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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

May 10, 2022

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

Dear Ambassador Tai:

The Constitution provides Congress with authority “to lay and collect . . . duties” and “to regulate commerce with foreign nations.”¹ Congress, in turn, has delegated certain authority over trade policy to the Executive Branch with the understanding that Congress will be consulted as to the direction and outcomes of this policy. Administrations of both parties have struggled to comply with the terms Congress has provided to ensure its views are reflected in our trade policy. Accordingly, we request that you take steps to ensure Congress is a full partner in the Administration’s ongoing trade negotiations, regardless of whether the Administration believes any eventual agreement from such negotiations will require formal Congressional approval. To that end, the Office of the United States Trade Representative (“USTR”) must provide Congress with timely, substantive briefings on negotiations and share all U.S. negotiating texts before the Administration commits the United States to a particular negotiating position or outcome.

Members of Congress may profess different views on the merits of any given trade negotiation. But there is no dispute that Congress has every right to be involved in the negotiation process. We expect a sound consultation process to, at a minimum, adhere to the standards of the Transparency Principles USTR announced last year, which incorporate the Guidelines for Consultation and Engagement to which USTR agreed in 2015, following extensive negotiations between Congress and the Executive Branch.

Regrettably, USTR’s recent consultations have not met those standards. For example, USTR recently announced that a “compromise outcome” was reached with the European Union, India, and South Africa with respect to a waiver of the World Trade Organization (“WTO”) Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”) that offers a path to a broader agreement with the 164 members of the WTO.² USTR’s announcement of the outcome preceded its informing Congress of the specifics of the compromise or sharing text of

¹ U.S. CONST. ART. I, SEC. 8.

² <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/march/statement-ustr-spokesperson-adam-hodge-wto-trips-waiver-discussions>

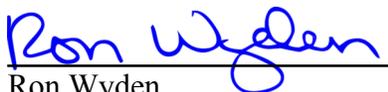
the proposal. USTR has committed in the Guidelines to share both text of U.S. proposals and consolidated text with Members of Congress and their cleared staff during negotiations. Importantly, USTR has shared — as it should — text for other trade proposals at the WTO and elsewhere with relevant Congressional committees in the past. There is no reason to have broken with that tradition here. USTR should promptly provide any new U.S. proposals or consolidated text to Congress.

We want to ensure that this failure to consult properly with Congress will not be replicated in other areas, particularly as the Administration seeks to launch new trade negotiations under the auspices of the Indo-Pacific Economic Framework, pursue multilateral and plurilateral negotiations at the WTO, and engage in bilateral discussions with countries such as the United Kingdom. All of these efforts concern international trade policy. As such, we believe that the Administration must follow both the letter and the spirit of the Transparency Principles and Guidelines and consult fully with Members. The mere fact that changes to U.S. law may not be required to implement a final agreement or that ideas are being exchanged in a “white paper” does not excuse USTR from fulfilling its obligation to consult — in detail, including by sharing any and all text and specific proposals — in a timely fashion, throughout a negotiation.

Moreover, consultations with Congress must be meaningful. USTR must be willing to describe and discuss its position on key issues under discussion. Further, USTR must share and consult on text proposals, including those widely circulating that may reflect possible outcomes, at the earliest possible point. The Guidelines are clear: “Consultation and engagement is vital to ensuring that trade policy reflects American interests and American values.”

We hope you share our belief that in order to create the “more durable, stable, and resilient trading system” identified as a key objective in the 2022 Trade Agenda, it is essential for USTR to improve consultation with Congress and stakeholders. With this object in mind, USTR, going forward, needs to adhere strictly to the Transparency Principles and Guidelines in all pending and future negotiations.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance



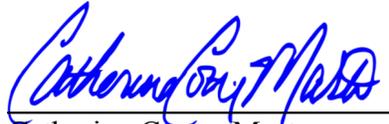
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United States Senator
Ranking Member, Committee
on Finance



Robert Menendez
United States Senator



Charles E. Grassley
United States Senator



Catherine Cortez Masto
United States Senator



Ben Sasse
United States Senator