

August 29, 2022

The Honorable Katherine Tai
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Tai:

We are writing to express our deep concern with your comments indicating American cooperation in reassembling the WTO's appellate body.¹ As you may know, the United States has blocked new members to the appellate body since 2011, when the Obama Administration blocked an appointment, citing the WTO's failure to protect American interests. The Trump Administration followed in this tradition. This rare bipartisan agreement was the result of a clear and consistent pattern of the WTO intentionally undermining American sovereignty, while enriching the Chinese Communist Party (CCP).

The trade laws of the United States have been subject to more challenges than any other WTO Member and roughly a quarter of all disputes involve U.S. trade policy³. The variety of ways in which the Appellate Body has failed to live up to its intended purpose was cataloged in a 2020 report by the Office of the U.S. Trade Representative (USTR), which demonstrated that the Appellate Body has:

- Repeatedly ignored the mandatory deadline for deciding appeals,
- Allowed Appellate Body members whose term has expired to continue deciding appeals,
- Made findings on issues of fact, including issues relating to the domestic law of WTO Members, although Members authorized it to only address legal issues,
- Insisted that dispute settlement panels treat prior Appellate Body interpretations effectively as binding precedent,
- Failed to apply WTO agreements in a manner that adheres to their text (as negotiated and agreed to by WTO Members), while filling in perceived "gaps" in agreements to impose new requirements on the United States to which we never agreed.

In so doing, the Appellate Body has infringed on our sovereign laws and strayed far from the limited role that WTO members assigned to it.

The Appellate Body is not only harmful, it is also corrupted by CCP influence. WTO rules require Appellate Body members to be "unaffiliated with any government," yet Chinese nationals are allowed to become members. The Chinese Communist Party's complete control of power in the PRC means it can coerce and intimidate any PRC national into following its will

Moreover, a recent Appellate Body member from the PRC appears to have had – and concealed – an improper continued role working for the PRC government². PRC nationals will be forced to do the bidding of the CCP if they want to, or not. The CCP shouldn't get a vote on the WTO Appellate Body when it is the primary threat to free and fair trade around the world.

Even without the Appellate Body, the WTO's dispute settlement process can remain a useful resource for U.S. policymakers. WTO panel decisions can still be issued and may have persuasive effect through their force of reasoning. To the extent such decisions can be effectively blocked by appealing to an Appellate

Body that no longer exists, this fact has allowed WTO members to regain a measure of sovereignty. And, of course, to the extent Members want to agree to truly binding dispute settlement, they have numerous options to do so – including, for example, an agreement not to appeal the results of a panel decision.

Restoring the Appellate Body would only do harm to the United States and give international bureaucrats and members of the CCP more influence over U.S. trade policy. We ask you to continue blocking the appointment of new Appellate Body members.

Sincerely,



Tom Cotton
United States Senator



Charles E. Grassley
United States Senator



Marco Rubio
United States Senator

1. Lester, S. (n.d.). *Katherine Tai on fixing WTO dispute settlement*. International Economic Law and Policy Blog. Retrieved August 3, 2022, from <https://ielp.worldtradelaw.net/2022/06/katherine-tai-on-fixing-wto-dispute-settlement.html>

2. *Dispute settlement - DS505: United States — countervailing measures on supercalendered paper from Canada*. WTO. (n.d.). Retrieved August 3, 2022, from https://www.wto.org/english/stratop_e/dispu_e/cases_e/ds505_e.htm

3. Lighthizer, R. E. (n.d.). (rep.). *Report on the Appellate Body of the World Trade Organization*. Office of the United States Trade Representative. Retrieved from https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf.