

# Congress of the United States

## House of Representatives

### COMMITTEE ON WAYS AND MEANS

WASHINGTON, DC 20515

#### SUBCOMMITTEE ON TRADE

November 14, 2007

The Honorable Carlos M. Gutierrez  
Secretary of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

The Honorable Susan C. Schwab  
U.S. Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, DC 20508

Dear Secretary Gutierrez and Ambassador Schwab:

The Chairman of the WTO Negotiating Group on Rules is expected to issue a draft text in the coming weeks, in the hopes of advancing the Doha Round of WTO negotiations. We wish to stress the importance of a strong Rules text and to highlight some of the key issues in this area.

The starting point must be to restore the balance that was struck in the Uruguay Round, more than 10 years ago. Among other things, that means eliminating the requirement – recently imposed by the WTO Appellate Body, not by WTO Members themselves – to offset dumped sales with non-dumped sales. We appreciate the Administration's sharp criticisms of these so-called "mandatory offsets" or "zeroing" decisions, and we welcome the proposal you submitted in the Rules Group to clarify what WTO rules provide. That proposal would clarify the rights of WTO Members with respect to both antidumping investigations and administrative reviews, and it is hard to imagine Congress approving any final package that fails to include this essential clarification.

The mandatory offsets requirement is just one of several examples of dispute settlement decisions that have upset the balance of rights and obligations under the WTO agreements. WTO Members need to clarify the rules in a number of other areas, including the following:

- the treatment of subsidized assets that are later privatized;

The Honorable Carlos M. Gutierrez  
The Honorable Susan C. Schwab  
November 14, 2007  
Page 2

- whether WTO Members intend to limit the use of government revenues, including antidumping duty revenues, beyond the disciplines imposed on subsidies by the Agreement on Subsidies;
- whether it is necessary to “separate out” the various factors that have contributed to injury to a domestic industry; and
- the treatment of a party in an antidumping investigation that selectively provides information requested by the investigating authority, but fails to cooperate with the investigating authority where cooperation would reveal that it is engaging in injurious dumping.

But the underlying problem of dispute settlement “overreach” must be addressed at its root. The negotiators must ensure that future WTO panels and the Appellate Body apply the text of the agreements as written and defer to the decisions and actions of WTO Members, unless those decisions or actions are clearly inconsistent with an explicit WTO obligation. International tribunals have long recognized this fundamental principle of international law, and that principle is already reflected in the WTO agreements. The Doha Round negotiators must now ensure that future WTO panels and the Appellate Body respect and apply this fundamental principle.

Re-establishing the compromise that was struck in the Uruguay Round, and correcting systemic issues with dispute settlement, are only the starting points of a successful negotiation. In some cases, the agreed-upon WTO rules fail to provide a level playing field, and the rules need to be re-negotiated. We support efforts to eliminate the unequal treatment of indirect taxes and direct taxes, as well as to strengthen disciplines on subsidies that clearly distort trade. We also support the enforcement of existing rules, and the strengthening of those rules, to increase transparency and due process in antidumping proceedings involving U.S. exporters.

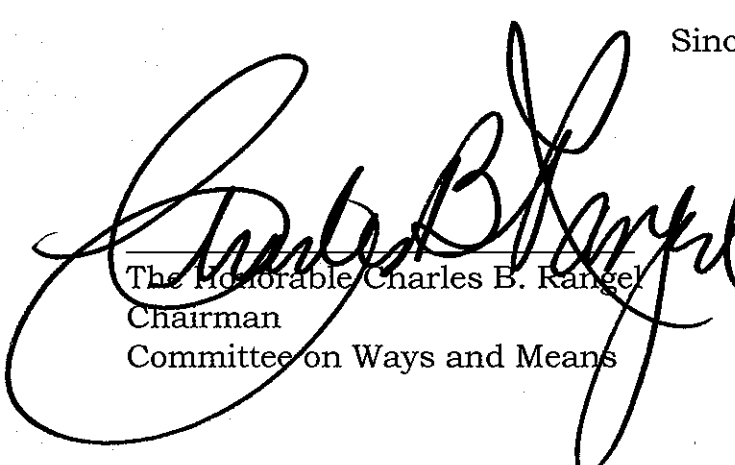
The mandate for the Doha Round negotiations was to “clarify and improve” existing disciplines regarding unfair trade. The points described above are intended to achieve that objective. They should not be used as a trade-off for other changes that weaken these disciplines.

The Honorable Carlos M. Gutierrez  
The Honorable Susan C. Schwab  
November 14, 2007  
Page 3


We also wish to note that the Negotiating Group of Rules is responsible for provisions that govern the treatment of bilateral and regional free trade agreements. Existing WTO rules require that these free trade agreements apply to "substantially all trade" between the parties. We have serious concerns as to whether some of our trading partners in the WTO are respecting that basic obligation, so fundamental and essential to the functioning of the WTO system. We hope that the Negotiating Group on Rules can serve a constructive role in resolving these issues before they develop into formal disputes between WTO Members.

We look forward to working with you as these negotiations continue.

Sincerely,



The Honorable Charles B. Rangel  
Chairman  
Committee on Ways and Means



The Honorable Sander M. Levin  
Chairman  
Subcommittee on Trade  
Committee on Ways and Means