

Congress of the United States
Washington, DC 20515

November 28, 2011

The Honorable John E. Bryson
Secretary
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Secretary Bryson and Ambassador Kirk,

We are writing regarding your proposal to alter fundamentally the dumping calculations in the Department of Commerce's periodic reviews of antidumping orders so as to eliminate so-called "zeroing." You have indicated that this change – which will require Commerce to offset dumping margins on dumped entries by the amount that U.S. prices exceed normal value on non-dumped entries – is necessary to implement certain adverse decisions of the World Trade Organization (WTO) Appellate Body. While we appreciate the importance of implementing WTO decisions, we have serious concerns in this situation.

First, as you know, we disagree fundamentally with the "zeroing" Appellate Body decisions. They impose obligations on the United States that are not found anywhere in the WTO *Antidumping Agreement*. The WTO Appellate Body has no authority to create and impose new rules on WTO Members. As Article 19 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") states unequivocally "the Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements." The only role of the WTO dispute settlement system is to "*clarify existing provisions* of those agreements. . . ." (DSU Article 3, emphasis added)

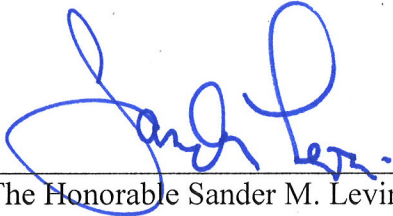
The Obama Administration must engage in vigorous efforts to reestablish the appropriate boundaries of Appellate Body review, consistent with the mandate set down by WTO Members in the DSU. The critical need for such a correction is becoming increasingly apparent. Indeed, even this year, the Appellate Body imposed restrictions that have no basis in the WTO agreements with respect to: (1) the simultaneous application of subsidy and antidumping disciplines to non-market economy (NME) producers and (2) the identification of a "public body" for purposes of the WTO subsidy disciplines. These decisions raise serious concerns that the WTO Appellate Body is undercutting U.S. ability to address unfair and anti-competitive practices by countries such as China, and undermine confidence in WTO dispute settlement. We cannot afford further such decisions in the future.

Second, to the extent the Administration moves forward with its proposal to implement the “zeroing” decisions, any such step must be prospective in nature. Moreover, such a step must also eliminate the myriad domestic and WTO cases against the United States in this regard; action that implements the zeroing decision but leaves in place these cases is not an acceptable result. The Administration must firmly close the door on the pending litigation and move to the next phase, which is to ensure – through negotiations with WTO partners (including others that continue to rely on the practice of “zeroing”) – that the Appellate Body-created disciplines are excised and the full scope of the trade remedy disciplines is restored.

Third, the Administration must redouble its efforts to ensure that U.S. trade remedy laws address meaningfully the harm caused by unfairly traded imports. For example, for years, producers injured by dumping have complained that the current Commerce approach does not fully address situations where a U.S. affiliate is absorbing antidumping duties on behalf of a foreign producer. Similarly, U.S. producers have expressed concern that the current rules make it too difficult to establish and counteract “targeted” dumping, which is aimed at specific customers, periods of time, or geographical areas. These and other serious systemic concerns should be given equal attention, even as the Administration considers the fundamental changes necessary to implement the “zeroing” decisions.

We look forward to your response with respect to these important issues.

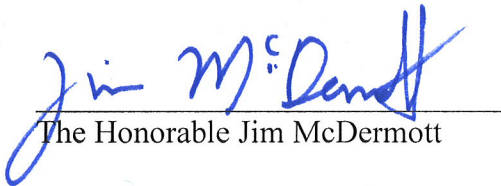
Sincerely,

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The Honorable Sander M. Levin

A handwritten signature in blue ink, appearing to read "Charles Schumer", written over a horizontal line.

The Honorable Charles E. Schumer

A handwritten signature in blue ink, appearing to read "Jim McDermott", written over a horizontal line.

The Honorable Jim McDermott

A handwritten signature in blue ink, appearing to read "Sherrod Brown", written over a horizontal line.

The Honorable Sherrod Brown