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CHIEF COUNSEL AND STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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December 9, 2010

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The Honorable Gary F. Locke
Secretary of Commerce
Herbert Clark Hoover Building
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

The Honorable Ronald "Ron" Kirk
U.S. Trade Representative
Office of the United States Trade Representative
600 - 17th Street, N.W.
Washington, D.C. 20508

Dear Mr. Secretary and Ambassador Kirk:

We write to urge you to press China for meaningful objective commitments and metrics to increase U.S. market access in China and protect U.S. intellectual property rights, including at the upcoming U.S.-China Joint Commission on Commerce and Trade (JCCT). For too long, China's commitments have failed to lead to commercially meaningful market access for U.S. companies. In particular, we urge you to secure robust commitments from China that will protect the range of U.S. industries, such as software, entertainment, and technology, harmed by the continued massive theft of their intellectual property and onerous and discriminatory market access restrictions in China.

The JCCT has been an important vehicle for dialogue with China on piracy and other issues that affect U.S. intellectual property rights holders. For example, since at least 2004, the U.S. Government has repeatedly raised concerns about persistently unacceptable levels of software piracy, the need for meaningful enforcement of U.S. intellectual property rights with respect to products sold in and exported from China, and unwarranted restrictions on market access for U.S. innovative products into China. But improved market access results for U.S. companies, as measured by sales, jobs and exports, have been meager.

The Honorable Gary F. Locke
The Honorable Ronald "Ron" Kirk
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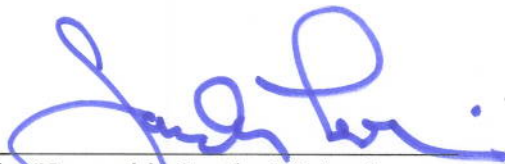
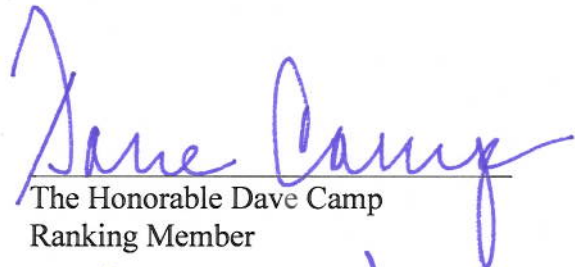
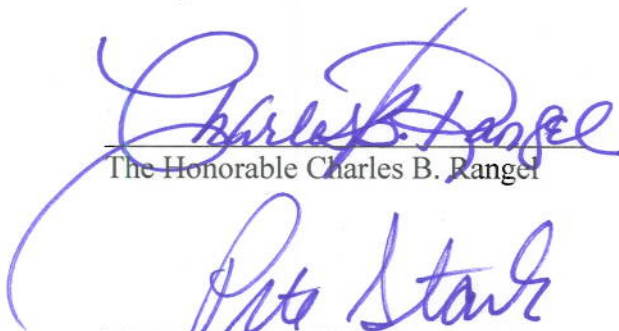
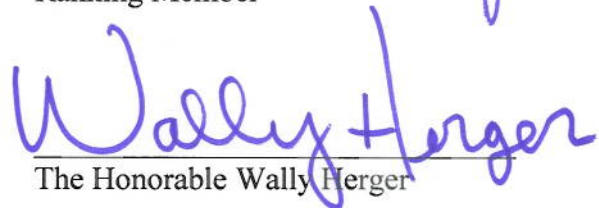


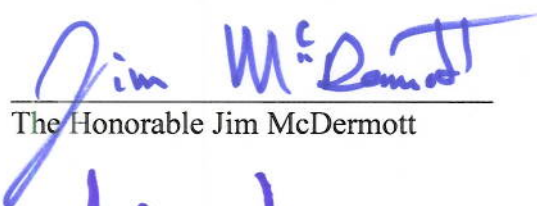
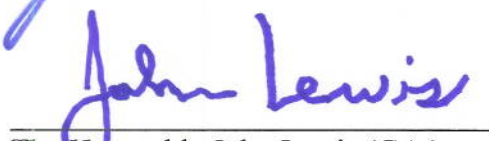
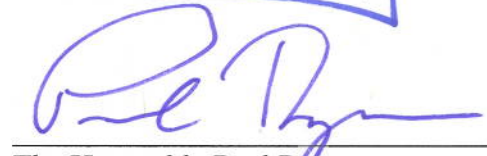
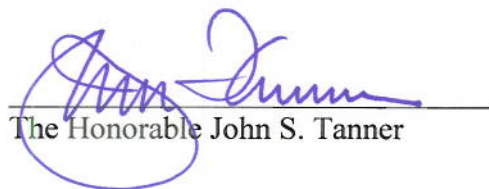
For example, despite the persistent efforts of you and your predecessors, illegal use of American software in China remains at unacceptable levels. We understand that today in China, nearly 80 out of every 100 computer programs are used illegally. The commercial value of stolen personal computer software in China has nearly doubled in four years to \$7.6 billion in 2009. The Chinese government's ongoing tolerance of software theft creates an unfair trade advantage that costs jobs in the United States. In October, the Chinese State Council issued decrees calling for greater enforcement against theft of intellectual property and committing the government to use only legal software. While these pronouncements are encouraging, China's track record is not. In 2005, China made similar commitments to the United States in the JCCT, which have not been realized five years later.

The renewable energy sector provides another example. At the 2009 meeting of the JCCT, China agreed to eliminate its 70 percent local content requirement for wind-power equipment, a requirement that appeared to be inconsistent with commitments China already agreed to when it acceded to the World Trade Organization. While this discriminatory requirement was removed, U.S. companies still face myriad other market access barriers that have rendered China's action moot. For example, U.S. companies are required to demonstrate that they have adequate experience in the Chinese market in order to bid on projects, and China refuses to recognize U.S. companies' global experience outside of China. We must comprehensively address such barriers and refuse to continue to accept commitments that do not provide meaningful market access for U.S. companies.

