capacity is.

And buildings are measured when the engineers sit down and ask what we're paying for. They're looking at the tonnage. They don't care -- nobody cares how many hours it takes you to get to that tonnage. They care that you have the capacity to get the tonnage to the site on the schedule. And that's what we sell.

So that when you say you have X number of tons, you're factoring into it how much square footage you have, how much equipment you have, how much labor you have to be able to make that.

So these are -- and how everybody formulates that would be proprietary within their own business as to how much their combinations weigh into that. So I don't want to get too deeply into how you make that point, but if you have a plant with X amount of square footage, and you can put so many people in that plant, and so much equipment in that plant, you can calculate out what you expect to produce from that plant. And that's your tonnage capacity.

COMMISSIONER KARPEL: Okay, I'd be interested in hearing from others, too. But so what I basically understood from you, though, is it's based on the square footage of the plant, plus the equipment in there, and --

MR. ZALESNE: And labor.

COMMISSIONER KARPEL: And so if you could talk a little bit how you factor labor in there, because you could have a huge plant with lots of equipment running multiple shifts, but if you don't have any people to work there it's not much capacity.

MR. ZALESNE: No, and that's why I'm saying to you -- and again when you -- you have to -- nobody builds a plant and puts a lot of excess capacity on the floor that can't be -- get a return on the investment that you have in that plant.

So when you structure -- when you build a plant, as everybody in this industry domestically and offshore does, you look at how much space you're going to have, and how many people you can put into that space, and how much equipment you can put into that space, to be able to do the processes that are involved in what type of structural steel you're fabricating.

And so there are-- again, there are proprietary differences in how people value -- how much equipment people have versus how much labor. So at the end of the day, you can replace some labor with some equipment. You can have some labor -- some types of processes that are very hard to automate and so it requires manual labor. But at the end of the day, your capacity, if you see aggregate capacity data, that data already has baked into it in the aggregate capacity what everybody's fab shop has as their capacity to be able to do.

So when we sell work, we're selling work to that capacity. We're selling work to that back lot. And if you hear, you know, Rick, Cives, people have multiple plants, they have multiple options within their organizations to be able to fabricate big projects. And so those data, you have to look at it in the aggregate as opposed to looking at an individual plant. But everybody's individual plant data is based on the same types of factors.

MR. LABBE: Peter Labbe with Cives Steel. I also want to go back to the point I made earlier that labor shortages don't exist. So we are calculating our capacity based on those square footages, and our equipment, knowing that we can grow our labor force to meet that demand, if we can actually get the work in the door, which is why we're here. That's what we've been struggling to do, due to subject imports.

So just to recap, our equipment and our square footage are kind of driving our capacity and what we've reported, because as we've all testified we don't have a labor shortage.

MR. PRICE: We'll come back to two notes here. One is, I find it ironic that in fact the Canadians argued this at the prelim and are arguing it here, when in essence in their own case they measured their capacity and argued for capacity measurements based upon -- based upon what they, what they -- based upon tonnage.

And just like you hear the members of this industry, that tonnage already bakes in the labor availability here. And I come back to one other real basic fact, which is in the interim data, in the interim period, this industry all of a sudden when they felt in interim '19 that the market, that we fought, the case was filed, there were opportunities here, started to hire right away. And they were able to pay workers to come in and do it. No shortage of that.

You know, so the abilities to do that are there, and their arguments on capacity are wrong. And we will go into more detail in the post-hearing brief.

CHAIRMAN JOHANSON: Alright, I have a question which will follow up an issue that was raised by Commissioner Karpel.

Do domestic FSS producers use imported steel? And if so, if the steel is imported but the design and fabrication are completed in the United States, is that a domestic product? Further, do we need to make any adjustments to domestic production to account for any non-U.S. steel?

MR. LABBE: Peter Labbe with Cives. To clarify, are you asking about do we use raw material from other places?

CHAIRMAN JOHANSON: Do you use imported steel in FSS production? I assume you do.

MR. LABBE: I can speak for myself that it's very occasional that I would. Most all of my steel supply is domestically produced to use -- to produce the FSS.

MR. McPHATTER: Chet McPhatter, Banker Steel. The same, most of our steel comes from the U.S. There are a few sizes that you have to buy internationally, but I would say 90 percent to 95 percent of our steel comes from the U.S.

MR. COOPER: Rick Cooper W&W/AFCO. We buy 99 percent domestic material, raw material sources.

MS. NOVELETSKY: Hollie Noveletsky, I would agree. We buy mostly domestic, unless they're an usual size.

MR. DOWNS: Jed Downs, Qualico. 99 percent only with the situation that it was not available in the U.S., and most everything is available in the U.S.

CHAIRMAN JOHANSON: Okay, but given that this is a giant industry and there are many, many steel fabricators out there, I assume that a fairly sizeable percentage would use imported steel. And if so, how should we take that into consideration?

MR. McPHATTER: Banker Steel, Chet McPhatter again. For us, as far as using foreign steel, we don't subcontract work. We don't subcontract a lot of work to any domestic fabricators, much less offshore fabricators. We do all of our work inside, in our facilities.

MR. PRICE: I would say that -- Alan Price, Wiley Rein -- any data on that should be reflected in an importer questionnaire, if there's a need for an adjustment in the record. But, you know, we'll address this in more detail in the posthearing brief.

CHAIRMAN JOHANSON: Yeah, if you could, I would appreciate that.

MR. WELD: Chris Weld with Wiley Rein. Commissioner -- Chairman Johanson, if you're referring raw steel mill inputs that are being imported, that -- that's not covered by this case. The raw steel mill input is not being covered. So if somebody is bringing in a beam and then fabricating it here, that is covered. But the actual import of a non-FSS product, the raw steel mill product of something that comes off the mill, that's not -- that shouldn't impact your analysis.

CHAIRMAN JOHANSON: Okay, thanks for your response. Feel free to follow up on any of this in your posthearing brief.

Material costs for the domestic industry have risen significantly during the Period of Investigation. How much of this is attributable to the Section 232 and Section 301 duties?

MR. ZALESNE: David Zalesne. I'll take a first shot at that. I'm going to start with the premise of your question. I'm not sure material prices have risen consistently through the Period of the Investigation. Domestic raw material prices, certainly for beams in the construction market, have remained in a fairly narrow band for a decade in terms of pricing.

There are spikes around various impacts in the economy, whether it be scrap pricing, whether it be short-term impact of the 232. But if you look at the history, really even in the pricing since the 232, steel prices on beams came down significantly, went back up a little bit significantly. They trade in a fairly narrow band. And for the most part, they're priced around the timing of the project bid. So everybody's looking at steel pricing for a project bid at the same time in the marketplace

In other words, if it's March of 2018 and you're bidding a 10,000-ton project, we're not looking at how pricing has gone in 2017 and where it's going in 2019. You're looking at what you're going to be able to buy the steel for that project for in 2018.

So raw steel input pricing is a relatively level -- a relatively neutral factor in that analysis, because we're all bidding on -- we're all placing the bid based on where steel prices are in the market at that point in time.

So it can be neutralized in your evaluation, whether you see it rising or lowering at some point in the analysis. We don't think the 232 has had a major long-term impact on steel prices. You know, obviously there are other things the Administration has done that have spurred the construction economy, which have other factors in terms of on the demand side over the past two years, but the 232, in our view it's really not done all the bad things everybody thought it would do. It's not done all the great things everybody thought it would do. It's just been a short-term pricing impact that has really been kind of baked into the pricing that you see in these bids.

MR. COOPER: This might help frame it. We are paying less for a beam from domestic mills than what we did in 2007 and 2008. Prices have increased a little bit. I think I would argue that the reason that they've had the recent small increases in raw material prices has been based on demand and not necessarily the 232.

MS. NOVELETSKY: Hollie Noveletsky. With the small increases due to market demand, we've been unable to pass along those increased costs due to the downward pressure from subject imports. And that has squeezed our margins and depressed our ability to get ready for the next economic downturn.

MR. LABBE: Peter Labbe with Cives Steel. I would agree that any fluctuations in the material prices during the POI, the vast majority of those fluctuations were due to market demand and not directly due to the 232. There may have been some small impact that very quickly self-corrected itself, and most of the fluctuations I saw were totally market driven.

Unfortunately, the subject imports prevented us from passing any of those fluctuations on through our bid process, and again explaining why we were not able to capture more market, utilize more of our capacity and make bigger margins during that time period, similar to what I said previously. Thank you.

MR. ZALESNE: I'm sorry, if I could. The one impact that has made, moved the needle in the marketplace from our perspective was the filing of these petitions. Everything else that happened in the two years prior to or the early part of this Period of Investigation as we were looking at it, were ups and downs of the market.

This has been the first time since these petitions have been filed that purchasers of fabricated structural steel have really started to look at it. You see in the most recent data some shifts in some things in 2019, some import impacts. This case makes a difference. This is the case that has moved the needle in terms of protecting the domestic industry. The other policies of the administration, whether it be a tariff, whatever, other things, ups and downs in the market. In fact, I would point out that when Commerce came out with its preliminary ruling it had de minimis numbers on some of the subject imports, you saw a press release issued within a week saying hey, Canadian contractor has now just sold its biggest contract ever in New York, partnering with their partner from Mexico on 50,000 tons of steel.

This case makes a difference. What you, with all due respect, what the Commission does is the one thing that the market will pay attention to on fabricated structural steel. The other, the other policies and tariff issues are all background noise to what happens in this marketplace.

MR. PRICE: Commissioner Johanson, there are a couple of different issues here. One is sort of what's going on in the overall economy and sort of what picture or time frame you're looking at.

When you look at your record, which is I think where the Commission starts to focus on it, there's no question that the cost of goods sold increased. A large part of that increase during the POI was, happened as there was an acceleration of steel prices, which has dissipated to some degree more recently.

The COGS to net sales ratio shows that -- shows that the cost of goods sold increased, and the industry wasn't really able to increase commensurate to not suffer harm to its gross profit margins.

MR. DOWNS: This is Jed Downs, Qualico Steel. I'd like to piggyback what Dave said, the impact of this case. We know of several large projects that the purchaser is sitting on the sideline waiting to see what occurs with this case, to whether they're going to buy from one of the subject imports or whether they're going to buy domestically. And so again to piggyback and say this case has tremendous impact.

CHAIRMAN JOHANSON: All right, thanks for your responses. My time's about to expire, but I would request that you all, in your post-hearing brief or now if you'd like to discuss it a bit, look at Table VI-3 at page VI-8 of the staff report. There's some numbers there involving a discussion of raw material costs, which do indicate, from what I could see, a fairly sizeable increase in raw material costs. If you could discuss this a bit further, I'd appreciate it. Do you see that Mr. Price or whoever else is looking? Page VI-8.

(Off mic comment.)

CHAIRMAN JOHANSON: Okay, yeah. This is VI-8, Table VI-3, if you look down at raw materials.

(Pause.)

MR. PRICE: So I'll address this in more detail. But you do see an increase going on as the 232 moves forward, and you then see a decline in some of the most recent period here. So there's no question that the data shows that there is, there is a raw material cost increase that is occurring in this period, and then the question is what is the industry -- is the industry able to increase its gross profit margins, which you would expect in a strong market or not, and the margins in fact did not decline. They declined by 2.7 percent.

So here you are in the peak of the business cycle, and the benefits of that business cycle did not, were not -- the industry couldn't capitalize on because of the subject imports were essentially suppressing and depressing domestic prices.

MR. ZALESNE: Just I hadn't really studied the table, but just to follow up on it, the timing of the 232 goes into effect in March of 2018. So some of the data, I think, is showing that prior to March of 2018 there had been some depression in steel pricing. It then came back up in anticipation of what might happen.

But your specific question was on the impact of the 232, and I would suggest that if you look, if you drill down a little deeper into post-232 pricing, you won't see -- you'll actually see a decrease from where they were pre-232. So my point being I'm not going to get into all the economic details about what 232 might or might not have done or psychology, but I don't think --

I think if you're looking at specific timing of that aspect, it really washes out for purposes of the analysis you have to make, because the timing was March of 2018. The data where you see that spike is 2017 to 2018 period, and then it comes back down again after that. So I think that is a neutral factor or --

MR. PRICE: No, let me just jump in. It's again different producers and you see the data in the aggregate here. The data in the aggregate would show that there has clearly been a cost-price squeeze going on. You see that in the margins that are going on here, and as a result of that it is having an injurious -- the imports are having an injurious impact by suppressing the prices, suppressing gross profit margins by 2.7 percent; suppressing -- in the three year period suppressing the operating margin.

So there's a significant impact. It just depends on and in the sense that the imports are having that suppressing and depressing effect on the ability to capture the benefit of what is strong demand in the marketplace.

CHAIRMAN JOHANSON: Okay. Thanks for your responses. My time is expired. Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Okay, thank you. So I'd like to take a line of questions about the domestic like product, and starting with the pre-engineered metal building systems, one of the arguments that the Respondent makes, that they say supports the notion that there's a clear dividing line, is that the petition did not include certain large producers of components for PEMBs as potential producers of the subject product, FSS.

So I wonder if one of the attorneys could speak to why the petition did not include those particular producers, if this product is indeed viewed as I think what's being referred to as conventional FSS.

MR. WELD: Chris Weld with Wiley Rein. We did not include every -- the name of every fabricated structural steel producer in our petition.

COMMISSIONER SCHMIDTLEIN: Are there any producers of PEMB components included in the petition?

MR. WELD: I'm not sure of the answer to that. I can -- there were, there were -- we provided the Commission a list of 900 members or thereabouts of AISC. What I would say is that companies like -- that produce pre-engineered metal building systems are part of a different association. They're part of the Metal Buildings Manufacturers Association, so which is why our scope explicitly excluded the complete metal building system.

So at the time, we're thinking okay, a company that produces a pre-engineered metal building system, they're not going to be part of this. But those companies do and we've, I think very quickly on realized that those companies do utilize fabricated structural steel components in the pre-engineered metal building. So we from the very first iteration of our scope that was filed publicly with Commerce, explicitly excluded the complete building built pursuant to MBMA guidelines, but our argument is that fabricated structural steel components of the complete system are included in the first paragraph of the scope, which talks about fabricated structural steel.

That's structural steel that's fabricated for erection or assembly into a structure. So we in our prehearing brief provided a very detailed breakdown on why we believe that fabricated structural steel components of pre-engineered metal buildings is part of the like product, while there's plenty of other --

COMMISSIONER SCHMIDTLEIN: Okay, I guess -- but you don't know whether any of the producers that you did list in the petition actually make components for PEMB?

MR. WELD: Well, some of the producers that are here this morning make fabricated structural steel that's utilized in pre-engineered metal buildings.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. WELD: Peter, can you speak to that, that there are certain domestic industry fabricators that produce fabricated structural steel --

MR. LABBE: Peter Labbe with Cives Steel. While I don't personally sell to pre-engineered metal building system companies, I do know of other fabricators that are AISC members and part of this petition that do sell fabricated product to pre-engineered metal building systems companies, and they would do it through a very similar process that we sell our fabricated steel, meaning a competitive bid process. It just is a different end user than ours.

COMMISSIONER SCHMIDTLEIN: So and who is their end user? Do you know?

MR. LABBE: Well, the end user I'm speaking of is the pre-engineered metal building company. So I am selling --

(Simultaneous speaking.)

COMMISSIONER SCHMIDTLEIN: Do you know who that is?

MR. LABBE: -- to pre-engineered metal building company or a company, you know, a construction company in the field. It doesn't matter which one.

COMMISSIONER SCHMIDTLEIN: So who, can you name names? Who are you talking about? Do you know another fabricator that's making components for PEMB and selling it to a company that is putting, selling this as an assembled or kit that people can put together?

MR. LABBE: Can I address that? I don't really want to throw names around sitting here. Can I address that confidentially?

COMMISSIONER SCHMIDTLEIN: Sure, okay.

MR. PRICE: Let me just pull up -- Travis, can you pull up the slides for a second? So no, not the -- yeah. So this is actually, we went to the website for Butler Manufacturing, which is here in preparation for this.

Again, you'll see in this thing these are pre-engineered metal buildings of theirs.

COMMISSIONER SCHMIDTLEIN: And is this a U.S. company?

MR. PRICE: This is a U.S. company, okay, which we discovered as we, you know again, what's a fabricated structural steel company, and you'll see beams and structural tubing in this, in this if you hit the next slide in this. The same thing here. So and next slide for a second. This is Building Systems de Mexico. This is actually off their Google page, which is one of the respondents here.

Not off the Google pages, use Google search and you come up with stuff. You start seeing pictures of their operation and you'll see this is from inside their plant. No espionage or anything, just straight pictures of inside their plant.

COMMISSIONER SCHMIDTLEIN: So this is Mexican companies?

MR. PRICE: This is their Mexican operation, okay.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. PRICE: Okay, and you'll see beams right there. So they're fabricating the beam. The beam has the same structural purpose, right? You can't distinguish it as a practical matter from a beam that any one of these folks fabricates from a beam that --

COMMISSIONER SCHMIDTLEIN: And so that's my question, right? Are there U.S. producers, I guess one of my questions, are there U.S. producers making both components for PEMBs and otherwise, you know, what we called "Other FSS"? That's one question, and you know of one.

MR. PRICE: Right.

COMMISSIONER SCHMIDTLEIN: And the second question would be do they make it on the same equipment?

MR. PRICE: The answer is that beam is going to be punched on the same equipment.

COMMISSIONER SCHMIDTLEIN: But in the U.S., right?

(Simultaneous speaking.)

COMMISSIONER SCHMIDTLEIN: When we look at domestic like product, we've got to look at what the process is in the U.S., not what's going on in Mexico.

MR. PRICE: Punching the beam is going to be punching the beam. It's going to be the same type of equipment out there, okay, and when these guys use a perlin in their operation and punch it, it's going to be the same type of operation, okay. Same type of workers in the sense that you have obviously the same types of operation doing the same type of items out there. So ultimately, they both end up in an end use that is similar. One may flow indirectly through, in internal consumption to an end user. There's no question, there's questions about -- there's that out there. Some may be purchased and go through this intermediary step.

COMMISSIONER SCHMIDTLEIN: So if they're doing basically the same thing, why don't we see -- I mean the Lexington respondents pointed out there's limited overlap, and I think somebody just referred to this in the list of AISC members with the metal building membership. Metal Building Manufacturers Association, Building Systems members. If it's basically the same thing, why don't we see more of those fabricators also members of the AISC?

MR. PRICE: So --

MR. WELD: Chris Weld with Wiley. I mean again I think my view is that there are, and we can provide this post-hearing, there are fabricators who produce fabricated structural beams and other material that if they don't even sell directly to a pre-engineered metal building system company that are either sold through distributor or through a distributor, but there are AISC members who would manufacture a fabricated structural beam or some other built up component for use in their pre-engineered building system. I'm happy to provide some additional names in post-hearing.

COMMISSIONER SCHMIDTLEIN: Okay. I'm not sure that you answered my question. Why is the -- why aren't all of the -- if it's basically the same process right, like you said it's indistinguishable --

MR. PRICE: This portion of the process is indistinguishable.

COMMISSIONER SCHMIDTLEIN: This portion of the process, right.

MR. PRICE: Right. So that the actual -- the actual fabrication processes for the structural components are the same. When you get to non-structural components such as insulated panels, skins, which are literally corrugated basically go to the next slide, corrugated steel here, that goes into, you know, that becomes different.

Go to the next slide for a second. That's an insulated metal panel, and by the way they make garage doors and more for industrial applications and things like that. One of the companies is the largest window producer in the United States too, which are going in these things. So you see, you see, you see them produce the same things. You could not distinguish it at the border, right?

There's no set, you know, between a beam used, a beam sold by RIF or a beam, you know, sold or imported by one of these companies. And so, and so -- and again, I will say that we learned some of this as the case evolved, okay, you know, in all honesty. So you see this here and this is not a fabricated structural steel component. It's a piece of insulation. The skin, it could be a roof skin, that type of roof. That's not a fabricated structural steel component here.

That trim, the same thing there. And so this goes to the sort of data reporting issue there, and we can get into a discussion of it. But these are not structural in nature. So that's where this -- that's where they go to a further downstream use, right?

COMMISSIONER SCHMIDTLEIN: Okay, all right. Well any further information that you could provide post-hearing would be helpful. Thank you.

CHAIRMAN JOHANSON: Commissioner Kearns.

COMMISSIONER KEARNS: I guess actually if you could stay on the slide that Mr. Price was talking about a minute ago, I want to get to cost-price squeeze here in a second. But before we do, yeah that's the one. Okay. I think that for me helps explain why we wouldn't include PEMBs in the domestic like product, whereas maybe we would PEMB components like FSS. It's the same approach that we're doing with Other FSS, right? We're including the FSS. We're not including stadiums, so that all has some logic to it. But we are including PPMs, not just PPM components.

MR. PRICE: No. Actually, we're considering

-- we're only including the FSS in the PPM. That's what our scope is.

COMMISSIONER KEARNS: Okay. So PPMs are not included in the domestic like product?

MR. PRICE: No, they are not, and this follows a long line of cases starting with aluminum extrusions that I can point to in our brief that we point to, such as -- such as aluminum extrusions, where it's only the extrusion in the curtain wall, for example, that's subject. If it's extrusions coupled with other things in a part instead of in a set of items there, it's only the extrusion that's covered.

COMMISSIONER KEARNS: Okay.

MR. PRICE: Okay.

COMMISSIONER KEARNS: Okay.

MR. WELD: Commissioner Kearns, if I could just follow up on that. I mean Commerce just a week ago published its final scope memorandum in which they concluded that FSS included in modules was included within the scope of the case, and they have been consistent with that throughout. That was our position in our prehearing brief, that we're not trying to cover the process plant module itself, but the FSS included in the process plant module.

As Mr. Price indicated, there is a long, a number of cases including aluminum extrusions, a solar case as well, where the Commission has taken, you know, out of scope components attached to in scope products and still determined that there was one domestic like product for that in scope, in the case of aluminum extrusions, just the aluminum extrusion part.

COMMISSIONER KEARNS: Okay, okay. Thank you very much. I might want to come back to that, but I'd like to get to cost-price squeeze here for a second. First, Respondents argue that it is not possible to fully pass along cost increases because of existing contracts. How do you respond to that, and I don't -- I've got two questions, but maybe just a quick response to that. Is there kind of a gap, a timing gap here given that it takes some time to fulfill a contract?

MR. PRICE: Yeah, go ahead.

MR. LABBE: Peter Labbe with Cives Steel. So when we bid a project, we will take current pricing and we will make a deal with our suppliers to lock that in for a period of time. So our material cost is known for the duration of each bid and each project that we bid. So we don't have price increases during the period of that project. When you bid the next one, you would lock in pricing again. So any market creep or anything, we certainly can account for it in the bid process. So --

COMMISSIONER KEARNS: I'm sorry, I mean I've not heard you correctly.

MR. LABBE: Yeah.

COMMISSIONER KEARNS: But what I'm envisioning is, you know, on Day 1 you win a bid, you know. You say you're going to provide it for X dollars. You win the bid, great. You don't yet have all of the -- all of the steel at hand.

MR. LABBE: Correct.

COMMISSIONER KEARNS: So over the year and a half that you're working on this project, you acquire steel and maybe the price of that steel has gone up.

MR. LABBE: But I would have acquired a firm price agreement with my supplier, so that my -- for that project, for that period of time my price is stable, and I know that ^^^^

COMMISSIONER KEARNS: So with the steel supplier, you've already locked that in?

MR. LABBE: Yes, yes.

COMMISSIONER KEARNS: Is that true of the industry? Would other folks in the industry agree with that?

MR. COOPER: That is true, and we actually will get a price, pricing agreement from our supplier, and we both sign it and that price is held, as Peter mentioned, for the duration of the project.

COMMISSIONER KEARNS: Everyone agree? Any different views? Anybody purchase the steel on more of a spot basis or anything during the course of the contract?

MR. McPHATTER: Chet McPhatter, Banker Steel. We agree, the same process.

COMMISSIONER KEARNS: Okay.

MS. NOVELETSKY: Holly Noveletsky. We also go straight to the mill and lock in the price.

COMMISSIONER KEARNS: Okay, thank you. Move on to the next question then. I'm looking at page 41 of Respondent's joint brief. Actually, this is something that I think Dr. Kaplan you had offered to respond to earlier. This is the -- if I can just find it here -- the issue about cost-price squeeze and unit costs, and how that, how that may look different.

So they say that the increase in the COGS to sales ratio is misleading. Unit total COGS increased by about $396 through the same period. Average sales values increased by about $412, which doesn't sound like a cost-price squeeze. What are your comments on that?

DR. KAPLAN: A cost-price squeeze is defined in terms of the percentage of the profit margin or the difference between the revenue and the COGS, which is the same thing. And let me give you an example of why someone would wanna look at the margin and not look at the unit.

It's an extreme example, but it calls attention to why you look at the margin and you don't look at the unit cost.

So let's say it costs 90 cents to make something, and you sell it for a buck. So the gross margin's 10%; everyone with me? And the per-unit is 10 cents, right? You make 10 cents on it, 10%. Now, let's take a cost of $9.89, and let's make the price ten bucks. Now the margin has gone from about 10% to about 1%. But the per-unit went from 10 cents to 11 cents. Which industry do you wanna be in? Do you wanna put up 90 cents and make 10 cents? Or do you wanna put up $9.89 to make 11 cents.

And the answer is, the people that would do the last are zero, zilch, zed, nada. Nobody is gonna wanna be in a business with 1% gross margins when they could be in a business with 10% gross margins. And that's why, if you open up any finance book, they look at the margin. They don't look at the unit price. Now, it's an extreme example, but I hope it gets to the point of why it could be confusing to look at one rather than another.

COMMISSIONER KEARNS: Okay, thank you. And then, joint respondents argued that it takes time for cost increase to work their way into FSS prices, in part, because raw materials aren't indexed in the contracts. But that that started happening in the fourth quarter of 2018, so before the filing of the petition, they say you're seeing some improvement in terms of the cost-price squeeze. How do you respond to that?

DR. KAPLAN: I'm gonna have to hear that question again.

COMMISSIONER KEARNS: Okay. So respondents argue that it takes time for cost increases to work their way into FSS prices. In fact, I think we said the same thing in the prelim, in part because raw materials aren't indexed in the contracts. But did that start happening, in other words, that being that you start to see price increases rise as raw materials increases had started to happen in the fourth quarter of 2018?

In other words, there's less evidence of a cost-price squeeze in the fourth quarter of 2018 and in the interim period of 2019, but in the fourth quarter of 2018, that's before the filing of the petition, so you can't attribute it to that.

DR. KAPLAN: I'm gonna have to go, you know, follow that quarter-by-quarter and look at it. I'm just not ready to do that now.

COMMISSIONER KEARNS: Okay.

DR. KAPLAN: I will say that the Commission regularly deals with a variety of different lags in their data. And I will sort through this one.

COMMISSIONER KEARNS: Okay. It's Page 42 of the joint brief is what I was referring to. I've got one more question I'd like to go to. We've been talking about AUVs a bit here and we all recognize that they're limited utility in this case. Nevertheless, we see a steady increase of domestic producers' net sales AUVs with a 14.8% increase from 2016 to 2018. Is it your argument that this increase would've been greater but for subject import competition?

DR. KAPLAN: I would argue that prices would've increased and that there is a product mix issue and the Commission recognizes that by only placing partial reliance on AUVs. But to the extent that we all believe as a group and we're convinced that prices have been suppressed by the bidding process of imports. We believe that AUVs would've increased, certainly relative to cost. Because if there's a big cost change, it kinda wash it out. But we think our, in a neutral world, our AUVs would've gone up, our profit margins would've gone --

COMMISSIONER KEARNS: Your AUVs did go up, right?

DR. KAPLAN: Yes. Well, would've gone up more, of course.

COMMISSIONER KEARNS: Yeah, almost 15%. But you're saying, compared to COGS, you'll see a squeeze there.

DR. KAPLAN: That's why I think the statute looks at both suppression and depression, and suppression in the context of rising prices. So the answer is, yeah, we would've done better in pricing in a rising-price world, our prices would've gone up more and our profits would've increased. Every single year. Not just -- you know, the trend -- if it was more suppressed, it would've, but in every single year, it would've been, and we want you to put that in the context of the last cycle where prices and profits are depressed relative to what they were then. So we're saying both those things.

