United States Senate
WASHINGTON, DC 20510

May 27, 2016

Ms. Cecilia Malmström
Commissioner for Trade
European Commission
Rue de la Loi/Wetstraat 200
1049 Brussels
Belgium

Dear Commissioner Malmström:

We understand the European Commission is evaluating its obligations under the World Trade Organization (WTO) to determine if China should be considered a market economy for the purpose of the European Union's antidumping laws. Labeling China a market economy before it in fact becomes one will thwart global efforts to secure China's compliance with its international trade obligations. In addition, it could have a destabilizing impact in certain global sectors, including the steel industry. We urge the Commission to maintain China's non-market economy status until China has transitioned completely to a market economy.

There is overwhelming evidence that China is not a market economy and that the Chinese government maintains extensive influence in its economy. Nine of the largest steel producers in the country, for example, are state-owned enterprises (SOEs) and receive a range of benefits from the Chinese government, including interest-free financing and free capital infusions. These SOEs also have no obligation or expectation to make a profit.

Under European Union (EU) law, China must meet five criteria to prove that it is a market economy. According to the EU's 2008 assessment, China met only one of these requirements, regarding "an absence of state-induced distortion in the operation of enterprises linked to privatization." Although we disagree that there is no state-connected distortion in China's market, particularly when the steel sector is examined, we agree with the assessment's other findings and believe they still hold true today.

China continues to have significant government influence over the allocation of resources and the decisions of enterprises. There is rampant violation of intellectual property rights and a largely ineffective legal framework for conducting business, which discriminates against foreign enterprises. The state continues to dominate the financial sector through state ownership and lending to SOEs. In short, the Chinese government exerts significant influence in its market, and for many reasons China remains a nonmarket economy.

Contrary to China's claims, China's WTO Accession Protocol does not require countries to treat China as a market economy by the end of 2016. Article 15 of the Accession Protocol clearly allows other WTO members to use something other than Chinese prices or costs as the basis for dumping calculations. Only one provision of Article 15 – subparagraph (a)(ii) – expires in December 2016. The remaining provisions of Article 15 remain in force after that date and

allows other WTO members to use something other than Chinese prices or costs as the basis for dumping calculations. Only one provision of Article 15 – subparagraph (a)(ii) – expires in December 2016. The remaining provisions of Article 15 remain in force after that date and authorize WTO members to use an alternative antidumping methodology if the producers under investigation "cannot clearly show that market economy conditions prevail in the industry." Article 15 contains no provision that requires member countries to give China market economy status at any given date.

Granting China market economy status before it has met the EU criteria will have significant, negative implications for the global economy. Chinese steel exports that were previously considered dumped will flood the European market. Such a decision will also hinder international efforts to increase China's compliance with its trade obligations. China has not complied with many provisions of its Accession Protocol, including those related to state-owned enterprises operating under commercial considerations. It has failed to keep promises to reduce steel overcapacity, and it maintains policies and enforces laws in ways that discriminate against foreign companies operating on Chinese soil. Giving China market economy status will allow China to continue to ignore these ongoing and serious trade concerns.

China's persistent and often flagrant violations of its WTO obligations are troubling and have caused severe harm for the U.S. steel industry. We understand European manufacturers, including steel producers, have been similarly affected. We urge the Commission to work with the United States on efforts to secure China's full compliance with its WTO commitments. Only after China has become a market economy should the EU treat it as such.

Sincerely,

Sherrod Brown
United States Senator

Jeff Sessions
United States Senator

Al Franken
United States Senator

Charles E. Schumer
United States Senator

Tammy Baldwin
United States Senator

Debbie Stabenow
United States Senator

Roy Blunt
United States Senator

Shelley Moore Capito
United States Senator

Amy Klobuchar
United States Senator

Joe Donnelly
United States Senator

Richard Burr
United States Senator

Tom Cotton
United States Senator

Joe Manchin, III
United States Senator

Rob Portman
United States Senator

James M. Inhofe
United States Senator

John Boozman
United States Senator

Robert P. Casey, Jr.
United States Senator

Chuck Grassley
United States Senator