China has also begun to implement a series of discriminatory "indigenous innovation" policies that harm a broad array of American companies. These policies establish government procurement preferences for products made with Chinese-developed and -owned intellectual property. China also uses standard-setting and product certification processes that require U.S. companies to forfeit their intellectual property rights as a requirement for doing business. China's continued restraints on exports, including exports of rare earth minerals, also frustrate the operations of many U.S. companies.

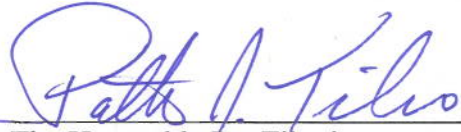
We urge the Administration to measure progress on greater U.S. market access into China and protection of U.S. intellectual property rights by objective criteria. These criteria should include commercially meaningful metrics, such as increased U.S. exports to and sales in China that increase U.S. jobs, a significant decrease in the theft of U.S. intellectual property rights caused by infringing products sold in and exported from China, and an objective means to verify such results.

Sincerely,


The Honorable Sander M. Levin
Acting Chairman
The Honorable Dave Camp
Ranking Member
The Honorable Charles B. Rangel
The Honorable Wally Herger
The Honorable Fortney Pete Stark
The Honorable Sam Johnson
The Honorable Jim McDermott
The Honorable Kevin Brady
The Honorable John Lewis (GA.)
The Honorable Paul Ryan
The Honorable Richard E. Neal
The Honorable John Linder
The Honorable John S. Tanner
The Honorable Devin Nunes



The Honorable Mike Thompson



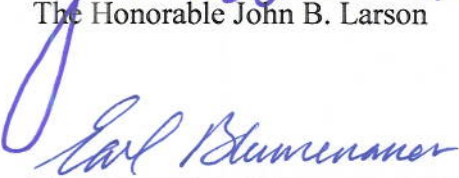
The Honorable Pat Tiberi



The Honorable John B. Larson



The Honorable Geoff Davis



The Honorable Earl Blumenauer



The Honorable Dave G. Reichert



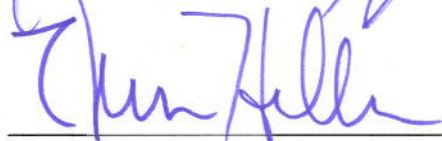
The Honorable Ron Kind



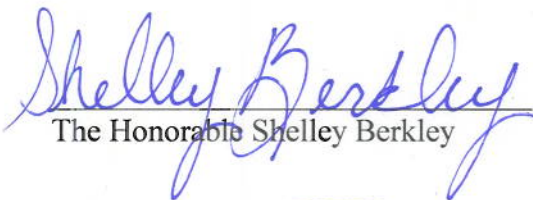
The Honorable Charles W. Boustany Jr.



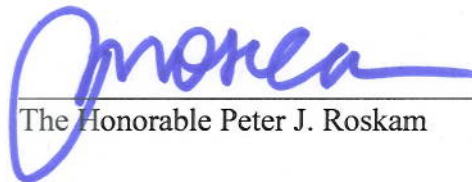
The Honorable Bill Pascrell Jr.



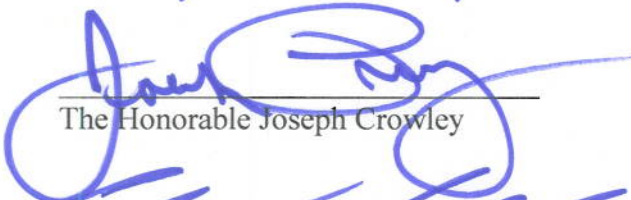
The Honorable Dean Heller



The Honorable Shelley Berkley



The Honorable Peter J. Roskam

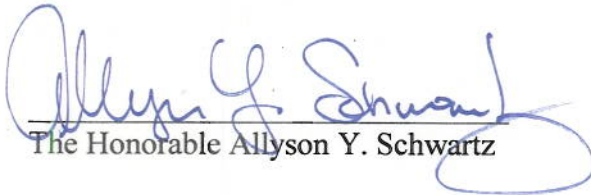


The Honorable Joseph Crowley

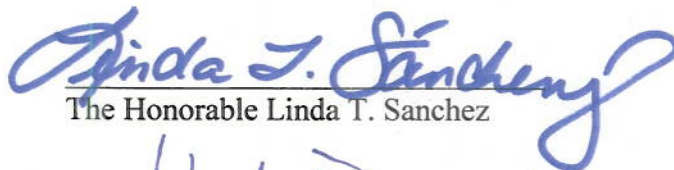


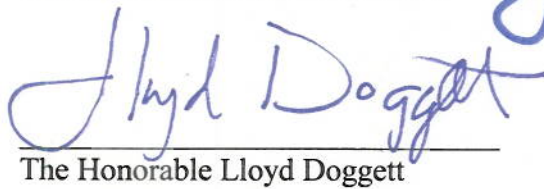
The Honorable Chris Van Hollen

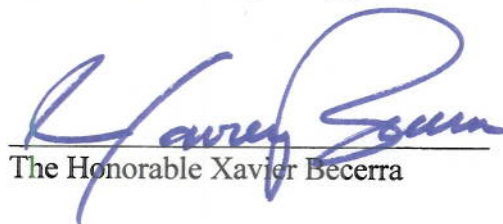
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The Honorable Ronald "Ron" Kirk
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The Honorable Allyson Y. Schwartz


The Honorable Danny K. Davis


The Honorable Linda T. Sanchez


The Honorable Lloyd Doggett


The Honorable Xavier Becerra