MR. PRICE: Yeah, okay. So you go back and you look at the last business cycle and compare it again to this business cycle, you're seeing the effects of the subject imports depress and suppress prices. You can clearly see it actually started before we filed the case and, but materially worse performance in what should be a, you know, in a strengthening market of similar dynamic here. And that's a clear sign that in the context of the business cycle, we have been materially injured, because we're not getting high enough prices here.

COMMISSIONER KEARNS: Right. By the way, my time is up, so I don't wanna go on too long here, but, in your brief, you explained how this positive market here in 2016 through 2018, how your profits aren't as high as they should be and as high as they were when you had a favorable market in 2006, let's call it. So I get that point. But can you speak for a minute about what happened there in 2009 through

2010? In other words, what about in a down market? Why do we see in a down market the profits went way down?

DR. KAPLAN: That was an extraordinary market. That was the housing crash. So profits really, the construction industry was --

COMMISSIONER KEARNS: That does -- I mean, yeah, profits went down because the market went down. But then more than the market went down. Why is that?

MR. PRICE: So one of the things our clients will say, this is actually a hyper cyclical industry. So you need to get higher highs, right? Because the lows get really bad here. And so when you see the low in 2009, 2010, 2011, that's the great recession going on in here and that's just a much worse position to be in.

MR. COOPER: And it's a function of how much capacity there is in the industry. That capacity was far greater than what the market could provide at that time. So it essentially, we were cannibalizing ourselves in the industry.

COMMISSIONER KEARNS: Okay, thank you. My time is up.

CHAIRMAN JOHANSON: Commissioner Stayin.

COMMISSIONER STAYIN: I have no further questions.

CHAIRMAN JOHANSON: Commissioner Karpel.

COMMISSIONER KARPEL: Yes, thank you. I wanted to follow up on capacity. On Page 57 of your brief, you contend that there is plenty of domestic capacity in the aggregate to supply any job that may arise regardless of timing issues that might lead to short-term constraints at the level of the individual fabricator.

I have a couple of questions based on that assertion. One is if you can elaborate on what you mean by a short-term constraint? Second, do domestic producers work together to ensure that jobs can be supplied by domestic producers? Are they aware of when one domestic producer has a capacity issue, and stepping in to try to bid on that project instead of the producer facing capacity constraints?

And three, how do capacity constraints of individual producers play out in a bidding context? Do producers bid on a project even though they're facing capacity constraints? Or do they take themselves out of the bidding process? You can take it step-wise. I'm happy to repeat questions. But since time is short, I thought I'd put them all out on the table together.

Yeah, so can you elaborate on what you mean by a short-term capacity constraint?

MR. LABBE: Peter Labbe with Cives Steel. So a short-term restraint would be that I've sold quite a bit of work and I can't quite fit that next full project in in the time frame that the customer needs it. And it kinda goes to your last question, I think. In that instance, I probably would not choose to walk away.

I would probably choose to continue to pursue the project and use -- for instance, Rick and I have multiple plants that we can utilize, so we can shift works within our own organization, or subcontracting between domestic fabricator structural steel suppliers is extremely common in our industry for that exact purpose, is to allow us to continue to chase work and use other fabricators in our area or their relatively large geographical areas to supplement our capacity to --

MR. COOPER: Rick Cooper, W & W/AFCO. The market place, the general contractors that are bidding on a project, if they have that job negotiated, they're looking to provide the owner, you know, a certain number of bids. If they come to Peter's company or my company and we don't have the capacity in that time frame to produce that project, we pass on it. If we do and they need five bids from the industry, or eight bids from the industry, they just go to the companies that have the available capacity and they will get their five to eight bids, however many that they're required by the owner to get.

So the answer to your question is, both things occur, we'll pass on a project if we can't reduce it. We don't wanna spend the time and the money to pursue that project, but the industry certainly can fill that void of Peter's company or my company not being willing to participate on that job.

MR. ZALESNE: David Zalesne. I think the language in the brief relates to scenarios that happen frequently in this industry where you might sell a project, but there are changes to the project, and so the time period where you expect to put that work in your shop, no longer has work. In other words, the design changes, they have to spend some time, and so you have gaps in your shop and then you have other work sold in other blocks.

And those types of ebbs and flow in the market are handled routinely post-bid, because these things happen post-bid. When you bid a job, the market is pricing based on what your capacity is and where you see that job fitting into your schedule. So as a practical matter, at bid date, most--and every owner--wants one fabricator to be responsible for their contract. So they're not chopping it up and saying, "Okay, you give me this here, you give me that there," unless they're affirmatively buying projects and breaking it up.

But in your typical projects, most of the projects, you're buying it, you're on a schedule and there's ample capacity to be able to manage. When you sell that job, you're committing the capacity that you have or that you can bring to the project to be able to deliver that project in time.

It's a self-leveling system within the industry, and again, there's no evidence that anybody's ever lacked the capacity to bid a project.

DR. KAPLAN: What this points out is that the cooperation among the fabricators to get it done actually is much more so than in other industries. So let's say you wanted to buy some steel somewhere and one company is a steel mill and it's sold out. You know, then you go to the other steel mill. So there's no capacity constraint in the industry. The steel's available, it's just one producer's sold out.

But here people kinda cooperate to make sure the job gets done, and the overall industry excess capacity is used efficiently, and there's nothing like hanging around if there's work to be done. So I wanna ask two questions. First, we wanna reiterate that there's been no capacity constraints. But second, how long has this stuff been going on? Is this like three years or is this like forty years? How long has this been --

MR. ZALESNE: Let me be clear for the buyers sitting in the room. We compete very aggressively with each other in terms of how we price work. There's no discussion about how we can manage capacity to support the industry.

DR. KAPLAN: Well, right, no. I'm --

MR. ZALESNE: So for all the rest of the lawyers in the room who are sitting back there, I wanna be very clear. I know we're not in that forum, but I wanna make sure everybody understands. This is a very competitive industry to begin with, okay? So pricing is not based on how we allocate capacity within the industry.

The specific answer to your question, referring back to the brief was, there are scenarios where there is cooperation where there somebody will buy something in a competitive market, even for a sublet part of a project, or because they have some space that became available in their shop, and so they have some availability.

But for the most part, what we're talking about in this case is the project bid process. And in that process, the market is telling you that in the aggregate there is ample capacity in the domestic market to serve the projects and to the extent the respondents are saying that's not the case, we don't believe the record supports their argument.

This is not really about trying to demonstrate which shop has which capacity at which day, but to be able to say, historically through decades of developing, building America's infrastructure, the domestic industry has had the capacity to support domestic demand.

MR. COOPER: I have a specific example for you. So I mentioned in my testimony the new Texas Rangers baseball stadium. We experienced a substantial design change for the very first phase of that project, that we would fabricate and deliver to the project, and it grew about a 130%, that first phase of it did through design revisions. And that was after we had already commenced work.

We were actually in fabrication, in detailing, in engineering, and for that period of time, in the second half of 2018 and early 2019, we did not have the capacity to keep that project on schedule given all the other workload that we had with other projects.

We subcontracted to five other FSS companies to help us with that. They had the capacity readily available. We placed that work with them immediately to stay on the project schedule. So the industry had the capacity while during that brief period of time, my company did not.

MR. DOWNS: If I could add to that. Again, we do collectively cooperate with one another if we have a down cycle or we got a job that's shifted. You know, you sell a job and it's supposed to start on July 1st, something happens, it doesn't start on July 1st, so you're looking for something to quickly fill. I may go to Bert and Bert may have some work, I may be one of those five fabricators.

If we're over-capacitized with subject imports, then all of a sudden, I'm going hungry because there's not -- the capacity's already been filled, or utilized. So that being said, also another thing is, I believe what you also may hear is that the domestic fabricators are not large enough to handle some of these large jobs that come through. And we have teamed up with joint ventures, teamed up with one, two or three fabricators at a time in order to make sure that whenever we go in, we know that we can handle a project. That's not uncommon either.

MR. PRICE: I'll actually point to -- this exact same argument was raised by the Chinese in the Canadian case. And they are, the Canadians, by the way, had -- you know, we agreed with their story in that case because it's actually the way the market works which is, there's no real capacity constraints here in terms of being able to service the market. That any instance one producer has, the other folks have plenty of availability and so the market functions in that way.

Secondly, as market demand increases, you know, you're not gonna go out and necessarily hire for a one-month or two-month change in that, but as, you know, the case gets filed, people see right away, hey, we're optimistic. We can start staffing up here. No problem hiring up, no problem getting people. You see this pretty quickly starting to staff up. We'll see if the people made the right bet on that, you know, and a lot depends on what the results of the Commission decision are.

Sorry, I know we have two more questions, I apologize.

COMMISSIONER KARPEL: Well, I think we've covered it sort of in these collective responses. But just a quick follow-up if my colleagues will indulge me. So what I understand is an individual producer, their capacity utilization rate might fluctuate over the course of a year, over the course of several years, but what you're saying, you want us to focus on sort of the average across the industry because if a purchaser goes to one domestic supplier who happens to be running at, you know, 90% capacity because they got a bunch of big jobs, they can go to another domestic producer and find what they need fairly easily. Is that your argument? Okay.

DR. KAPLAN: And there's so many of them. In some industries, there's like three guys and it's like, who you gonna go to? Here there's a lot of fabricators. So there's a lot of choice and there's a lot of excess capacity, which makes things run smoother given the inarticulate way, I apologize as a fabricator and an attorney. Exactly what Rick described and Peter described about how these jobs are completed.

MR. MCPHATTER: Let me add what Alan was getting to there. Our capacity in each of our plants are built to what we consistently see year-to-year. And there is still room to grow within our plants by adding people if we can see the workload out ahead of us to do that. So there's multiple ways to grow or to cover the work.

CHAIRMAN JOHANSON: Okay, I have just one more question. Joint respondents estimate that FSS accounts for, on average, about 30% of the total costs of a project. And they discuss this at Page 2 of their pre-hearing brief. Do you all agree with that estimate?

MR. PRICE: Absolute disagree. You heard testimony saying that the FSS was about 75 to 80% of the cost of a typical project.

MR. COOPER: I'm not sure that's the question he asked. Are you asking the -- is it 30% of the total cost of a building, like this?

CHAIRMAN JOHANSON: Of a project.

MR. COOPER: Of a project being a completed structure like this? Is that what you're asking? Are you asking is it 30% of our bid?

CHAIRMAN JOHANSON: 30% of your bid?

MR. COOPER: No, yeah, it's much more.

MR. PRICE: So it's principally FSS and the joint respondents really muddled this issue quite skillfully in the way they wrote the brief, because they confused the project of being the wind tower, the building, all of Hudson Yards at some point, of $23 billion if you wanna get there at the maximum version, the most extreme version of this, which has land and everything else associated with all of that.

With what is the actual sort of the package they're bidding on, and that's principally FSS and not only do you have testimony on that, Mr. Kaplan did an analysis and the analysis is consistent with these estimates, and actually he used in his estimations the ones most favorable to the respondents and it comes out to about the exact same numbers that --

DR. KAPLAN: I think this issue is the same issue that was raised by Commissioner Karpel about what a project means. Is it the FSS bid with erection? Or is it the project for a complete building or a complete stadium? And so we'll clarify it, I think that there is a bit of confusion raised in the respondents brief and we'll look at that and try to make it consistent with these distinctions of the FSS project versus the building structure or stadium project.

CHAIRMAN JOHANSON: Okay, thank you. That concludes my questions. Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Thank you. I just had two more questions. One is that the respondents point out that some of the purchasers that responded to the lost sales and lost revenue questions indicated that they did not know the price of the fabricated steel portion, structural steel portion.

So can you respond to the joint respondents' contention that the Commission should disregard those purchasers from that analysis, since they could not have made their decision on the basis of the price of FSS, since they didn't know what that price was?

MR. PRICE: So I'll say a couple of different things about this and we'll respond more fully in our post-hearing brief.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. PRICE: The Commission all the time looks at sales where there's a mixture of services in the good, and doesn't prevent them from finding, from considering it in the underselling analysis. Even if you sell a piece of steel, there's actually a piece of service there that the mill will have, and that's the most, that's about the least amount of service you can find.

You start selling something along the lines of a large power transformer, there's gonna be a bunch of service of the installation associated with that, and maintenance in the service contracts. No problem dealing with the analysis in those types of cases. So just because there's some service in there doesn't mean you can say there was no probative value to the information you have. That's number one.

In this case, the vast majority of the value is actually FSS. That's number two. Number three is that, you know, when it comes to the bidding, a lot of the bidders actually do have the data, and as our guys tell you that they do. Number four is the non-price components which is principally an erection service, is essentially a standardized, so if you go into New York, you're basically hiring the labor union, okay?

And you know, there's an erection, that all the workers come from the union hall, right? And so that's what your workers are, it's a pretty standard rate, and all that is standardized. So what is the variable in here, and the most important variable, and the largest component is the FSS, and the FSS is what makes that -- it allows you to rely on that analysis. You add that with the situations where you have discrete examples, where it is broken out, so it's all reinforces each other in this.

We wish that you had asked us for our big components and the import big components, but unfortunately, the way it was collected was just from the purchasers, so you actually could've gotten those even in more discrete. We asked for pricing products, so -- but all the things you have which is the AUVs, the bid data you have, the pricing products from the preliminary, all keep on point to one factor, which is imports only make sales when they're undersold and the FSS is the principal component and that seems to always show underselling, no matter how you try to sort and dice the information.

COMMISSIONER SCHMIDTLEIN: Okay. And I welcome you to address that in the post-hearing, as you mentioned. All right. Last question I had was, there was some discussion of the competition between domestic producers, and so in your experience for the witnesses here today, do U.S. producers get higher margins when there isn't competition from subject imports? Since I assume that, when you go through the multiple rounds with the bids, you are competing against each other and therefore having to lower your bid in response to competition from another member of the industry.

MR. COOPER: That's not the case in the market place if we're just -- if your question is, when we're competing just against domestic producers, do we get a higher margin? And the answer to that's no because we've lost so much market share to the subject foreign producers that we all are chasing a smaller market and we have as we've discussed several times today, we have significant capacity in our industry and it's not utilized at the level that we'd like it to be, so no, the answer is, we still are offering our product at lower margins because we've lost approximately 30% of the market share to foreign producers.

MR. ZALESNE: I'd like to take a slightly different take on that. I think there was better profit margins as you've seen from the data. Before there was the subject imports, because all domestic fabricators are generally competing on level playing fields within the rules that the domestic industry operates by.

And what you've seen, I think what Rick's referring to, what we've seen in the last couple of years, as you've seen the surge or the increase in imports, particularly from the subject companies, and you see the kinda numbers that Commerce showed you in terms of what the data is, it has depressed the market overall. So when we get into projects today, yeah, the market place has an expectation that you can buy at a depressed price, so whether there's a -- we don't necessarily know who they're talking to, but we're all sort of assuming that if a job has the potential to go offshore to one of the subject countries, that's where the market's gonna buy the job.

And so absent this, yes, absolutely, I think we would get higher margins, not unconstrained margins, because we wouldn't be dealing, we still, it's a very competitive market and for all the happy talk about helping each other with capacity, we're very fierce competitors when it comes to bids domestically. But we're bidding off a level playing field. We're bidding off of costs that domestic fabricators all have in their own operations and we're not bidding against artificially low costs that are being introduced to the market from the subject countries.

MR. COOPER: I'll use the Los Angeles Stadium as another example. That was about a $200 million project for us. We lost that to foreign competition and we had to go replace that $200 million in sales out in the market place, and that was against, primarily, or most of the time, domestic fabricators. So we had to make up that market share loss somewhere.

MS. NOVELETSKY: Without the subject imports in our market, we'd be able to price our jobs where the market would bear them, and with healthy domestic competition, it would keep the prices in check, but they would be within a healthy margin where they should be so that we can cover our costs and make a profit.

DR. KAPLAN: If the supply curves upwards sloping and we're getting more work, the price is gonna go up. But if it's capped by an import price that could keep supplying product at this low price, you just keep it coming, keep it coming, keep it coming, you get too high, they slap it down, they underbid you, they bring more in. And if that's the case, then the price is limited and the profit's limited, and that's the market price and the market profit, and if you put the duties on and it raises the import price, domestic supply will increase, prices would increase and profit margins would increase.

I mean that's a pretty standard competitive market analysis of a market where there's a lot of foreign supply capable of being sold at low prices. And that's certainly the impression I get from looking at the market is that, that China, Canada and Mexico are not capacity-constrained and they're not -- and so they will be able to continue to supply the market at prices that suppress the prices and profits of domestic producers.

So each of them is kind -- it's always interesting as an economist. Each of them is describing a personal mechanism of how, like, an economist would look at, like, you know, market equilibrium working. But the things they're saying are completely consistent with a very elastic supply of imports at a dumped price. And that's what I think we're seeing here.

MR. LABBE: I would point you back to the last upcycle that we had, where we did hold a larger share of the market share. The subject producers were much smaller impact on us, and at that time, as we should, we were able to raise our prices, we were able to make decent margins. We were able to build our balance sheets so that we could prepare for the next downturn.

So absolutely, I would say that if they weren't dumping that steel in this market, our margins would be higher just competing domestically. It doesn't remove all competition, because we would still compete with domestic suppliers, but we would all be competing on a level playing field.

MR. MCPHATTER: Couple of comments. I mean, on some jobs, we don't get to bid them as domestic fabricators. There's still projects out there that just go straight to foreign fabricators. Now as far as the pricing mechanism, we're still competing with other building materials. You know, we're competing with concrete, wood, so we're just looking for a level playing field, get reasonable margins and be able to grow our companies and take care of our employees.

MR. PRICE: Chet, let me ask this question. So in the project you described in your testimony where, basically it was you in the room and the Canadians in the other room. If the Canadians weren't there and you were the last one left, would you have had a higher price than what you had submitted?

MR. MCPHATTER: Yes.

MR. PRICE: Okay. Rick, let me ask you a question about the L.A. Rams Stadium. Basically you were the one domestic producer who said you were there, you gave them a bid. They wanted you to commit to a price you couldn't commit to, so they went offshore to get a lower price. If the Chinese hadn't offered that pricing, regardless of who the erector was, okay, would you have gotten higher prices than you otherwise would've?

MR. COOPER: Absolutely.

MR. PRICE: Okay.

COMMISSIONER SCHMIDTLEIN: Okay, all right. Thank you very much.

CHAIRMAN JOHANSON: Commissioner Kearns?

COMMISSIONER KEARNS: I'm sorry. See, I still have four more questions, but I think three of them can be addressed entirely post-hearing. First, as I said before, there's the question I had about, what seems to me to be somewhere artificial distinction between the assembly that you might do inhouse versus the erection services and so forth that you may do on site. So I'd like to hear more from you all post-hearing about that. And I would note that I saw a number of industry witnesses nod their head when I suggested it was sort of an artificial distinction. So I'd like to hear more from you on that.

Next, on related parties, there are a few related parties that you suggested be excluded because it would skew the data. And I'd like to get real granular on that about exactly -- you said, I think you said it appears that, you know, this could skew the data. But you know, it seems to me that just because a party's related, it doesn't, and it might have like higher profits than the industry average, that alone does not mean it's skewed. So we need to know, like, specifically, trace this back to the subject imports or how best to do that.

MR. PRICE: Happy to do that. And one of the mysteries in all of this, and I'm not just saying you're having higher profit. That's not actually what our argument is in that, so we'll be happy to do that. We can point to the things in the record that are clear that are nonsubject merchandise that it appears that they have included based upon their descriptions. At a certain point it gets behind, you know. It gets harder than to go beyond that. You can just see that there is clear, there are issues with that. Okay?

COMMISSIONER KEARNS: Yeah, okay. Although that's not a related party question --

MR. PRICE: That's not a related party --

COMMISSIONER KEARNS: Right.

MR. PRICE: -- question. Absolutely.

COMMISSIONER KEARNS: And I, and I've read the brief on that and I, I get that point, but okay. And then, and again, I think this is post-hearing, but Dr. Kaplan, in your economic analysis, you came up with a head-to-head comparison of bid data. One of those adjustments that you made there included restricting the bids awarded to a single bidder; however, isn't it the case as reported by several purchasers that bids are frequently split among suppliers? If you could answer that post-hearing, too, I'd appreciate it.

DR. KAPLAN: Yes, Commissioner.

COMMISSIONER KEARNS: Thank you. And then my final question, which I think, just real quickly if we could talk about here, has to do with nonprice factors. The staff report at Table 2-9 indicates that 27 of 28 purchasers reported certainty of delivery times and the cost of contract overall, not just FSS price, as critically important purchasing factors.

Considering other record evidence suggesting that even if a U.S. producer has won a bid, that producer itself may subcontract to a subject fabricator due to lack of necessary capacity. How should the Commission consider this evidence? Is it really price-driving purchasing decisions or the need to meet project delivery time frames?

MR. COOPER: Rick Cooper. I mentioned in my testimony that they typically prequalify FSS companies for proposing on a project. They'll select a certain number of them, they will prequalify them. You have to not only just financially prequalify but show that you have the capabilities to fabricate and deal with the complexity of the project as well as the schedule.

So they whittle all that out, through that process and because we are a manufacturing facility as well and we talked about change orders a little bit earlier and the significant one I had on the Texas rangers job, what that can do at any given point in time we try and schedule our production facilities to deal with each project that we have under contract.

When you have growth in a project that creates production issues and so we will often sell a project and at the time we sell it we're not certain, we're not planning on fabricating any of that work out but we might have another project that's in our production schedule that grows or it slides into a later time frame and creates a bubble of work that we have to somehow accommodate to make the project's schedule. We will go to a partner fabricator in our industry and give them the, offload the excess capacity that we need to place somewhere with them in order to again make our contract commitment. There's plenty of capacity in our industry to do that. That's common in our industry and sometimes a fabricator will joint venture a project for commercial reasons to plan on dividing the work up and we all have done that in this room together.

Again, that's for commercial reasons as well as schedule reasons too but the point being there's enough capacity in the industry to where we can partner together or we can go it alone if the circumstances and dynamic works to do that.

MR. LABBE: Peter Labbe with Cives Steel. The nature of the bid process, the multiple rounds, the prequalification, just the whole nature of the purchasing process levels all of the non-price factors. Several of my colleagues have talked about being in one room and the Subject Import in the other room. You wouldn't be sitting in that room if you had a non-price factor that was an issue.

So they level all that through the bid process, through the nature of the process. So you're all at the same non-price factors and then it comes down to money.

MS. NOVELETSKY: Hollie Noveletsky. When we do sub work, it's not uncommon to sub work and sometimes it gets subbed to a subject fabricator. It's always based on price.

MR. ZELESNE: David Zelesne. There's an old saying in steel that everybody wants their job to be fast, right and cheap so pick two. Schedule matters. These non-cost matters matter but all of those other two elements are leveled out. At the end of the day, at bidding day for the schedule the customer wants they are going to assume they will get the schedule they want and they are going to assume they get the quality they want and they've leveled all that out.

In every story you've heard sitting here today is in consistent with evidence that I think both of you Commissioners have referred to about respondents. Buyers answering questions about how they're buying steel. They've already leveled out the schedule. They've already leveled out so when they say to you in those responses to the questionnaires, we look at non-price factors like schedule completion and total cost. They've leveled out schedule completion. They've leveled out quality. They've leveled out capacity.

They know the people sitting in those last two conference rooms can both build the job but if they're seeing margins that are coming in at significantly, you know if you follow the Commerce Department and one guy has a significant in some cases significant support or say the issues that we're talking about here if that last price piece we're going to lose everything every time if we're even in the conference room depending on to make sure we get there.

So I do think that yes, you can probably find evidence in there that will tell you there are non-cost factors that apply but I think our experience is telling you with the sophistication of the buyers that are buying these projects and with the available data that they have to make their buying decisions, they know very well that they are getting they're going to level out most of the other non-cost factors. It comes down to price when they buy.

COMMISSIONER KEARNS: Okay, thank you all.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: I do have two additional questions. I think just one of these we can -- I guess we will talk about both here briefly but we could also defer most of it to the post-hearing brief. We can just touch on them briefly.

I'm trying to understand what you said about PPMs. I think you had said at one point only components of PPMs are part of the Domestic Industry according to the product. I'm having a hard time tracing that to your brief, where it seems like you are talking about in part assembled -- on page 25 for example. You talk about according to the Commission find that all in-scope FSS including FSS assembled into processed plant modules share the same physical characteristics, etc.

So what exactly is your argument there?

MR. WELD: Our argument, we're not trying to cover processed plant modules in this case. We're trying to cover the FSS contained in processed plant modules. It's what Commerce found. Commerce found that the FSS used contained and processed plant modules in the scope of the case. That's what we're covering here. The FSS which provides the structural support for the PPM.

COMMISSIONER KARPEL: Unassembled.

MR. WELD: We're not covering the entire PPM. We're talking about covering the fabricated structural steel that is providing support for the plumbing and the other things that are going into the processed plant module.

COMMISSIONER KARPEL: Is that unassembled?

MR. PRICE: You can see here is a module and there are modules that is essentially just pieces of steel that you may, that are just sub assemblies, okay. So they can ship from their shops as Peter does and these sub assemblies. Because it's not just a stick. It depends on how it ships from the shop so they can ship these in sub assemblies. Then a simple thing is just a pipe can be slipped through it. Sometimes it is just that so again I will address it more in the posthearing brief because it is, I understand your question.

COMMISSIONER KARPEL: This entire thing in this picture is that within the domestic like product according to your arguments or is it just the pieces of that structure that are within...?

MR. WELD: The fabricated structural steel in what you are looking at is covered while the nonstructural piping there, the plumbing, any electrical wiring that may be in there that constitutes the module is not covered.

MR. REYNOLDS: This is Kevin Reynolds with W&W AFCO Steel. This hopefully will shed a little clarity on it for you. We recently had a module project that we ordered approximately 6 thousand tons on in Louisiana and we shipped the FSS to a module yard adjacent to the job site. In addition to that, this was an ethylene project.

In addition to that a similar package was awarded to a Chinese fabricator. Unfortunately, throughout the course of the project or I guess early on we were committed to do an additional ten thousand tons on the project but there was downward price pressure on the finished product, the ethylene at this facility.

So the owner can down with a mandate that said we must save all money so instead of buying that ten thousand tons from WW AFCO we want you to buy that ten thousand tons from the Chinese fabricator. This was the exact same steel from the exact same design drawings assembled in the exact same yard. We manufactured six thousand tons. They purchased approximately fifteen thousand tons from the Chinese.

So it's the exact same product that's the structural steel, the FSS product. Some of it was partially assembled, some of it was in sticks but we all provided the exact same product.

COMMISSIONER KARPEL: Thank you. If there's more that you feel like you could say to explain that in your posthearing brief that would be welcome. I also had a few questions to flag for posthearing.

One is if you could -- I believe Petitioners are asking the Commission to apply the captive production provision and focus on the merchant market. If you could address the statutory requirements for that in your post-hearing brief?

MR. PRICE: Happy to and our argument is both that you should put more focus on the merchant market as you've done in a number of cases, either applying the cap at consumption provision or as a condition of competition.

COMMISSIONER KARPEL: Also, if PEMBs components were to be defined as a separate domestic like product would you still contend that a domestic PEMB component industry was materially injured by Subject Imports?

MR. PRICE: We will address that in the post-hearing brief.

COMMISSIONER KARPEL: And last, I already flagged this but if you could address the ECS analysis at pages 46 to 54 of the posthearing brief about capacity estimates, I'd appreciate that. Thank you.

MR. PRICE: We'll address that in the posthearing brief.

CHAIRMAN JOHANSON: Alright, do any other Commissioners have questions? None do. Do Staff have any other questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Mr. Chairman. Staff has no additional questions.

CHAIRMAN JOHANSON: Do Respondents have any questions for this Panel?

MR. NICELY: Not at this late hour.

CHAIRMAN JOHANSON: Alright then with that, let's take a break for lunch. Let's break for forty-five minutes which means we will come back here at 2:35 p.m. I would like to remind all parties that this room is not secure so if you have any proprietary information you should take it with you. Thank you all again for appearing today.

