

117TH CONGRESS
1ST SESSION

S. RES. 101

Expressing the sense of the Senate that, while the United States finds value and usefulness in the World Trade Organization in fulfilling the needs of the United States and other free and open economies in the 21st century, significant reforms at the World Trade Organization are needed and the United States must therefore continue to demonstrate leadership to achieve those reforms.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2021

Mr. PORTMAN (for himself and Mr. CARDIN) submitted the following resolution; which was referred to the Committee on Finance

RESOLUTION

Expressing the sense of the Senate that, while the United States finds value and usefulness in the World Trade Organization in fulfilling the needs of the United States and other free and open economies in the 21st century, significant reforms at the World Trade Organization are needed and the United States must therefore continue to demonstrate leadership to achieve those reforms.

Whereas the United States had led the formation, as well as reform, of rules governing the multilateral trading system since World War II;

Whereas the United States is a founding member of the World Trade Organization (in this preamble referred to as the “WTO”) and a key architect of the organization;

Whereas the United States secured important commitments in the WTO to facilitate trade in goods and services, to prevent the application of non-scientific restrictions on United States agriculture, and to protect United States intellectual property;

Whereas the United States uses the rules of the WTO to benefit workers, farmers, and businesses in the United States by facilitating access to the 90 percent of the world’s consumers who live outside the borders of the United States;

Whereas the fundamental purpose of the WTO is to create space for members to negotiate with each other, and the WTO reserves to those members exclusively the right to negotiate and adopt rules that reduce and eliminate trade barriers and discriminatory treatment;

Whereas the prompt settlement of disputes in which a member of the WTO considers that its rights are being impaired by the actions of another member is essential to the functioning of the WTO and the maintenance of a proper balance between the rights and obligations of members;

Whereas the WTO’s dispute settlement function, including in particular the Appellate Body, has increasingly failed to enforce the rules of the WTO in a timely manner, and has usurped the negotiating prerogative of members by creating new obligations and rights that are inconsistent with the rules negotiated by members;

Whereas the creation of those obligations and rights undermines—

(1) the WTO’s negotiating function by discouraging members from making concessions; and

(2) the WTO’s dispute settlement function by encouraging overuse of the process and undermining its legitimacy, including by preventing free market economies from responding to globally trade distortive practices by nonmarket economies;

Whereas the WTO does not have sufficient rules to discipline the distortive economic policies of nonmarket economies, such as policies relating to excess capacity and forced technology transfer, the special treatment those economies afford to state-owned enterprises, and their massive and opaque industrial subsidies;

Whereas there is long-standing bipartisan support in the United States Congress to reform the WTO to address those failings;

Whereas the current presidential administration, as well as prior administrations, raised concerns about the failings described in this preamble and have made reform of the WTO a top priority of United States trade policy;

Whereas the United States urges WTO members to work constructively with the United States to assess the reasons why the existing WTO rules have proven inadequate in order to create an atmosphere within the WTO that is conducive to the development of new rules less subject to jurisprudential drift;

Whereas the guiding principle for reform of the WTO, and the lens through which WTO members should consider specific reform proposals, is the restoration of the WTO’s

capability and capacity for negotiation between members;
and

Whereas, given that the United States has achieved its trade policy objectives through active leadership at the WTO, and that an absence of that leadership would be filled by nonmarket economies that are hostile to a host of United States interests: Now, therefore, be it

1 *Resolved*, That it is the sense of the Senate that—

2 (1) while the United States finds value and use-
3 fulness in the World Trade Organization (in this
4 resolution referred to as the “WTO”) in order to
5 fulfill the needs of the United States and other free
6 and open economies in the 21st century, significant
7 reforms are needed;

8 (2) the United States must therefore continue
9 to demonstrate leadership to achieve reforms that
10 restore the effectiveness of the WTO’s—

11 (A) negotiating function;

12 (B) dispute settlement function so that it
13 transparently, efficiently, and fully enforces out-
14 comes negotiated by members rather than
15 usurping their primacy by creating new rights
16 or obligations; and

17 (C) rules for special and differential treat-
18 ment to ensure those rules promote develop-
19 ment for truly disadvantaged countries, rather
20 than becoming tools for globally competitive

1 countries to engage in protectionism and mar-
2 ket distortions;

3 (3) the efforts to reform the negotiating func-
4 tion of the WTO should revitalize the negotiating
5 function by providing confidence to members that
6 the WTO operates according to the rules as nego-
7 tiated and adopted by members;

8 (4) a revitalized negotiating function must in-
9 clude new rules that reflect the 21st century econ-
10 omy, further combat anticompetitive and protec-
11 tionist barriers, and ensure disputes are efficiently
12 resolved;

13 (5) the United States Trade Representative
14 should continue to lead efforts to work with WTO
15 members to pursue reforms at the WTO that—

16 (A) ensure the dispute settlement mecha-
17 nism faithfully applies the rules adopted by
18 members, including by undertaking measures to
19 ensure the WTO's Appellate Body does not cre-
20 ate new rights and obligations;

21 (B) improve public confidence in dispute
22 settlement by promoting greater transparency
23 and efficiency in the conduct of proceedings;

24 (C) redress the consistent failure by cer-
25 tain members to satisfy their notification obli-

1 gations under various WTO agreements, includ-
2 ing through measures that strengthen account-
3 ability;

4 (D) ensures rules for special and differen-
5 tial treatment are appropriately reserved for
6 countries whose state of development and global
7 competitiveness actually warrants such flexi-
8 bility;

9 (E) create new rules and structures that
10 can serve the interests of the United States
11 while promoting peace, prosperity, good govern-
12 ance, transparency, effective operation of legal
13 regimes, the rule of law, and free enterprise;
14 and

15 (F) expand upon the trilateral negotiations
16 currently underway with Japan and the Euro-
17 pean Union; and

18 (6) the United States Trade Representative
19 should explore and assess specific reform proposals,
20 including—

21 (A) pursuing plurilateral agreements that
22 further the interests of the United States while
23 limiting the benefits accruing to countries that
24 are not parties to those agreements;

1 (B) efforts to ensure that incorrect inter-
 2 pretations by the Appellate Body, including
 3 with respect to the Agreement on Safeguards,
 4 the Agreement on Implementation of Article VI
 5 of the General Agreement on Tariffs and Trade
 6 1994, and the Agreement on Subsidies and
 7 Countervailing Measures, are corrected, and not
 8 to be deemed precedential;

9 (C) new rules and norms to address prac-
 10 tices of nonmarket economies, such as practices
 11 relating to state-owned enterprises, which cer-
 12 tain countries often utilize for objectives that
 13 cause severe trade distortions; and

14 (D) better implementation of existing
 15 rules, such as the prohibition in paragraph 4 of
 16 Article XIV of the General Agreement on Tar-
 17 iffs and Trade on currency manipulation, to en-
 18 sure that those rules are effective to preserve
 19 the rights of free market economies.

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