

United States Senate

WASHINGTON, DC 20510

June 27, 2017

The Honorable Wilbur Ross
Secretary of Commerce
United States Department of Commerce
1401 Constitution Ave, NW
Washington, DC 20230

RE: Reconsideration of the People's Republic of China's Non Market Economy Status

Dear Secretary Ross:

We write concerning the Department of Commerce's (DOC) reconsideration of the People's Republic of China's (China) standing as a nonmarket economy. We appreciate your decision, as part of the less-than-fair-value investigation of certain aluminum foil exports, to initiate an inquiry into whether the China should continue to be treated as a nonmarket economy country under our antidumping and countervailing duty laws. We would strongly urge you to continue treating China as a nonmarket economy country.

December 11, 2016, marked the 15th anniversary of China's entry into the World Trade Organization (WTO). Since 2001, China has built up a persistent trade surplus with the United States, amounting to \$347 billion in 2016. This surplus—by far the largest among any of the United States' trading partners—is to a great extent the result of trade distorting practices of the Chinese government to the detriment of American businesses.

China's state intervention in their economy remains heavy handed and severely curtails the ability of American companies to compete on a level playing field. Despite China's WTO commitments, many of China's largest companies continue to be state-owned, encourage overproduction in many sectors, and yield exports at low prices that would be financially impossible without subsidies provided by the state. China's government intervention has tilted the playing field in favor of their producers, causing American companies to close their doors, shutter their factories, and lay off their workers. The U.S. Department of the Treasury's *Foreign Exchange Policies of Major Trading Partners of the United States* report released on April 14, 2017, states that the "distortion in the global trading system resulting from China's currency policy . . . imposed significant and long-lasting hardship on American workers and companies."

To correct for China's trade distorting practices, a number of countries—including the United States—have put in place antidumping (AD) and countervailing (CVD) duties on imports from China. The U.S. International Trade Commission reports that, out of the 303 U.S. AD duty orders in force, 111 are in force on products from China. Out of the 1,052 AD cases initiated

according to the U.S. - China Economic and Security Review Commission's (USCC) 2016 Annual Report to Congress. This is, by a large margin, the most AD duties imposed against any country in the world. South Korea, number two on the list, had just over 200 AD duties imposed against it in the same time period. The high rate of trade remedy action against China is indicative of China's unwillingness to abide by internationally-accepted terms of free market trade. Unfortunately, the problem is getting worse, not better. The same USCC report found that in 2016 the United States launched 57 AD and CVD investigations against China, 86 percent of the total number of cases that year.

Under U.S. law, countries that are designated nonmarket economies are determined to not operate on market principles in terms of cost or pricing structures, and this fact is taken into account when countries are being investigated in an AD case. Changing China's non-market economy status would significantly reduce the dumping margins in AD cases concerning imports from China and remove an important tool that U.S. businesses rely on to limit losses incurred from economic distortions caused by the Chinese government's intervention. It would become much more difficult to correct China's unfair behavior, and American businesses would suffer.

The Department of Commerce must take into account six criteria in making a market/nonmarket economy determination. These six criteria outline basic tenets of free markets. The last time the Department of Commerce conducted a review of China's non-market economy status in 2006, it found that China failed on all six determining criteria.

Ten years later, experts continue to believe that China is still failing in all six criteria. In 2016, the United States Trade Representative (USTR) submitted its *2016 Report to Congress on China's WTO Compliance*. The report found that the Chinese government is maintaining, and in some cases, strengthening, its control over the means of production through central and provincial state-owned enterprises and exerting influence over resource allocation. China continues to have overly restrictive foreign investment and ownership rules, actively intervenes in the valuation of their currency, and heavily subsidizes certain industries and businesses. In addition, human rights and labor organizations around the world, including the AFL-CIO and Amnesty International, note that China's workers have no freedom of association and no system for collective bargaining exists between employers and employees in China. Additionally, China's rule making system has only become more opaque—to the point where it has become nearly impossible for many U.S. industries to participate in the Chinese market.

It is imperative that as a nation we use all of the tools available to ensure that our businesses can compete on a level playing field, and to correct any imbalances that exist in the global market. Government experts and U.S. industries have made the case that China continues to fail to meet the criteria that the U.S. government has deemed necessary to grant market economy status. We must continue to do our part to provide fair market conditions for U.S. businesses – because when we have a level playing field, U.S. businesses will compete fairly and win.

We appreciate the work that you have done thus far to enforce our trade laws. We strongly urge you to continue to make full use of the tools available to you as Secretary of Commerce to confront irresponsible actors such as China who do not play by the rules.

Sincerely,



Joe Manchin, III
United States Senator



Charles E. Schumer
United States Senator



Debbie Stabenow
United States Senator



Jeffrey A. Merkley
United States Senator



Gary C. Peters
United States Senator