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JON TRAUB,
STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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JANICE MAYES,
MINORITY CHIEF COUNSEL

November 17, 2011

The Honorable John Bryson
Secretary of Commerce
Herbert Clark Hoover Building
1401 Constitution Ave, N.W.
Washington, D.C. 20230

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th St, N.W.
Washington, D.C. 20508

Dear Secretary Bryson and Ambassador Kirk:

The United States and China both have a significant role to play in restoring global economic health. Both countries have stressed the need to maintain positive economic and financial relations and to fight against trade protectionism. The upcoming meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) provides an important opportunity to further that goal by addressing longstanding and specific concerns, improving U.S. market access in China, and furthering China's efforts to rebalance its economy. In addition to addressing specific barriers, the JCCT should help to supplement the broader effort by China to rebalance its economy away from export dependence.

As shown clearly at the Committee's hearing last month, the list of concerns with China is long. These concerns include WTO-inconsistent subsidies including directed lending, imposition of harmful "indigenous innovation" policies, persistent failure to adequately protect intellectual property, currency undervaluation and failure to liberalize the capital account, a lack of regulatory transparency, export restraints, adoption of sanitary and phytosanitary measures that are not supported by science and block U.S. agriculture exports, and other barriers to U.S. exports and investment. While we recognize progress is difficult to make on every issue at each meeting, it is important that the JCCT process be used – throughout the year – to make progress in each of these areas and that the trajectory of change is always in the direction of improved market access for U.S. companies, ranchers, farmers, and workers.

Before the JCCT meeting last December, Members of this Committee wrote expressing concern that, for too long, China's commitments have failed to lead to commercially meaningful market access for U.S. companies. As we said then, the Administration must ensure that progress is measured not just in the number of laws repealed. In our view, the United States should: (1)

develop commercially meaningful metrics to measure the effectiveness of commitments, such as increased market opportunities for U.S. exports to and sales in China, which would increase U.S. jobs; (2) measure progress with China against those metrics; and (3) where sufficient progress fails to materialize, develop new approaches to these longstanding issues.

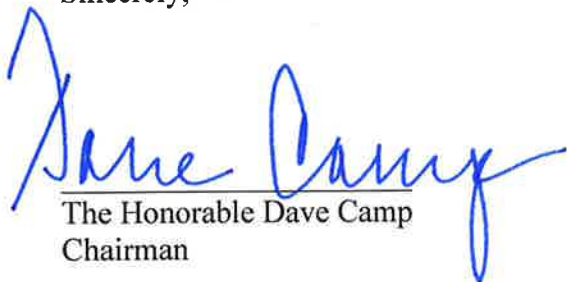
The enforcement of intellectual property rights is a classic example of how China's commitments have failed to lead to real market access for U.S. companies, as well as the need to measure progress based on commercially meaningful metrics. China has been on USTR's Priority Watch List every year for the past seven years, and the United States has been raising concerns about China's 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 since at least 2004. Last year at the JCCT, the United States and China focused on software piracy, and China agreed to: adopt software asset management systems for government agencies; make budgetary allocations for purchasing legal software; and commit thirty major Chinese state-owned enterprises to participate in the same program. But, one year later, full implementation has not occurred, and we understand that U.S. companies have not seen a meaningful increase in the market share held by legitimate software, as would be expected from these commitments.

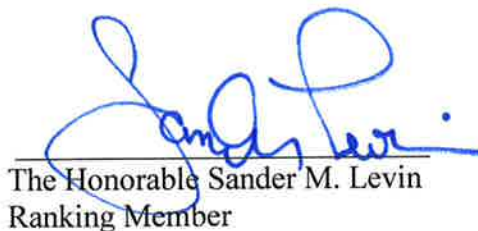
In the same vein, we noted in our letter last year the various trade-distorting policies in China's renewable energy sector. While China agreed to eliminate its WTO-inconsistent local content requirement for wind-power equipment at the 2009 JCCT meeting, we noted that U.S. companies continue to face myriad other market access barriers that have rendered the removal of the local content requirement moot. Among these, we have significant concerns with expanding tech transfer requirements that force U.S. companies to forfeit their intellectual property rights. Unfortunately, while USTR continues to investigate these issues, little commercially meaningful progress appears to have been made in opening this sector and providing a truly level playing field for U.S. companies.

