

## **WTO Appellate Body condemns the "Byrd Amendment" – the US must now repeal it - Brussels, 16 January 2003**

**The WTO Appellate Body has just confirmed that the US "Byrd amendment", which directs the US government to distribute the collected anti-dumping and anti-subsidy duties to the US companies that brought the cases in the first place, is incompatible with WTO rules. EU Trade Commissioner Lamy welcomed the Appellate Body findings: "The EU and 10 other countries had maintained that this measure clearly flies in the face of the letter and the spirit of WTO law. This was our conviction from the outset and I am glad that the Appellate Body has now clearly and definitively condemned this measure. We now expect the US to act quickly in order to repeal the Byrd amendment".**

Under the Continued Dumping and Subsidy Offset Act of 28 October 2000, (also known as the Byrd amendment), the US government distributes the anti-dumping and anti-subsidies duties to the US companies that brought forward the cases. Offset payments are paid to cover certain expenses (such as investment in manufacturing facilities and acquisition of technology) incurred after the imposition of the anti-dumping and anti-subsidy measures for the production of the product subject to the measures. In the first annual distribution in January 2002, almost US \$ 207 million dollars were distributed, mostly to steel producers. More than US \$ 270 million dollars are available for distribution this year.

This law raised immediate and widespread concerns. It was a first time in the history of the WTO that so many Members contested the compatibility of a legislation to the WTO obligations: 11 members requested the establishment of a panel (Australia, Brazil, Canada, Chile, EU, India, Indonesia, Japan, Korea, Mexico and Thailand) and six others joined as third parties supporting the complainants (Argentina, Costa Rica, Hong Kong, China, Israel and Norway).

Released on 16 September 2002, the panel report recommended the repeal of the Byrd amendment after upholding the key arguments presented by the 11 complainants. The US law was held an illegal response against dumping and subsidisation. Offset payments constitute a remedy in addition to the imposition of an anti-dumping or anti-subsidy duty and this remedy is not envisaged in the WTO legislation. Once dumping or subsidisation has been established, the offset payments flow automatically and confer a competitive advantage to the US industry, which may be eliminated only if dumping or subsidisation has first ceased.

Following an appeal by the US on 18 October 2002, the Appellate Body has today issued its report confirming the Panel's central finding that the Byrd amendment is WTO inconsistent because it is an illegal response to dumping or subsidisation.

The decision of the Appellate Body is final and the US now has to comply with it. Given the clear WTO inconsistency of the law itself and the very broad interests affected, the US should repeal the Byrd amendment without delay.