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**An appeal not to appeal:  
withdraw the appeal of the WTO panel report in the retreaded tyres case!**

Dear Commissioner Mandelson,

We have learned that the European Commission appealed the panel report in the World Trade Organization's dispute settlement case "Brazil – Measures affecting imports of retreaded tyres". With this open letter the German non-governmental organisations working on environment and development strongly urge you to withdraw this appeal.

On your personal website you quote yourself repeating your statement given at the confirmation hearing in the European Parliament in October 2004:

"I am convinced that trade policy, used well, can make a powerful contribution to economic development around the world, as long as we recognise the needs of the poorest".

The website of the Directorate General for Trade of the European Commission states under the heading "Trade and Environment":

- "Trade policy needs to be formulated both so that it supports environmental policies and action, and takes into account its potential impacts on the environment"; and
- "The EU is keen to ensure that its own trade policy is congruent with both its own environmental policy and international efforts to tackle environmental problems".

An appeal of the panel report would be an assault on the health needs of the poor and the environment. As Brazil's Environment Minister Marina Silva elaborated at the First Panel Hearing of this case:

"Generation and accumulation of tyres is one of the world's most pressing environmental problems. The large quantity of tyre waste generated every year and the difficulties related to collection, stockpiling and adequate environmental disposal in a developing country with continental dimensions, impose on Brazil the need to adopt efficient measures for the responsible management nationwide. In addition to the enormous environmental problem

resulting of the risk of contamination of the air, soil and groundwater, the accumulation of tyres constitutes also a great threat to public health because it is directly related to the spreading of diseases, especially in a tropical environment".

The Panel agreed with Brazil that its measures necessary to protect human and animal life and health from mosquito-borne illnesses such as malaria and dengue fever. As a consequence, the Panel agreed that the ban was "provisionally justified" under WTO rules. The only problem the Panel found was that the ban was applied in a discriminatory way because some local courts issued injunctions allowing Brazilian retreaders to import used tyres for retreading. Brazil has stated that it will comply with these recommendations and ensure that these injunctions cease, as they defeat the purpose of the import ban to minimize tyre waste.

On 12 June 2007 the World Trade Organization (WTO) made public the panel report in the dispute which the EU brought against Brazil's import ban on retreaded tyres. The WTO panel ruled - according to a Directorate General Trade statement of the same day – that:

"Brazil's import ban on retreaded tyres, as well as fines for the importation, marketing, transportation and storage of imported retreaded tyres and an import ban maintained by the Brazilian state of Rio Grande do Sul are in breach of WTO rules and not justified under WTO provisions for health protection."

In this statement DG Trade wrote:

"The panel decision confirms the European Union's view that Brazil's import ban on retreaded tyres is WTO-incompatible. The EU is strongly in favour of environmental and public health protection, but Brazil's measures do not serve those objectives. Rather, they are protectionist and discriminatory".

The DG Trade argumentation - given in the EC Fact Sheet (WTO dispute Brazil – Measures affecting imports of retreaded tyres) of 23 April 2007 and in DG Trade's statement of 12 June 2007 - is in total contradiction to the panel findings.

To give you two examples:

The EC claims that "Brazil's measures ... are protectionist and discriminatory." Opposite to this assertion the Panel finds:

"that Brazil's policy of reducing exposure to the risks to human, animal or plant life or health arising from the accumulation of waste tyres falls within the range of policies [necessary to protect human, animal or plant life or health] covered by Article XX(b)" (see para 7.102 of the panel report).

The EC states:

"Throughout this WTO dispute, Brazil has defended its measures on grounds of public health and environmental protection. However, Brazil's import ban on retreaded tyres does not serve to improve Brazil's current system of waste tyre management. Brazil continues to import retreaded tyres from other Mercosur markets and imports a large number of used tyres for retreading in Brazil. Banning the importation of retreaded tyres from the EU is clearly discriminatory and does not protect the environment or public health."

Again, the Panel's view is totally different:

"The Panel recalls the Appellate Body's statement that a "necessary" measure is

located significantly closer to the pole of "indispensable" than to the opposite pole of simply "making a contribution to". As we have determined above, an import ban on retreaded tyres has the potential to reduce the amount of waste tyres generated on Brazil's territory and, hence, can contribute to the realization of the stated objective, i.e. the protection of human, animal and plant life and health from the risks posed by the accumulation of waste tyres. Moreover, our examination of the alternatives identified by the European Communities suggests that no alternative measure is reasonably available that could avoid the generation of the specific risks arising from imported retreaded tyres. Alternatives that would involve management or disposal of the tyres once imported do exist, but raise their own concerns, either because they lead to the type of risks that Brazil seeks to avoid in the first place (unsafe stockpiling and emissions from incineration) or because they would not meet the level of protection sought by Brazil. The safest methods (material recycling) are useful but insufficient on their own to absorb the entire amount of waste from end-of-life tyres." (see para 7.212).

Furthermore - quoting the lawyer Brendan McGivern of White & Case International Trade (Geneva) - this "important decision provides new clarity on the fundamental issue of when governments may take trade-restrictive measures to protect human or animal life or health".

The EC has defended several European environmental and health policies at the WTO (asbestos, GMOs, Hormones) and will likely have to defend others in the future. It does not make sense to challenge a decision that will be useful for arguing pending and future environment and health cases at the WTO.

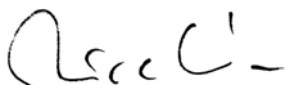
The government of Brazil has indicated not to appeal and to bring its measures into conformity with the multilateral trading disciplines.

For public health and environmental reasons and for the further development of a fair trading system - a new trading system that takes into account so called "non trade concerns", including those relating to human rights, health and environment - we strongly urge the European Commission to withdraw the appeal.

Instead of appealing, the Commission should support Brazil and other developing countries to implement efficient measures for the responsible management of used tyres and other hazardous waste.

Sincerely yours

*On behalf of the German NGO Forum Environment & Development,  
a network of more than 50 NGOs*



Juergen Maier, Director