

Congress of the United States
Washington, DC 20515

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The Honorable Cecilia Malmstrom
European Commissioner for Trade
European Commission
Rue de la Loi / Wetstraat 200
1049 1049 Brussels
Belgium

The Honorable Michael Froman
United States Trade Representative
Office of the United States
Trade Representative
200 17th Street, NW
Washington, D.C. 20508

Commissioner Malmstrom and Ambassador Froman,

With market distorting subsidies and other measures contributing to global overcapacity in basic commodities such as steel, aluminum, and solar, and threatening the continued viability of businesses throughout the United States and Europe, it is increasingly apparent that trade enforcement is a shared challenge. We write to urge deeper cooperation on our shared enforcement objectives, including the unique challenges posed by continued market distorting behavior in China.

The United States and Europe have collaborated in the WTO and other multilateral fora on trade enforcement in the past, including with respect to Chinese export restrictions on raw materials and rare earth elements. However, in other instances this cooperation has fallen short of what is needed to ensure the best outcome for workers and businesses in both Europe and the United States.

Regarding China's bid to be designated a market economy for purposes of our respective antidumping laws, we share the view reflected in a resolution by the EU Parliament in May 2015 urging the Commission to "coordinate with the EU's major trading partners...on how best to ensure that all provisions of Section 15 of China's Accession Protocol to the WTO that remain in force after 2016 are given full legal meaning..." In our view, the expiration of subparagraph 15(a)(ii) of China's WTO Accession Protocol does not require WTO Members to grant China market economy status.

In that regard, we urge much closer engagement between technical experts in the Commission and the United States Trade Representative's office, as well as the Department of Commerce, on this subject. Without this technical engagement, our respective efforts to preserve strong, effective trade remedies, consistent with our respective WTO rights and obligations, risk falling short.

Regrettably, with respect to trade remedies in particular, the Commission has at times appeared less willing or able to develop and deploy during proceedings in Geneva a meaningful strategy for addressing shared challenges. Going forward, we believe that it is critical that the United States and Europe work much more closely on enforcement matters. At minimum, enforcement should be part of the built in agenda of future engagement, including a commitment to regular

technical discussions on enforcement-related matters, and cooperation on trade remedies enforcement relating to third country dumping and subsidization.

Closer cooperation on issues of interpretation of the WTO Agreements is critical not only to ensuring strong trade enforcement but also to ensuring that WTO panels and the Appellate Body do not add to or diminish our respective rights and obligations under the agreements. The concerns that resulted in the recent U.S. action to exercise its rights under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") to oppose the reappointment of a member of the Appellate Body are in many respects the same concerns that have been expressed repeatedly by Congress. Since the early years of the WTO, Congress has urged U.S. representatives to ensure that the Appellate Body applies the WTO Agreement as written, without adding to or diminishing rights and obligations under the Agreement. This bedrock principle is the foundation on which U.S. participation in the WTO is based, and must be respected for Congress to continue to have confidence in the system.

The integrity and viability of the WTO depend critically on a healthy, well-functioning dispute settlement system that applies the pertinent WTO agreement as written to help Members resolve a particular dispute. We note that Administrations of both political parties in the United States have raised this concern over a substantial period of time and in relation to a significant number of reports. These concerns relate to both the interpretations reached and the adjudicative approach employed by the Appellate Body and some panels.

We look forward to continued discussion of these important issues in the months ahead.

Sincerely,



Sander M. Levin
Ranking Member
House Committee on Ways and Means



Ron Wyden
Ranking Member
Senate Committee on Finance