

Congress of the United States
Washington, DC 20515

November 24, 2021

The Honorable Katherine Tai
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Tai:

We both strongly support the World Trade Organization (WTO). But the WTO is at a cross-roads. Negotiations for agreements drag on interminably. Enforcement remains frustrated as the impasse over the WTO Appellate Body continues. Moreover, this stagnation takes place at a time when the need for action at the WTO has never been more compelling; the world trading system confronts a host of challenges that the United States could not have foreseen when it helped establish the organization. We are heartened that you agree with us on the importance of WTO reform to take on these challenges. While the reform process will take time, we have an immediate opportunity to make headway on our shared objective: the WTO's Twelfth Ministerial Conference (MC12). If the United States demonstrates leadership by pushing for strong outcomes, we can help revitalize the rules-based trading system. Correspondingly, if we accede to low ambitions, we risk undermining its existing benefits. To that end, we are conveying our views regarding *how the United States can get it right at MC12*—and warning which missteps could place the WTO on the wrong path.

First, we must show that the negotiating function of the WTO can deliver significant trade agreements, including by insisting on a high-standard fisheries subsidies agreement. The agreement should ensure that all major subsidizing nations accept commitments to eliminate harmful subsidies and other practices that endanger fish stocks and harm the livelihoods of workers in the United States and around the world. We should not accept an agreement at any cost, including one that allows countries to inappropriately claim special and differential treatment or allows for unreasonable stand-still periods. We need the WTO on a path where Members accept commitments commensurate with their level of economic development, as well as, in this case, commensurate with their share of global distortive subsidies in this sector.

Second, we must pursue opportunities to promote digital trade. Promoting digital trade promotes not only our economic interests but also our values including open discourse, consumer protection, and protections for innovation. We should reiterate at MC12 the importance of pushing ambitious outcomes in the Joint Initiative negotiations on electronic commerce. We also support an outcome under the Joint Initiative on Services Domestic Regulation that would facilitate trade in digital and other services around the globe. What we must oppose is letting the moratorium on customs duties on electronic transmissions expire. Indeed, it is time to push to

make the moratorium permanent. Electronic transmissions are a vital and routine part of business in all sectors in the modern economy, and therefore this moratorium helps support exports by U.S. firms in all sectors, including manufacturers and farmers. The few WTO members seeking to end the moratorium are vastly outnumbered, and lack any persuasive justification—other than to try to use it as a chit to extract unreasonable concessions. It is time to let them know such efforts are futile—and will be counterproductive to their interests.

Third, we must show that trade rules support rather than undermine public health, including in the fight against the COVID-19 pandemic. The proposals we should consider favorably include those that expand manufacturing capacity, such as by combating export restraints or removing unnecessary customs barriers or other supply chain bottlenecks. What we must not do is undermine the innovators who developed the COVID-19 vaccines by waiving intellectual property (IP) rights under the WTO TRIPS¹ Agreement. Waiving our IP rights will not improve manufacturing capacity and will not advance our goal of rapidly increasing access to COVID-19 vaccines everywhere in the world. To the contrary, adding inexperienced manufacturers will strain supply chains further, dis-incentivize investment in innovative technologies, and facilitate China and Russia's attempts to misappropriate U.S. intellectual property.

Fourth, we must work to strengthen disciplines to combat subsidies and abusive practices by non-market economies—a position which has broad bipartisan support. In particular, we should build on our efforts in the trilateral partnership to strengthen the types of subsidies covered by the Agreement on Subsidies and Countervailing Measures (SCM Agreement), including prohibited subsidies. We must also foster ways to hold WTO Members to their notification obligations for subsidies. What we should not do is distract from this focus by joining the proposed Fossil Fuels Subsidies Ministerial Statement. At a time when many Members of Congress like ourselves want to combat the high energy prices (including for those Americans struggling to fill their gas tanks and heat their homes), we should be entitled to know precisely what impact this statement would have on our efforts, such as on the proposed More Energy More Jobs Act, which would allow the United States to responsibly develop offshore gas and oil projects.

In contrast, we have two recommendations for actions the Administration could take that we would view as constructive in advancing our trade and environmental objectives. First, the United States is a global innovation leader on products that increase energy efficiency and reduce energy consumption. *In our view, resuming negotiations to reduce tariffs on trade in such products (like the proposed Environmental Goods Agreement would have done) could lead to real progress,* in contrast to this proposed Ministerial Statement. *Second, advise Congressional Democrats that their proposed Build Back Better legislation undercuts our international efforts to have our trading partners adopt pro-environmental trade policies.* The Build Back Better bill would provide hundreds of billions of dollars in wasteful spending that would primarily benefit the wealthy and include domestic content requirements that further neither trade nor the environment—and most certainly is alienating many of our closest allies.

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights.

Finally, we must work to reform dispute settlement to ensure the United States and other WTO Members can enforce their rights—fast enough to ensure that those rights can be fully vindicated. To that end, it is time for the United States to start a concrete conversation about which reforms will address our long-standing concerns. The United States should not accept a system that returns to the *status quo ante* nor propose that the *status quo* continue indefinitely. The U.S. critique of overreach by the Appellate Body is well-founded and should be a core component of our reform agenda.

In sum, we are your partners at this critical cross-roads for the WTO. There is an easier road that offers meaningless new commitments, undermines existing ones, and substitutes rhetoric for substance. Let us be Americans—and take the one less traveled, but far more meaningful.

Sincerely,



Mike Crapo
Ranking Member
Committee on Finance



Kevin Brady
Ranking Member
Committee on Ways and Means