

# United States Senate

WASHINGTON, DC 20510

April 14, 2011

Ambassador Ron Kirk  
Office of U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20508

Re: WTO Appellate Body Ruling on Trade Remedies for Dumping and Subsidization

Dear Ambassador Kirk:

We are writing to express our great concern with the World Trade Organization Appellate Body's recent decision regarding application of our anti-subsidy law to China, and to urge that the Administration take all steps necessary to rectify this ruling, including through negotiations in the Doha Round, and to ensure that our countervailing duty law remains fully and effectively applicable to China. We agree with you that this decision "appears to be a clear case of overreaching by the Appellate Body."

Given the huge challenge of the Chinese government's massive industrial policies, it is more important than ever that our workers and industries retain the ability to use our trade laws and effectively combat subsidies that violate international trade rules.

In 2008, the Government of China brought a challenge to several antidumping (AD) and countervailing duty (CVD) investigations conducted by the United States. As you know, in October 2010, a WTO dispute settlement panel ruled that the United States had the right to impose both antidumping and countervailing duty penalties against unfair Chinese trade practices. The U.S. position was upheld in a host of related practices. This recent Appellate decision reversed the key aspects of a WTO panel decision that had strongly upheld U.S. trade remedy laws and their applications.

This dispute arises from four products from China: new pneumatic off-road tires, circular welded pipe, light-walled rectangular pipe and tube, and laminated woven sacks. In each case, the Department of Commerce found that these products were being subsidized by the Chinese government and also being dumped below their fair market value. Other U.S. industries, such as paper manufacturers, have also found AD and CVD investigations to be vital in mitigating the devastating impact of unfairly dumped and subsidized Chinese products. The United States has a number of options in its response to the Appellate Body report, and we urge you to work with Congress to strengthen, not weaken, our trade remedy laws and make certain that American industries retain tools like AD and CVD to compete fully in a fair, global market.

This is not the first instance of WTO overreach, and allowing other countries to obtain benefits via litigation that they could not secure through negotiations. The WTO's action in this case, if implemented, would have a direct and adverse effect on U.S. trade laws without the U.S. government ever having accepted these rules. During prior WTO negotiations, the U.S. government made clear that settlement panels should defer to national authorities such as the Department of Commerce and the U.S. International Trade Commission, bodies that have been explicitly dismissed in this WTO decision.

U.S. trade remedy laws provide critical support to U.S. manufacturing. However, this most recent WTO decision is a grave threat to efforts to restore long-term growth and job creation. Massive Chinese government subsidies are making it very difficult for U.S. manufacturing to compete. China is said to be planning a \$1.5 trillion dollar, five-year investment in seven strategic industries all of which include manufacturing in some way. This investment will only serve to further subsidize Chinese manufacturing at the expense of the U.S and further threaten manufacturing jobs here. We need to work together to defend American jobs and ensure that our trade laws are not dismissed by the WTO.

We thank you for your thoughtful consideration on this critical matter and look forward to your prompt response.

Sincerely,

Sheldon Brown

Tom Harkin

Ron Wyden

Rob Portman

Rebecca Stanger

Kirsten E. Gillibrand

Al Franken

Jeanne Shaheen

Paul Menendez

Dianne Feinstein

Jay Bybee

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Ben Cardin

Susan M. Collins

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Jeffrey A. Merkle