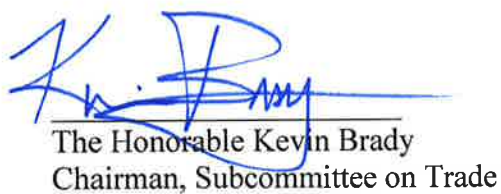
Similarly, last year China made important commitments at the JCCT and at the Strategic & Economic Dialogue (S&ED) to repeal indigenous innovation policies that required U.S. companies to develop their intellectual property in China in order to gain access to China's vast government procurement market. But it is unclear whether Chinese procuring entities, particularly at the sub-central level, have truly opened procurement to U.S. companies that developed their intellectual property outside of China. Moreover, government procurement is only one aspect of China's web of indigenous innovation policies that discriminate against U.S. companies. 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. This web of discriminatory policies is now being applied to prevent U.S. companies from selling electric vehicles and other next generation auto technology in China. We hope that the upcoming meeting of the JCCT will provide an opportunity for stocktaking and further progress on these issues.

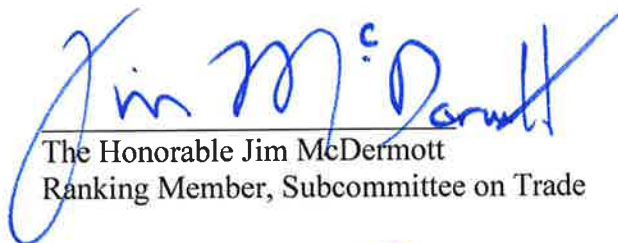
In conclusion, we once again urge you to measure progress with China using commercially meaningful metrics and benchmarks and to press China at the JCCT on that basis. Where progress fails to materialize, the Administration, working with Congress and stakeholders, should seek to develop new approaches to these longstanding issues.

