

December 06, 2019

The President
The White House
Washington, DC 20500

Dear Mr. President:

The World Trade Organization (WTO) Appellate Body will cease to function on December 10 when terms of two of the remaining three members expire. The United States has focused attention on problems with the appeals process. But now greater leadership is required. America's economic interests will be harmed if there is no internationally agreed upon mechanism for combatting unfair trade practices of other nations. Now is the time to put forward a specific, detailed U.S. proposal aimed at reforming the dispute settlement system so that global trade rules can be predictably enforced.

The WTO dispute settlement system is worth saving. It has adjudicated hundreds of cases between member countries, including [more than 120](#) brought by the United States against trade-distorting measures of other nations. Although not perfect, the dispute settlement system has led to meaningful reductions in unfair practices and has helped to strengthen the rules-based international trading system. Global merchandise exports have risen from only [\\$54 billion in 1948](#) to almost [\\$20 trillion in 2018](#), an inflation-adjusted increase of 35 times.

The United States has prospered as trade has expanded. Despite having less than 5 percent of the world's population, our country produces almost a [quarter of global output](#) – U.S. GDP reached \$20.5 trillion in 2018. Real value added by manufacturers -- [\\$2.16 trillion in 2018](#) – has never been larger. Employment is at a record high of over 157 million people. Unemployment at 3.5 percent hasn't been lower in 50 years. Other factors also contribute to this strong performance. Nonetheless, engaging with the global economy has led to greater growth and opportunity for the United States and for American workers.

We urge your administration to embrace the plan to renovate the WTO appeals process outlined below. The proposal seeks to reform the Appellate Body in a manner consistent with concerns raised by USTR. The approach has three parts:

- Adopt the "Walker Principles" developed by the WTO-appointed special facilitator, New Zealand Ambassador to the WTO David Walker. The Walker Principles address six issues highlighted by the United States: ensuring that appeals are completed within 90 days; Appellate Body members do not continue to serve beyond their terms; precedent from past cases is not binding on future cases; facts and municipal law are not subject to appeal; the Appellate Body does not issue advisory opinions; and Appellate Body decisions do not add obligations or take away rights provided in the WTO rules.
- Create an oversight and audit committee to ensure compliance by the Appellate Body with the Walker Principles. This committee would meet at least once per year, or whenever requested by a party involved in an Appellate Body ruling. The committee would be comprised of the chairs

of key WTO committees along with four independent trade law experts. The committee would review the Appellate Body's performance and, when asked, determine whether a specific ruling violated the Walker Principles.

- Create term limits for members of the Appellate Body secretariat of not longer than eight years, equal to the maximum term for a judge. This would rebalance power within the appeals process, giving primacy to the reasoning of Appellate Body members and ensuring that staff help to write decisions, not make them.

USTR has resisted negotiating reforms to the WTO appeals process until other countries acknowledge that the Appellate Body has strayed beyond its mandate. The Walker Principles were developed with the purpose of restoring proper functioning to the Appellate Body. By adopting them along with the related enforcement measures and term limits for the secretariat, WTO members would be agreeing with the United States that the Appellate Body has overreached.

We urge your administration to strike while the iron is hot by stating prior to December 10 that the goal of the United States is not to kill the Appellate Body, but rather to reform it. The statement should clarify that adoption of the reform plan would end U.S. opposition to the appointment of new Appellate Body members. It also should express willingness to extend temporarily the terms of the current judges so that pending appeals can be completed.

Such a statement would send a signal to other WTO members that the United States is serious about fixing the Appellate Body. It also would send a signal that your administration supports the rules-based international trading system, thus helping to strengthen business confidence in this country and around the world.

Sincerely,

Americans for Prosperity
American Craft Spirits Association
American Soybean Association
Center for Freedom and Prosperity
Citizens Against Government Waste
Coalition of American Metal Manufacturers and Users
Competitive Enterprise Institute
Computing Technology Industry Association (CompTIA)
Consumer Choice Center
The Fashion Accessories Shippers Association
The Fashion Jewelry & Accessories Trade Association
FreedomWorks
Gemini Shippers Association
Institute for Policy Innovation
International Dairy Foods Association
The LIBRE Initiative
National Corn Growers Association
National Council of Farmer Cooperatives
National Retail Federation

National Taxpayers Union
North American Association of Food Equipment Manufacturers
Retail Industry Leaders Association
R Street Institute
Taxpayers Protection Alliance
USA Poultry and Egg Export Council
U.S. Grains Council