

## **Backgrounder**

### **THE BYRD AMENDMENT**

On October 28, 2000, U.S. President Bill Clinton signed the Continued Dumping and Subsidy Offset Act of 2000, also known as the Byrd Amendment.

The Byrd Amendment allows U.S. producers who support petitions for anti-dumping and/or countervailing duty investigations to receive duties collected as a result of the anti-dumping and/or countervailing duty orders.

This means that U.S. companies that bring trade remedy cases to U.S. authorities stand to benefit not only from the imposition of anti-dumping and countervailing duties on competing imports, but also from direct payments from the U.S. government when those duties are disbursed.

In September 2001, 11 WTO members challenged the Byrd Amendment at the WTO: Canada, Australia, Brazil, Chile, the European Union, India, Indonesia, Japan, Mexico, South Korea and Thailand.

The WTO Panel agreed with the complainants, and in September 2002, determined that these payments are not consistent with U.S. obligations under WTO agreements governing anti-dumping, subsidies and countervailing measures. The Panel determined that the payments constitute an additional measure against injurious dumping and subsidization not contemplated in either agreement.

In January 2003, a WTO Appellate Body report upholding the key Panel findings against the Byrd Amendment was adopted by the organization's Dispute Settlement Body (DSB).

An arbitrator subsequently gave the U.S. 11 months (until December 27, 2003) to bring its measures into compliance. More than 18 months after the adoption of the Appellate Body's report, the U.S. has not repealed the Byrd Amendment to bring itself into conformity with the WTO ruling.

On January 26, 2004, in order to protect its WTO rights, Canada, along with seven other WTO members (Brazil, Chile, the European Union, India, Japan, Mexico and South Korea), requested retaliation authorization from the WTO.

The U.S. objected to the complainants' requests, and the determination of the level of retaliation was referred to arbitration. The U.S. argued that the Byrd Amendment did not affect trade.

According to U.S. Customs and Border Protection, distributions to U.S. producers under the Byrd Amendment amounted to US\$231 million in 2001 and US\$330 million in 2002. As of March 1, 2004, disbursements calculated for 2003 are approximately