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On behalf of SolarWorld Americas Inc.

Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation
Section 301 Committee Hearing

Good morning. My name is Tim Brightbill. I am a partner with Wiley Rein, and I am testifying today on behalf of SolarWorld Americas. I appreciate this opportunity to appear before you again to express SolarWorld's support for the duties on Chinese-origin products being imposed under Section 301, and in particular our support for USTR's inclusion of solar cells and solar modules on the second list of products to be subject to duties.

As USTR is aware, SolarWorld Americas is the largest and one of the only remaining U.S. manufacturers of solar cells and modules. It was one of the very few companies to testify during the Section 301 investigation, and we also appeared before the Committee during the previous round of hearings on the tariff lists. The hacking of SolarWorld's information and technology were a key part of the Section 301 investigation. SolarWorld and the domestic solar industry have been devastated by the Chinese government's policies and practices with respect to technology, intellectual property, and innovation. This is detailed in USTR's comprehensive Section 301 report, which includes the following findings and information:

- In 2012, while SolarWorld was litigating a trade petition it had filed against solar imports from China, the 3PLA stole thousands of sensitive files from SolarWorld, on at least 12 occasions. According to DOJ, "such information

would have enabled a Chinese competitor to target SolarWorld's business operations aggressively from a variety of angles." (pp. 158-159)

- SolarWorld stated that the Chinese government's cyber-theft of its proprietary business information "resulted in more than $120 million in damages in the form of lost sales and revenue" because Chinese producers entered the market earlier than expected based on the proprietary information taken. (pp. 173-174)

- SolarWorld stated that its "efforts to stay ahead of the Chinese wave of illegally dumped and subsidized imports were thwarted by the hacking and theft of proprietary information about the [(PERC)] process that {SolarWorld} had innovated." (p. 174)

- As the SolarWorld example illustrates, Chinese cyber theft of commercially sensitive information often takes place in industries that the Chinese government has prioritized for state support, and the victims often operate in U.S. industries that are already suffering from the results of China's other policy tools. (p. 176)

In short, SolarWorld Americas provided uniquely useful and valuable information to USTR for its report, and submitted direct evidence of harm to its operations from the unfair and illegal Chinese trade practices.

To ensure that the Chinese companies who use this stolen solar technology and sell into the U.S. market do not profit from their theft, USTR should continue to include solar cells and modules on the list of products to be subject to 301 duties and should quickly proceed with the imposition of those duties. USTR has explained that it will consider several criteria in choosing these products. First, the duties are to be imposed on products that benefit from Chinese industrial policies. As USTR is aware, the Chinese government maintains numerous policies to support the development of renewable energy and has artificially supported its domestic solar

industry through industrial plans. In addition, tariffs on these products are not likely to disrupt the U.S. economy, as there are both U.S. sources – including SolarWorld – and many alternative, non-Chinese import sources for these products. Finally, I would note that the Section 201 solar safeguards investigation from earlier this year was a global action, which does not penalize China for its illegal and unfair actions such as solar cybertheft.

Therefore, we request that USTR impose additional Section 301 duties on its second list of products, covering $16 billion in trade, including solar cells and modules. In addition to the tariffs, the U.S. Government may wish to consider other restrictions on Chinese solar products, which may be even more effective than tariffs. For example, the U.S. Government should restrict federal procurement of Chinese technology based on stolen data and technology, and should prohibit or restrict Chinese solar cells and panels from all U.S. military and veterans' installations and housing. These restrictions should extend to all Chinese companies using solar PERC technology, regardless of whether the manufacturing occurs in China or in a third country.

Section 301 duties and other restrictions on unfair Chinese solar imports are even more important now, given recent developments in China's domestic market. China has scaled back its support for solar installations in its own market and has

cancelled large-scale projects. China is thus exporting its solar overcapacity crisis into the global market, putting severe negative pressure on prices worldwide.

Ensuring that the 301 remedy addresses Chinese solar manufacturers and benefits U.S. solar manufacturing would:

- Penalize Chinese state-sponsored cyberhacking;
- Combat China's efforts to monopolize solar and renewable energy manufacturing;
- Protect U.S. energy independence and critical infrastructure; and
- Address China's systemic illegal and unreasonable practices that burden and restrict U.S. commerce.

Therefore, we request that USTR continue to include solar cells and modules on its second list of products subject to the Section 301 duty, and promptly impose duties on this second list. Thank you, on behalf of SolarWorld Americas.