(Whereupon a lunch recess was taken, to reconvene this same day at 2:35 p.m.)

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

MR. BISHOP: Will the room please come to order? Mr. Chairman, the panel in Opposition to the Imposition of the Antidumping and Countervailing duty orders have been seated. All witnesses on this panel have been sworn in. This panel has sixty minutes for their direct testimony.

CHAIRMAN JOHANSON: Feel free to begin whenever you'd like.

MR. PINKERT: Good afternoon. I'm kicking things off this afternoon for Respondents. Before turning to company witness testimony I wish to address two key legal issues. First, Petitioner cannot credibly advocate for product limitations here that it expressly rejected at Commerce. Petitioner argued to Commerce for broad scope language that includes PEMB components as well as metal roof and wall panels.

Quoting from the Petitioners' scope case brief, for the same reason the Petitioner has opposed the request by Building Systems De Mexico to exclude components of pre-engineered metal building systems, it opposes any attempt to limit the scope with reference to the types of structures in which FSS is used.

Similarly, Petitioner advocated to Commerce for no limitations based on whether the FSS is essential to support the design loads of the structure. Second, the captive production provision is entirely separate from the related parties analysis and has nothing whatsoever to do with the exclusion of particular companies from the Domestic Industry.

When the Commission analyzes whether to apply the captive production provision it examines the Domestic Industry as a whole. Moreover, the fact that some PEMB components are sold as building kits that are excluded from the investigations, in no way triggers the captive production division as no PEMB component is processed into a downstream article. A complete PEMB is nothing more than a complete set of PEMB components. Thank you.

STATEMENT OF MARK GOLLADAY

MR. GOLLADAY: My name is Mark Golladay and I'm here with Cornerstone Building Brands, the parent company of U.S. Producer NCI Group and Mexican Producer Building Systems De Mexico. I've worked in the metal building industry for 34 years during which time I worked for both NCI and Blue Scope.

NCI employs several thousand people in the United States in connection with its steel fabrication business. We fabricate steel for thousands of building projects each year. However as a producer of PEMB components we operate within an industry distinct from the conventional FSS industry that is dominated by the AISC members.

Our largest competitors are Nucor Building Systems and BlueScope. We do not see the petitioning companies in the market. We generally do not see Foreign Producers in our market either. Cornerstone and BlueScope have subsidiaries that supplement their respective U.S. production capabilities but those subsidiaries do not directly participate in the U.S. Market.

Beyond that, we occasionally see some imports of Canadian insulated metal panels but we do not view them as injurious. We do not support the Petition brought by the AISC members. I would like to briefly describe a couple of aspects of NCI's business that are relevant here.

First, NCI's U.S. fabrication plants account for 85 to 90 percent of the fabricated steel that we ship in the U.S. At certain times of the year we will not have the capacity in our U.S. plants to meet the project deadlines that customers are seeking. Our facilities in Mexico and Canada augment our U.S. fabrication, allowing us to meet the customer's timeline.

Second, we sell a large number of components in addition to our sales of complete building systems. A customer purchasing components will later combine them with other components sourced from NCI or another company into a metal building but they are not buying a building system as such.

Third, when a customer does order a full building system we normally ship the fabricated steel in phases and separately invoice the customer for the steel components contained in those phases. For many projects multiple facilities will be contributing steel including our Mexican facility. Petitioner and Commerce Department treated the Mexican component shipped to the job site on those projects as in scope FSS and it follows that our U.S. component shipped to the same job site, must be part of the domestic like product.

Finally, NCI produces and sells metal wall and roof panels. Single skin panels are produced at the same facilities where we produce what we call structural elements while our insulated panels are produced in separate facilities. Both types of panels involve fabricating steel so that the steel panels can be incorporated into a building and the tariff code covering sheet metal roofing and siding is listed in the scope. When these panels are used for a PEMB they work as part of an integrated structure. Thank you.

STATEMENT OF MARK DETWILER

MR. DETWILER: Good afternoon. I'm Mark Detwiler, lead R&D Engineer for the building segment of Cornerstone Building Brands. I've been in the metal building industry for over 20 years. I am here to address some of the unique physical characteristics, production processes and uses for components of pre-engineered metal building systems.

The primary frames for PEMBs are almost exclusively made from built-up elements which are made in the factory by welding two flanges to an inner plate known as a web. The steel is normally 55ksi hot rolled steel plate, sheet or merchant bar. The primary frames are designed, cut and shaped often with bearing depth tapered along their length to meet specific building designs.

These frames are designed for use in PEMBs, which are normally relatively lightweight, one or two story structures. MBMA standards govern PEMB construction while AISC standards govern conventional steel construction. Conventional FSS construction typically involves the fabrication of 50ksi wide-flange I-beams, channels, structural angles, shapes, plates and other steel products that are hot-rolled from the mill to standard dimensions.

The heavy beams and other shapes used in conventional steel construction are better suited than PEMB components for large scale construction projects requiring heavy or compressive load bearing capacity. The secondary framing of PEMBs is constructed with cold-formed steel, roof and wall sections that are often lapped.

In contrast, conventional construction generally uses single span hot-rolled steel joist roof framing and hot-rolled structural wall secondary members. The fabrication of PEMB components often involves automated weld processes in unique machinery. The welding for PEMB components is generally a one-sided weld which is not typical for conventional FSS.

The fabrication of conventional beams and structural shapes may require a different sequence of process in welding due to heavier load-bearing requirements. Also, complex connection designs and other engineering concerns. It is not economical for conventional FSS producers to produce PEMB components.

PEMB components are fabricated in design to minimize the amount of steel in the structure and so that the components can be readily assembled at the job site, typically by bolting together shop-welded endplates. Conventional construction often requires additional framing and the assembly of a conventional FSS building is normally more complex, requiring welding, cutting and fitting at the erection site.

Even for projects of a similar size, a conventional steel structure is normally heavier than a PEMB and the differences in weight may require different building foundations. We do not consider the PEMB components that we produced to be like the conventional FSS being produced by the AISC members. Thank you.

STATEMENT OF GREG PASLEY

MR. PASLEY: Good afternoon. My name is Greg Pasley, and I'm President of Butler Manufacturing, a Division of BlueScope Buildings North America, for BlueScope.

We are among the largest U.S. suppliers of fabricated structural steel, FSS, with six production facilities. We fabricate the FSS at our U.S. facilities and import a small amount of FSS from our affiliated company in Mexico to supplement our domestic production.

Let me say at the outset that I was surprised when I first learned in September of 2019 that the FSS we manufacture and import from Mexico was covered by this investigation.

In my view, and that of everyone in my company, the FSS we manufacture is not the same as, and does not compete with, the FSS produced and sold by the companies that filed this case. Let me explain why.

BlueScope exclusively produces FSS as components for its pre-engineered metal buildings. The FSS produced by the Petitioners in this case, in contrast, is FSS for conventional buildings, and a wide variety of other products. FSS components of PEMBs are very different from those other products and serve completely different markets.

PEMBs are ideal for low-rise, less complex structures. For those uses, PEMBs are less expensive and faster to assemble than conventional buildings, as their steel is used more efficiently.

As a result of these and other differences, the FSS we make for PEMBs does not compete with the FSS made by the Petitioners and most other FSS manufacturers. We never compete against other companies on contracts to supply FSS for PEMBs. Instead, we produce our FSS from our own plants, including our affiliated company in Mexico.

In BlueScope's case, we do not even invoice FSS components separately from the invoices we issue for the buildings. Instead, we put together our proposals for completed PEMBs, working with builders we have developed trusted relationships with.

The FSS we produce never competes with the FSS for conventional buildings. To understand why FSS for PEMBs is so different from other types of FSS, you need to understand the important differences between the way conventional buildings are designed and the way PEMBs are designed and built.

For conventional buildings, a general contract or subcontractor will normally request bids for FSS from numerous suppliers who compete based on schedule, quality, and price. The FSS for these buildings is normally sold through a competitive bidding process.

The FSS for PEMBs is different. I do not sell FSS components to a general contractor. Instead, I work with trusted builders who rely on us to provide a complete building shell. FSS components of the building are delivered to the building site ready for assembly, usually in stages. As a result, most of my marketing efforts involve maintaining and supporting contacts with the builders we have been associated with over many years to determine what building projects they have, and how BlueScope can best provide the FSS that those buildings require.

PEMB builders use their associated manufacturers to supply the complete building shell when competing against contractors offering conventional buildings. But the FSS used in PEMBs does not compete as a stand-alone component against the FSS in conventional buildings.

In fact, the majority of producers of conventional FSS cannot produce the FSS we make for PEMBs because they lack the specialized equipment necessary.

As a result, when we have regional capacity limitations in our plants, we import some of our FSS from our affiliated company in Mexico. We import only a fraction of what we produce domestically, generally around five percent, and this is from our Mexican affiliate who only sells to us in the U.S.

Thus, none of the small amount of FSS we import from Mexico takes away any sales of domestically produced FSS. In addition, the FSS we import does not compete with domestic production of FSS because we use our imported FSS to overcome production constraints that we may incur for particular products in particular plants.

One final point. The U.S. producers who brought this case have charged that much of BlueScope's production of FSS is for captive consumption. This is just wrong. BlueScope does not internally transfer any of its FSS it produces to make a downstream product. BlueScope produces FSS which it ships usually in stages to the building site. There, the FSS is ultimately assembled by the builder into a completed building.

BlueScope is a major producer of FSS and never a consumer of the FSS it produces. Thank you.

STATEMENT JAVIER SALAS

MR. SALAS: Good afternoon. My name is Javier Salas, Vice President of Corey. I've been in the FSS industry for over 30 years.

I want to convey three points. One, we are the only Mexican company exporting FSS for large scale projects.

Two, pre-engineered metal buildings are a totally different market.

Three, Corey is and shall remain a Mexico-oriented company and the record reflects that.

So our questionnaires show our U.S. sales are modest but remain important to us. A couple of times a year we consider bidding on a project in the U.S. From time to time, we do bid. And of those times, we sometimes win a bid to do some portion of a project.

In three years, we were awarded four projects, some of them collaborating with other U.S. fabricators. On those few occasions when we were able to bid, we believe that our ability to provide a quality product, meet a fast-track schedule, and work with our customers to reduce costs through value-engineering efforts, makes our company competitive with U.S. producers.

I have struggled to find out who these other Mexican fabricators are that compete for work on large-scale projects in the U.S., whether in the high-rise, commercial, or sports facility. We have never competed with another Mexican fabricator in the U.S. I hope you ask me why in the Q&A.

The Department of Commerce confirmed we don't sell at unfair prices, and the Hudson Yard's developer says they chose us for our ability to meet their schedule. Our current plant has continued bidding a select few projects in the U.S., while continuing to collaborate with U.S.

fabricators.

This case and recent trade policy has illustrated the wisdom of not becoming overly dependent on the U.S. market. Thank you.

STATEMENT OF JOHN KELLY

MR. KELLY: Good morning, or good afternoon. My name is John Kelly. I am Vice President of The Related Companies, the company behind the development and construction of Hudson Yards, the largest private real estate development in the history of the United States.

Hudson Yards construction is a construction manager designated to oversee all construction activities at the development. I hold a position as vice president of both companies.

I'm here to tell you the story behind how we became our own trade manager for the Hudson Yards development, and why we sometimes have to source FSS abroad.

Our procurement experience with 20 and 30 Hudson Yards, a 3.6 million square foot retail and commercial office building, changed how we do business. There are three main points I'm here to confirm.

First, we only became our own trade manager and began sourcing FSS abroad after a traditional contract bidding process was unsuccessful.

Second, our contract commitments to tenants and the potential damages from a late delivery make schedule, total cost, and partnering with the right fabricator all critical components of a successful bid.

Third, our procurement process does not allow for a direct comparison with lump-sum bids that would have been received by a traditional method. The alleged large discounts quickly diminish when we properly level our process with a traditional lump-sum bid.

For 20 & 30 Hudson Yards, we originally sought to award the project to a single company that would provide the detailing, fabrication, and erection of the 100,000 tons of structural steel. This is very large for a single building, approximately the amount of FSS in the Empire State Building and One World Trade Center combined.

We tried multiple times to pursue a traditional bidding process. We ultimately split the bid into multiple packages, thereby assuming more risk and directly undertaking work ourselves. This allowed for a broader range of suppliers to get involved.

After the success of this process at 20 & 30 Hudson Yards, we gained confidence in our ability to manage the additional business risk and were able to maintain the role of trade manager into the next stage of the Hudson Yards development. The 2.9 million square foot 50 Hudson Yards that when completed will be the fourth largest office complex in Manhattan, and home to BlackRock and Facebook.

It is important to understand that often what appear to be competing bids are not always apples to apples comparisons. I am not going to say that money was no object. Cost always matters. In many cases, as with 50 Hudson Yards, it is one of the three or four factors that matter most. But it is not accurate to say that it is the most important factor.

It was not in the case of the bid process for Hudson Yards, where potential penalties for not maintaining our schedule commitments to our clients far exceed any potential savings on FSS. That is why the delivery schedule was such an important factor in awarding the Hudson Yards projects.

With respect to the alleged large discounts we received by sourcing abroad, we believe any discount can be accounted for by our decision to take additional business risk of being our own trade manager, directly taking on work that would typically be part of a subcontract for FSS, and procuring erection services separately, adding to the risk, cost savings, and removing any markup that the fabricator might have added to erection services.

If you would like me to further unpack any of these elements such as what it means to be a trade manager, the sharing of business risks, or the percentage makeup of

FSS of the total cost for a typical hi-rise structure, I will be happy to do so during Q&A.

STATEMENT OF SABRINA KANNER

MS. KANNER: Good afternoon. My name is Sabrina Kanner. I am the Executive Vice President of Design and Construction for Brookfield Properties, a global real estate company with $200 billion of assets under management and the largest commercial office landlord in New York, Houston and Los Angeles, and one of the largest here in Washington, D.C.

For the past 20 years, I have proudly played a leadership role in the design and construction of Brookfield's commercial office and development projects. Last year, Brookfield's speculatively launched a 1.9 million square foot tower to complete the eight acre Manhattan West complex in the Hudson Yards District. We made this decision despite New York City being the world's most expensive city in which to build a commercial office tower based on the assumption that pricing would not increase beyond conventional escalation.

While no single factor is responsible for New York City's high construction costs, it is important to ask why this is happening and how the issues we discuss today impact the construction and real estate industries, their projects and the creation of American jobs. New office buildings are tall, complex structures well suited to steel construction, yet only highly specialized teams can produce such complex steel structures with the expertise and experience needed to deliver on schedule and at a cost that the commercial office rental market will bear.

It is our experience it is not always the U.S. producer who has the technical skill and capacity for our projects on our schedule. We often see U.S. and Canadian teams working together on projects, which is often in the best interest of our economy. It is notable that our Manhattan West Tower had two finalists for the steel award of approximately $350 million.

One was a Canadian-U.S. team, and one was 100 percent U.S. team. The 100 percent U.S. company was already working on one of the city's largest towers, and was awarded a second very large tower as we completed the leveling of our bids. Capacity and ability to execute a third large tower was an alarming risk to take with the U.S. firm.

We awarded the project to the Canadian-U.S. team, who was within one percent of the 100 percent U.S. firm's price. Clearly, schedule risk was a factor in this award. Construction costs in New York City have risen five percent per year in each of the last two years compared to the rest of the country, which rose by three to four percent per year.

The cost of steel rose nine percent last year. The addition of high steel tariff premiums seriously jeopardizes several planned projects in New York City. Of the seven steel structure projects that comprise the $11 billion of construction we had identified last February, four have gone ahead, including ours. There is also an enormous project out to bid now for JFK Airport, with roughly $7 billion in construction and 100,000 tons of steel. These projects will create 63,000 jobs, American jobs, on site and through purchases made from other industries.

Very simply, potential job losses resulting from project cancellations due to tariff premiums, further escalating out of control pricing, outweigh the 1,600 FSS jobs for these same projects that AISC purports to protect with proposed tariffs. Thank you.

STATEMENT OF KEVIN GUILE

MR. GUILE: My name is Kevin Guile, president of Supreme Group LP. Founded in 1972 and under the same family ownership ever since, Supreme is one of Canada's largest privately held steel fabricator and erectors, with over 400 employees in Canada and the United States. Supreme's business model is centered around integrated fabrication, with three plants in Canada and one in Portland, Oregon.

We recently deployed additional capital into our Portland, Oregon facility after we permanently closed two of our Canadian facilities this past fall. This step to invest in our U.S. facility with new equipment, expansion, training and development, was taken to best serve the robust Pacific Northwest market.

Supreme is a proud member of the AISC. All of our shops have AISC quality certification. We are an innovative company. We supported the research at Purdue University into the Speed Core system for high-rise construction. The AISC website describes Speed Core as "a revolutionary concrete-filled composite steel plate sheer wall core. With this remarkable system, erection will take an estimated 43 percent less time to complete than it would with a traditional cast in place reinforced concrete core."

Supreme is proud to have successfully built the first Speed Core high-rise. The 60 story Rainier Square Tower high-rise in Seattle was built mainly at our Portland facility, with support from other local U.S. Pacific Northwest fabricators. However, sufficient local capacity was unavailable at the time, so two of our Canadian operations were engaged.

The Speed Core innovation shifts man hours from the erection site to the fabrication shop. Speed Core also benefits the steel sector, as new steel materials are required. None of this would have happened without Supreme's Canadian ownership placing its brand, reputation and considerable capital at risk to prove this system.

Last year, Supreme received the AISC's President's Award for excellence in fabrication, for our work on the Amazon Spheres project in Seattle, Washington. All fabrication was completed out of the facility in Portland. We also received a productivity award from the Canadian Welding Bureau for our work on Rainier. This award highlighted our patent pending orbital welding robot developed in Edmonton for use in our facilities in Portland to support the fabrication of the large plate sections required for this high-rise construction.

We reduce costs for our customers by dedicating more hours to fabricating and assembling pieces in shop, to reduce the cost burden in the field, where labor and construction costs are more expensive. Even with our awards and innovative approach to projects, we typically only win ten percent of our bids. In other words, we are successfully awarded approximately one in ten projects. This is the industry norm.

In order to maintain level and consistent capacity, it is normal for our sales and estimating resources to bid ten times our normalized production capacity. Any interruption to this open cross-border trade would have a negative impact on our business, our employees, our customers and the overall steel industry for Canada and the United States. Thank you.

STATEMENT OF DAN ROONEY

MR. ROONEY: Good afternoon. I'm Dan Rooney, president of ADF International located in Great Falls, Montana, 90 miles from the Canadian border. We are part of the ADF Group, which includes facilities in Canada. We're a greenfield plant with nearly 200 union employees because of Canadian investment. I appreciate the opportunity to present again in today's final hearing.

We oppose the AISC in filing these petitions. During the preliminary hearing, I discussed the integrated nature of the North American FSS industry and the constraints on the U.S. industry. I would like to reiterate those points and address the Petitioners' points about the U.S. domestic industry's capability to supply all projects ranging from the small and simple to the large and complex.

An integrated approach with design assist, engineering, fabrication, logistics planning and installation strategies help us meet the needs of increasingly complex projects. By integrating operations across Canada and the United States, we improve our ability to accommodate design and installation changes and meet delivery and construction schedules.

Projects in our industry do not always have definite starts for fabrication and even installation due to unforeseen project accelerations and delays. We often bid and secure work representing more than our annual shop capacity. This strategy helps ensure consistent work in the shop. If projects then overlap, we rely on competitors' available capacity, spirited competitors on bids, but also ready partners when needed.

We always look for capacity in the region of the project. U.S. fabrication capacity first, then elsewhere as a last resort. Just last year while working on a large project, we tried to seek assistance from U.S. fabricators and found there are still a number of limitations inhibiting their ability to complete a project, large or small.

We took the difficult decision to ship material for an overlapping project in California from Montana to our headquarters in Quebec, because we could not find capacity available in the U.S. Fabricating structural steel is labor intensive and requires high skill and time intensive activities such as assembly and welding, which vary based on the scale of the project.

There is insufficient skilled labor in the U.S. to meet market demand. In my experience, U.S. fabrication capacity is constrained for the majority of fabricators due to the very low unemployment rate, lack of skilled craftsmen and workforce development challenges. These issues are unrelated to imports from Canada.

As a U.S. producer interested in maintaining a healthy industry, the worst thing that would happen to the industry is duties. Cross-border collaboration is important to our company, and we are not alone. Duties would stifle innovation and investment, further constraining the U.S. industry. That is not good for our industry or the country. Thank you.

STATEMENT OF ROSS TEMPLETON

MR. TEMPLETON: Good afternoon. My name is Ross Templeton, and I am Political and Legislative Director of the International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers. Our union consists of 130,000 members throughout the steel supply chain, from fabrication in shops to erection on construction sites. We represent ironworkers in both the United States and Canada.

I am here to advocate for those American members, because duties on Canadian fabricated steel are against the interests of ironworkers in the United States. The wages and standards of workers in Canada do not undercut those of workers in the United States. For example, the pay scales of American ironworkers at ADF International's fabrication plant in Great Falls, Montana, who we represent, are comparable to the pay scales of fabricators across the border in Alberta.

Over the past three years, wages for our workers have increased. Our union's own training and safety standards are the same on both sides of the border. Canadian workers have accessed free and independent unions, and there is an even playing field for workers in both countries.

The American and Canadian steel industries are highly integrated. American erectors rely on fabricators in both countries to deliver materials on time to construction projects. This keeps Americans in the construction industry working. The availability of fabricated components gives construction end users the confidence to make capital investments and contractors the confidence to bid jobs, which in turn grows the pie for American fabricated steel suppliers.

The American construction industry is by nature vulnerable to interruptions. If materials do not arrive on time, ironworker erectors cannot work. If our members cannot work, they do not get paid. Each step in a construction project depends on the one before it. So delayed sourcing of fabricated steel creates a cascading series of consequences over the remainder of the project, effects of which in turn ripple up the supply chain of other construction materials.

Delays mean costs. Costs turn profits into losses; losses discourage investment and bidding, with the end result of lost jobs for American fabricators and erectors alike. Canadian fabricators form a vital part of this delicate system that benefits manufacturers and builders across the United States.

American fabricators are not able in every instance to meet demand, and Canadian producers fill those gaps. Unnecessary duties on fabricated steel will create a chilling effect on investment in our sector of the economy. Canadian welders pose no threat to American welders, and interruptions in the construction materials supply chain from Canada will take food off the tables of American workers.

Duties considered today fail the test of necessity, and the ITC should make a negative determination. Thank you.

STATEMENT OF SID DICKERSON

MR. DICKERSON: Good afternoon. My name is Sid Dickerson. Over the last almost 50 years, I have worked exclusively in the steel industry. For the last 19 years, I've operated my own companies, Dickerson Enterprises, Inc. and the Steel Construction Group LLC. DEI concentrates on providing professional services to owners, construction managers and domestic fabricators. These services include program management, steel procurement and dispute resolution.

During these 19 years, my work has focused on the steel requirements for large sports-related facilities, including Minute Maid Park and Reliant Stadium in Houston, Heinz Field and PLC Park in Pittsburgh, Soldier Field in Chicago, Mercedes-Benz Stadium in Atlanta, the Big House in Ann Arbor, Michigan, the renovation to the Dolphins Stadium in Florida and the new stadium in Los Angeles, where the LA Rams and LA Chargers will soon play.

Our policy is to work solely with U.S. fabricators, and whenever possible to source FSS from U.S. producers/fabricators. DEI was contracted in 2016 to provide program management services for steel for the LA Stadium. Once bids were received and reviewed in December 2016, we helped the construction manager analyze the offers, make a recommendation to the owner to award the subcontract for roof steel and secondary steel to a joint venture of Schuff Steel and Herrick Steel. These companies are both domestic AISC fabricators.

In February 2017, the Schuff-Herrick Joint Venture notified the construction team that they had determined there were portions of their scope that they cannot fabricate in their own shops, nor could they find any domestic source for the materials. While I did not participate, others on the construction team accompanied Schuff-Herrick to review facilities in Britain, Germany and Italy.

They finally determined that an Italian fabricator was the most appropriate source capable of providing the needed material to allow Schuff-Herrick to meet their contract obligations. They did not consider sourcing FSS from China at that time. From February until July of 2017, Schuff-Herrick worked with the Italian fabricator but they reported multiple instances in which this company attempted to change project requirements and/or increase their original bid price.

As a result, the owner in July of 2017 issued a stop work notice to the construction manager. At that time, I was asked if it might be possible to subcontract for the required steel in China. Schuff-Herrick remained of the opinion they could not produce the FSS in their own facilities and that the FSS for this project could not be attained in the United States. I was also asked to investigate whether the owner could eliminate the roof portion of the stadium. This was not the optimum solution, as it would not give the owner the desired stadium and it would eliminate the jobs of hundreds of construction workers.

I then organized a trip for the stakeholders to visit five Chinese fabricators. This trip included representatives of Schuff Steel, Herrick Steel, the construction manager, the owner, the Engineer of Record, various other consultants and myself. All parties agreed that the Chinese companies were capable of fabricating the large pieces of FSS to the tolerances required by the Engineer of Record.

They also had the space to preassemble certain components in China, and disassemble the components for shipping before they were reassembled in the U.S. at the construction site. This was very important to ensure the quality of the finished FSS and to avoid delays in construction.

Sourcing FSS from China allowed the owner to lift the stop work notice so that the project could proceed. Significantly, the work previously done in Italy was now being performed in China, and the cost of the project, which now incorporated Chinese FSS, was still greater than the initial cost bid by Schuff and also W&W in 2016. Finally, about seven years ago I made the business decision that my companies DEI and SCG would work only for domestic fabricators.

Thus, the FSS which we import into the U.S. from China supports decisions made by members of the U.S.

industry, who are the Petitioners. We have supported them when they have requirements that they believe can best be met by the use of offshore procurement, but we do not support them in this case. When some members of AISC have taken a position which we believe is not in the best interest of the majority of domestic fabricators, who may feel that they have no choice but to source some of their FSS from offshore. I welcome any questions. Thank you.

STATEMENT OF XUANMIN ZHANG

MR. ZHANG: (Through Translator) Good afternoon. My name is Xuanmin Zhang, the General Manager and Director of Shanghai Matsuo Steel Structure Company. Because of scarce time, I will not be reading my statement at this hearing. But I am leaving a copy with you, and I would be honored to answer any questions that you may have.

I have asked Ms. Eve Wong to read the summary of my prepared statement in English. I have been working in the FSS industry for 36 years. My company has so far successfully completed over 400 projects in the past 20 years all over the world, including in the U.S., Europe, Japan and Australia. Shanghai Matsuo is one of the few companies in China selling FSS to the United States. With the U.S. economy booming, FSS product from China is a good supplemental to the U.S. industry.

Also, FSS is just part of large projects, and the cost of FSS is a small element in consideration of the whole project. Timely delivery of high quality products is more important than anything else. I left my family on the first day of the Chinese New Year to come today to testify, to share my thoughts with you. I decided to do something which may be helpful to hundreds of employees in Shanghai Matsuo, to the industry and my dear customer in France and the U.S.

Finally, I would like to give best wishes to you all in the New Year. Thank you.

STATEMENT OF MAGGIE ZHAO

MS. ZHAO: Dear Commissioners: My name is Maggie Zhao, from Wison in Houston, Texas. I've been with Wison for four years. My role is in business development and sales. I graduated from University of Houston with a Bachelor's degree in Geology and from LSU with a Master's in Geology and Petroleum Engineering.

Wison has been selling modules to the U.S. since 2017. Our modules combine piping, valves and other loose pieces into a whole steel structure, which greatly decreases the onsite construction schedule and cost. Therefore, our product is much more complicated than just the FSS.

Wison has been successful in delivering these projects because of our engineering, procurement and fabrication capabilities. We were able to engineer more loose components into the modules to achieve the most cost-effective onsite construction.

Since 2017, we have already completed four projects for Formosa and participated in biddings to companies such as Exxon and Air Products.

Our fabrication yard in China faces the international water, which simplifies the sea freight process. Once the modules arrive in Port of Calhoun for the Formosa project, it's only about six miles to the construction site.

