BEFORE THE UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

CRYSTALLINE SILICON PHOTOVOLTAIC CELLS AND MODULES FROM CHINA
INV. NOS. 701-TA-481 AND 731-TA-1190 (REVIEW)

TESTIMONY OF CRAIG A. LEWIS PARTNER, HOGAN LOVELLS US LLP

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

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

The Chinese solar industry has not stood still since 2012. At least two major changes of relevance to the U.S. market have occurred – and these changes are functionally irreversible. First, demand for solar products has skyrocketed in China, leading Chinese producers to refocus a large share of their shipments on the large and growing domestic market. As Mr. Dougan will explain, China represented only 12 percent of solar installations globally in 2012. In 2017, China represent a majority – 54 percent – of all solar installations worldwide. Consistent with this dramatic growth in their home market, Chinese producers now predominantly make domestic, not export, shipments.

Petitioner SolarWorld has sought to blunt these facts by pointing to recent changes in the Chinese Government's feed-in tariff program – the "FIT Program." They claim that the FIT program has been terminated and that this signals an end to the growth and importance of the Chinese market for Chinese producers. However, to paraphrase Mark Twain, reports of the death of the FIT Program and decline in solar demand in China are greatly exaggerated. Recent reports indicate that the initial decision to remove the FIT has already been revised, and China now plans and projects continued strong support for solar energy until at least 2022.

Also, while there was a modest slowdown in China's solar installations during the third quarter of 2018, the volume of installations in 2018 to date – 34.5 Gigawatts – is still a massive number. This enormous domestic demand for solar products continues to absorb a very large share of Chinese production. In other words, a moderate and temporary flattening of Chinese demand does not mean that Chinese shipments have diminished in importance.

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

At the same time that the importance of exports to the Chinese industry has diminished, the composition and direction of those exports has also radically changed. Since 2012, the Chinese industry has successfully shifted its exports away from the United States and the European Union and toward regional markets in Asia. The precise figures are reported in the Commission's prehearing Staff Report and are confidential. However, the growth in the share of Chinese exports that has been directed to other Asian markets since 2012 is very large. The 2017 data show that such exports currently predominate over exports to other markets.

Here again, Petitioner SolarWorld has sought to diminish this development by pointing to India's recent imposition of safeguard duties on solar products in September of this year. But, the continued application of these safeguard measures remains significantly in doubt because the measures are subject to a pending domestic legal challenge by local solar developers and the safeguard duties are also being challenged by Taiwan and Malaysia in the WTO. Meanwhile, at the 2015 Paris climate summit, India's prime minister Modi announced a target of generating 175 GW of power from renewable sources by 2022. Out of this, 100

GW is slated to come from solar energy. There is no evidence that this policy goal has changed. And given the relatively small size of solar manufacturing in India, a significant portion of this will have to be supplied by imports, including imports from China.

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

The dramatic pivot of Chinese producers to their own domestic and other markets is an important and lasting structural change to the Chinese solar industry and the composition of Chinese industry shipments. In addition, the other major structural change since 2012 is with respect to the sourcing of solar products for the U.S. market. Specifically, China has been almost completely supplanted by other sources such as those in Malaysia, Korea, Indonesia, Vietnam, and Taiwan.

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

SolarWorld now premises its claim for extended protection under the antidumping and countervailing duty orders on the theory that Chinese imports will flood back into the U.S. market if the orders are released. In other words, Petitioners suggest that nothing has changed since 2012, and shipping patterns will snap back to their 2012 patterns as soon as the restraint of AD/CVD measures is removed.

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

First, Chinese capacity utilization is currently high, leaving relatively little capacity to ship to the U.S. market even in the extraordinarily unlikely event that the 201 and 301 tariff barriers were to be terminated. As we showed in our pre-hearing brief and will reinforce in our confidential post-hearing submission, Petitioner's estimates of available capacity are greatly exaggerated.

Second, the nature of the investments that underlie the shifts in production and sourcing demonstrates the unlikelihood of a reversal of present U.S. sourcing patterns. During the safeguard investigation, Petitioners repeatedly criticized this realignment of sourcing patterns as allegedly reflecting efforts by Chinese companies to "circumvent" the antidumping and countervailing duty orders by producing the products in nonsubject third countries. Petitioners pointed out, for example, that Trina and Canadian Solar have established manufacturing facilities in Southeast Asia and Taiwan and complained that Chinese producers are "ramping up third country operations specifically to avoid U.S. trade remedies." (Petr's August 8, 2017, prehearing brief on injury at 83).

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

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

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

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