COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

May 6, 2011

The Honorable Timothy Geithner
Secretary of Treasury
U.S. Department of Treasury
1500 Pennsylvania Ave, N.W.
Washington, D.C. 20520

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20220

The Honorable Gary F. Locke
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 Secretaries Geithner, Clinton, and Locke and Ambassador Kirk:

The upcoming meeting of the U.S.-China Strategic & Economic Dialogue (S&ED) provides an important opportunity to improve U.S. market access and address longstanding concerns, particularly given the China's recent release of its five-year plan. We recognize that the S&ED is but one forum through which the United States engages with China. However, we believe that it is a particularly effective bilateral forum that can help to set the direction for other bilateral and multilateral efforts to address Chinese market access barriers.

In recent bilateral summits, including President Hu's state visit in January and the Joint Commission on Commerce (JCCT) meeting last December, China made encouraging commitments. However, those commitments can be deemed meaningful only if they result in improved market access for U.S. companies, as measured by sales, jobs and exports. Many of us wrote to you last December, urging you to press China for meaningful objective commitments and metrics to ensure real U.S. market access in China. We continue to believe that objective metrics are essential to demonstrating progress. We encourage you to adopt a similar approach in the S&ED.

The S&ED has been an important forum for addressing key barriers and shaping long-term policy. Yet the list of concerns with China remains far too long. These concerns include WTO-inconsistent subsidies and directed lending, a lack of regulatory transparency, currency misalignment and failure to liberalize the capital account, imposition of harmful "indigenous innovation" policies, persistent failure to adequately protect intellectual property, export restraints, adoption of sanitary and phytosanitary measures that are not supported by science, and other barriers to U.S. exports.

China's continued use of WTO-inconsistent subsidies remains a fundamental area where continued work is necessary. China's directed lending policies, preferential lending rates and terms, and its continued protection of certain sectors all result in significantly reducing the cost of capital for particular Chinese entities, severely disadvantaging U.S. companies that compete with Chinese firms both in China and abroad. For China, maintaining these subsidies to reduce the cost of capital is unsustainable over the long term and must be addressed as part of its efforts to broadly rebalance its economy. Through the S&ED, China should commit to eliminating these distortive barriers and instead allowing the market to establish the cost of capital.

Similarly, China's persistent use of discriminatory regulations and lack of transparency in its regulatory process continue to serve as a major market access barrier. For example, U.S. financial services companies are subject to onerous "seasoning" requirements that significantly limit competition in the securities sector, benefit established Chinese firms, and erode the substantive impact of previous commitments taken at the S&ED. In addition, lack of transparency in the drafting and implementation of regulations seriously impedes the ability of U.S. companies to bring products and services to market and allows China to give its companies a head-start and first-mover advantage.

China's currency misalignment continues to be a serious problem driven, in large part, by China's continued refusal to open its capital account. Appreciating the RMB together with other necessary financial sector reform – including lifting equity caps and liberalizing the capital account – will help China realize its stated priority of increasing domestic consumption and rebalancing its economy. While China's undervaluation of its currency is just one of many problems China must address, it is a serious problem and a high priority. China must let the RMB appreciate and move toward allowing market supply and demand to determine the value of its currency. The S&ED is a good opportunity to supplement ongoing multilateral efforts through the G20 to establish a clear path forward that will result in RMB appreciation and a shift toward allowing market forces to determine the RMB's value.

China's discriminatory "indigenous innovation" policies are trade restricting, violate the spirit of rebalancing, and harm a broad array of American companies. Many of our trading partners, including the EU and Japan, share these concerns. Such limitations increase costs and discourage trade. China is worse off, U.S. companies who could otherwise participate in Chinese projects are worse off, and the global economy is worse off.

Important steps were taken during the JCCT and President Hu's visit to address this issue. For example, China's commitment to "de-link" government procurement and indigenous innovation policies was an encouraging first step. However, since that commitment was taken, a number of sub-central entities – including Beijing – have continued to use procurement catalogs that link procurement preferences to the development of intellectual property in China.

Government procurement catalogs are only one part of the problem. Progress is being made through the U.S.-China Innovation Dialogue, but China must work more rapidly to address and dismantle other policies that discriminate against U.S. intellectual property. For example, China uses standard-setting, product certification processes, and technical transfer agreements that require U.S. companies to forfeit their intellectual property rights as a requirement for doing business. China also supplies massive WTO-inconsistent subsidies. These policies significantly undermine China's commitment.

