Congress of the United States
Washington, DC 20510

June 3, 2016

The Honorable Jacob Lew
Secretary of the Treasury
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20520

The Honorable John Kerry
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20220

The Honorable Penny Pritzker
Secretary of Commerce
Herbert Clark Hoover Building
1401 Constitution Avenue, NW
Washington, D.C. 20230

The Honorable Michael Froman
United States Trade Representative
Office of the United States
Trade Representative
200 17th Street, NW 20508
Washington, D.C. 20508

Dear Secretaries Lew, Kerry, Pritzker, and Ambassador Froman:

The eighth session of the U.S.-China Strategic and Economic Dialogue (S&ED) occurs at a time of increasingly troubling developments in China's economic policies. China's persistence in following old models of investment-led growth are leading to severe shocks in the global marketplace. At the same time, the new policies that China is unveiling appear to undermine fair and open competition in the Chinese market. This S&ED is, therefore, a critical opportunity to address the barriers and distortions that endanger the well-being of the U.S.-China economic relationship and the international economy.

China continues to engage in cross-cutting policies that raise doubts about whether China will move towards a market-based economy able to foster sustainable growth. State-owned enterprises (SOEs) remain dominant in China's economy, largely insulated by government policies from the need to respond to market realities. China's reliance on and promotion of investment-led growth has resulted in broad distortions to markets around the world.

We are particularly concerned by global overcapacities in steel, aluminum, solar, and other commodities, which have impacted U.S. producers, consumers, workers, and suppliers in these industries. Global overcapacities largely result from China's over-investment in its production capacities, which stems from subsidies and other market-distorting measures. For example, global steelmaking capacity has more than doubled between 2000 and 2014, and that increase has occurred principally in China. While we continue to urge the Administration to address global overcapacity in multilateral and bilateral fora with U.S. trading partners, coupled with effective trade enforcement in the United States, the S&ED is an opportunity for direct dialogue with China on this serious issue. We also urge you to use these meetings to reiterate the importance of China's meaningful engagement on the establishment of new global disciplines on export credit guarantees and compliance with the World Trade Organization (WTO) *Agreement on Subsidies and Countervailing Measures*.

Additionally, as highlighted by the Department of the Treasury's recent *Report to Congress on Foreign Exchange Polices of Major Trading Partners*, China's currency and exchange rate policies remain problematic. Instead of following through on its asserted desire to move towards a market-determined exchange rate, China has continued to let the government play a decisive role in determining the value of the RMB. This practice cannot continue. Moreover, amid persistent doubts about the accuracy of China's economic data, China must provide more and better data on its interventions into foreign exchange markets.

We also note the likelihood that China will raise the subject of its non-market economy status in U.S. trade remedy cases. However, the breadth and depth of problems faced by U.S. firms seeking to do business with and in China is a result, in large part, of China's failure to pursue market-oriented policies in favor of continued and broad-based government intervention throughout its economy. These interventions have a detrimental impact on U.S. workers and firms operating in China as well as the United States. As such, the way for China to achieve market economy status would be for China to undertake the reforms necessary to transition to a market economy, in which prices for Chinese goods and services are determined by market forces.

In addition to these cross-cutting policies, China maintains a wide range of specific barriers to U.S. trade and investment. China's reliance on localization polices appears to be deepening in concerning ways. In particular, China has expanded its usage of what it unjustifiably claims to be national security concerns to impose localization requirements on information and communications technology (ICT) products and to force disclosure of intellectual property (IP) as a condition of access to the Chinese market by foreign ICT providers.

China's recent calls for what it terms "cyber sovereignty" also portend similarly negative impacts on the development of and access to the digital economy. These policies would appear to exacerbate the effects of China's internet censorship regime, which contributes to discriminatory treatment of American providers of digital goods and services and impediments to the free flow of data. In addition, China continues to pursue policies that would compromise the integrity of U.S. technology companies' products and services, requiring backdoors to be installed in products sold in China and compliance with invasive audits.

We also remain concerned that China continues to use anti-monopoly law enforcement as a tool of industrial policy. We urge you to use this S&ED to seek specific commitments from China to apply its competition law on the basis of objectives that relate only to consumer welfare and in a manner respecting procedural fairness, transparency, and non-discrimination.

China's IP environment remains seriously deficient for the protection of legitimate right holders and the encouragement of innovation. China continues routinely to deny market access and other benefits to foreign firms unless they agree to license IP to a Chinese party or meet other conditions. Trade secrets theft in China is a persistent and growing problem for U.S. companies in China, and China's trade secrets laws and enforcement regime have proven insufficient.

Often, the theft of proprietary and sensitive assets results from Chinese government-sanctioned cyber-attacks on U.S. companies, which frequently are economically motivated. We understand that China is reforming its current trade secrets laws, and the importance of those reforms should be emphasized during the S&ED. The overwhelming majority of counterfeit goods entering the United States originate in China, exposing U.S. consumers to dangerous and inferior products and harming legitimate U.S. producers and their employees. China remains the greatest infringer of intellectual property rights (IPR) of U.S. producers of audiovisual content. China's enforcement against counterfeit goods and online infringement of IPR remains grossly inadequate. Additionally, China's trademark registration system continues to be deliberately difficult for legitimate right holders to navigate. There are also reports of continued unjustified denials of patent applications and invalidations of existing patents, and the Chinese Food and Drug Administration reportedly is considering a change in policy that would condition regulatory approval of pharmaceutical products on the post-market pricing of drugs.

U.S. agricultural exports to China continue to face significant unwarranted, non-scientific regulatory barriers. In particular, despite positive commitments made by China during President Xi's visit to Washington last year, approval of innovative U.S. biotechnology products remains slow, irregular, and unpredictable. This situation has caused serious price disruptions in the international market for U.S. agricultural products and harm to U.S. farmers. China should be held to its commitments to reform its regulatory processes. We would welcome China's timely approval of the numerous applications currently pending as an intermediate step to a regularized system of approvals.

While we have highlighted several pressing concerns in the U.S.-China economic relationship, these issues do not constitute an exhaustive list of the challenges faced by U.S. businesses, workers, and consumers seeking to trade with and invest in China. We also emphasize the importance of addressing these issues in other fora, particularly the ongoing bilateral investment treaty negotiations. In addition, we expect full, timely implementation of the expansion of the Information Technology Agreement, and greater ambition and accelerated engagement in negotiations for an environmental goods agreement. China still has not made a serious offer in its long-overdue accession to the WTO Government Procurement Agreement. We also note our deep and abiding concerns with the lack of transparency and predictability in China's regulatory and rule-making processes and the reports of retaliation and intimidation directed at U.S. and foreign companies that seek to exercise their rights in China's market. These are systemic matters that affect every single issue on the U.S.-China economic agenda.

There are important, difficult reforms and course corrections that China must undertake in order to make it possible for the U.S.-China economic relationship – and the global economy – to achieve their full potentials. We urge you to impress upon China the enormous stakes at issue in our bilateral relationship and partnership, on behalf of all the U.S. companies, farmers, ranchers, manufacturers, workers, and consumers that rely on the benefits of that relationship.

Sincerely,

Orrin Hatch
Chairman
Senate Committee on Finance

Kevin Brady
Chairman
House Committee on Ways and Means

Ron Wyden
Ranking Member
Senate Committee on Finance

Sander M. Levin
Ranking Member
House Committee on Ways and Means