Our modular concept will not be feasible for projects that require lengthy in-land transportation. Such transportation limits the size of the module that can be built, which greatly restricts the quantity of loose pieces that could be incorporated.

Our biggest project is EG-2, which is an ethylene glycol unit that is mainly used as a raw material to produce polyester fibers and antifreeze. The overall contract value is $356 million. The modules fabricated in China are less than 10% of it. Most of the cost occurs at the U.S. construction job site for equipment installation, welding, insulation, and other labor-intensive activities.

Therefore, our modules are not purchased based on the FSS price, rather, they are purchased based on efficiency and cost savings characteristics at U.S.

construction job sites. Thank you.

STATEMENT OF PAUL GUILFOYLE

MR. GUILFOYLE: Good afternoon, Commissioners. My name is Paul Guilfoyle. I'm with Exxon Mobil --

MR. BISHOP: Can you talk a little bit more directly in your mic, please?

MR. GUILFOYLE: Can you hear me now? Good afternoon, my name is Paul Guilfoyle. I'm with Exxon Mobil Corporation, and I currently serve as Venture Executive for Gulf Coast Growth Venture, a new state-of-the-art polymer and glycol manufacturing facility in Gregory, Texas, and part of Exxon Mobil's $20 billion planned investment in the U.S. Gulf Coast called Growing the Gulf.

Prior to this, I was the project executive for our last major construction project in Baytown, Texas, called North American Growth. I am here to voice strong opposition, specifically to the imposition of AD/CVD duties on fabricated structural steel that is incorporated into complex, highly-engineered process plant modules of the kind we are importing. This project, and quite honestly, our future growth projects in the region are threatened because of these investigations and unnecessarily so.

Process plant modules are nothing like FSS and their import is not harming a domestic industry. And I will focus on these two topics today.

First, process plant modules are an entirely distinct product from FSS. These modules are enormous, complex structures made up of hundreds of different components. FSS is only one such component and it counts for less than 5% of the total value of the modules we're importing. Not the total value of the plant, not the land, just the modules that we're bringing in.

One of these modules can weigh over 10,000 tons and span over 300 feet. The pictures shown today of a module is nothing like the process plant modules we are importing, and if you refer to the confidential section of our brief, Pages 9 and 10, you can see some examples of the actual process plant modules we're importing.

Further, process plant modules are designed to perform specific functions critical to the operation of the overall plant. These functions are far more complex and varied than just the structural support provided by FSS. In addition, compared with FSS, process plant modules have a significantly more extensive production process and can be produced only in a very limited number of facilities.

FSS is typically constructed over a period of weeks or months and is shipped in containers, or via truck to a wide variety of construction sites. By contrast, process plant modules can take years to design, engineer and construct, require an extensive and diverse amount of specialized labor to produce. It can require specialized shipping transport and delivery via deep-water ports and are custom-produced and delivered only to the petrochemical facility that ordered it.

No one can consider these to be like products. By any test, they are separate and distinct. Process plant modules are even imported under different HTS codes than any of the ones for FSS listed in the scope of these investigations.

Second, with regard to injury, imports of process plant modules are not harming any domestic industry. We decided to source these modules for a project from abroad because of capacity constraints, construction labor shortages, even as mentioned by petitioners this morning, and geographical limitations in the United States.

Our decision had nothing to do with the price of FSS content in the modules. When we began considering this project, we determined that a conventional stick-build approach to constructing the facility would have made the project non-viable. We would not have built it. This was based on our own recent experience with the North American Growth Project, which was delayed and cost significantly more to build than planned, due to a shortage of craft labor and the unpredictability of productivity in the U.S. Gulf Coast. We are also aware that other large stick-built projects in the region were delayed and over budget for similar reasons. Examples of these projects are outlined in my affidavit.

Interesting, last week, a major U.S.-headquartered construction firm declared bankruptcy as a result of project delays and overruns for their projects in the U.S. Gulf Coast. Therefore, we chose a modular construction approach and a site adjacent to a deep-water port that would facilitate delivery of the modules required for this project.

Having decided on modular construction, we determined that forty complex process plant modules would be necessary. We determined that no U.S. supplier had the capacity, labor availability and deep-water port access to supply the necessary modules on the schedule that we required and so we turned to module fabrication yards abroad with demonstrated capabilities.

Claims by petitioners that they could've supplied these modules from U.S. fabrication yards are just not correct. And since even the petitioners testified this morning that U.S. FSS producers do not significantly compete in the Chinese FSS market, they could not have supplied U.S.-produced FSS to our module fabricators abroad.

These facts demonstrate that no domestic industry is injured or threatened with injury as a result of our decision to import process plant modules for the GCGV Project. At Exxon Mobil, we remain committed to the revitalization of U.S. manufacturing through our Growing the Gulf initiative.

We ask that this Commission find that process plant modules are a separate like product and their imports are not harmful to the domestic industry. Thank you.

STATEMENT OF JAMES P. DOUGAN

MR. DOUGAN: Good afternoon. I'm Jim Dougan from ECS. Demand for FSS grew from 2016 to 2018 and remains steady between the interim periods. Growth in domestic shipments outpaced demand, while subject import volume essentially rose on pace with demand. Between the interim periods, subject import volume fell substantially, while nonsubject import volume grew substantially.

Because FSS is a customized product and not a fungible commodity and competition between domestic producers and subject imports is attenuated as you've heard from this panel, domestic and imported FSS do not displace each other on a ton-for-ton basis. Nevertheless, an analysis of market share weighs against the finding of adverse volume effects.

As shown on Slide 2, the domestic industry gained 2.3 percentage points of market share from 2016 to 2018. The Commission will look in vain for any mention of that important statistic in petitioners pre-hearing brief. Subject import market share was essentially flat at about 30%. And when subject import volume and market share declined between the interim periods, it was nonsubject imports, not domestic producers, that filled the gap.

Domestic industry volume and market share barely changed at all. The interim period analysis is a natural experiment that completely unravels petitioner's theory of the case. Petitioners claim that because nonsubject imports are fairly traded and higher-priced than subject imports, they lost share.

First of all, subject imports didn't gain market share. Any share lost by nonsubject imports was gained by the domestic industry.

Secondly, petitioners claim that the domestic industry has ample capacity available to satisfy all the U.S. demand for FSS and has only been prevented from doing so by unfairly traded, low-priced subject imports. If this is true, then why did nonsubject imports, which are fairly traded and higher priced, increase in volume and market share while domestic shipments were flat. The answer is two-fold, one, competition is attenuated, and two, the domestic industry does not have the available capacity it claims to, a point which I'll address in more detail shortly.

Respondents contend that the record as reported is sufficient for the Commission to make a negative determination. However, as noted in ECS's prehearing analysis, apparent consumption in the prehearing report is understated because of the low coverage of domestic producers' questionnaires, which staff estimates to be 53.7%.

It would be inappropriate for the Commission to measure the significance of subject import volume using what it knows to be understated domestic industry shipments. And if the data are revised to account for the underreported shipments, the support for a negative determination becomes even more compelling.

As shown on Slide 5, domestic industry share was much higher to begin the POI, and increased to 75.3% by 2018. Subject share was flat at roughly 20% before declining to 16.9% in part year 2019. Again, fairly-traded, higher-priced nonsubject imports, not domestic producers, filled the gap created by the decline in subject imports between the interim periods.

Flat, subject import market share is not evidence of injury in a growing market, especially when domestic industry share is growing. Steady subject share could only arguably be evidence of injury if the domestic industry had the ability to satisfy a significantly greater portion of the market than it already did. But the record shows this not to be true.

ECS's pre-hearing analysis presents voluminous evidence from domestic producers' questionnaire responses, reporting the availability of skilled labor as a significant production constraint. We didn't make this up. This is in their questionnaires. This is accompanied by cites to AISC's own industry publications discussing labor constraints, along with the Bureau of Labor Statistics data about the record low unemployment rates in the manufacturing sector.

Earlier they mentioned, well, maybe they're talking about the construction sector. No, we present data that show the unemployment rate in the manufacturing sector is even low than the century-low unemployment rate in construction. But even leaving aside this extensive evidence questioning whether domestic producers might be able to hire additional labor to expand production. Their own questionnaires prove that they've overstated the capacity they have available right now with their current work force.

FSS is not the typical steel product examined by the Commission. It is custom-fabricated to unique specifications on a project-by-project basis. And requires the significant application of highly skilled labor to produce. In the words of Mr. Cooper, referring not only to his own company, but to subject producers as well, "We sell manhours, not tons." Thus industry capacity is driven by labor productivity more than by equipment capacity.

Shown at Slide 7, domestic producers own data show that it took their floor employees on average 15.7 hours to make a short-ton of FSS. This is within the range of 15 to 30 hours for short-ton benchmark from the AISC, and it's consistent with the AISC data provided in petitioner's economic appendix. But domestic producers reported capacity, assumed an average of 10.7 hours to make a short-ton.

This level of productivity is unsupported by any record evidence and it's far above any industry benchmark. By using these assumptions, domestic producers have overstated their available capacity by more than a third. As a result, they've understated their utilization rates by over 20 percentage points. Using these producers' actual productivity, based on their own data, the industry's 2018 utilization rate would not have been 65.5%, but rather 87.9%.

And given the need to balance the timing of seasonal and project-driven production demands, this figure approaches, if not achieves full practical capacity. In this context, the fact that subject imports and not domestic producers, replace subject imports' market share in 2019, makes perfect sense. That the reduction in subject import volume and market share provided no benefit to domestic producers also means that the larger presence of subject imports earlier in the POI caused no harm.

Turning to price, as you've heard from the witnesses, the price of the FSS imbedded in the larger cost of the project, is not the driving force in purchasing decisions. And the majority of purchasers do not even receive itemized bids. FSS generally only accounts for a minority of the total project cost, roughly 30%. These conditions of competition preclude analysis of price effects.

And we invite the Commission to ask the witnesses on this panel about the statement from petitioners this morning that FSS is the only variable in the bid price. This is not some invention on the part of respondents.

The Commission itself reached the same conclusion in the 1988 case on this same product where it found that the comparison of total bid prices would be meaningless. Tables 5-2 and 5-3 of the pre-hearing report state that, "Bid data is analyzed on the basis of total cost of the bid." In other words, the conditions of competition prevailing in the 1988 case remain in effect today.

Petitioners have presented a very detailed analysis of the bid data in Attachment 1 to their economic analysis, and much of it's BPI, but here's basically what you need to know: They identify a number of projects with head-to-head competition between domestic and subject bidders, but in only five of those projects was there a separate price for the FSS in the total cost of the bid.

And petitioners acknowledge this on Page 11 of their Appendix, stating, "The large majority of responding firms reported they do not know the price of FSS in the bid." This is from their own Appendix. So in nearly all cases, what they're comparing is the total cost of the bid, not the price of the FSS. This is, in the words of the Commission itself, a meaningless comparison. A small minority of data points that do feature itemized FSS prices do not rise to the level of evidence of significant adverse price effects.

Petitioners also state that subject imports caused price pressure because 23 of 28 purchasers reported that they always or usually purchase the FSS offered at the lowest price. But how often do these purchasers actually know which FSS is offered at the lowest price? Only 9 of those 23 companies reported receiving itemized prices of FSS in their bids. And only 7 of those 23 provided bid data with the price of the FSS broken out.

And this is as if I were to say, when I go to a deli to get a sandwich for lunch, I make my decision based on the price of the bread. It sounds kind of absurd, right? The petitioners are trying to convince you that there are price effects on bread by comparing the price of sandwiches. And that's absurd too. There was no price depression by reason of subject imports either. Given the customized nature of the product, AUVs have limited utility for price comparisons. The domestic producer's AUVs increased by 15.5 percent from 2016 to 2018, and by 1.9 percent between the interim periods.

There was no price suppression by reason of subject imports. In its preliminary determination, the Commission found that the increase in the industry's cogs to sales ratio in 2018, was attributable to an increase in raw material costs that was unlikely to be immediately reflected in FSS prices, because of the lack of indexing provisions in domestic producer's contracts -- emphasis on the words "immediately reflected." We'll return to that in a moment.

The most important driver of this increase in costs was the imposition of the Section 232 tariffs in early 2018, shown in figures 5-1 and 5-2 of the prehearing report, and that's reproduced at the confidential version of slide 14. Petitioner's representatives have claimed that the 232 tariffs have not had a meaningful effect, at least until this morning, but 87 of 98 domestic producers reported that the Section 232 tariffs affected the U.S. market, and 60 of 105 producers reported that the 232 tariffs increased raw material costs for FSS.

Now, back to the words "immediately reflect." Because contractors for FSS generally don't index to raw materials, a sudden increase in steel costs, like the one experienced in 2018, can't be immediately reflected in domestic producer's prices, hence, the temporary -- emphasis on "temporary" rise in the cogs to sales ratio.

The table on slide 15 shows that the ratio was already declining in the fourth quarter of 2018, months before the petition was filed. The record provides other clear evidence that subject imports were not preventing price increases that otherwise would have occurred.

As shown at the table on slide 16, average sales values rose by more than unit COGS, showing that the industry has been easily able to cover its increasing raw material cost. This is further demonstrated by the fact that the industry made more gross operating and not net profit per ton in 2018 than in 2016.

As to lost sales and revenues, while 13 out of 27 responding purchasers reported switching some volumes of FSS on the basis of price, the total quantity at issue amounts to less than 5 percent of total reported purchases and imports over the POI, and is therefore not significant even as reported.

What's more, these responses are frequently in direct conflict with the reported bid data, with a significant portion of the purchasers reporting these shifts also revealing that they did not know the price of the FSS in the projects. So, the Commission should give these claims little weight.

As to lost revenues, only 3 of 28 responding purchasers indicated that domestic producers had lowered prices to compete with subject imports. And one of those three admitted that it doesn't receive bids with the price of FSS itemized. So again, in the words of the Commission itself, these are meaningless datapoints. In all, there's little evidence of significant price effects.

Turning now to impact. The domestic industry increased its per unit profits at all levels over the POI. It also increased its absolute gross profit by 12.3 percent, its absolute operating income by 18.7 percent, and its absolute net income by 50.9 percent. This is not an industry experiencing material injury.

The industry's operating margin was essentially flat from 2016 to 2018, with the tiny decline in 2018 attributable to the industry's temporary inability to pass through the 232 tariffs. While the industry's operating margin improved slightly between the interim periods, the increase in net sales AUV that largely drove this change was not due to a significant increase in U.S. shipment AUVs, which merely continued their modestly increasing trend from the full years of the POI.

The larger contributor was the large increase in the AUV of the industry's export shipments. Therefore, any improvement in the industry's condition should not be attributed to post-petition effects. The industry's employment and investment indicators, likewise, indicate no material injury. Steady headcount, with rising wages is consistent with the picture of a tight labor market.

Capital expenditures increased by roughly 70 percent from 2016 to 2018. And the industry's CAPEX to depreciation ratio remained above 100 percent throughout the POI. Moreover, the industry earned consistent returns on assets of between 10.6 and 11.1 percent.

In summary, this is not an industry experiencing material injury by reason of subject imports, nor is it vulnerable to injury in the reasonably foreseeable future. The Commission should make a negative determination with respect to both current material injury and threat, thank you.

MR. NICELY: Chairman Johanson, that concludes our presentation.

MR. NOLAN: Could we reserve the balance of our time for rebuttal if there's any left?

MR. BISHOP: You have one minute remaining. And yes, you may.

CHAIRMAN JOHANSON: Okay. We will now begin Commissioner questions with Commissioner Stayin.

COMMISSIONER STAYIN: One of the subjects we discussed this morning with the domestic industry was the fact of whether they had the capacity to provide the needed FSS for the U.S. market. And it was their position that they had. And of course, we asked well, we understand that there's some problems with having skilled labor.

Now we have all the skilled labor we need, and we have a great training program in place. What is your take on that?

MR. DOUGAN: Commissioner Stayin, Jim Dougan, just to answer that quickly. We didn't make this stuff up about the labor constraints, it's in the domestic producer's questionnaires. There's five pages of citations to domestic producer questionnaires that said that they -- that labor -- skilled labor availability was a key production constraint on their capacity.

So, this is not some fiction that we invented. It's reported in the domestic producer's questionnaires themselves. You may have heard differently from the handful of producers who are sitting here today, but there's a very large number of domestic producers who report that it is.

There are also publications by the AISC as an association itself, that say that skilled labor availability is an issue for this industry and a constraint. And the Bureau of Labor Statistics shows that manufacturing unemployment is at an all-time low. It's 2.7 percent, or something like that.

So, to say that there's absolutely no labor constraint, any given producer may have the capability to hire more people and increase their output, but the industry as a whole in aggregate, this is an issue for them. And I will also point out that they said, "Oh, you know, this isn't a problem for us. We hired more workers in the interim period."

But production between the interim periods decreased, and their market share remained essentially flat, even though the subject imports dropped off. So, if their argument is the only thing that's constraining our capacity, the only thing that's constraining our output is the presence of unfairly traded imports. The interim 2019, just belies that.

MR. PORTER: Excuse me, Commissioner, this is Dan Porter with Curtis. I'm over here, I'm over here. I just want to sort of add a gloss to this. Essentially, you heard something this morning. You heard Mr. Dougan with his charts saying, "There seems to be a disconnect." And I ask you to look at essentially pages 3-3 to 3-

MR. BISHOP: I need you to stick with your mic, Dan.

MR. PORTER: I'm sorry, I ask you to look at pages 3-3 to 3-7 of the staff report. And then pick up your calendar about the panel that appeared here this morning. They're confidential, but you can take each of these people's percentages of the domestic industry and add them up. What do you get? You get the panel here was not representative of the total industry. That's the disconnect.

So, you heard something today, but you got 100 and something U.S. producer responses. They said something that was reported by Mr. Dougan. That's how you can square both of those things.

MR. DICKERSON: If I could add, Sid Dickerson. You need to understand that the fabricators are manufacturers, and their schedules are based on what they can manufacture. The demand for their product is based on construction schedules, which are not the same thing. So, even though they may have an aggregate, the capacity to do what seems to be all the work, in a six month period, based on construction demands, they don't have the capacity to respond to the construction schedules.

MR. WHALEN: Ed Whalen, from the Canadian Institute of Steel Construction. We heard this morning a lot about welders and I understand you had some questions related to welders, and that particular trade and skill is a good and large component of steel fabrication.

And published on December 11th, from an ABC affiliate, and a number of other reports that the American Welding Society warns of future welder shortage, and the group gets its data from the Economic Modeling Specialists International. And they claim that the industry is predicting a shortage of more than 375,000 welders by 2023.

That isn't in 10 years, 15 years, or 50 years. That's only three years away. So, in order to get to that number, it's only plausible that they're in a current shortage right now, and it will balloon to very large numbers in only three years.

From a Canadian perspective, we're seeing the same thing. And not only is our industry faced with that challenge, but all industries across the board are facing challenges with skilled labor. We have some difficulties trying to encourage the younger generation to get into our industry because they believe it's dark, dirty and dangerous. And these are just some of things that we have to deal with.

But the reality is that we are all faced with a labor shortage and we're all scratching our heads globally what are we going to do about it. So, a lot of things are being grappled with on how to challenge that, but it's a real and present factor that we're faced with at the moment. Thank you.

MR. MCKINNEY: This is Sheridan McKinney for Corey. I'd like to add if you were to go to the website AISC.org on February 25, 2019, the day of this staff conference for this case, there's actually an article that says, "New Coalition aims to close the skilled trades gap." And there's quite a few other articles like that available on the web and on this website, thank you.

COMMISSIONER STAYIN: Thank you.

MR. ROONEY: Commissioner, Dan Rooney with ADF International. And this morning you did hear about some unprecedented efforts to train welders in the United States. That wasn't the case 20 years ago when we could rely on trade schools and an older workforce that was handing down those skills.

Today, ADF is included in that group that is looking at unprecedented ways for private industry to find ways to train young welders to get into the workforce. We struggle finding workers every day, in our capacity and our ability to take on additional jobs is constrained by that, thank you.

COMMISSIONER STAYIN: Thank you. The Petitioners have responded to your -- some of your briefs that there is no injury. And their responses that that because of the imports, there is a price suppression and a price depression impact. And the way you could tell that that was happening is because they weren't able during this economy, this growing economy, to be able to increase prices and to get part of the action in this point of time because of these imports. What is your response to that?

MR. DOUGAN: Commissioner Stayin, Jim Dougan from ECS. I don't think the evidence supports a finding of price depression or suppression. Depression is a little harder to track in this industry given the unique, customized nature of every product, so you know, but you look at trends. You look at trends and the average unit values for the domestic producers. They increased by 15.5 percent from 2016 to 2018.

And there's a graph in Section 5 of the staff report. I don't have it handy, it shows again, an increase in trend. So, there was certainly no price depression by reason of subject imports. The prices are going up. There's no price depression. The question is, is there price suppression. Are the subject imports preventing price increases that otherwise would have occurred?

And we say that the evidence shows that that's not true either. There was, an -- sorry, yes, an increase, in the COGS to sales ratio in 2018. The Commission itself at the prelim, found that that was because of especially a temporary inability to pass through an increased raw material cost. That increased raw material cost is attributable largely, to the Section 232 tariffs, which were imposed in early 2018.

But again, I would characterize this as temporary, because you'll see that even by the fourth quarter of 2018, again, with the given time for the 232 tariffs to sort of be reflected and passed through in the producer's prices, you see the COGS to sales ratio coming back down to basically 2017 levels.

So, the idea that there's a, you know, extended level of price suppression, and if this is significant, I mean we're talking about even at its worst, we're talking about a couple of percentage points, right? But we say that's even an overstatement due to how it was being ameliorated by even before the filing of the petition, mostly before the filing of the petition.

And finally, what I would add is that -- and you know, we can talk about this and what Dr. Kaplan's rebuttal to it was. We can probably go back and forth on this all day. But the fact that you saw an increase in the unit gross margin, unit operating margin and unit net profit over the POI, means that there weren't price increases that otherwise would have occurred.

And in absolute terms, the industry's profitability increased significantly. So, these are not -- this is not a picture where you see, you know, shrinking margins where you see tight margins, but you see declining profitability. None of that is true here.

COMMISSIONER STAYIN: Thank you.

MR. PINKERT: I would just add very briefly, Commissioner, that the Commission has looked not just at the COGS to sales ratio in analyzing price suppression, but also to whether or not the industry was able to cover its increases in unit costs with increases in sales values.

And it was able to do so in this case, so really what Mr. Dougan is saying, is that there's that piece of the statute that talks about price suppression in terms of price increases that otherwise would have occurred. And the question is if they're already covering all of their unit cost increases with sales increases, then where is the increase that would otherwise have occurred for purposes of the price suppression?

COMMISSIONER STAYIN: Thank you. My time is up.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: I think I'll start a little bit where I left off with Petitioners in my question about what is a PPM, and is it assembled? Is it the assembled piece? Is it the components? Is it the picture that Petitioner showed? Is it the one that Exxon Mobil has in their brief? If you could talk a little bit, sort of set the scene for me, and I'll probably have follow-up questions, but I'm still struggling a bit with what is it? What are we arguing is in or out of the domestic like product?

MR. GUILFOYLE: So, the product that we're -- it's Paul Guilfoyle, sorry, Exxon Mobil. So, the product that we went to purchase and that we're importing is a process plant module. And it has components in it like reactors, compressors, pumps, pipes. The picture that they describe we would call a rack of steel, or assembly of steel. It is not what we would call a process plant module.

And so, it has some steel as it's constructed, that's incorporated into the module, but the product that we're purchasing is the entire module itself. I'm not sure, it looks like I didn't answer your question.

COMMISSIONER KARPEL: Well no, you did. I guess I'm interested in hearing what the lawyers think is -- the Petitioners were talking about no, no, we're just arguing that the FSS in the PPM is what it is in, but do you agree with that? Or, is it the entire module we're talking about, as sorry, I didn't see your name, as the representative from Exxon Mobil said.

MR. MARSHAK: Ned Marshak, I represent Wison and other Chinese --

MR. BISHOP: Closer to the mic, Ned, please.

MR. MARSHAK: Ned Marshak. I represent Wison and other Chinese Respondents. What Petitioners said this morning that it was only the FSS in the module that is subject merchandise. So, the duty would only be assessed on the value of the FSS. And we're going to hold Petitioners to that. The Department of Commerce also, but the entire module is significantly larger.

If you look at our brief for Wison, for one of the biggest projects we had, a 356 million dollar project, there were 62 modules that came in. And if you look at each module, each module is different. Each module has a different amount of equipment on it. So, these are custom made, mastic built, they're custom made to go directly from the site in China, which is you know, has a port right there, a de-porter port, right at China, right to the deliver at for Moses construction site, different sizes. But each of them is more than just a rack, because it has equipment, and then you know, just you know, put together like blocks when they get there. And the key is getting a lot of equipment, as much equipment as possible on the modules, and non FSS, on the modules, so that work won't have to be done at the construction site.

And it's tremendous saving. Now, in Wison's case, you have a 356 million dollar project and the cost of the FSS is let's say, you know, 10 percent. So, it's a very, very small port cost. The FSS is like, you know, the frame, like the bread. And everything else is the stuff they're really buying and having the construction done overseas in a way that makes the construction -- the final construction site that much easier and it facilitates the final construction.

COMMISSIONER KARPEL: So, are we being asked to find the plant production modules are a separate like product, or that the FSS components in the plant production module is a separate like product?

MR. MARSHAK: We're going to have to think about that because this is, you know, a theoretical question as to how you look at this. We believe then that, you know, what's coming in is a separate like product. And you look at it, just the FSS there, or the whole module. We have to figure out legally, which way it goes.

But the one thing we know is, you know, this module coming into the country just has nothing to do with FSS coming into the country, because the FSS is only a small part of the module. And when the modules come in, you can' t have FSS to the United States, it just doesn't compete with a great big module coming in and the FSS is no more than 10 percent. And I think Exxon Mobil it's even less.

But we will put that in a brief, the theoretical answer to your question.

MS. ZHAO: Maggie from Wison. Maggie from Wison here. So, just to add on Paul from Exxon, also Ned, the traditional module, especially for the PPM that we're talking about here. Besides the FSS, the main lead component is the loose pieces. Those are all non-steel structures, so we're talking about piping, valves, like electrical instrumentation.

So, all of those smaller pieces that we were able to incorporate it into the modules, that way -- just like Ned mentioned. They're paying tremendously decreasing on site construction, so that way the owner doesn't have to deal with the labor constraint here.

It's not only the labor constraint, it's the skilled labor constraint here. So, we're talking about on schedule, on progress, on quality. So, the FSS, at least based in our project, is really just a very minor portion of the project.

MR. PAL: This is Raj Pal, with Sidley Austin, for Exxon Mobil. I would just add that --

MR. BISHOP: Get closer to the mic Raj, please.

MR. PAL: Yeah, I would just add that you know, the definition of domestic like product under the statute, refers to the articles subject to an investigation. So, when you're conducting the analysis, we believe that -- the statutory definition does not refer to the dutiable component of the article, it's talking about the article that's subject to investigation or subject to import.

As they've described it's the, you know, the entire process plant module that is subject to import, and therefore falling within the scope of this case, and so we believe that the analysis should be done comparing that module to the other FSS.

COMMISSIONER KARPEL: Okay, thank you. And I have some questions about PEMBs. I guess I'd like to understand a bit more about the purchasers of these PEMBs versus purchasers of mainly conventional FSS, and whether there's an overlap in that, and whether you might have a purchaser or builder who's thinking I need to build a building. Should I think about PEMBs?

Should I think about going the conventional FSS route? I mean, does that happen? I haven't seen a lot of discussion in the briefs about sort of this idea that there's going to be certain customers who have a willingness to sort of engage in an intensive project management approach, maybe different than the type of customer that could maybe not handle that, but could maybe handle -- or, the business model could handle using PEMBs.

So, I wondered in the context of the like product arguments, you could sort of tackle that question.

MR. PASLEY: Yes, it's Greg Pasley with BlueScope. In general, our pre-engineered metal buildings are sold through a builder network, so a group of contractors who are affiliated with either, you know, one of the BlueScope companies, one of NCI's companies, NuCor building brands, and essentially that contractor is competing on an individual project.