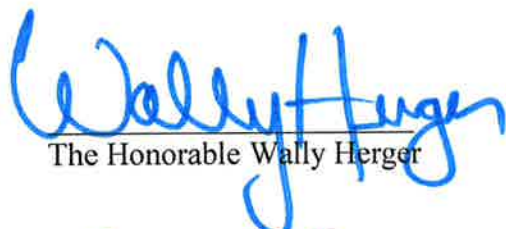
Sincerely,


The Honorable Dave Camp
Chairman

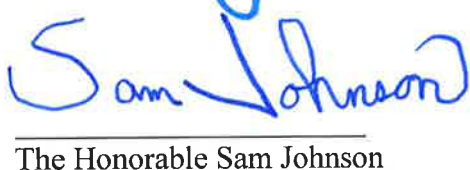

The Honorable Sander M. Levin
Ranking Member

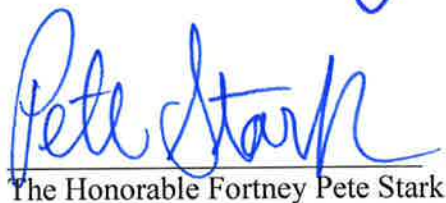

The Honorable Kevin Brady
Chairman, Subcommittee on Trade

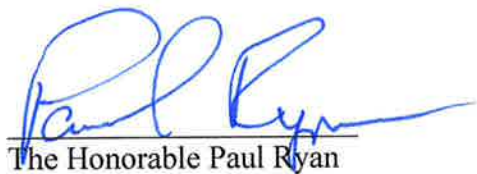

The Honorable Jim McDermott
Ranking Member, Subcommittee on Trade


The Honorable Wally Herger


The Honorable Charles B. Rangel

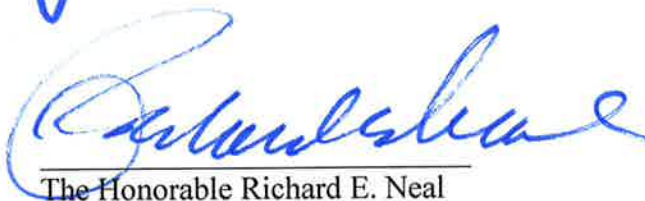

The Honorable Sam Johnson


The Honorable Fortney Pete Stark

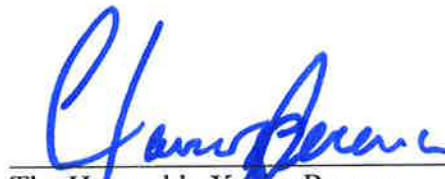

The Honorable Paul Ryan


The Honorable John Lewis


The Honorable Devin Nunes


The Honorable Richard E. Neal


The Honorable Patrick J. Tiberi

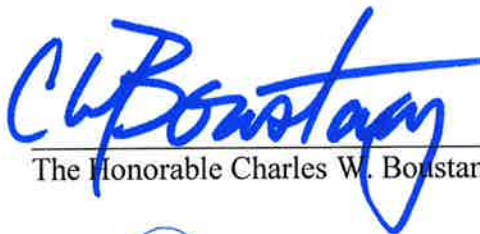

The Honorable Xavier Becerra


The Honorable Geoff Davis

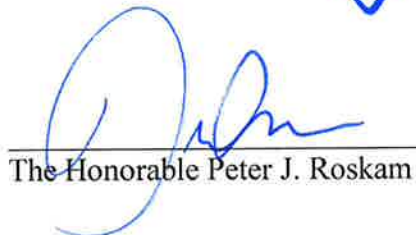

The Honorable Lloyd Doggett


The Honorable Dave G. Reichert

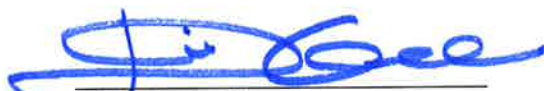

The Honorable Mike Thompson


The Honorable Charles W. Boustany, Jr.


The Honorable John B. Larson


The Honorable Peter J. Roskam


The Honorable Earl Blumenauer


The Honorable Jim Gerlach

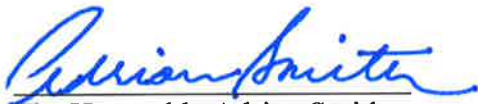

The Honorable Ron Kind

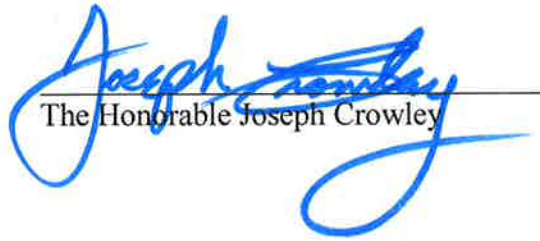

The Honorable Tom Price

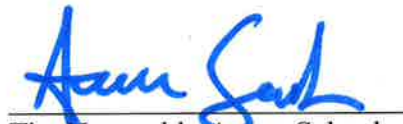

The Honorable Bill Pascrell, Jr.

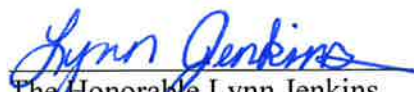

The Honorable Vern Buchanan


The Honorable Shelley Berkley


The Honorable Adrian Smith


The Honorable Joseph Crowley


The Honorable Aaron Schock

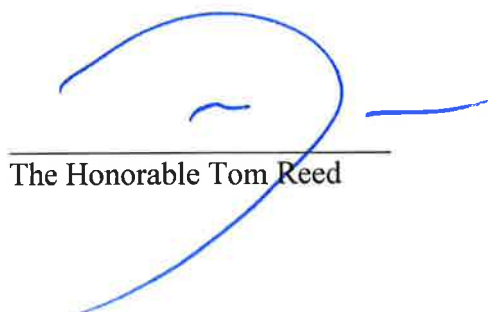

The Honorable Lynn Jenkins


The Honorable Erik Paulsen


The Honorable Kenny Marchant


The Honorable Rick Berg


The Honorable Diane Black


The Honorable Tom Reed