



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

Commissioner Peter Mandelson
Trade Directorate-General
European Commission
B-1049 Brussels

Per fax and per postal mail

September 4, 2007

Subject: EC Appeal in *Brazil-Retreaded Tyres*

Dear Commissioner Mandelson:

The undersigned organizations are deeply concerned about the European Commission's decision to appeal the WTO Panel report in the *Brazil-Retreaded Tyres* case. The report, which addresses the legality of Brazil's import ban on retreaded tyres for health and environmental reasons, has made an important contribution to the progressive development of WTO's jurisprudence on environment and trade. Given that the EC has in the past and is currently defending European environmental and health policies at the WTO and will likely have to defend others in the future, it is in the EC's interest that the Panel's environmentally sensitive interpretation of WTO law stands. Thus, in light of the Panel's contribution to reconciling trade and environment at the WTO, we respectfully urge the EC to either withdraw their intention to appeal or, at a minimum, to focus any appeal narrowly to avoid compromising the ability of WTO Members to protect life, health, and the environment.

In addition, because of the undeniable public importance of this case and precedent-setting effect any Appellate Body decision will have, we believe that an appeal in this case should be conducted in a transparent and open manner. It is inexplicable and unacceptable, given the usual positions on access to information and accountability espoused by the EC and its members, that the EC has opposed open hearings and the contemporaneous disclosure of pleadings in this case. That is especially true given that Brazil was supportive of these requests and has disclosed its pleadings on the date they were filed with the WTO.

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In order to foster greater confidence in the dispute settlement system, proceedings should be fully transparent and open to the public. The most effective way of achieving this is by posting pleadings (including with respect to appeals) on the official governmental web site contemporaneously with their being filed with the WTO, and by web casting hearings in real time, with appropriate provision made for protecting any state secrets or confidential business information. Open hearings have already been held at the WTO via closed-circuit television (with the EC's consent); and web casting involves fewer expenses and reaches a much wider audience, far beyond those wealthy enough to be able to travel to Geneva for a hearing.

We have approached the EC before with a request that it adopt a general position that hearings be web cast. The EC responded that it would not presently adopt such a position as a general matter, and we respect that. The explanation in the EC's response, however, does not preclude agreeing to web casting a specific hearing. The *Brazil-Retreaded Tyres* hearing on appeal, since the EC insists on filing an appeal, presents a compelling case for such a web cast.

Thank you in advance for considering these requests.

Yours sincerely,



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