So, we would not generally sell to an end user, more through a contractor network that's affiliated with the brand itself. And as part of that, as you talk about whether the project would compete against a conventional steel project, it would depend on the project basically.

A lot of times our contractors, our builder network has a larger propensity, I think, for negotiated work, so less bidding work compared to what we saw earlier today. It's in general, much, much smaller projects, not big stadium projects, not big infrastructure projects, but our average size projects, probably around $200,000, so maybe you know, 100 tons or less in that area, so fairly small projects where negotiation would be much more common in that arena.

As you talk about how the decision is made, maybe between how to go -- whether to go pre-engineered, or with conventional buildings, a lot of times that decision can be made with an architect. It could be made from the end user standpoint as far as what's going to be more efficient. What's going to suit that type of building better.

Again, more simple, low-rise buildings, more on the pre-engineered side of things. If you look at construction specifications, the two types of construction are dealt with separately. There's a division 5 metals that governs essentially the parameters of structural steel supplied under that.

But if you go to the Construction Specifications Institute, the specs for pre-engineered metal buildings sit under specialty construction. Just a different category of construction there. I don't know if that helps, or what more I can expand on there.

MR. NICELY: Commissioner Karpel, if I could add just to be very clear about something in your data that we have submitted. BlueScope and NCI are very similar in many respects, but there's one very important distinction that you need to understand in our data that NCI, which is a subsidiary of Cornerstone, sells a significant quantity of components of PEMBs where they're not selling the building itself, but instead, a portion or certain aspects of the FSS for a PEMB.

And even with regard to those kinds of sales, which are significant, in and of themselves, they're still abiding by the MBMA standards, not the AISC standards. So, they're still selling the products that they're selling are FSS that are specific to PEMBs.

COMMISSIONER KARPEL: And they're selling those to other PEMB producers, not just as a stand-alone.

MR. GOLLADAY: Mark Golladay. We're actually selling to both. We're selling to other PEMB producers. Primarily, to PEMB producers, that's correct.

COMMISSIONER KARPEL: My time is up, so I'll pass it on.

CHAIRMAN JOHANSON: Alright. It's 4 o'clock, and the bell is ringing outside. I finally get into my questions for this afternoon's panel. I appreciate you all being here. I'm looking at the list of witnesses here. There are people on this panel, it's like 50 or so people, so anyway. I know you've been waiting all day.

I'm going to bring up an issue which has already been discussed, and I've discussed it with this morning's panel as well. But you all put a lot of effort into discussion in your brief about the labor situation. And I wanted to dig a little bit more into that, although I know we dug a fair amount already. But do labor constraints experienced by fabricators vary significantly by region?

Because you heard this morning that the domestic producers said the labor is not an issue, but I'm wondering if region to region it's not as striking from one region to another?

MR. PASLEY: Greg Pasley with BlueScope again. We have six manufacturing facilities across the U.S. and we also have 14 locations where we have service centers with engineers, project managers, et cetera. We're in an extreme labor crunch right now. We're hiring across all locations and I think that goes back not just to skilled welders on our shop floor, but it also goes to skilled engineers, detailers and project managers as well.

We've got many kind of innovative avenues to attract employees, whether that's working with technical vocational technical colleges nearby, doing programs with high schools, and also doing programs with colleges in the area.

I think for us, the experience we have on the BlueScope side, it is not so much a regional issue as it is a national issue. We do have issues across virtually every site we have. We've hired over 200 people in the last 18 months. It's just been a serious hiring piece as the economy has been going along very well for us. Thank you.

MR. ROONEY: Sorry, Dan Rooney, with ADF

International. And I'd just like to say that while we don't have multiple fabrication plants, I get the opportunity to talk to multiple fabricators across the country as well as suppliers and educators across the country.

And this is not a regional issue. It's an extremely low unemployment rate, and a skills gap. The conferences that I attend, it's been very rare that there hasn't been a breakout session that dealt with unemployment and dealt with the skills gap that we face. And many of those breakout sessions are innovative methods for recruiting individuals, and then retaining those individuals through some, what again I would call unprecedented training methods taken on by private industry because of a lack of attention over the course of 10 years to the skilled trade programs at local universities and trade schools.

MR. GOLLADAY: Mark Golladay for NCI. We also have trouble attracting and retaining skilled workers across all regions. It's been a very difficult thing to work through.

MR. NICELY: And Chairman Johanson, I'd just point you that portion of our joint filing with the ECS analysis that provides again, as Mr. Porter talked about earlier, of the extent of the -- the extent to which you have narrative responses from a dramatic number of producers referencing this problem.

So, again, we don't think that who you heard from this morning is particularly representative.

MR. NOLAN: This is Matt Nolan for the Canadian group. Just to add real quick, you know, if you look -- and we'll point some of this in the post-hearing brief. But there are reports that the construction industry at large, lost 60 percent of its workforce during the course of the Great Recession. And most of those workers never came back.

And so, what we're dealing with is trying to remedy acute shortages that have developed in this industry, because they haven't been able to replace these workers that left. This is not just, you know, information that we're providing. This is Census Bureau data that they collected. We will put that in the post-hearing brief.

But what you're seeing is a general shortage in the economy of skilled labor, an acute shortage in the construction industry, and the construction industry includes some of the same types of workers that are used in the fabrication industry, namely welders and that sort of professional skill.

CHAIRMAN JOHANSON: Alright, thanks to you all. To all of you for your answers there, for clarifying some of that. You argue at page 2 of the Respondent's pre-hearing brief that capacity is difficult to measure in this industry. Given that, do you all happen to have an estimate of the domestic industry's production capacity over the POI?

MR. NICELY: Estimated overall capacity or?

CHAIRMAN JOHANSON: Right. Would you have any idea as to what you think that might be?

MR. DOUGAN: Chairman Johanson, it's hard to say. We'll do some looking into it. The -- first of all the coverage of your domestic producer questionnaires is, you know, not complete, so the number that you have there is at least in terms of reported capacity, is probably low. But then we know that it's overstated based on their labor productivity.

So, we can do some thinking about that, but I don't -- I'm not aware of. Maybe some of the other industry folks are aware of, you know, something that publishes a number. I looked briefly at some of the AISC data attached to Doctor Kaplan's economic analysis. It seemed that that dealt mostly with you know, financial performance as opposed to production output, so I can't point to anything right now. We can look into it a little bit more.

CHAIRMAN JOHANSON: Okay, thanks.

MR. NICELY: Chairman Johanson, one of the reasons why we may not have that at our fingertips is as you can tell, the scope of this case is so much broader than what folks typically think of when they talk about FSS. It sounded from what Petitioner's counsel talked about this morning, that they didn't even realize they were going to be capturing as much of our -- of the PEMB production for instance, that exists, as part of their broadly defined scope.

So, but we can do our best in post-hearing to give you an estimate.

CHAIRMAN JOHANSON: Okay, thank you Mr. Nicely. This is a question for CISC. You mentioned in your pre-hearing submission at page 10 that many bidders fail to meet basic bid requirements which thus limits the bidding pool. What are some of the common basic bid requirements?

MR. WHALEN: I'll also probably defer some of that question to some of the other fabricators because they're directly experiencing some of those requirements themselves. In many projects that I'm aware of, other than just price there is requirements for a certain safety record, quality, meeting schedule being able to take on a certain amount of risk, depending on the project. That risk can take all different types of forms, from a milestone type of payments to various different type of payment requirements on a particular job.

Those are some of the things that are included in a project that may or may not -- bidders may or may not be able to either meet or live with.

MR. DICKERSON: Sid Dickerson. Also, a lot of the projects that bid have special requirements for certification for a certain area. And then you might have, like L.A. is infamous for a fabricator might be a fine fabricator ISC certified, but if they don't have L.A. certification they won't let them on the bid list.

Las Vegas has similar requirements. I think Florida has similar requirements. So that's one of the things that's limiting. Another one might be bonding capacity. Another one might be project management support. So there are other limiting factors.

MR. NOLAN: This is Matt Nolan for Canada back here again. There's also technical capabilities. If you have the ability to do cambering. If you have the ability to drill holes to certain sizes for certain types of plates. Do you have the right equipment to do certain projects?

A large, complex project like the Hudson Yards is going to be far more demanding in the technical requirements than a simple two-story building. And so not all fabricators have the ability to meet those technical specifications necessary, or have the equipment necessary to meet the requirements of a particular job.

So it will vary a lot depending on what the project is, right?

MR. SALAS: Javier Salas, Corey. The other thing that nobody mentioned is bonding capacity, right? The larger the project, the more financial strength of the company. Thank you.

MS. KANNER: Sabrina Kanner, Brookfield Properties. In addition to all of these factors, as an owner we also look at backlog. How many other projects are going on at that time in that region for for this bidder. Because installation is an enormous part of our decision to award, capacity and ability to install become critical components in the decision to award.

So if someone is over-extended, it increases our risk, the project risk.

CHAIRMAN JOHANSON: Alright, thank you for your responses. My time is expiring. Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Thank you. Alright, I'd like to thank you all for being here this afternoon. Let me just follow up on that.

So if I understand what I'm hearing, it is that the bid pool is somewhat limited by the criteria for the project. And so those bidding on the project are expected to be able to meet the criteria, whether it's technical or availability, or other requirements, bonding. So doesn't that suggest that at that point, if you have met that criteria, that the importance of price is elevated? Because it's already been -- the bid pool has already been sort of

weeded out, if you will.

MR. DICKERSON: That's an argument that many times is met -- I mean made, but really I think it may have been the guy from Related Properties earlier that said price is always a consideration, but it's only one of three or four considerations. And as projects have gotten more complicated, and there have been more cases of failures during the process, owners, construction managers are becoming much more in tune to looking at more than just price. So the only way you can address price, it's always going to be a consideration, because there's always going to be a certain price somebody needs to do it, and there's always going to be a certain price the end user can afford to pay for it.

But it's not the prime consideration.

MS. KANNER: I would also add that there are penalties associated with leases in these large structures, millions of dollars, and so the ability to deliver is critical. And I would almost look at this in the reverse.

So the example that I gave, at the end of a leveling process, we had two numbers that were essentially the same. And then we had one bidder who had two projects, and another bidder who had no project in the region. And so that became the deciding factor, rather than price. Price is important, but it was met.

MR. PASLEY: And this is Greg Pasley with BlueScope again. I've sat on the other side of that table during those interviews. I mean, I feel like those requirements are generally a minimum to get you into the game. But at that point, there is differentiation between the different contractors. It does fall back to other characteristics that come out during those interviews.

MR. SALAS: This is Javier Salas with Corey. The other factor, once you have been prequalified, that plays a very important role is value engineering. Whether it's incorporation of steel, higher strength steel, or connection design that facilitates the cost on erection, those are very important factors.

MR. KOPPELAAR: Walt Koppelaar, Walters Group.

COMMISSIONER SCHMIDTLEIN: Go ahead.

MR. KOPPELAAR: One of the other factors, the biggest factor, is risk. As projects become more complicated, there's more risk. And where is that risk going? Like a lot of things, it flows downhill. And how do we manage that? How do we deal with that?

So a risk remediation plan, logistics, what kind of cranes are you putting on? Do you have devices for safety, something over and above to ensure that nobody gets hurt or killed on a project? These are all things that steel suppliers and erectors consider.

COMMISSIONER SCHMIDTLEIN: Okay, alright thank you for that. Let me switch gears just a little bit.

I know we've had a lot of discussion about bid prices and the bid data, and there's been a little bit of mention of the AUVs. I think, Mr. Dougan, you've talked about them, and that the U.S. AUVs are going up, and that AUVs are not a great measure, because obviously these projects differ so much.

One question I had, though, is if you look -- and this is really for the people on the APO, so the witnesses, the fact witnesses won't be able to answer it, but if you look at Appendix F, as in Frank, where we break out the various shipments by type, you know, PPM, Solar Beam, Pre-engineered, and then "other," which is the largest category, given the robust demand in the United States, and given that you all have advocated that we don't look at the bid data, right, why do we see -- if you look at the total subject sources, you see the AUVs for, if you look at the all-product types, it goes up slightly. But if you look at "other," which is the catch-all, you know, that's just breaking out PEMB, pre-engineered, solar beams, and process plant modules, if you look at "other," the AUVs for subject imports goes down overall.

And I just wonder why. You know, what do you think accounts for that, given that overall demand was up by

5 percent in the sort of conventional FSS segment is going down.

MR. NICELY: Commissioner, can you tell us which page?

COMMISSIONER SCHMIDTLEIN: I'm sorry, I'm looking specifically at page F-21.

MR. NICELY: Okay.

COMMISSIONER SCHMIDTLEIN: And this is where we break it out. U.S. importers who have shipments from subject countries, total. We also have it by individual countries.

(Pause.)

Does that tell us anything, I guess is the question?

MR. DOUGAN: Commissioner Schmidtlein, I'd like an opportunity to take a better look at it more closely for the posthearing, especially because we're dealing with BPI data. And to the degree how much of that has to do with product mix -- and I'm not saying, just -- because you're saying there's the different product breakouts, but is there an element --

COMMISSIONER SCHMIDTLEIN: I mean that's a broad category, right? The other category is a broad category.

MR. DOUGAN: It's a broad category, but also is there a difference in the composition of the country contributions to each one of those categories for, you know, all subject sources combined? Were there greater or lesser weights from each subject country who may have been concentrating in different applications? I'm not sure. I can take a look at it more closely posthearing, though, for certain.

COMMISSIONER SCHMIDTLEIN: Okay. I mean just in general along these lines, is there another way we should have collected pricing data, or data that would get at the pricing competition here, in your view?

MR. DOUGAN: Commissioner Schmidtlein, I just want -- and thank you for this question, and I want to take the opportunity to sort of respond to what appeared to be kind of allusions that we were acting in bad faith about these data; that we said, no, don't use pricing data, you've got to collect bid data. And then once we got them, we said, no, throw them out.

I was here at the conference, and what we said was, look, this is a project-specific, complicated, customized thing. Your traditional quarterly pricing comparisons are going to be of not very much value here; that they would be in another sort of three bar or flat products or something like that.

So that's not going to be probative for price effects. And then the staff said, well, should we gather bid data? And my response was, you may as well. You probably should. Because at least then you're comparing on a project-by-project basis.

Now is that going to -- do we know whether that's going to give us the price of FSS broken out? We didn't know. But we said that's probably your best bet, so you should do it that way because at least then you know that the people are bidding for the same thing.

We didn't know if it was going to be FSS broken out or not, but we said that's certain going to be more probative. Turns out that a very -- by Petitioners' own admission, a very small portion of these bids have the price of FSS broken out. So we said you know, then you kind of can't rely on those. This wasn't us just rejecting both sources out of hand. This was looking at what data were actually received, and trying to make a reasonable argument about it.

We were not -- this was not a hutzpa thing where we were trying to tell you, you know, just throw out all your data. We really did look at this but --

COMMISSIONER SCHMIDTLEIN: Well I mean this, does this sort of suggest in you all's view that fabricated structural steel producers really can't use the trade remedy laws, because there's no way, given the nature of how they produce, how the competitive bidding is done and that FSS isn't broken out and AUVs aren't reliable because of product mix that it's just too bad? There's no way for them to avail themselves of the trade remedy laws because of that?

MR. DOUGAN: I don't think we're arguing that, and I think that --

COMMISSIONER SCHMIDTLEIN: Well then how should -- how can we get better pricing data? How could we have gotten better pricing data?

MR. DOUGAN: Well, if I could -- and the answer to that is apart from getting the pricing data, I don't know other than maybe getting more bids and it's difficult to say. But I don't know that it's going to be any more representative. But what I'm saying is this. There's not a blanket inaccessibility of trade remedy laws to this industry. But in this instance, based on the information that you have, are there other things on the record that point to significant price effects? A lot of times you'll say well, they appear to be a lower price, the AUVs are lower and there was a big shift in market share. There was a big jump in subject import shipments.

You're not really seeing that here. You're not seeing a shift in the market share. Subject import was flat. The domestic industry gained share, and when the subject imports declined in the market in 2019, the domestics didn't pick that share up. It went to non-subjects who were higher priced. So that to me, drawing an inference, you can't do something where you draw an inference.

Was there a significant deterioration in financial condition? Was there an inability to get price increases that otherwise would have occurred? Do you have a significant number of purchasers reporting that the domestic producers lowered prices to compete against subject imports? You don't have any of that.

So what Petitioners have done is saying well, we recognize the bid data's imperfect, but we want you to infer from that imperfection, based on total costs, we want you to infer everything else. We want you to infer loss of market share. We want you to infer deterioration of financial condition, when the other facts on the record don't support it. So I'm not saying and I don't think anybody here would be arguing that the fabricated structural steel industry is not entitled to trade remedy if they can prove their case.

But between the conditions of competition and the way that the data exists on the record, they can't prove their case. In that case, it warrants a negative determination. It's not a blanket statement.

COMMISSIONER SCHMIDTLEIN: Okay. I've long run over, but can you make it brief?

MR. PORTER: I promise, really fast. Just really quickly, picking up on the point that as Commissioner Kearns sort of noted earlier, you have a job to do, and you know, the staff and you do your best to seek information and get it. But at the end of the day, you have an evidentiary record, and does that evidentiary record, well better stated, what does that evidentiary record say about the job you have to do?

You are correct. You need to look at everything. You well know there are past Commission determinations where you just said I can't use this pricing data. I cannot do underselling, yet you still make a determination, okay, even though despite best attempts, you can't use the underselling data because of the way it came in.

And what I just wanted to point out is if you look at all of the data, and you interestingly looked at page F-21 and we're trying to sort of say well look at this other. Well I would sort of say that's actually imports. I would flip over and look at page G-7, which is U.S. producers, and look at that AUV and you see rising AUV, which we think -- which we would submit is a little more probative of whether there's injury from imports.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. NICELY: Commissioner Schmidtlein, I know you've run out of time, but I wanted to follow up on what Mr. Porter just said. I mean do look at that data on a company-specific basis. Those are companies whose prices are rising, some of whom, you know, you've heard from, who are in the what I'll call the conventional FSS category, which is presumably your other category on the imports.

The irony is that both prices are going up while the import, the other import prices are going down. So in other words we're seeing a lack of correlation, if nothing else, between the movement and the prices. I'd again say, to back up what Mr. Porter just said, look at what you did just relatively recently, and we notice there's a bone of contention on this because we are in an appeal on that topic.

But on Softwood Lumber, you also didn't have -- you also did not have underselling data, and that didn't stop you, has not stopped you from imposing a trade remedy for the softwood lumber industry.

COMMISSIONER SCHMIDTLEIN: Okay. All right, thank you. My apologies.

CHAIRMAN JOHANSON: Commissioner Kearns.

COMMISSIONER KEARNS: Thank you all for being here, in particular thank you from our friend from China, who came during the Chinese New Year. I appreciate your flexibility on that. Sorry we couldn't move the hearing for you, but thank you all for being here. I wanted to jump off right where Commissioner Schmidtlein left off.

Mr. Dougan, you say, you know, let's look at other things like market share. That doesn't change. That doesn't seem to suggest there's been price impacts. But I think what the Petitioners would say is yeah, let's go ahead and do that. We see a cost-price squeeze. We see flat income in a market that's growing, that it's not going to get any better than this they say, right?

This is like a market peak, and yet that's not reflected in our data. So if you look at the, you know, if we're making any kind of inferences, and I'm not sure that's really what they're suggesting anyway. But if you do that, I think yeah, you may not see much of a volume case in my view. But I think it's more of an open question about what kind of price impact you see, which then of course is a bit circular.

Which is why we don't need to look at inferences about cost-price squeezes or so forth. What we need to do is look at all the data. What they're saying, what I heard this morning, you've got to look at all of the data. You've got to look not just at the bidding data. You've got to look at the pricing data that we have from the prelim. You've got to look at AUVs. You've got to look at lost sales.

So what else do we need to look at, do you all think, from what they have proposed that we look at? But I'm hearing them say very clearly, Dr. Kaplan said this morning you need to look at all of that stuff in this particular case, because everything has its limitations.

MR. DOUGAN: Agreed, and I don't -- I'm not, you know, suggesting that the Commission narrow its focus and only look at one thing and not another. The Commission will look at all of the evidentiary record gathered.

COMMISSIONER KEARNS: Should we look at the pricing data from the prelim, for example?

MR. DOUGAN: You can look at it and reject it, and the reason why you should though is because of the conditions of competition in this industry, because it's not sold on the ton for ton basis as a commodity project, excuse me, product in competition with another. This is project-specific, custom made for a particular application at a particular time.

COMMISSIONER KEARNS: So what would you have us look at primarily, AUVs or what?

MR. DOUGAN: Well I guess what I'm saying is if the -- if the conditions of competition in the industry are such that the price of the merchandise in question is not known to the person who is buying it, then you can't find adverse price effects by subject imports. I mean that's --

COMMISSIONER KEARNS: Yeah, but that gets us back into the first part of what you were saying, Commissioner Schmidtlein saying. It's like yeah, so that's sounding a little bit more like yep, sorry. There's not enough data in this case, gotta go negative. Whereas the other approach would be look, we've got to take what data we have and do our best.

MR. DOUGAN: Well, and so that's why I also responded to, you know, only 3 of 28 purchasers said domestic producers lowered their prices to compete. When they were asked about that this morning, Petitioners had nothing. They had no response to that, okay. That's not -- I don't know how that fits in the --

COMMISSIONER KEARNS: That's lost revenue we're talking about, right?

MR. DOUGAN: Lost revenue.

COMMISSIONER KEARNS: It seems like we very rarely see much in the way of lost revenue for whatever reason, right, compared to lost sales?

MR. DOUGAN: Well it depends, depends on the case. I mean it really varies, and lost sales here, I mean again, not that significant. It's only, it's like less than five percent of reported purchases and imports. This is not, you know, massive shifts. I've seen a lot bigger share than that that we've, as respondents, tried to explain away, right? This is not a lot. This does not rise to the level of evidence of significant adverse price effects in our view.

That's where that comes from, and again, if you're seeing a situation, how do these -- if you look at everything, how do these data points compare to one another? If you see a huge shift in market share but not much lost sales, okay maybe the lost sales you'd put less weight on them because look, there's a lot of lost market share.

Or if there's a huge amount of lost sales and no shift in market share, maybe you say okay, maybe it is kind of what Petitioners are saying that we could have done better before. But here you've got a situation where you have hardly any significant lost sales. You've got flat subject import market share and increases in domestic industry share. Increases in domestic industry share is a key thing in light of this other information.

And if subject imports and their unfair pricing are the barriers to them increasing their sales, increasing their prices, increasing their profits, then 2019 is a pretty good test case. They'll often tell you to disregard it because of post-petition effects, right? But here, we're almost saying imports, subject imports did retreat from the market to some degree, and domestic industry shipments hardly changed. Their prices went up a little bit, and yet their -- I mean their profits did go up, but that was because of the AUV of their export shipments.

Their U.S. shipment price went up a little bit, but you know, it was just on a continuing trend that you already saw. If you saw flat to declining prices from '16 to '18, and then a spike in prices between the part year periods at the same time subject imports were declining, you might infer from that fact pattern that it was the retreat of subject imports that allowed them to raise their prices. That didn't really happen here. You had increasing prices all along.

And then between the interim periods, U.S. shipment values, they kind of stayed the same and the bump that they got was from kind of -- I'm not sure of how, why the export AUVs went up by so much, but they did.

So and again, we're not talking massive shifts in profitability. We're talking a percentage point difference, right?

COMMISSIONER KEARNS: Yeah.

MR. DOUGAN: And so even though exports are a minor portion of their overall shipments, a big change in that AUV is enough to move the needle a little bit.

COMMISSIONER KEARNS: Okay, thank you. That's very helpful. Along the same lines but switching a little bit here, you know, they are saying there is a cost-price squeeze, and I mean you show on Slide 16 that the average sales value is up -- is up more in dollar terms than are COGS. But if we look at the C tables, I think you'll see that there is a 30.4 percent increase in COGS and only a 14.8 percent increase in average sales values.

So doesn't that suggest there is a cost-price squeeze, and what else can we attribute it to? I mean it's not that demand is weak. It doesn't seem to be non-subject imports. So again going to like what inferences we're supposed to draw, doesn't this seem to suggest -- and I hear your argument you made in your briefs about the -- it's going to take time to catch up to raw material costs. But you know, I mean at some point we've had enough time. We were saying that in the prelim. So anyway, what's your response?

MR. DOUGAN: Well, I guess what I'm saying is the prelim we hadn't seen the fourth quarter 2018 data, right, and the 232 tariffs were only imposed in early 2018. So the interim period for the first nine months of 2018, the best data you had at the prelim, showed the squeeze, not the recovery, the beginning of the recovery from that squeeze because you didn't have the fourth quarter data yet.

But you're seeing that here, even before the petition was filed. So you don't even have to compare, because arguably the 2019 data are impacted by the filing in this case, which happened in February, right? But you've got that fourth quarter, where it's almost already on the way back down to the 2017 level. So that's where we would argue in that regard.

You know, when you're talking about percentage increase in unit value of raw materials or COGS, I mean those are coming from a different base, right, so the percentage point is not necessarily the most helpful way to look at it. This is what Mr. Pinkert was saying was, you know, on a per ton basis you're more than recovering any increase in costs that you have and in absolute total dollars, your profits are going up.

So that doesn't suggest to me a significant cost-price squeeze to the degree that it is preventing increases that otherwise would have occurred.

COMMISSIONER KEARNS: Okay, thank you. Switching subjects a little bit but still on bids, so we heard this morning that according to some of the U.S. industry witnesses, they do provide to the purchasers itemized bids, more than apparently our data that we got from the purchasers reflects. Do you all have any thoughts on that? How can we -- I mean I have this sense that somewhere out there is itemized data on these bids and we just don't have it.

Any thoughts on how we can get it, and also I think Mr. Dougan you had offered in the opening to address this argument from the Petitioners, that the only real variable in the bids is the FSS cost. So if you'd like to comment on that and not just Mr. Dougan, but anyone else on the panel.

MR. DOUGAN: Well, let me -- for the latter part of that question, I definitely want the industry folks to be able to answer that, because they're the ones making the bids. When it comes to the testimony that you heard this morning about, you know, yes we provide it, I mean they may provide it. They may provide it in some instances.

There's this whole question about the representativeness of the panel vis-a-vis the industry as a whole, and whether that would amount to evidence of significant price effects even if they could provide you with all those data, when everyone else here is providing -- I mean it's a very small minority, by their own admission, of purchasers are aware of the FSS price within the bid.

Now they may be able to bring up particular instances. That may be true. But what you've also heard, you know, from Mr. Dickerson is, you know, we heard up and down from Mr. Cooper and WW that they lost this LA stadium deal because they could give away their labor and they would never be able to match the cost.

He's basically saying they were already kind of a low bid, but we ended up getting it from the Chinese because the Italians screwed up? Well, we paid more than WW was bidding. So they think they know what drives the purchasing decisions, but they don't.

MR. DICKERSON: That's true. Sid Dickerson, and on the Rams job that we heard a lot about this morning, I was the owner's rep that they were referring to I think. So I probably have superior knowledge. On the bids in 2016, there was no Chinese involvement. There was none whatsoever, so nobody was beat because of the Chinese pricing.

In fact, the decision was made to give it to Schuff-Herrick not because of price. I don't think they were the low price. The decision was made to give it to Schuff-Herrick because the other bidder on the same equivalent level, which may have been W&W, was using an erector from Texas and we had concerns with the hot market, that he would not be able to get adequate workers to staff the job.

So we did make a decision to give it to someone that was a higher price, and about 12 months later in 2017, that's the first time we took pricing from the Chinese. We did not -- we did it as an owner would do, to try and help a subcontractor remedy a problem he's got.

We've got the pricing, we offered it to them. They came back and said while we can't get back to the level we bid at, we can reduce some of the issues that have been raised, caused by the Italians.

