February 23, 2022

The Honorable Katherine Tai  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Tai:

We write to emphasize the urgent need to consult closely with Congress to set a clear, action-oriented plan to confront China’s predatory trade practices and trade aggression throughout the world. This month marks the second anniversary of the entry into force of the Economic and Trade Agreement Between the Government of the United States of America and the Government of the People’s Republic of China (the “Phase One Agreement”). The Biden Administration’s failure to share a detailed analysis of China’s performance under this Agreement leaves Congress with insufficient data to fulfill its Constitutional mandate to regulate commerce with China. We have great confidence in your abilities to address the many challenges China presents to the United States and other market economies, and we hope you will expand detailed communication on these matters so that Congress and the Administration can be partners in developing effective U.S. responses.

We appreciate and fully agree with the general commitment you made in October 2021 to enforce the terms of the Phase One Agreement, while also pushing to address other concerns with China’s many state-centered and non-market trade practices that were not covered by the Phase One Agreement. We also appreciate that USTR’s report last week on China’s WTO Compliance highlighted several areas in which China has fallen short of meetings its Phase One commitments. However, it is beyond time to move beyond generalities and, in close partnership with Congress, take concrete action on all fronts. Specifically, we identify below three key steps that we believe the Administration should take in the near future.

First, USTR should provide a detailed analysis of China’s performance of its obligations under the Phase One Agreement. This should include both purchase commitments and all structural obligations. Such analysis is a necessary prerequisite to confronting China regarding both obligations in the Phase One Agreement it has failed to fulfill and the more pervasive, yet equally distortive, unfair Chinese trade practices that the Phase One Agreement did not cover. For purchase commitments, although publicly-available data show that China has fallen far short of its obligations, detailed analysis is required to understand the current situation and determine the most appropriate course of action. For example, we note that China’s performance was better in 2021 than in 2020 and better with respect to agriculture than for energy products or manufactured goods. For structural obligations, even more detailed analysis will be required of the extent of China’s compliance with its obligations in various areas, including intellectual property, technology transfers, agriculture, financial services, and currency. It will be particularly important to identify areas in which China is in compliance with the letter of the commitment (such as by enacting a new law or regulation) but out of compliance with its spirit
insofar as the responsive measures have not been applied or enforced. It is also important that
USTR provide evidence of actual improvement in the market conditions that U.S. companies
face to the extent such evidence is available.

Second, USTR should develop an action plan to address China’s shortcomings under the Phase
One Agreement. One reason we considered the Phase One Agreement a significant achievement
when compared to the numerous prior commitments China had made in our various bilateral
dialogues is that the Phase One Agreement contains a clear mechanism for consultation
regarding alleged non-compliance with its terms and unilateral retaliation when such
consultations do not succeed. If the Biden Administration is committed to enforcing the Phase
One Agreement on its terms, then it must be willing to invoke the Phase One Agreement’s
enforcement mechanism. We fear that if this mechanism is not utilized, the value of any future
trade agreement with China will be seriously compromised.

Third, USTR should lead an ambitious, forward-looking strategy to advance free and fair trade
and combat unfair industrial policies and trade practices in China and throughout the Indo-
Pacific. In our view, this should include direct engagement to address additional unfair practices
by China that are not covered by the Phase One Agreement, as well as an active trade negotiating
agenda to reach new trade agreements throughout the Indo-Pacific region. Although we support
the concept of making short-term progress throughout the Indo-Pacific region on issues of
mutual concern through dialogues and engagement on key issues like digital trade and improving
the resiliency of our supply chains, such efforts alone are no substitute for new trade agreements
that are fully enforceable and truly integrate supply chains with trusted trading partners through
markets access commitments and associated rules of origin. We disagree that the President’s
decision to focus on domestic policy priorities means that trade agreements cannot be a priority.
To the contrary, we are confident that negotiating robust, enforceable trade agreements with new
partners in key regions will allow the United States to greatly expand markets for our exporters
and their workers as we work to recover from the COVID-19 pandemic.

We look forward to your response on these important priorities to address the many trade-related
challenges that China presents, and we look forward to consulting closely with you to develop
effective solutions that present a united, bipartisan American response.

Sincerely,

Kevin Brady
Republican Leader
Committee on Ways and Means

Adrian Smith
Republican Leader
Committee on Ways and Means
Subcommittee on Trade