

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

May 18, 2018

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C., 20500

Dear President Trump:

A high-level delegation of officials from China led by Vice Premier Liu He is currently in Washington to meet with you and to continue the trade discussions with members of your cabinet that began in Beijing earlier this month. As those meetings take place, we write to make clear that, as a matter of your duty as President of the United States, responsible for U.S. economic, foreign, and national security policy, it is absolutely inappropriate for penalties assessed by the U.S. Department of Commerce on Chinese telecommunications company ZTE to be traded off as part of any trade deal with China. We also write more broadly to convey serious concern over the apparent lack of coherent strategy in your administration's engagement with China on matters of U.S. trade, economic, and national security policy.

Last month, the Department of Commerce's Bureau of Industry and Security (BIS), which administers and enforces U.S. export controls laws, denied ZTE's export privileges for seven years because ZTE had violated the terms of its 2017 settlement agreement with BIS. These penalties may well result in ZTE's inability to continue operating. However, it is helpful to recall the grounds for ZTE's original settlement agreement and the reasons for BIS's decision now to deny ZTE export privileges.

In 2017, as part of its enforcement efforts, BIS found that ZTE had engaged in a multi-year conspiracy to violate U.S. sanctions by illegally shipping telecommunications equipment containing sensitive American technology to Iran and North Korea, in violation of the Export Administration Regulations and the Iranian Transactions and Sanctions Regulations. ZTE also admitted to engaging in an elaborate scheme to hide these violations from the U.S. government. BIS considered the infractions so egregious that it imposed on ZTE a record-high penalty of \$1.19 billion and a seven-year suspended denial of the company's export privileges, which could be activated if any aspect of the deal was not met.

In April this year, BIS discovered that ZTE had violated the terms of its settlement agreement by, among other things, failing to reprimand the ZTE employees that had engaged in the illegal activities, rewarding those employees with bonuses, and repeatedly lying about it to BIS. As a result, ZTE now finds itself facing justifiably dire consequences for its malfeasance and flagrant disregard for U.S. export control laws and sanctions.

When announcing the denial of ZTE's export privileges, the Department of Commerce took care to underscore the integrity of its decision as part of an administrative and law enforcement proceeding, apolitical and separate from wheeling and dealing. In its press release on April 16, 2018, the Commerce Department explicitly noted that "this is a regulatory action and is unrelated to any ongoing trade-related actions."

This statement and the purposes underlying it ring increasingly hollow in light of the statements you have made via Twitter this week in anticipation of the Chinese trade delegation's meetings with members of your administration:

- On May 13, you announced that you and President Xi Jinping are working to allow ZTE to resume its business operations and that you have instructed the Department of Commerce to accomplish this.
- On May 14, you explicitly linked ZTE's commercial viability to the larger trade discussions with China.
- On May 16, in response to blowback to your earlier statements, you declared that nothing has happened yet with ZTE "except as it pertains to the larger trade deal."

The United States has serious, long-standing, and increasing trade and investment frictions with China that range from irritations and disagreements to open and possibly existential conflicts. Your administration has taken steps to implement an aggressive approach to confronting some of those problems. These include the investigations into national security threats from imports of steel and aluminum under Section 232 of the Trade Expansion Act of 1962, which have resulted in tariffs of 25 and 10 percent on steel and aluminum imports, and the investigation into China's unfair trade practices, including forced technology transfer and theft of U.S. intellectual property under Section 301 of the Trade Act of 1974, which has resulted in the launch of a dispute at the World Trade Organization, proposed tariffs on \$150 billion worth of Chinese imports, and potential investment restrictions on China.

Your administration's actions have gotten China's and the world's attention. The current discussions with China are a critical opportunity to use that attention to demand and secure some important, systemic changes to the U.S.-China economic relationship. For many years, the problems posed by China, including global overcapacity in steel and aluminum production and the abuse of U.S. intellectual property rights holders, have been intractable. This is not an opportunity to cut superficial deals with China that fail to address the unfair terms of China's trade and economic relationship with the United States and the rest of the world. What is at stake are American jobs, American economic and innovative vitality, and the future of America's ability to be and remain a globally competitive powerhouse.

It should go without saying that the present discussions are also not an opportunity to undermine U.S. national security interests.

In your May 16 statements, you indicate that we have not yet seen China's demands in these trade discussions. This contradicts statements made by Commerce Secretary Wilbur Ross

who on May 8 told Politico that the Chinese “responded [to U.S. demands] a bit later with their own list of things which as you might imagine was quite different from ours.”
The lack of clarity on the basic facts surrounding these discussions is unacceptable.

As the Ranking Member of the House Committee on Ways and Means and the Ranking Member of the Ways and Means Trade Subcommittee, with oversight authority over the Office of the U.S. Trade Representative, the Department of the Treasury, and the Department of Commerce, we ask that the heads of these agencies to provide by May 25:

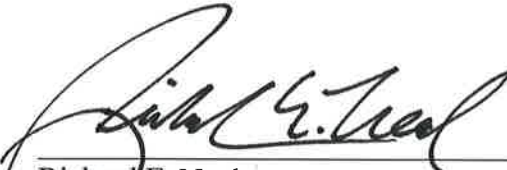
(1) Briefings to our staffs regarding:


- (a) The content of the discussions with China that occurred this week in Washington, DC and during the week of April 30 in Beijing; and
- (b) The Administration’s strategy for its current economic and security engagement with China; and

(2) Documents reflecting:

- (a) China’s demands of the United States;
- (b) U.S. demands of China (including the document members of your administration provided to the Chinese ahead of the Beijing visit in early May titled “Balancing the Trade Relationship between the United States of America and the People’s Republic of China”); and
- (c) Any additional documents, lists, or other materials produced or exchanged as part of these U.S.-China discussions.

Sincerely,


Richard E. Neal
Ranking Member
Committee on Ways and Means


Bill Pascrell, Jr.
Ranking Member
Ways and Means Trade Subcommittee

CC: Hon. Robert Lighthizer, U.S. Trade Representative
Hon. Steven Mnuchin, Secretary of the Treasury
Hon. Wilbur Ross, Secretary of Commerce
Larry Kudlow, Director, National Economic Council
Peter Navarro, Assistant to the President, Director of Trade and Manufacturing Policy