They made the decision to sub this deal. On that particular project out of about 70,000 tons, about 18,000 was done in China. I mean that's kind of it. When -- I'm a little bit off, and you can kick me. When this petition was filed, I made the recommendation to the owner that he allow the fabricator or the contractor, who in that case was Herrick, to cancel his contracts with the Chinese because there was no way that I knew we could --

At that time when the petition was filed, there were numbers tossed around like 219 percent, 220. I said there's no way to protect you from that. They didn't give it to a U.S. fabricator; they took it to Thailand and it became a disaster because of quality issues and schedule issues and everything. But the fact of it is, it went to, which is not one of the countries being considered here, and it was not because of any Chinese pricing that W&W did not get that job.

COMMISSIONER KEARNS: Okay, thank you all. My time is past expired and I appreciate the patience of my other Commissioners.

CHAIRMAN JOHANSON: Commissioner Stayin.

COMMISSIONER STAYIN: Thank you. The Canadian submission spoke eloquently about the importance of design participating in the planning and providing the product, as well as erecting the ultimate product. So this is something that works well. Does that work well with smaller companies? And then the other issue is how are the Mexicans and the Chinese dealing with that part of it? Are they also bidding on a project and providing the design, engineering and erection solutions?

MR. GUILE: Commissioner, it's Kevin Guile from Supreme Group from the Canadian contingent. With respect to the way that we address a project in North America, whether it's Canada or the United States, we're looking really to drive value to the customer from a total installed cost perspective.

So that includes the raw material, the fabrication, the shipping, the logistics, all the buyout items, decking, joists if there's galvanizing requirements, and the field installation. So when we're looking to compete on a project, it's really bundling up all of those services together, trying to work with the client to understand their drivers, if it's schedule, if it's risk, if it's turnovers of certain areas of the project, to ultimately come to them with a plan, an execution plan and proposal that really fits their individual project needs, their drivers.

So it's very seldom that in fact just to go back to Commissioner Kearns' question on the breakout pricing, it's very seldom that we're providing breakout prices for all of those different services. If they do look at breakout prices on say supply and install, we'll always qualify that our proposal is based on the award of the total amount of the job, and the breakout is for accounting purposes or evaluation purposes only.

We all may address that a little differently with how the breakout is, because it comes down to where do you put your margin, where do you put your overheads, where do you put your risk dollars. So that could be different on the individual projects and how we address each client's particular drivers.

COMMISSIONER STAYIN: You also have an affiliate in the United States that you work with and through as well?

MR. GUILE: That's correct Commissioner.

COMMISSIONER STAYIN: With respect to the Chinese and Mexican producers, would you like to comment on --

MR. SALAS: Of course. Javier Salas, Corey, the only Mexican company operating in Mexico and in the U.S. We do not erect in the United States. We have participated in projects, either where the developer has decided to split the two contracts into supply only of fabricated structural steel and erection, the case of Hudson Yards, or teaming up with other U.S. and other fabricators your -- that have erection capabilities.

COMMISSONER STAYIN: So, you would -- would you subcontract them with that erector?

MR. SALAS: We would subcontract with their fabricator that has erector capabilities.

MR. KELLY: John Kelly, with the Related Companies. We do request that our bidders supply a breakout for the value of fabricated structural steel versus installation services, you know, versus some other elements on a project. We've seen that the cost of FSS is not always the driver in terms of the overall costs of the project.

Depending upon the labor market, a higher cost of supplied FSS can lead to a lower cost of installation, and there's many other factors that would go into that. We've also found that both with domestic fabricators and subject fabricators, that when we split apart the installation and the furnishing of FSS into two separate contracts, that we generally would get a more aggressive price on FSS.

MR. NICELY: Commissioner Stayin, Matt Nicely. I'm rounding out the rest of the discussion about Mexico, just to make sure we're focusing on this that while Mr.

Salas is right, he's the only Mexican in the room talking about high-rise large projects. Much of what comes in from Mexico is to service the PEMB market that does not compete against the folks that were here this morning.

And then on in the U.S. market, the U.S. producers that are here today on this panel are also not engaging in that same kind of bid process that you talked about. They are selling either the componentry for the PEMBs, or the PEMBs, but on a different basis. But again, what's most important is they're not competing with the conventional FSS companies.

COMMISSIONER STAYIN: Okay.

MR. PASLEY: Commissioner, I'd add to that. This is Greg Pasley with BlueScope. When you mention design, the fabricators we heard from earlier today, when they talk about design, that's the connection design, which is part of the detailing package that they do. It's fairly unique to the pre-engineered metal building industry that we essentially do the structural design for the overall structure, and that's included in that package.

So, we can't take into account that lowest in place cost. And that would be something that differentiates us from what is in that conventional fabricated structural steel space.

COMMISSIONER STAYIN: Thank you.

MR. PASLEY: You're welcome.

MR. KOPPELAAR: Walt Koppelaar here, from Walters Group. I'd also like to say that we are both a Canadian and a U.S. producer, and we do install our own steel. And installing our own steel means we do our own construction engineering. So, we figured out the best way to erect these buildings safely, and that gets built into the whole process what Kevin Guile from Supreme indicated as well.

It absorbs the risk, manages that risk through the entire process from A to Z.

MR. ROONEY: Commissioner, Dan Rooney with ADF International. I just want to follow-up that in addition to qualifying any breakouts, the bids that we do, there's many times a strategic reason why we might breakout bids in a specific manner, that may not be one to one for each of the services that we perform.

One of the simplest examples of that is when we want to front load a project to try and receive as much of that project profit as we can at the beginning of the project to fund the rest of it, such as engineering, design and some of the detailing as well. That's a very simplistic example of why we might use a different strategy when we breakout prices, and it would be difficult to compare them one to one. Thank you.

COMMISSIONER STAYIN: Thank you. Mr. Dickerson, I've been impressed by the project that you have handled, and what are the things that you look for when you are determining who is going to be your contractor, where you are going to get your product?

What are the things -- obviously, price is something that the Petitioners are saying is the most important factor. Others are saying maybe it's not the only factor.

MR. DICKERSON: I like to say that their price means nothing to me when I'm representing the owner. The only thing that matters to me is my cost. So, we look -- when I'm setting up program management on these projects, I will look, and I keep close tabs on the domestic industry, because I'm looking for areas that are overcommitted already.

I want to avoid bidders who are already overcommitting their capacity because I know that's going to be a problem. I look for large shops. The larger the shop, the better the shot is that I'm going to be able to get the product I want. I look for innovation. Labor is more expensive in the field, so I know if I've gone somebody that's an innovator on the fabricator side of things, I'm going to get a lower cost, which is again, the only thing -- my cost is what I'm worried about.

I look at safety records. I look at who they're going to use to do their erection. I want to look at their erection subs, because of safety issues. I personally will not accept an erector that doesn't have a declining modifier, and it has to be below one and declining because safety is in everybody's best interest and it's in my best interest to not have problems.

But, we don't have a problem with fabricators subbing out to other fabricators, but I do watch out for is I don't want somebody coming in that's going to fabricate -- the example this morning was 30 -- the hours increased by 30 percent and we subbed it out to five other fabricators.

I've got to send inspectors into those other. It may seem like a small thing, but it's a big cost when I have to send the inspectors in. So, at the end of the day, there have been very few jobs that I've been involved in in awarding to steel people based on price. There are just other considerations that bring risk.

And I think Related and Brookfield would back me on this, yeah, so. I will say, to answer the first part before you got to this question on the Chinese fabricators, from our standpoint anyway. The only ones we bring steel from are in support of U.S. fabricators. So, a domestic fabricator has come to me and said, "We have an issue, can you help us?"

So, our fabricators don't need to provide the services you were talking about because our customer, the domestic fabricator is doing all of that. He's doing the erection engineering. He's doing that. So, we don't have to provide it because we truly are providing a commodity.

COMMISSIONER STAYIN: Thank you very much.

MR. DUSSAULT: Serge Dussault, Canam.

COMMISSONER STAYIN: Yes.

MR. DUSSAULT: I'm representing a fabricator in Canada and line fabricating shop in the U.S. This morning I heard numbers on the split of FSS versus the installation. And I had the office run some numbers on two bids we put in last week, and they were a very large bid, close to 20,000 tons each.

One of them, the erection, was about 55 percent of the total price we put in, and the other one, the erection, was 28 percent, which shows there's a wide gap in the projects.

COMMISSIONER STAYIN: Yeah. Thank you very much. My time is up.

MR. KELLY: I'm sorry, just quickly. John Kelly from Related. Along the same lines, if I could refer you to Section 3-4 of our response, you know, we have figures that show the breakout between fabricated structural steel and installation services. That's of their confidential submission.

COMMISSIONER STAYIN: Thank you.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: Yes, thank you. Actually, I have a question for the gentleman before last who spoke. I'm sorry, I didn't catch your name. But you were talking about bids where you had put wildly different sort of shares into erection services versus FSS. Can you say that again, and can you explain why that would have been?

MR. DUSSAULT: Two different projects. One was a high-rise in New York. And the other one was a more industrial-type building.

COMMISSIONER KARPEL: Sorry, and can you say your name and your company?

MR. DUSSAULT: Serge Dussault, Canam.

COMMISSIONER KARPEL: So, they were just different types of projects, one being a large industrial project.

MR. DUSSAULT: Yeah.

COMMISSIONER KARPEL: Not very many stories versus a high-rise?

MR. DUSSAULT: A high-rise in New York, complex erection, and the other one was a green field industrial project with no obstruction to the erection, much simpler. In both cases the FSS was about 30 percent of total cost.

COMMISSIONER KARPEL: Thank you. I may return to the bids in a minute, but I want to make sure I have time to ask you about some of the tables in the appendix of the staff report. Let me look at my notes. You know, we've been talking about what data on the record we can look at to understand price effects in this investigation.

And we talked a bit about the bid data, is that usable? Is it not? Why? But if we decide we're not going to rely on that because of various reasons, what else are we going to rely on? And we talked some about that. But I wondered as one possibility, if we can look at the F tables, and for example, compare the table on page F-3 with the table on F-12, right? And so, F-3 is large U.S. producers U.S. shipments by application.

And we can see unit values there for different uses -- high-rise, residential, commercial, industrial, sports, and entertainment and other. And then on F-12 we have U.S. importers, U.S. shipments by application, and the same breakouts and unit values.

You know, can we look at those unit values by different applications to essentially compare -- as a proxy for comparing prices, or what's happening with U.S. shipment prices versus domestic producer shipment prices. And for example, it's all BPI data, but just saying generally speaking, it looks like the unit buyers of the imports for these applications are often, we haven't done a full comparison, lower than what they are on the U.S. shipments for these applications.

Have you thought about that? And is that something we should or shouldn't be looking at?

MR. NICELY: This is Matt Nicely. We will look at it as we said earlier when I think Commissioner Schmidtlein was asking us about these tables as well. We'll look at this more carefully for the post-hearing. But I would say that one of the things that's critical to recognize that even if you're seeing these AUVs for imports being lower, then you would normally see a different change in market shares, right, of the two categories.

Here, you're seeing the domestic industry's market share go up, and subject import market shares stay flat. In other cases, as Mr. Dougan was saying earlier, in other cases where you have faulty pricing data -- pricing data that's just not as useful, you look at these other indicators.

For instance, market share, to determine whether or not those differences in prices are actually having a meaningful impact. And I would say that as a result of what you're seeing here, they're not. There's obviously, what it's demonstrating is a lack of direct competition, attenuating competition, perhaps because of the differences in market segments, but even when you're looking at these individual market segments that look like there might be direct competition, why wouldn't there be an increase in import -- subject import market share?

MR. MARSHAK: This is Ned Marshak. Just for an example, because the Chinese are in this sub market. Look at sports and entertainment. I mean, you know, it just -- there's no direct competition there. I mean you can just see the way the prices are going crazy, and the quantities are different. There's no correlation with anything.

It's a product mix or it's something else, but there's obviously not price competition in the AUVs.

MR. PORTER: Commissioner Karpel, if I may, this is Dan Porter with Curtis. I would say yes, look at this data. The data that you used pointed to completely supports Respondent's case. Why? He noted there was -- he looked, and he said oh, there's some underselling. Yes, but it didn't prevent dramatic increases in U.S. producer AUV in the two biggest markets that you have, which is the commercial and the industrial.

So, underselling in and of itself, doesn't really tell you much unless it's leading to something like either A -- lost market share, or B -- decreasing prices. Here you don't have lost market share and you have increasing prices based on the data that you just did. So, I would say yes, look at this data. Why? Because it completely supports Respondent's case.

MS. ZHAO: Maggie from Wison. I just want to add to your point. Coming from the petrol chemical industry, this could be a real example of the why our pricing is not -- our project win is not based on pricing. With the current AD and CVD and plus the tariff we are being subject to potential 100 percent of the all of the duty combined.

But since 2018, our project winning has not decreased for Wison alone, we are still doing projects for them based on this prejudicial tariff. So, that could be a really sounding support of why are projects are not based on pricing. It is because of our commitment. It is because of our scheduling that we can meet their requirement, even with like a 35 day sea freight transportation, we are still able to deliver the product ahead of time to the job site for all the construction requirements.

So, we're definitely not winning by pricing, thank you.

COMMISSIONER KARPEL: I appreciate those responses. If you want to put those in post-hearing too, for us, and also consider the other tables I was going to ask you to compare, but you don't need to here, but the tables on F-5 and F-21, which are sort of different breakouts of the industry as well.

Okay, turning to another question that came up this morning with Petitioners, and I think it was also mentioned here. But of course, you said the opposite, but do you agree with Petitioners that purchasers will generally tell producers why they didn't get a bid? Do they sit down and sort of go through we didn't get it because this was too high -- your price was too high overall, or because your FSS component was too high overall?

I hear what Mr. Dickerson was saying that his story of what happened with that stadium project was a bit different than the perceptions of the domestic producers of that project. So, I'm just trying to understand, really, how transparent is this market in terms of why bids are lost and why?

MR. DOUGAN: Commissioner Karpel, if I could just real quickly before the industry folks start, the data -- we want to hear what these folks have to say. But the responses in aggregate, which are in the staff report, are instructive in this regard. And one of the things that it said is 61 of 113 responding U.S. producers reported that purchasers may discuss competing bids with them, but only 34 of 113 reported that purchasers would specifically discuss price.

And the report notes that "These discussions may occur after the bid has been awarded, and that the price feedback is often vague, so." And then 24 out of 33 foreign producers says the purchasers don't discuss competing bids.

So, there's evidence in the pre-hearing report about how infrequent this is in the market at large. And there's also evidence about how rare it is, or how rare or how frequent it is that purchasers -- I'm sorry, purchasers allow bidders to refine their bids in the course of -- and it's not frequent.

So, the idea that they're using this price to leverage down during the bidding process isn't supported by the record. I turn to the industry folks now.

MR. DICKERSON: And I would say -- Sid Dickerson. Part of the problem is information that is shared by purchasers with the bidders is usually not very reliable. I mean it could be that 90 percent of them say it was your price, it may not be the case at all.

They're -- communications after a bid are pretty sketchy and not very reliable.

MS. KANNER: Sabrina Kanner, Brookfield. When requested, we are completely transparent. When someone is seeking information as to why they lost their bid we will go into detail, but generally don't offer it.

MR. GUILE: Kevin Guile with Supreme. As I mentioned in my opening testimony, we'll -- we're successful in approximately 1 in 10 project awards. So, we're bidding a lot of work on a very, very consistent basis. And of course, in order to make our future proposals better, we do request client feedback.

More often than not, we don't get very much feedback because I think as Sid was just saying, the team is generally moving on with their preferred proponent through the award, through the project execution. We've kind of passed what was in their immediate kind of need, if you will. So, we generally don't get a lot of feedback, although we do try and get it.

But again, when we're bidding literally hundreds and hundreds of projects, it's really tough to solicit all of that feedback.

MR. KELLY: John Kelly with Related. We generally don't offer feedback after a bidding process, depending upon our relationship with an individual fabricator we might. But we certainly wouldn't discuss numbers with other bidders on a project, or what a successful award was.

MR. ROONEY: Commissioner, Dan Rooney with ADF International. Many times, even with feedback, and the feedback may be -- it's a lower cost, but there may not be substantial reason for why it was a lower cost, which was the team that we got beat, had an erector fabricator scheme that was just simply more efficient than ours. And so, while it's easy many times to say you got beat on price, and you got beat on price by a certain percentage, many times we don't get the details of how that happened.

And I don't believe it's always because of subject imports, because many times those -- the competition is just domestic fabricators. And as Kevin with Supreme said, people have moved on. They don't have the time to go into that detail, or maybe don't even want to share that scheme that the other team came up with, thank you.

CHAIRMAN JOHANSON: Alright. When my staff and I were meeting yesterday, this question came up. We wondered about it. How do producers pass on rising material costs once a bid has been accepted?

MR. SALAS: This is Javier Salas with Corey. Similar to some of the fabricators of the U.S. industry, we do lock in pricing for raw materials before we submit a bid.

CHAIRMAN JOHANSON: Do you know if that's common across the industry?

MR. SALAS: I would say if you're large enough, it would be, you know, particularly with U.S. mills, some European mills would do the same. You have to have some kind of a volume, and of course, relationship with the mills.

MR. DICKERSON: Sid Dickerson. Part of the things that didn't come across this morning. If you're a large fabricator, and you have influence with a mill that you purchase with all the time, it's possible to lock in pricing for a certain period. Bear in mind, the majority of the fabricators in the AISC are small fabricators that may not even have mill pricing. I mean they may not have the ability to go to the mill to price, so they're buying it from them from service centers.

They're buying them, which may be domestic material as you asked this morning, or it may be offshore raw material. Some of those fabricators will still bid a project and they will just decline to guarantee their price for the course of the project and the owner has to make the decision are we willing to take the risk of an escalation or not.

But the fabricators here we're talking about with one exception are very large fabricators in the U.S. and they are not representative of their entire industry. And the smaller fabricators don't have the ability to lock in these prices, and in many times, they would not have the ability, Chairman, to pass the prices along, so they put themselves at risk, so.

MR. GOLLADAY: Mark Golladay for NCI. We do have some contractual abilities to increase price as raw material prices increase, but it is more of a negotiated item with the customer. So, we do have some protections.

MR. PASLEY: Greg Pasley with BlueScope. I mean we probably have similar protections through what Mr. Golladay referred to, but it is fairly limited, and for us it generally relies on our customers if there's a change or a delay on that project, we're able to reprice the project, but for the most part, we have small protections built into the price up front.

And then as prices change, that risk is on us if there's no change from the customer perspective. So, during times of rapid raw material price increases, like March to August of 2018, we got caught out during that time, and that was losses for us at that point in time.

CHAIRMAN JOHANSON: So, I assume it's safe to say that there is no norm across the industry here?

MR. NICELY: You just heard from two producers who are in the PEMB part of the industry, which obviously is pricing their product differently from the conventional FSS.

MS. ZHAO: Maggie from Wison. So, yes, we are able to lock in price prior to the project. So, usually based on a quantity of the material that we're going to purchase, so we are able to do that. And also, another key point is that for every bid that we submitted to owner, usually it's valid for 90 days. So, if the project were to delay, or there's any changes in terms of engineering, or project scope, that if past the 90 days, then we would normally get another round in pricing from the material producer.

CHAIRMAN JOHANSON: Okay, thanks.

MR. KELLY: Sorry.

CHAIRMAN JOHANSON: Yes?

MR. KELLY: John Kelly with Related. Just to -- I agree with what everybody has been saying here generally. In our experience, the fabricator will lock in pricing with the mill on some of our projects where there's been an extended duration, we would usually negotiate upfront with the fabricator, the time period for which they can lock in material pricing, and then we would define who would bear the risk of material price increases after that time period would expire.

CHAIRMAN JOHANSON: Okay, thanks for your responses to that question. Moving on to something else. If price is not determinative, why does it get cited so often? And I would suggest you see page 50 of the Petitioner's pre-hearing brief for some market participant comments.

MR. DICKERSON: This is Sid Dickerson. The reason price gets mentioned so much is everybody trains their buyers to say price first. And it's -- I used to have a joke, if there was only one fabricator left in the world, the first thing we would do when we walked into the people at a post-bid meeting, was cut our price.

But it's a misconception. It is something that is hammered by everybody, price, price, price, price. But that's not really what is the determination.

MR. PORTER: Yes, Commissioner, excuse me, Chairman Johanson. I would actually say page 2-18, sorry -- I would actually say page 2-18 is a bit more probative on this question. The Commission questionnaire asks for sort of a list of factors, you know, the typical rate the factors that influence price.

And I would submit that this page actually supports Respondent's position that the price of the FSS is not the most important thing for purchasers.

MR. DOUGAN: Commissioner Johanson, if I could add something too. This is something I addressed in my referral to testimony where the Petitioners say the majority of U.S. purchasers, 18 of 28, reported that they usually purchase the lowest price product, and it's sort of the same, you know, kind of thing.

If you add in the ones -- I didn't calculate the statistics on the 18, but if you add in always to that, it's 23 of 28, right? But only 9 of them actually receive itemized FSS prices. So, they say that price is why they always buy it, but they don't actually know what the price of the FSS is. So, I would take this with a bit of a grain of salt.

CHAIRMAN JOHANSON: Okay. I thank you. And on another price issue, this is a question for the Canadian Respondents. At page 49 of its pre-hearing brief, Petitioner notes that a recent CITT investigation, which is a Canadian International Trade Tribunal, producers of FSS in Canada argue that price is determinative. Are you all arguing something different here today?

MR. NOLAN: This is Matt Nolan for Canada, and the CISC representative is coming back to his chair, so I'll defer to him when he gets here. But I would make sure the Commission notes that the scope of that case was far different than the scope of this case. The scope of the Canadian case was much more narrow, and a very defined small series of set of products, and had some fundamental distinctions and I'll turn it over to Mr. Whalen.

MR. WHALEN: Ed Whalen, Canadian Institute of Steel Construction. That is correct. The Canadian case was confined to industrial steel fabrication, and limited to several industry sectors, and in those -- in the scope of those cases, all the FSS that was in question at the time, it was all supply only.

There was no supply and install on those projects. In addition to that, a majority of all those cases were unit prices in which drawings were not complete.

They were estimates done by the EPC's consultants that provided estimate number of tonnage and the fabricator would put in their unit prices.

So, there was a lot more restricted type of bidding activity than what we're talking about in this particular case.

CHAIRMAN JOHANSON: Okay, thank you Mr. Whalen. I appreciate that. And I don't think this question has been asked, although the general theme has been out there most of the day. The question is how often are firms requested to supply cost breakouts with your bids, and if so, on what basis?

MR. ROONEY: Commissioner, Dan Rooney with ADF International. To answer your last question first, on what basis. There's multiple reasons -- descoping of bids to ensure that our bid is apples to apples with another firm's bid, as well as leveling of bids so that a customer can understand the difference between bids and then understand where they have to put in what we in the industry would call a plug number, because one team doesn't have a component of the bid.

That means the customer then has to make up that number themselves based on their own industry experience. How often? We're asked to break out those bids, from an estimate I think it's about 30 percent of the time.

Occasionally, it is because of owner supplied insurance as well. Thank you.

MR. SALAS: This is Javier Salas with Corey. In our case where we have been asked to break down our price, but not our cost. Thank you.

CHAIRMAN JOHANSON: Okay. Unless someone else wants to add anything?

MR. GUILE: Yeah, Chairman, if I may, Kevin Guile from Supreme Group. I think one of the challenges that may be coming to appreciate is that there is not one bid form industry wide that every client has a different set of criteria that they use for evaluation, and in fact, different client companies on different projects have different sets of criteria.

So, it's very difficult to give you a straight answer for how does this happen because it's so different in many different cases. I will tell you it also depends on the type of work that we're doing. If it's a small school, so on and so forth, typically, it's just the bottom number. There's not really any breakouts. If it's a really complex project, the client may have different breakouts for different areas of the project, for their own internal accounting purposes, or they may ask indeed, for the breakout of supply and install.

It really depends on what the drivers are that the client needs to address.

MR. NOLAN: And this is Matt Nolan again over here. And also sort of dovetails, or points out another of the issues that we've sort of been grappling with and wrestling with here today, which is the projects are all different. Every project is unique. Complexity changes the degree of engineering and design changes, whether there's an erection component changes, and so your definition of price and what's competitive in price changes depending on what is in or not in that particular project or that bid.

And it becomes difficult to make comparisons at that point. So, you know, I appreciate the difficulty, but part of the problem is the more complicated the project, the more this sounds like a services business, right? Right? There's engineering services. There's design services. There's erection services.

And so, now we're conflating a product with a bundle of services in a price component.

CHAIRMAN JOHANSON: Okay, thanks for your responses. My time is long expired. Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Alright, thank you. I wanted to follow up a little bit on now the PEMP -- PEMB issue. And the first question is I wanted to follow-up on something that Mr. Golladay said, I think, in response to an earlier question that you sell components of PEMB to producers other than, or buyers other than producers of pre-engineered metal buildings. Did I understand that correctly?

MR. GOLLADAY: We sell components to PEMB producers, competitors of us, actually, and other fabricators as well.

COMMISSIONER SCHMIDTLEIN: And what do those other fabricators use the components for?

MR. GOLLADAY: You know, mainly it's pre-engineered type structures, or it could be components, just for a separate small project. It also could be insulated panels for a cold storage building.

COMMISSIONER SCHMIDTLEIN: Well, I'm just talking about fabricated structural steel, which would not be insulated panels, right?

MR. NICELY: Except, I'm sorry, it would include that.

COMMISSIONER SCHMIDTLEIN: It does include that?

MR. NICELY: Yeah, and we do need to talk about that. We haven't had a change to engage you on that yet. I mean the Petitioners have claimed that this kind of product is not before you. They have claimed that this is kind of the roofing, et cetera, and insulated panels are not part of the scope.

But as you know from the slide that we had up there when Mr. Pinkert was speaking, they've taken diametrically opposed positions before the two agencies on this very topic. They have said that any steel in a structure is within the scope. And they confirmed that with the Commerce Department, and the Commerce Department said as much in their scope memo.

So, part of the problem with their scope is that it has, in fact, been defined so broadly as to not include merely the frames for instance, of the pre-engineered metal building systems, but also these panels, the skins if you will, with provide obviously, some structural aspect to the building. They're not particularly load bearing, like you would typically thing of fabricated structural steel.

But that's not us making that decision, that's the Petitioners making that decision, as confirmed by the Commerce Department.

MR. DUNN: Commissioner Schmidtlein, this is Chris Dunn, Curtis, representing BlueScope. The Petitioners have alleged that our responses, our data are unreliable. I can assure you that we answered the questionnaires exactly the way the Commission said to answer them, using the product definition, the way it is defined by the Commerce Department, and in the beginning of the questionnaire -- of the Commission's questionnaire.

So, we included in that non-structural components that are defined as structural steel. If you -- they say, all of a sudden in the Petitioner's say, all of a sudden, in their pre-hearing brief, well, non-structural steel is definitely out of the scope. You would search in vain if you read the definition, for any exclusion for non-supporting or non-structural steel.

Moreover, they come back as recently as the January 23rd decision by the Commerce Department, where Petitioners say we have no limitation.

Now they say, well, wait a minute. They've exaggerated. Their data are unreliable. It's unreliable because what? Because we responded exactly according to their definition.

COMMISSIONER SCHMIDTLEIN: Okay. Alright, I understand that point. Okay, so let me step back for a moment, and I wanted to ask a little bit more generally about what do you know about the domestic industry with regard to those producers making PEMB systems? My understanding is there two here, two of the largest, I think. There's a third I've seen referenced in the documents.

MR. NICELY: Yes, there's a third that is Nucor Building Systems.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. NICELY: A part, obviously, of Nucor, which Petitioner's counsel -- Petitioner's counsel's law firm generally represents, and oddly enough that company didn't supply you with a U.S. producer questionnaire.

COMMISSIONER SCHMIDTLEIN: Okay. And are there any other producers that you're aware of in the U.S.?

MR. DUNN: Commissioner Schmidtlein, you're looking here at the two producers, NCI and us, who -- U.S. producers who said we produce components for PEMB. The Commission had, I think it was 80 responses from U.S. producers. Not one of those responses said, yes, we produce. They all said, no, we do not produce for PEMB.

COMMISSIONER SCHMIDTLEIN: I know, but it's a fragmented industry in terms of --

MR. DUNN: Absolutely.

COMMISSIONER SCHMIDTLEIN: -- fabricators. So I'm asking, based on your industry knowledge, do you know if there are other producers in the U.S. making these?