To address these concerns, China should quickly join the WTO Government Procurement Agreement. China's commitment to submit a "robust" second revised offer in 2011 that includes sub-central entities is a good start. However, China should provide additional assurances that full accession will occur in the very near future. We encourage you to seek a target date certain for full and meaningful accession to the GPA and ensure that China's commitments result in real market access for U.S. companies as measured by sales, jobs and exports.

China's failure to enforce IP laws continues to be a major problem. We urge you to secure clear and robust commitments from China that will protect the range of U.S. industries harmed by the continued massive theft of their intellectual property and onerous and discriminatory market access restrictions in China. We applaud recent commitments that China has taken and believe that those commitments will benefit both U.S. and innovative Chinese companies. However, commitments alone are not enough. The United States must establish clear metrics to demonstrate that these commitments have resulted in increased market share and new sales by U.S. companies, not simply in an increase in the number of raids and enforcement actions.

For example, last December, many of us wrote that despite persistent efforts by you and your predecessors, illegal use of American software in China remains unacceptably high. We understand that today in China, nearly 80% of business software in use in China was obtained illegally. We believe that recent commitments to conduct additional audits and publish results and to allocate budgets for the purchase of legitimate software are encouraging. However, we are concerned that U.S. companies have not yet seen a meaningful increase in sales and stories of circumvention are already rampant, further underscoring the importance of objective criteria and metrics.

We also remain very concerned by China's continued restraint on exports of raw materials, including rare earth minerals to the United States and other trading partners. China has actively restricted the export of rare earth minerals to Japan and the United States, including, at one point, prohibiting export of certain minerals altogether. These actions raise serious issues under the WTO Agreements, and meaningful commitments are necessary to ensure that such restraints are brought into compliance as quickly as possible.

China continues to maintain a number of SPS barriers that are not supported by science, including burdensome and discriminatory regulations and restrictions on U.S. exports of fruit, potatoes, beef, pork, and poultry. These onerous restrictions are not supported by science, and compliance is expensive. China must bring its activities into compliance with international standards and the WTO's SPS Agreement.

Increasingly, China has misused its trade remedy laws to retaliate against U.S. companies. To address China's misuse, USTR initiated WTO dispute settlement proceedings against China relating to China's investigation of grain oriented flat-rolled electrical steel (GOES). But there are numerous other examples. China's improper use of its trade remedy laws to retaliate against U.S. companies must end.

We welcomed President Hu's commitment in January to "engage in across-the-board negotiations to promptly bring the WTO Doha Development Round to a successful, ambitious, comprehensive, and balanced conclusion." While we were encouraged that bilateral discussions began once again, we are deeply disappointed that those discussions have not allowed us to make meaningful progress. For the negotiations to be successful, China, and other advanced developing countries, must be willing to engage in robust and good faith bilateral discussions.

Finally, we welcomed the reaffirmation by Presidents Obama and Hu of bilateral investment treaty negotiations. We believe that discussions should resume quickly, aimed at achieving robust protections for U.S. investors, including pre-establishment rights.

The U.S.-China relationship is critically important. But much work needs to be done to strengthen that relationship and to improve U.S. market access into China, particularly on the issues highlighted above. We urge the Administration to measure progress on greater U.S. market access through the use of 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. This process also requires diligent verification of results. We believe that such metrics would improve the S&ED and strengthen the U.S.-China relationship.

Sincerely,

Dave Camp

The Honorable Dave Camp
Chairman

K. Brady

The Honorable Kevin Brady
Chairman
Subcommittee on Trade

Wally Herger
The Honorable Wally Herger

Sam Johnson
The Honorable Sam Johnson

Paul Ryan
The Honorable Paul Ryan

Devin Nunes
The Honorable Devin Nunes

Pat Tiberi
The Honorable Patrick J. Tiberi

Geoff Davis
The Honorable Geoff Davis

The Honorable David G. Reichert

The Honorable Charles Boustany Jr.

Peter Roskam
The Honorable Peter Roskam

The Honorable Jim Gerlach

Thomas Price
The Honorable Tom Price

Vern Buchanan
The Honorable Vern Buchanan

Adrian Smith
The Honorable Adrian Smith

Aaron Schock
The Honorable Aaron Schock

Lynn Jenkins
The Honorable Lynn Jenkins

The Honorable Erik Paulsen

The Honorable Kenny Marchant

The Honorable Rick Berg

Diane Black
The Honorable Diane Black