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# Congress of the United States

## U.S. House of Representatives

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The Honorable Ron Kirk  
U.S. Trade Representative  
600 17th Street NW  
Washington, D.C. 20508

Dear Ambassador Kirk:

This week, the Committee on Ways & Means held two hearings on China's exchange rate policy. At those hearings, proposed legislation – H.R. 2378 – was discussed at length. That legislation would, among other things, require the Department of Commerce to treat China's currency policy as a countervailable subsidy.

While we share the deep frustration that China's currency is significantly undervalued and must adjust to reflect market reality, we expressed concern at both hearings about whether H.R. 2378 is the appropriate remedy. In particular, we questioned whether this legislation is consistent with U.S. obligations under World Trade Organization rules. And we were not alone. At Wednesday's hearing, former USTR General Counsel Ira Shapiro also expressed doubt about the WTO-consistency of the bill. Similarly, in a memorandum that was discussed at length at the hearing, former WTO Appellate Body Chairman Jim Bacchus warned that legislation amending the countervailing duty law in this manner would likely run afoul of our WTO obligations. In addition, the Department of Commerce recently concluded that the petitioners failed to establish that China's currency regime is countervailable under U.S. law, which closely tracks our obligations under the WTO Agreement on Subsidies and Countervailing Measures.

Yesterday, Secretary Geithner, in testimony before the Ways & Means Committee, set out a clear standard against which to judge legislation addressing China's currency. First, he said that legislation must "be consistent with our international obligations. We have to be confident that if we take action under it, it will withstand challenge in the WTO." He added, "If we took action that was inconsistent, that could be challenged, then China or any other country involved could then, under the WTO, take additional action that would disadvantage other U.S. parties, including people completely unrelated to the underlying case." Second, Secretary Geithner emphasized that "it has to be effective, meaning we

have to be confident that if we deploy it, it's going to have more benefits in terms of expanded market access than it is risks to loss of economic advantage.”

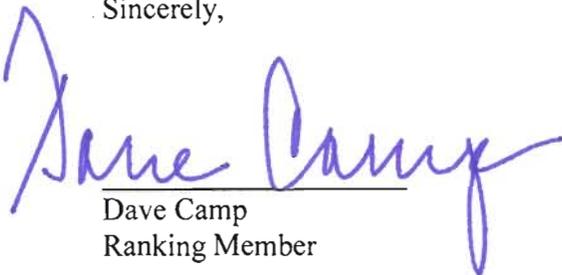
As noted at the hearing, we both fully support the standard that the Secretary set forth. But we are concerned that H.R. 2378 fails to satisfy either element. When Secretary Geithner was asked whether H.R. 2378 met his first test – consistency with our international obligations – he responded, “That’s not my judgment to make, and I’m not in the position to give you a legal assessment on the consistency with WTO obligations. That’s really a judgment the lawyers at USTR would make. I would like to refer your suggestion to them.” He further promised that “I’m sure that my colleague Ron Kirk and his colleagues can give you an authoritative response.”

Given USTR’s expertise on this matter, as well as the fact that USTR would have to defend the United States in any WTO proceeding, we write now to direct the question to you: Is H.R. 2378 consistent with our WTO obligations?

Given the expedited schedule under which this bill might be considered, we would appreciate your analysis as soon as possible, and no later than the close of business on September 26, 2010 – ten days from now. With only a few weeks left in the legislative calendar this year, it is important that we receive a timely response. Without your input, it will be extremely difficult for Congress to act with full knowledge about this bill and to determine if it meets the metric established by Secretary Geithner on behalf of the Administration.

We look forward to your analysis, and to discussing this issue with you and your staff.

Sincerely,



Dave Camp  
Ranking Member



Kevin Brady  
Ranking Member  
Subcommittee on Trade