MR. PASLEY: That's correct. Greg Pasley from BlueScope. So the Metal Building Manufacturers Association releases market share data between Nucor Building Systems, BlueScope, and NCI. We represent roughly three-quarters of the industry in the U.S.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. PASLEY: So we're major players in that point.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. GOLLADAY: Yes, I would agree. And there's probably 30 other members --

COMMISSIONER SCHMIDTLEIN: Roughly 30.

MR. GOLLADAY: MBMA.

MR. PASLEY: Typically small, local or regional. Those would be the full answer -- I'll say something for Mark and he can correct me if I'm wrong, but those would be the folks you might buy cold farm purlans or some small portion of their structures from MECI, a division of --

MR. GOLLADAY: That is correct.

COMMISSIONER SCHMIDTLEIN: Okay. And for the three large producers -- and I think I already know the answers -- but one of you also makes more conventional structural steel, fabricated structural steel, correct? I think I have read that, as well, in the many, many pages --

MR. PASLEY: I'm not sure that's correct, Commissioner.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. PASLEY: So we do have some components within a pre-engineered metal building, you know, if you have a mezzanine or something like that that could be traditional milled steel, not a fabricated free plate member, things like that. It would be a very, very small percentage of what we do make, typically not made in our Mexican facility, just for that information. I don't believe Nucor has a structural fabrication shop, but they are obviously a large steel mill supplying milled steel into the FSS industry.

MR. GOLLADAY: And from NCI's perspective, we're the same. We have a very small percentage of our output that is conventional type.

COMMISSIONER SCHMIDTLEIN: And is that--I'm just trying to get a feel, because one of the things we asked is: Is that made on the same equipment that you make the components for the PEMB, by the same people.

MR. PASLEY: Traditionally, not. It would be, as far as the processing equipment for that material, that milled steel would go through a separate operation, essentially. Our traditional framing members, most of our manhours would go into those frame productions. That's two plates and a third plate welded together to make an I-Beam. Typically a tapered section welded on one side. Very different from that material that's received from the mill and used for that type of material.

So the cut-and-drill, what happens after that, would take place on a separate line for that milled steel versus what happens with our steel, the traditional piece.

MR. GOLLADAY: And the same is true for NCI.

MR. PORTER: Commissioner, this is Dan Porter. I just wanted to comment on a point made by counsel Alan Price this morning. He put up a photo of, I think it was in the BlueScope's MineRay facility, and he circled beams. And he basically -- he actually stated when the beam is coming across the border, it could go anywhere in the FSS market. That was the inference he gave.

That is categorically not true. Okay? Every beam that BlueScope imports is specifically engineered and built for BlueScope. If BlueScope imported that beam, and all of a sudden the project disappeared the next day, BlueScope would have to scrap it, or just let it sit in inventory forever.

So the idea that this beam coming in for PEMBs can all of a sudden be diverted to the FSS merchant market is categorically not true.

MR. GOLLADAY: And for NCI, we also -- all of the product we bring from our Mexican subsidiary is for NCI's sales to our domestic customers.

MR. NICELY: And just to be clear, BSM was a mandatory Respondent for the Commerce Department.

COMMISSIONER SCHMIDTLEIN: Um-hmm.

MR. NICELY: We, just like all the other Respondents in the Commerce Department investigations, had the same situation as all of them did, which is there were no control numbers specified. There was no Section B questionnaire response required, because everything was compared with constructed value because every product is unique. That's true. That fact is true whether we're talking about product made for PEMBs or product made for Hudson Yards.

COMMISSIONER SCHMIDTLEIN: Well that was my next question. So these are all made-to-order, right? So how is this different from the conventional, what I'm calling the conventional FSS product where it has to be designed, cut, you know, made, designed, cut to certain specifications that are dictated by the project?

MR. NICELY: Well they're not -- they're not merely dictated by the project. Here, they're dictated by a specific kind of project. MBMA is the certification, the organization that certifies for PEMB. The AIFC is for other conventional structural steel.

The fact that they're both -- the fact that the fabricators are making something that's unique to a specific project doesn't mean that they're not distinct. There is a dividing line. They are quite distinct --

COMMISSIONER SCHMIDTLEIN: By end--

MR. NICELY: I'm sorry?

COMMISSIONER SCHMIDTLEIN: By end use.

MR. NICELY: By end use, yes, for the kind of product that they're -- for the kind of building that they're being made for.

COMMISSIONER SCHMIDTLEIN: So would you all advocate that we have a separate like-product for solar beams, process plant modules, I mean where would the -- how would this line differ from the line for other end uses?

MR. PASLEY: Well, Commissioner I would offer, I mean from my perspective the manufacturing process is different. So traditional fabricators choose not to essentially use a built-up member, or a member made out of three plates to form that I-beam. They choose not to do that for building construction, for this low-rise construction, because they feel like the labor is too much for that, or for whatever reason that's not how a traditional conventional building would be built.

That technology exists. They use it on bridge girders, large, large, large structures, things like that. But not in the type of construction that we participate in. And that's why I believe the distinction has been drawn and is recognized in AISC's Code of Standard Practice saying that this is the standards that govern conventional steel construction, not applicable to metal buildings. See the Metal Building Manufacturers Association Guidelines for that material.

It's recognized in the specifications. It's recognized by the Certification agencies that go and certify the fabrication plants. So to satisfy the inspection requirements of the buildings codes, our plants have to be certified. AISC has their certification for their fabricators. Used to have a MBMA, or, sorry, used to have a metal building certification, dropped that. Picked up by an International Accreditation Agency essentially recognized as a separate certification for the metal building industry.

So that manufacturing process really drives a lot of the difference in the structure and how they're used.

MR. DUNN: And also -- this is Chris Dunn for Curtis. Commissioner Schmidtlein, I think the Petitioners were engaging in a little bit of misdirection here. They were saying, well, every project is unique. And leading to the conclusion that they wanted you to reach, well, then there are a million like-products.

That is not what we are saying. We are not talking about any other like-products here. We are speaking of components for PEMBs. They are physically different. They are markedly -- marketed differently. They are sold differently. Neither one of our two companies has bids. So many of the others have bidding.

They are not interchangeable. You go through all of the criteria, this product is different. It is a different market segment. It is not just each customer is separate.

COMMISSIONER SCHMIDTLEIN: Okay, I understand--

MR. SALAS: Javier Salas from Corey, if I may?

COMMISSIONER SCHMIDTLEIN: Okay, briefly, please. I've run over.

MR. SALAS: The processes are dramatically different. The steel grates are dramatically different, The way of selling the product is dramatically different. They are in the business of almost striation of the building.

So if you have two different customers that require a storage facility that is 30 feet wide by 50 foot long, it's almost going to be identical. That's not going to happen with us.

COMMISSIONER SCHMIDTLEIN: Okay, thank you very much.

COMMISSIONER KEARNS: So just to see if I'm hearing you correctly, what I'm hearing about PEMB components is I guess there's two ways in which you would say PEMB components differ from other FSS.

One, well one is I think, as Corey just said, because we're talking about smaller structures, you know, probably the piece of steel coming across the border is going to be a different grade, won't be able to bear as much weight, but my understanding from what I've seen is, you know, there might be some -- there might be a bit of a continuum, there might be some overlap there, but in general PEMBs can't bear as much weight, et cetera. So they're going to look a little bit different in that way.

I guess there's three things, that's one. Two, the certification is different, right? They're going to be MBMA standards versus AISC, but one just quick question, just answer this in a minute. I'm going to ask in a minute -- isn't it right that the MBMA standard just leads you back to the AISC standard? So answer that in a second.

Then the third thing I'm hearing and tell me if this is right, is in essence, and this goes to what Mr. Porter was saying a minute ago, the reason why that beam can't just be used for other FSS I think is in essence we're talking about with PEMB we're talking about cookie cutter projects. It might be more than one variety of cookie cutters but in essence you've got this kit that you can kind of replicate here, here and here and that's not going to match up.

You know, if you take one part of that, any part of that PEMB it's not going to just naturally fit within some stadium component. I mean maybe every once in a while but basically no so that's the difference and I think that's to me the key difference, what they're saying is these are you know cookie cutter components, they're not going to match up with other FSS. Is that right?

MR. PASLEY: Not exactly. I mean what I would say is because the manufacturing process is different and because the structural design is part of the package so it's an engineered product so the structural design is such that my design matches my manufacturing capabilities which could be different than NCI's design matching their manufacturing capabilities to get absolutely the optimum amount of what I do in the shop whereas the structural design for conventional FSS is made such that it can go out to any FSS shop and essentially be produced at that shop because they're not certain at the design stage, in general, who's going to be producing that material.

So optimizing the interplay between design and fabrication capabilities and with that also saying it's going to act as a system with the secondary members so the members that hold the cladding and possibly including an interaction with the cladding itself which is a proprietary system for each of those PEMB manufacturers.

So a little bit of differentiation in terms of that. When we talk about AISC versus MBMA, the building code says steel design has to be per AISC the specification for steel design. How do I design a member to resist a certain amount of load, okay. That's going to be common whether it's conventional or PEMB.

However, within that, not from the physical design how the mathematics behind the member design when you talk about how that's implemented, what they call the code of standard practice where they talk about erection tolerances, how the steel behaves, etc., that's a standard issued by AISC and that specifically references the MBMA building systems guide for it's essential equivalent of code of standard practice.

The remainder of the MBMA manual is examples of how to design a PEMB per that AISC standard from a mathematic standpoint, the physics of how that member behaves. Does that answer the question, Commissioner? I'm sorry, I'm an engineer.

COMMISSIONER KEARNS: It doesn't simplify things, I'll say that. It may answer the question.

MR. DUNN: Commissioner, this is Chris Dunn, again for Curtis. I wish you could have come out to the scope's facility in St. Joe Missouri as we invited you. If you had gone there you could see the framing for PEMBs, the framing elements, it's not cookie cutter. They are computer cut to very specific dimensions of that building. They are then welded together by machine.

COMMISSIONER KEARNS: When I say cookie cutter I was meaning like unlike a stadium type of thing, every one of those is different. When I say cookie cutter I don't meant that it's not precise. What I mean is you've got, as I understand this and I mean I just totally don't, you've got maybe each company has ten different models of building. No, Mr. Nicely says that's not right. Then, okay.

MR. GOLLADAY: No, for NCI it's totally custom. We design everything to order. It's just that the market that we're pursuing is different than the market for conventional FSS.

COMMISSIONER KEARNS: What does that mean? The market that you're pursuing?

MR. GOLLADAY: Well we're not competing against them. We're selling to different --

COMMISSIONER KEARNS: I'm now totally confounded now because I thought that the whole difference was customization. The basic FSS is more customized and you're saying that's totally not the case. So other than, like I'm sorry I'm just totally lost.

MR. SALAS: Let me jump in real quickly. We have never competed with any metal preengineered metal building, ever, in over 35 years that our company has done business. I have never engaged in any project where a preengineered metal building fabricator is bidding. We have not been into their market. We have never sold a preengineered metal building.

I would bet that out of the six or seven fabricators this morning they have never done a preengineered metal building and that's as simple as that.

It's different markets. We don't compete with each other. There's no overlapping.

MR. NICELY: Commissioner Kearns. I'm sorry this is confusing. The fact that both segments of this industry, this very broad industry that the Commissioners have now brought to you both provide customized product doesn't mean that their not very distinct, okay. We put up this morning when Mr. Detwiler was speaking the distinctions, and this is all covered in our brief.

I mean pages 3-19 of the Mexican Respondents' brief walk through the six like-product factors and amongst them are the differences in physical characteristics, okay. So these are some of the critical ones that we decided to put up on the slide for you here but just to be clear --

COMMISSIONER KEARNS: Let me just stop you, because I read it. Just to be clear, I read your brief. But what I see in here is typically built up frames, I see one sided welds. One-sided welds, uncommon so you know I can't sit here and understand oh that's why it's one thing or the other.

"Often requires", "better suited", I mean there's a lot of blurriness here and you know when we usually see blurriness in domestic like product issues doesn't help you all very much but in almost every one of these things, and I remember seeing your brief and I circled it, "typically", "often", what am I supposed to do with that, right? I just really don't know what distinguishes the two like categorically.

MR. GUILE: Commissioner Kearns, Kevin Guile from Supreme Group. So just to help maybe back up a little bit and help you distinguish the difference between conventional steel frame structures versus PEMBs. When a client has in the PEMB sector, when the client has a requirement for a building, they'll generally go and say to a building producer "here are the dimensions of my building. It's X wide, it's X long, it's so high. Here's the certain snow load, certain wind load, so on and so forth. Can you provide me a solution?" The PEMB provider will design that specific solution.

COMMISSIONER KEARNS: Whereas with FFS?

MR. GUILE: Whereas with FFS you have an owner who engages an architect, who engages an engineer, who comes out with plans and specifications.

COMMISSIONER KEARNS: Can we go over, so the difference is that you have in-house engineers? But they say they have in-house engineers too?

MR. GUILE: Yes, that is correct.

COMMISSIONER KEARNS: Okay but they tell us that they have in-house engineers I believe. I think I read that as well.

MR. GUILE: Commissioner, Kevin Guile again with Supreme. There's engineers, there's different types of engineers so the PEMB engineers are designing the physical structure and then they manufacture that in their shop and they provide the other ancillary things, girts, purlins, skins, so on and so forth.

As a steel fabricator, we also have engineers but our engineers don't practice that type of work. We don't have that software that is specific to integrate their design and their manufacturing together. Our engineers are looking at connection design. Value engineering to improve or enhance what the engineer of record has provided.

With construction engineers they are looking at how are we going to position the crane to lift these big heavy sections together? So yes, we will both have engineers but they're totally different fields.

COMMISSIONER KEARNS: Okay. My time is up but thank you very much.

CHAIRMAN JOHANSON: Commissioner Stayin?

COMMISSIONER STAYIN: Well having said all of these things, let's talk about cumulation. Are we going to cumulate the Chinese, Mexican and Canadian products? I know that our Canadian friends say no and I suspect that our Mexican and Chinese friends would also not like to be cumulated. I guess, you want to talk about this now or would you like to put this in your posthearing briefs?

We're talking right now about different products that are distinct and of themselves the Canadians don't sell to the industrial market. Others remain and the Mexicans sell to the PEMB so where does this all fall out?

MS. NOONAN: Commissioner, Nancy Noonan from Arent Fox. I think all the parties have addressed it in their briefs and will definitely all hit it again in our posthearing but just to briefly hit it for Canada, for purposes of threat we think that there is sufficient evidence on the record not to cumulate Canada.

Canada does not have, their volume trends are as they always are. Canada has been in the market for decades. Canada has got lots of investments in the U.S. They are not looking to hurt the U.S. Market so a lot of that indicia that the Commission looks at when it is exercising its discretion, whether to cumulate we think Canada should be treated separately and of course a finding of no threat of injury.

MR. NICELY: Matt Nicely with Hughes Hubbard for NCI. We would stand on what we wrote in our prehearing brief. I mean a large aspect of why we think Mexico should be decumulated is because of how large the imports are that don't compete with the petitioning industry.

So that's a -- so there's overlap between our like-product argument and our decumulation argument, but I would refer you to our brief on that point.

COMMISSIONER STAYIN: I recognize both of your arguments in your briefs.

MR. MARSHAK: This is Ned Marshak, representing the Chinese. Usually we don't get a question like this, but, you know, when you look at the facts of this case, I think the emphasis today has been on Mexico, and it has been on Canada. So we're even better.

(Laughter.)

MR. MARSHAK: You know, less injury and less threat. Look at the data. Look at what's happening down the middle of 2018 till now. You know, straight down. So, you know, let's decumulate and let's give everybody a whiff.

COMMISSIONER STAYIN: Thank you. I have no other questions. Thank you.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: Thank you. I guess I have a lot of the same questions that Commissioner Kearns just shared on PEMBs and where -- what we can look at for a bright, you know, a dividing line between PEMBs and conventional FSS.

So I too have read the arguments in the briefs on this, and in some cases multiple times because it's just not jumping out at me. So whatever you can do in the posthearing submissions to sort of help us understand where these clear dividing lines are, would be appreciated.

And one related question. You have mentioned that PEMBs are not sold through a bid process. So how are they sold? I mean, are purchasers going out to more than one PEMB producer to try to get the best price? And how does that work, if that's what's happening?

MR. GOLLADAY: For NCI, typically what happens is we provide a price to our building/contractor, and we negotiate that price. And then they -- if there's a bid taking place, it takes place from that business to the end user -- if there's a bid taking place.

We also do design-build. So there's no bidding in that process.

MR. PASLEY: And a similar response -- Greg Pasley from BlueScope-- on our end. We go to market through a network of about 1,500 builders across the U.S. So contractors affiliated with one of our building brands, and essentially they request a building price for a building of a certain size. We price that building to them. They may be negotiating the project. They may be part of a bid process. But we are not part of that bid process.

COMMISSIONER KARPEL: And so why is it different for conventional FSS and PEMBs? I mean, is it because the size of the PEMB project is smaller, and so this contractor is thinking I'll just get an estimate for what it would cost me to get the PEMBs to then win the project at a price --

MR. PORTER: Commissioner Karpel, I think I'd look at it this way. Being these are much more relationship-based, okay? So BlueScope has relationships with the contractor who then does the bid. And they have sort of this long-standing relationship and essentially the contractor is not seeking to, you know, go get a whole bunch of PEMB component suppliers. Number one, there are not that many, as we just heard. Three account for 75 percent of the market.

And so it is really just relationships that BlueScope has with different contractors. And those contractors then seek, you know, to bid. So it's a very different sort of -- a very different dynamic.

COMMISSIONER KARPEL: So are contractors not also purchasing conventional FSS?

MR. PASLEY: They could be. And I mean it's -- there is an area of overlap in terms of the types of projects, but there is a sweetspot, so to speak, for pre-engineered metal buildings. They tend to be simpler buildings, larger clear spans, places where our types of framing tend to be more economical.

And then as you drift into maybe more complex, more heavier structures, that tends to drift toward the conventional FSS market. But there is, you know, a gray zone in between in those areas.

MR. GOLLADAY: For NCI, we experience the same thing.

MR. DUNN: Commissioner Karpel, this is Chris Dunn again for BlueScope. We submitted -- BlueScope submitted in its questionnaire response, and we can repeat this in the posthearing brief, websites where they will compare to you -- they compare for the market, the kinds of areas where you want a PEMB, and the kinds of areas where you want conventional structures.

They're really different. I mean, there is an area where you say, well, you know, maybe. But you can tell that they're selling them differently. They're saying, alright, generally PEMBs are made much quicker than conventional buildings. Generally they're smaller.

And again, I understand you're saying well where is the line generally, but there is a marked difference. There is an area obviously where somebody could say, well, I could kind of go either way. But it's quite -- it's a very small portion of the market.

COMMISSIONER KARPEL: Okay. I'm trying to understand if you have a different type of purchaser for PEMBs versus conventional FSS. So you mentioned that with

PEMBs you give a price to a contractor and they decide if they want you, you know, to use you or not.

We also heard from some more real estate developers who I take aren't contractors themselves. They may work with contractors who then help them build this building. So is that a difference between -- that we should be focusing on? Like are these large real estate developers who are looking to build a building? Are they considered the purchaser versus a context where someone is trying to build a smaller, you know, two-story apartment building being run by a contractor?

MR. KELLY: So just quickly -- John Kelly from Related -- from our standpoint, we've never looked at a PEMB for any of our projects.

MR. PASLEY: Yeah, and I think it goes back more towards, I mean typically the industry defines that difference more the manufacturing process, and the components that make up that building. I mean, without getting too technical, we do have a piece made out of cold-form steel, and that's that piece governed by AIS that the Petitioners referenced earlier as a separate spec.

That is different than what the conventional FSS world would use for those types of members. So it normally comes back to that components in the manufacturing process that goes into that, and the materials used for that more than looking simply at who the construction buyer is. Certainly that relationship business and that dealer network, that builder network, is unique to PEMBs not existing in the conventional FSS world.

MR. GOLLADAY: And for NCI, I would go back to your question on cookie cutter earlier, Mr. Kearns. Our components that we sell probably fall more in that category where it's the same cross-section. They are made to order, but they're very similar.

MR. PORTER: One last time, if I may. I actually think you should flip this question around. You're asking us to essentially prove the negative that, you know, that -- or to prove the bright line.

I think you should flip it around and ask Petitioners where is the overlap. Okay? We're talking the purpose of a like-product determination, as you know well, is to determine the industry to be examined. An industry is made up of producers.

So the question is: Are there the same producers? No. There's different manufacturing equipment. Okay, are there the same customers? No. Are there the same channels of distribution? No. You know, is there price difference? Yes.

And so we went through all of the factors, and the factors the Commission historically uses are very correct in trying to determine whether the whole industry is different.

And so the question really is: Where do Petitioners show there's an overlap? They can't show any overlap. And that to me is more telling than trying to, you know, is this distinction and so forth? There is no overlap.

COMMISSIONER KARPEL: I guess, for example, on channels and on customers, I still feel like I'm not getting a clear answer. So again, I want to move on to another question because time is short, but if you can work on this posthearing.

MR. PALEY: Can I try one more? One very short thing. I mean, we do sell a completed building shell. So that's an engineered structure. The components plus the cladding is a part of that. In the conventional FSS piece, they do not do the structural design. So the framing design, they would only do the erection engineering, the connection design. They would not do the complete framing design. They would not offer a weatherproof enclosure so another roofer would come in and do essentially do that work.

So it is a different scope of work, a different package when you talk about what happens at the construction side as well.

COMMISSIONER KARPEL: Thank you.

MR. SALAS: And finally -- Javier Salas from Corey -- no traditional FSS fabricator would use a dealer network to sell a project. We do it directly. Thank you.

COMMISSIONER KARPEL: I wanted to ask you about a slide that Petitioners showed this morning. I guess it was the last slide in the economic, what was it, economist's consulting firm's presentation. Now I'm getting the names mixed up. I apologize. But it's the last slide. It looked like this (indicating). And they make a point of noting that as non-residential construction spending went up during the Period of Investigation, there is a dip in fabricators' profitability.

And I wondered -- and they point to this as evidence of impact of subject imports. And I wondered if you could react to that. What do you think this graph shows? And do you agree that it is showing an impact?

MR. DOUGAN: Commissioner Karpel, Jim Dougan. First of all, it's a dip in profitability that isn't really observed in the data that you gathered as part of the record. And we understand this is a fragmented industry, and we understand that there's lots of, you know, responses, and the coverage. The staff certainly did an amazing effort to get the coverage they did.

I think coverage at the prelim was 30 percent, and they got it up to, you know, 53. So that's a pretty massive task. But 53.7, even though incomplete, for purposes of measuring, you know, volume effect and significance of imports, that is a majority of the industry. And the majority of the industry is not displaying a trend like what is shown in that graph.

So I think you, on that aspect of it, might take it a bit with a grain of salt. Because it's not something that staff has had a chance to vet through the certified questionnaires. That's the one aspect of it.

And the other aspect of it is, as I'm sure Mr. Nicely is looking forward to, he and I are both looking forward to talking about, it's part of this general business cycle argument that they, you know, should have been doing better, and that in a prior business cycle, you know, they did better.

But, you know, I'll let Mr. Nicely take over from there.

MR. NICELY: Commissioner Karpel, this topic--and I know you were not on the Commission at the time, but I know you now have had a chance to look into it during the course of the appeal on Softwood Lumber, but this topic is critically important in the Softwood Lumber case. You had data on the record from prior lumber cases that was the Commission's own data. And in that case you would not look back at prior business cycles and see how wonderfully well the domestic industry was doing during the latest Lumber 5 POI, as compared with prior business cycles.

Now you have a Petitioner coming to you with data that they collected on their own, by the way, this entire page is their data, it's not your data, it's not questionnaire data, it's their data. And they're expecting you to just take it at face value.

So, as Mr. Dougan said, we very much want to stress that you can't just take this at face value. You've got to consider how it was collected and who it was collected from, and it wasn't your staff.

But the critical thing is, every business cycle, as you all said in the Lumber case, every business cycle is different. There are different issues going on. Look what was happening right before the crash in 2008-2009. That's a bubble if there was ever a bubble.

So we could go through and really dig through this entire slide, but the point is that you are now on record in a very recent case of not doing the very business -- prior business cycle comparison that they're asking you to engage in. And I know you -- I know I'm not fully answering your question on going backwards further than you seem to want to look at, but on the part -- on the years that you're looking at, please look at your staff's data.

Look at the questionnaire data, because this is not your questionnaire data.

COMMISSIONER KARPEL: Just a brief followup. I know I'm over time, but you have a response. Even though this is someone else's data, like of course we'll look at questionnaire data. But does that mean we should disregard this entirely? Or is there something to be gleaned if there is a showing that the construction spending goes up but profitability isn't tracking that.

MR. NICELY: I guess, I mean we've been looking. We've shown you on Mr. Dougan's slides what your questionnaire data showed with regard to them. They don't show this.

I can't explain why. I don't know who they collected it from. I don't know -- you know, it is a black box to understand exactly what this is. So to understand, when your own data doesn't track it, it's hard to react to it.

MR. NOLAN: Excuse -- this is Matt Nolan for Canada. I'd just like to jump in for a second on this. Business cycles are -- you know, you have to look at the factors that are affecting the business cycle, the prior cycle that you went through, to see if the conditions that existed at that point were comparable to the conditions now, so that you would have a similar cycle.

What was going on in the business community at that point? How much lending was going on? How much activity was there in the community? During the 2006 period, construction was at an all-time high, and everybody was talking about how much easy money was out there. There were subprime mortgages, and easy financing available.

Then you go into the crash where you couldn't buy, beg, borrow, or steal money to build a building. And I think anybody around here in 2009 and '10 would tell you that.

Now we come back to a normal recovery cycle and we're comparing that to an excessive up and down cycle in 2008-2009. Now I'm not saying that you should never look at other business cycles, but you've got to look at how comparable the conditions exist in that prior cycle. And they've done none of that here.

They've just put some numbers up on a board and said we're over. You can't just look at it that way. You've got to dig into that.

CHAIRMAN JOHANSON: Commissioner Schmidtlein?

MR. DOUGAN: Sorry, one last point to that. Also, the number that's here -- and we will get into it more in posthearing -- but there's a median fabricator's profitability, whereas the profitability you have from your questionnaire is just weighted average.

So, I mean who knows how comparable this would be if it was calculated in a different way. Sorry.

CHAIRMAN JOHANSON: Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Excuse me. I just have a couple more questions.

One is, this morning we heard Petitioners argue that the cost of erection services is mostly standardized in the United States due to the collective bargaining, and I wonder if you all can comment on that, if you agree with it? So of course not from project to project, but when you're talking about bidding on the same project.

MR. ROONEY: Commissioner, Dan Rooney with ADF International. I think they talked about the hourly rate of the labor services, not necessarily standardized on price that an erector might give to each fabricator. While we all like to believe that everybody, every erector bids the same price to every fabricator, that may not necessarily be the case. In addition to that, many times we team up with an erector. A fabricator has an advantage. An erector has an advantage. And together we find a way to manage that project, manage the risk --

COMMISSIONER SCHMIDTLEIN: Can I stop you just a minute?

MR. ROONEY: Sure.

COMMISSIONER SCHMIDTLEIN: Are you suggesting that one erector will give a bid to multiple fabricators for the same project?

MR. ROONEY: Yes.

COMMISSIONER SCHMIDTLEIN: Okay. And you think they could be different on the same project?

MR. ROONEY: I know they can be different because we all have a different scheme. While this morning they talked about all FSS being fabricated to a specification and therefore it couldn't be vastly different, the way we supply a project, transport steel, and erect that steel is part of what we would call "means and methods." And means and methods for a fabricator and erector can be different.

And as a fabricator, I might have an idea that an erector really finds to be very innovative and lower their costs. And so it's not as if they're giving an advantage to one fabricator or another, they're looking at the scheme in which we're going to deliver the components to them, save them field labor by doing more of that labor in the shop, and giving us a different price based on that scheme.

MR. GUILE: Kevin Guile with Supreme Group. Just to add to that, in my opening testimony I talked about the speed core system, the game changer that the AISC is actively promoting, and we're fully behind that, having built the first project in the world. It saves 43 percent on construction time.

When we went after that project, we partnered with an erector because we knew they had the capability, the knowledge, the expertise, the business culture. They shared our innovative mindset for how are we going to build the first one in the world?

We did not go out to seven different erectors and say can you give me a price? Because that would not manage our risk. We knew we had to bring the right solution to deliver this project to the market, so we select who we want to work with.

We've got ideas around how are we going to put more hours in the shop versus less hours in the field where it's more complex, or you've got additional equipment, so on and so forth. We want to put hours in the shop generally to deliver to the market the lowest total installed cost.

So we really want to partner with folks. In addition to that, we also have a small erecting group ourselves that we try and keep busy. But we would never take them to a major, big project like Rainier Square Tower because they didn't have the capacity, the knowledge, and the expertise. So it's just different avenues, different channels to deliver to the client what they're looking for.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. KOPPELAAR: Walt Koppelaar from Walters Group. I misrepresented myself earlier when I said I was a

Canadian producer and a U.S. producer. I am also a U.S. erector, and we offer a complete package.

And in that complete package we balance out all the risks to provide an overall economical benefit to the owner. Should things be done in the shop versus in the field? We balance out those costs. We have internal tug of wars, and they can be nasty. We throw things around the room, but at the end of the day we come up with a solution that works, and it's the lowest cost.

COMMISSIONER SCHMIDTLEIN: Okay. Alright, thank you. Alright, the last question I have, this is sort of shifting gears, but, Mr. Salas, you testified in your direct testimony that, I believe if I recall, that you were the only Mexican producer competing in the U.S. market with regard to conventional FSS, and that you would be happy to explain why, or more about that. Am I remembering right?

MR. SALAS: Thank you for asking that question, Commissioner.

COMMISSIONER SCHMIDTLEIN: Okay, it's been so long ago.

(Laughter.)

COMMISSIONER SCHMIDTLEIN: So would you like to elaborate on that?

MR. SALAS: Yes, of course. Several factors, and let me go back to the Department of Commerce investigation.

Initially they designated two mandatory respondents. One of them ended up being the largest producer of fabricated steel for monitor poles for transmission towers that ended up being outside of the scope of POSTAS, I believe it's called.

The second one was BSM, who in our opinion should be also outside of the scope because it's a metal building producer. And way in the bottom, it was Corey.

So we actually had to get into the investigation as a voluntary respondent. Luckily we were accepted and here we are. Out of seven questionnaires that the Department of Commerce sent to Mexican firms, only the mandatory and ourselves responded. That's why we have so many firms with the higher rates, because they didn't respond.

Again, out of twenty years that we've been in the U.S., in and off, participating with other U.S. fabricators, we have never competed with another Mexican company. Out of all the relationships we have in the U.S., nobody has seen another Mexican company. The problem of the lack of detailed scope in this investigation, if that includes 250+ thousand tons of steel components that are being imported into the U.S., as petitioners claim to be FSS, but we have the two large producers who are monopoly transmission towers over I think close to 100,000 tons.

We have the pre-engineered metal buildings which, you know, according to the data we have, it's over 50,000 tons. We have scaffolding equipment, we have garden furniture for Home Depot, we have shelves for the Home Depots and the Targets and all of that. And we believe we are the only ones and, you know, it's pretty telling when the future of your exports depend on complying with the Department of Commerce investigation. You don't even bother to answer a questionnaire? Thank you.

COMMISSIONER SCHMIDTLEIN: Okay, all right. Thank you very much. I have no further questions.

CHAIRMAN JOHANSON: Commissioner Kearns?

COMMISSIONER KEARNS: Thank you. Yeah, returning to just to, I think there's a couple of loose ends I had on bidding. As we talked about a little bit, petitioners say FSS is only, the only real variable is in the bids is on FSS, and I think Mr. Dougan, you had suggested that maybe some of the folks in the industry would want to comment on that. And I guess we did hear a little bit just a second ago about erection services.

But if there's more that you all wanted to say about that. And if we wanna just go to the issue of erection services we heard a moment ago, I think, from Mr. Rooney, who it was? You know, what I heard you say in response to Commissioner Schmidtlein's question is, you can have two bids on the same project where the erection services are provided by the same company on each of those bids, but the price of those services might be different for the two bids; is that right?

MR. ROONEY: Yes. Dan Rooney with ADF International. All things being equal, if it's a simple job, most of the erector bids are going to be the same for every fabricator. But every erector that looks at a fabricator is going to see a fabricator with a certain amount of risk and so there might be some spread there, depending on how they see the risk of that fabricator. I would suggest in that situation it would be relatively small because most fabricators find out about that spread and fight back very quickly.

However, maybe it's best to give you a simplistic example of a project down in California where we had some relatively heavy columns that have to be lifted into place a significant distance from the crane. Which means we have to have a very high-tonnage crane in our budget for the erection of those columns. What we chose to do was split those columns in half and utilize a much smaller tonnage crane in our erection scheme. And we had to balance out the cost of that crane versus the cost of that field, labor to then weld those columns back together or bolt them together.

It turned out to be that utilizing a smaller crane and more field-welding was the route that we chose to go. Is that how we secured the project? I would suggest that on that project it was, because we came up with a different scheme than maybe everybody else did. Everybody else might've looked at it as a simplistic job of bringing in a very large crane with a large capacity on the reach and all of a sudden, their bid was higher than ours and because we were innovative in that circumstance, we got the bid.

Or it could've been that we developed a field connection that was fairly inexpensive to complete with the field labor, again, versus the cost of bringing in that large crane. There's a lot of variables that went into that, and the erector would've taken that into account. Some erectors, and I think maybe the speed core system that Supreme was talking about, that Kevin is talking about, I believe they chose an erector that had a significant capacity for field-welding and they were very good at it and had very few fails throughout their history.

And so all of a sudden, that erector would've looked at that project and bid it vastly different than an erector that didn't have the same volume of field welders on their staff and the same capability of field welders on their staff. So there's always differentiating factors that an erector would look at it to give me a bid, versus somebody else based on my scheme, especially on significantly complex project.

COMMISSIONER KEARNS: Thank you, that's super interesting. And I think what you were also saying with Commissioner Schmidtlein is, or at least in my mind, if one FSS company is maybe assembling more at its factory before it ships off, then of course, the erector services will be lower than if there was less assembly done at the FSS factory, right?

MR. ROONEY: Yes. Shop labor rates are considerably less than field labor rates, so any of the work that we can do in the shop that saves that field labor, obviously makes the total installed cost of the project less.

COMMISSIONER KEARNS: Right. And it also makes the erection part less because, even if it's the same cost, it was done in-house. This is kinda going with what I was saying this morning about kind of an artificial distinction between the two parts of the contract.

MR. ROONEY: Agreed.

MR. SALAS: Javier Salas with Corey. If may I add, there's -- you know, during the Hudson Yards project, we were able to introduce thicker plate at higher strength grades. For that project, we had laminated columns, which is basically a 40-inch by 40-inch solid steel made out of plates. So instead of having five, let's see -- so we were able to introduce -- back in those, five years ago, was it?

Five, six years ago, the thickest plate in Grade 65 available in the U.S. market was 4 inches. We were able to introduce 6 inches in the same grade. Obviously we saved a lot of welding in the shop. We also were able to introduce Grade 50 up to 8 inches when the thickest plate available in the market was 6 inches. Saving not only weld in the shop, but also weight while erecting the steel. So saving for in capacity or splicing on the field. So those are the things that you can do with value engineering that end up saving money at the shop, but also on the field.

COMMISSIONER KEARNS: Okay, great, thank you. And then just one more question on bidding, which is, I think it's someone from Canam, Mr. Dussault, I think I heard? Although I'm not seeing it on my chart, okay, oh, thank you. I think you mentioned in response to a question from Commissioner Stayin, that the ratio of erection services to FSS on some recent bids, I think you said it was roughly 30% in both cases.

And my question is, I'm wondering if you and if others on this panel can provide documentation to us to help establish what the breakdown is between FSS and not just direction services, but anything else that might be in the overall bid. Y'all help us with that?

MR. DUSSAULT: We can certainly provide a breakout on past projects --

COMMISSIONER KEARNS: Okay.

MR. DUSSAULT: -- to clarify the situation.

COMMISSIONER KEARNS: Thank you. And again, if we can get some help from others as well. I think we asked kind of the same question of petitioners this morning. So hopefully that can help us on your end as well. Given that a lot of these purchasers, again, apparently didn't provide itemized data, even though it sounds to me like you all and U.S. producers have some itemized data.

Something down to lost sales and revenues. Mr. Dougan. In Dr. Kaplan's economic analysis, he identifies the projects lost to subject imports and adjusts them for the value of the FSS, as opposed to the value of the entire bid to reach a value of lost revenue. He further extrapolates to account for the entire market reaching an even greater value of projects lost to subject imports. Can you address this analysis in your post-hearing submission? I'm guessing you probably were going to anyway, but --

MR. DOUGAN: I will do so.

COMMISSIONER KEARNS: Okay, great, thank you. I think the only other thing -- I did wanna just, I addressed this business cycle issue in the softwood lumber case. It seems to me it's worth noting that while the Commission acknowledged that the business cycle and the impact of the great recession on housing starts, we acknowledge those things in that case.

The NAFTA panel remanded on this issue to the Commission and directed it to reconsider the record evidence in relation to the business cycles distinct to the U.S. lumber industry and to apply its findings in its injury analysis, which we have done on remand, so doesn't that sort of suggest that we should be looking at business cycles and having the petitioners in this case giving us more to go on than I think we typically see.

Typically we just see, look, you know, over the three-year POI, you know, the market seems to be growing and, you know, we've got questionnaire data that says everyone seems to think we're in a, you know, things are going well. But I guess I'm just trying -- how would you respond to that? I mean, seems to me like the NAFTA panel in the lumber remand told us to look at business cycles.

MR. NICELY: You're asking me to enter into dangerous territory.

COMMISSIONER KEARNS: You started it.

MR. NICELY: My colleagues are waiting for me to get back to the office to work on our brief reacting to your remand determination. But I -- there's a distinction between looking at the business cycle in which we're operating at the moment, versus comparing to prior business cycles, right?

Those are two different things. It's part of what obviously will be addressed in the further litigation that we're in the midst of, but all I -- the only point I was making, and in your remand determination you stayed with the argument that comparing two prior business cycles is not something you're required to do under the statute.

That's the position I think the Commission took, and here we are with petitioners trying to use data that is not even the Commission's data, whereas in softwood lumber, it was your data, because you have so much data in the softwood lumber case. That --

COMMISSIONER KEARNS: Thank goodness for that, right?

MR. NICELY: But the point is that you're -- they're asking you to look at a prior business cycle, take it on faith that the data are accurate, which we, as I discussed with Commissioner Karpel, we questioned, because we haven't had a chance to study it as much as we'd like to, because we saw it for the first time in the brief, but the point is that it's not your data. It's AISC's collected data and then is questionable because of that, because it wasn't part of your own collection of data.

MR. DOUGAN: Commissioner Kearns, if I could just add to what Mr. Nicely is saying. It's not only that in lumber you had prior profitability. You had your own Commission's findings about errant consumption, share of subject imports, what were the price trends, what were the conditions of competition at the time, so that when we were arguing that those are relevant to you weighing that evidence.

We didn't just say take it on our faith that you can compare these things, but you had made findings on all of these things. Here, you don't have any of that. You've got a few data points of median operating income versus non-residential construction, and they're saying this should have been as good as that.

You don't have apparent consumption information. You don't have information about the conditions of competition, all the various things that was available to the Commission in the lumber case. You didn't have -- in those cases you had reliable third party data from you know, pricing to all that other stuff. That's not present here.

So, there's not -- the weight of the evidence isn't basically good enough for them.

MR. NICELY: But the critical point here is -- and it keys off of what Jim just said, is that you have to -- if you're going to compare prior business cycles, to the extent there are, you know, this industry follows the business cycle at all, by the way, but if you're going to compare to prior business cycles, if indeed there are prior ones to compare to, then you have to look through and consider whether the conditions today are the same.

And I would tell you today, given that they're looking back at a period that is just before the crash, that those conditions are quite different.

COMMISSIONER KEARNS: Okay, thank you. I would appreciate in the post-hearing if you all have any more specific criticisms of that data, or any alternative data, I would appreciate that, thank you.

CHAIRMAN JOHANSON: Commissioner Stayin? Commissioner Karpel? Okay. Any other Commissioners have questions? No Commissioners do. Do staff have any questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Mr. Chairman, staff has no additional questions for the panel.

CHAIRMAN JOHANSON: Do Petitioners have questions for this panel? Okay. No Commissioners -- the Petitioners do not have questions for the panel. Then this panel is dismissed. But I would like first to note that for rebuttal and closing, Petitioners have six minutes for direct, five minutes of closing for a total of 11 minutes.

And Respondents have one minute of direct, five minutes of closing for a total of 6 minutes, so we will now prepare for Petitioner rebuttal and closing, followed by Respondents.

MR. BURCH: Closing and rebuttal remarks on behalf of Petitioners will be given by Alan H. Price and Christopher B. Weld of Wiley Rein, and Doctor Seth T. Kaplan of International Economic Research. Mr. Price, Mr. Weld, Mr. Kaplan, you have 11 minutes.

CLOSING STATEMENT OF SETH KAPLAN

MR. KAPLAN: Thank you very much after a long day. I'm going to return to my first slide from a presentation in the morning. And at that point I talked about four established facts from the staff report from your record, compiled by your staff, of this Commission and put into the report using APO data. And what your staff found was that the Commission, domestic industry had large amounts of unused capacity, that subject imports compete head to head on the basis of price, that projects won by imports were under bid, and I found that the domestic industry's performance was the best of the cycle.

I put these up because I anticipated to win this investigation they would come at the staff and your record and say no, there's not large amounts of unused capacity. Your staff and you are wrong. No, there is not subject imports competing head to head on the basis of price. The record and the staff report is wrong.

Projects won by subject imports were underbid, no, the record and the staff report is wrong. And they have spent the whole day and the whole afternoon trying to undermine the record that was collected by the Commission, carefully and meticulously.

With respect to unused capacity, their argument makes just no sense. There is zero, zero evidence that there was a -- that there were projects in the United States that were not bid by domestic producers. That the industry turned down bidding a project -- never happened.

That the industry didn't build the project that it bid. Never happened. That's what happens when there's a shortage. That's what happens when you are above capacity. So, what is their argument? Well, we're this far from capacity. We're aren't at capacity, because there was never a problem building anything, never a problem building anything, but the next project will be the straw that breaks the domestic industry's back.

And why is that? Because of labor shortages. Labor shortages were so bad that the representative from BlueScope, said it's terrible, I only hired 200 people. It was awful. He managed to hire 200 people since 2011, 2 million people have joined the construction labor market, 2 million, to get the percentage needed in this industry which is high employment.

20,000 U.S. workers, there needs to be about 15 or 1,600 workers more. That's less than one-tenths of 1 percent of the workers that were added over that period, and what does this mean by a labor shortage? It means prices have to go up so workers will get more. Go on the web. They'll show that there's a labor shortage in plumbers, carpenters, brick layers, welders, electricians, roofing, roofers, home -- HVMC, iron workers.

How come these buildings are getting built with all these shortages of skilled labor? They're using more skilled labor than our industry. Wages go up, workers get hired. There has been testimony that there has been no problems adding workers, over the period of investigation. You've seen fluctuations. Projects get built.

The second point -- imports compete head to head. That's what people testified to, that's what your record shows. The third point, subject import products were underbid, after requesting bidding data, and requesting -- there shouldn't be data on pricing products. They now come back and say the data doesn't show it.

You have five or six different ways you could look at pricing. None of them perfect, as in every case, and they all show the same thing. Price is important, and the import's underbid.

Finally, the performance was suppressed at the peak of the business cycle because we're earning about 6 percent, using the Commission's data. Forget about my graphs. I'll defend them in the post-hearing. They're earning 6 percent at the peak of the cycle.

And that's just crazy. And why is that? Because prices have been suppressed, and projects have been lost. Thank you.

CLOSING STATEMENT OF CHRISTOPHER WELD

MR. WELD: Chris Weld on behalf of Petitioner. I want to address the like product issue regarding PEMS, that was discussed this afternoon. Respondents have mischaracterized our position this afternoon, including in the first slide of their presentation. And so, I just wanted to clarify a few points. We've detailed some of this in our pre-hearing brief, and we will of course, go into more detail in the post-hearing.

But first, compete PEMS are out. Commerce agreed. No one is contesting that. There should be no confusion regarding that. Two, FSS components of PEMS are in. You can't distinguish an FSS component of PEMS in an FSS for other structures.

Commerce agreed, they concluded that FSS components of PEMS are in the scope. And you've heard this afternoon from the Mexican Respondents, that they sell FSS components of PEMS, to PEMS producers and other fabricators.

They say there's a gray area. They have not shown a clear dividing line.

Third, non-FSS components are out, things like skins, doors, windows, trim and slated metal panels, things that are not structural. We've never claimed they're in. Respondents flat out mischaracterized our position on this. Frankly, it's Respondent's who have mischaracterized their positions, told conflicting stories between the Commerce Department and the Commission.

At Commerce, BSM, a subsidiary of NCI, said that doors, trims and insulated metal panels are out of scope. They acknowledge it explicitly in their filings. But now, apparently, according to the Respondents, they are in scope. They're arguing both ways. We will go into additional detail in our post-hearing brief, thank you.

CLOSING STATEMENT OF ALAN PRICE

MR. PRICE: Okay, one more plan like product here for one second. This is actually something we're pulled up here real quickly on the Butler website. In addition to what -- they have lots of different things here and they'd like to say oh, there's these clear dividing lines. And they talk about their buildings.

Well, you can build conventional. They supply that by the way. They can build hybrids, so let's, you know, well, that's a mixture of designs that include beams, girders, tresses, with butler CZ secondary sections and trust perlins.

So, basically, there's no clear dividing line, even on their own website about what these projects and products that they offer have and are. Okay. We'll furnish that in our post-hearing brief, but this is directly from their site.

Okay, I want to thank the Commission for what is a long day and your excellent questions and your really efforts to deal with what is a case that has a lot of different issues in it. First of all, the Commission should cumulate the subject imports. Certainly, in regard to injury, I don't think there's any argument that there is sufficient overlapping competition with regard to all of the subject suppliers.

We'll debate some of the data you have and discuss the threat stuff some more, but we addressed it partially in our brief, and we'll address it more in our post-conference brief. But we think you should cumulate for threat. Bottom line is there is more than reasonable overlap. It doesn't have to be perfect overlap, but there is substantial overlap, enough for cumulation, so that's pretty clear and that should be off the table from day one.

Let's go to the statute for a second. Statute says listen, you have to evaluate all of the relevant legal factors in the context of the business cycle. I'm not saying this, that's what Congress directed. Okay, so, we're looking at in the context of the business cycle.

Let's look at the volume of imports. The volume of the subject imports during this period okay, the volume effects of the subject imports are historically high in the POI, increased from 2016 to 2018. They had a substantial market share, so bottom line is it's substantial, just on the pure volume at 30 percent.

We scale it in various ways, the Respondents keep on trying to do this and that. We all do some scaling in this case. It's still substantial at any number they put on it, without any change in the volume trends, particularly in the context of the business cycle, particularly in the context of the highly bid projects where price is a critical, critical factor.

It doesn't always have to be the most important factor in every issue, but it is. So, this is a substantial volume, it's having in this industry. Things would have been better if we didn't have dumped and subsidized imports in this marketplace. We would have sold more. We would have had more volume. We'll address some of the details in our post-conference brief and we'll address that in detail.

Clearly, as Mr. Kaplan said, this capacity constraint argument is -- makes no sense. In fact, what they don't tell you constantly by the way is 97 of 118 producers and 51 of the 63 importers said that they did not refuse, or decline or been unable to supply fabricated steel during any portion of this period.

So, there's no sign of sort of shortages. There's no sign out here, volumes were significant. It had a significant effect. They were significant in the context of this business cycle, and they were significant in the context and much harder than the last business cycle from these producers.

Let's look at the price effect and pricing here. Bottom line in this case, we -- as Mr. Kaplan explained, we ask that you collect the conventional pricing products. The Commission requested bid data. The bid data that was requested was in the format that the Respondents had requested. We actually requested you collect bid data from U.S. producers and the foreign producers, so you could actually get at the details also, and address some of this, just like you collect pricing data, so you would actually be able to match this up better and get rid of some of the ambiguities here.

But the data you have is plentiful with information on the record that shows the pricing product data from the prelim, all shows underselling, and it is probative, and it continues to be probative. The bid data shows that it is probative and continues to be prohibitive. In fact, let's come back to this.

On imports only, only seem to win when they undersell a domestic industry. Out of all of the comparisons available, only once -- only once, did the foreign producer win a bid when they were actually overselling. These non-price factors become important only in the contents of I'm first underselling. So, that's what your data shows you. We'll just price in more detail in this.

We would have had substantially higher prices impact, clearly in the context of --

CHAIRMAN JOHANSON: Mr. Price, your time has expired.

MR. PRICE: Thank you.

CHAIRMAN JOHANSON: You have to wrap up please.

MR. PRICE: I will just say clearly, in the context of this business cycle, the subject imports obviously had an impact on profitability. Using your data as is, gross profits are down, operating profits are down. This is a period where we should be earning more, doing better, hiring more employees, which we were able to do in the end of the period of investigation.

I want to thank you and we'll address the rest in our post-conference brief.

MR. BURCH: Thank you Mr. Price, Mr. Weld and Mr. Kaplan. And closing and rebuttal remarks on behalf of the Respondents will be given by Nancy A. Noonan of Arent Fox and Ned H. Marshak of Grunfeld, Desiderio, Lebowitz, Silverman and Klestadt. Miss Noonan and Mr. Marshak, you have six minutes. You have eight minutes for your closing and rebuttal.

CLOSING STATEMENT OF NANCY NOONAN

MS. NOONAN: For the record, Nancy Noonan, from Arent Fox. Thank you for your careful attention to the case. Obviously, this is not a simple steel case. It is a construction case, from our perspective. You are seeing that the bids include FSS and many other aspects to it, engineering, detailing, whether you could do a bond, your erection.

You heard today that the erection component of the bid is not consistent. It depends on the value that the FSS manufacturer is bringing to the process. We will document that in our post-hearing brief. Competition is attenuated, there's various products here. I don't understand them all myself, but clearly there's many products here, and the projects themselves are very complex and unique.

The product is a custom product. What does it mean for capacity? That is the crux of the case, I think, is you know, what's going on with the U.S. capacity? Well, we know that it could take 10 hours to make one ton of FSS, or it could take 30 hours to make it. It depends on the complexity of the project.

So, what we do have on the record though, and we have no complaints or objections to the record. We think the staff did an amazing job, and we think the record totally supports a negative determination in this case. But what we do have, is in 2019, you know, Petitioner's whole argument is things would have been better but for the subject imports.

Well, in 2019, the record shows subject imports were retreating. We don't have to go into the where's or the why's, but the market share of subject imports were down 5 percent. What happened? Did U.S. market share go up? No, it did not. Non-subject market share went up. So, how can they be saying things would be better if the subject imports were not in the market?

That is absolutely not true and not borne out by the record. Labor -- they have, you know, they had five companies testifying. They have one opinion on it. We had U.S. producers on our panel as well, who all said there is a labor shortage. This is a real issue. Labor is not just the person who can come in and do the simple weld. It's also going to be your supervisors, your project managers, up the chain of these complex projects.

We will detail that more in our post-hearing brief. Finally, you know, we also heard that there are times of overcapacity. You win a bid and you're like, and then you win that bid, and you're like yeah, I won the bid. Oh no, how am I going to make it all happen?

They go to each other. You heard that from the Canadian panel as well. They go to each other. This is a very integrated market. There's plenty of business for everybody. We all can win in this market.

And then my final point is U.S. consumption has increased, domestic shipments have increased, U.S. market share has increased. The U.S. industry has continued to be profitable, import market share has remained flat. There's no injury by subject imports, Ned?

CLOSING STATEMENT OF NED MARSHAK

MR. MARSHAK: It's the end of the day. I must have two or three minutes left. Nancy said a lot of what I was going to say, but I'll still talk for two or three minutes. So, what are you going to look at to make a decision? You can look at the data.

You're going to do the analysis, the analytical data that you do in every case. You're going to look at anecdotal data. You can look at individual bids. You can look at witness testimony. You're going to look at all types of stuff that is in the record. And then you're going to look at the creditability of the witnesses, the credibility of the positions. So, let's look at four key issues -- the anecdotal data, the analytical data, and the credibility.

So, the first labor -- Petitioner came up here and said no labor shortages. 39 companies that Jim cited in his brief, labor shortages, and they're saying none. Credibility -- none. At least 39. So, there is a labor problem.

Two, the percentage of FSS in a project. They come up here and they say it's 90 percent, it's 95 percent. It's almost everything in the project is the cost of FSS. Well look at the facts. And we have facts on the record already from some of the projects we put on. But we'll put on more. It's 30 percent, or it could be 40 percent, it could be as low as 5 percent, and it differs, but it sure as heck isn't 90 percent every project to what Petitioners said this morning.

And then they went on and said look, the erection costs are always the same in every project. It's always a matter of FSS pricing, erection costs the same. Look what our witnesses said. And these are the people who actually do the erection, do the work. Absolutely not. There is no way in the world that the erection costs are identical in every project and that the costs of the FSS is driving the overall cost of the projects.

And then what did they come on and say? Price, price, price, price, price. All the witnesses. The only thing that matters is price. They're saying everything is equal, it always comes down to price. Look at what we said today. Look at what our witnesses say. And our witnesses are people who bought. People who consult with the owners.

It's not always price. It's risk. It's costs. It's what it's going to be together. It's getting delivery on time. You have a massive project, somebody comes in with a lower price, if there's a bigger risk, there's no way you're going to take that company. It's not price, price, price, price, they're multiple other factors.

And price, it's always price. It's one factor. But price is the dominating factor, the price is the reason why somebody bought Chinese steel, or Canadian steel, or Mexican steel, or who awarded a bid to somebody who had FSS is 5 percent or 10 percent. The price of that FSS has been the reason why that contract is awarded? Absolutely not.

I mean and that goes back to the credibility of what you've heard today. And look what they used as their test case. Their poster child for what's an important case that was won on the base of price. We had somebody coming in today and saying, "I lost this bid to Chinese steel because the Chinese steel was so incredibly low." He may have thought that.

He may have really believed that, but it just wasn't true. They had one domestic company bidding against another domestic company. It was awarded to one company, that company could not make the steel, the FSS in the United States itself. They had to call the contractor, and they couldn't get anybody else in the United States, so what does it do?

Goes overseas. It goes to Italy. It goes to other European countries. It doesn't even look at China. And then, when the Italian company fails, it only has to go back, it only goes to China because the company, the domestic fabricator says that can't be done in the United States.

So, again, when the companies, the producers here today talk about price, price, price, price, price, they may be sincere. They may really believe in their hearts that it's price. But in fact, when you look at the witnesses. When you look at going over what's going on in the industry and look at common sense, when you look at these massive construction projects, you don't take the lowest price. You go with the risk. Thank you.

CHAIRMAN JOHANSON: I'd like to thank all the parties for appearing here today. I'll now make the closing statement. Post-hearing briefs, statements responsive to the questions and requests of the Commission, and corrections to the transcript, must be filed by February 4, 2020. Closing of the record and final release of data to the parties occurs on February 18, 2020. And final comments are due on February 20, 2020. With that, this hearing is adjourned.

(Whereupon the hearing was adjourned at 6:45 p.m.)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Fabricated Structural Steel from Canada, China and Mexico

INVESTIGATION NOS.: 701-TA-615-617 and 731-TA-1432-1434

HEARING DATE: 1-28-20

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 1-28-20

SIGNED: Mark A. Jagan

Signature of the Contractor or the Authorized Contractor's Representative

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

SIGNED: Christopher Weiskircher
Proofreader

I hereby certify that I reported the above-referenced proceedings of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceedings.

SIGNED: Gaynell Catherine
Court Reporter