

## **BRAZIL – MEASURES AFFECTING IMPORTS OF RETREADED TYRES**

### Request for the Establishment of a Panel by the European Communities

The following communication, dated 17 November 2005, from the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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The European Communities hereby requests the establishment of a panel pursuant to Articles 4.7 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). This request concerns Brazil's imposition of measures that adversely affect exports of retreaded tyres from the European Communities to the Brazilian market.

Specifically, this request concerns:

- Brazil's imposition of an import ban on retreaded tyres, notably by virtue of Portaria No. 14 of 17 November 2004 of the Secretariat of Foreign Trade of the Brazilian Ministry of Development, Industry and International Commerce that prohibits the issuance of import licences for retreaded tyres.
- Brazil's adoption of a set of measures banning the importation of used tyres,<sup>1</sup> which are sometimes applied against imports of retreaded tyres, despite the fact that these are not used tyres.
- Measures maintained at the level of Brazilian States which prohibit the sale of imported retreaded tyres. For instance, Law No. 12.114 of 5 July 2004 of Rio Grande do Sul bans the commercialisation of used tyres, as which are considered *inter alia* retreaded tyres that have been manufactured outside of Brazil from the casings of used tyres and imported into Brazil.
- Brazil's imposition, by virtue of Presidential Decree No. 3919 of 14 September 2001, of a fine of 400 BRL per unit on the importation, as well as the marketing, transportation, storage, keeping or keeping in deposit or warehouses of imported, but not of domestic retreaded tyres.
- Brazil's exemption of retreaded tyres imported from other Mercosur countries from the import ban by means of Portaria No. 14 of 17 November 2004 of the Secretariat of Foreign Trade of

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<sup>1</sup> Portaria DECEX No. 8 of 13 May 1991, Portaria DECEX No. 18 of 19 July 1992, Portaria IBAMA No. 138-N of 22 December 1992, Portaria MICT No. 370 of 28 November 1994, Interministerial Portaria No. 3 of 12 September 1995 of the Ministry of Industry, Commerce and Tourism and of the Ministry of the Economy, CONAMA Resolution 23 of 12 December 1996, CONAMA Resolution No. 235 of 7 January 1998.

the Brazilian Ministry of Development, Industry and International Commerce and from the above-mentioned financial penalties by virtue of Presidential Decree No. 4592 of 11 February 2003, in response to the ruling of a Mercosur panel established at the request of Uruguay.

For each of the measures referred to above, this request also covers any amendments, replacements, extensions, implementing measures or other related measures.

These measures are inconsistent with Brazil's obligations under Articles I:1, III:4, XI:1 and XIII:1 of GATT 1994.

- Brazil has acted inconsistently with Article XI:1 of GATT 1994 by instituting and maintaining a prohibition and restriction other than a duty, tax or other charge on the importation of a product of the territory of another Member, made effective through import licences and other measures.
- Brazil has acted inconsistently with Article XI:1 and/or Article III:4 of GATT 1994 by instituting and maintaining a restriction other than a duty, tax or other charge on the importation of a product of the territory of another Member, made effective through a fine imposed on the importation of retreaded tyres in the amount of 400 BRL per unit.
- Brazil has acted inconsistently with Article III:4 and/or Article XI:1 of GATT 1994 by maintaining prohibitions of the commercialisation of imported retreaded tyres at the level of States and by imposing a fine in the amount of 400 BRL per imported retreaded tyre that is marketed (sold), transported, stored, kept or kept in deposit or warehouses. Thereby, Brazil has failed to accord, to products of the territory of the European Communities imported into the territory of Brazil, treatment no less favourable than that accorded to like products of national origin in respect of laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.
- Brazil has acted inconsistently with Article I:1 of GATT 1994 by eliminating the import ban and the above-mentioned financial penalties for retreaded tyres imported from other Mercosur countries, while maintaining those measures for other imports, notably from the European Communities. Thereby, Brazil has failed to accord an advantage granted, with respect to rules and formalities in connection with importation, and with respect to matters referred to in paragraph 4 of Article III, to products originating in other countries immediately and unconditionally to the like products originating in the territory of the European Communities.
- By applying the above-mentioned import bans on retreads as well as financial penalties on every unit of retreaded tyres imported from the European Communities, but not to those imported from other Mercosur countries, Brazil acts inconsistently with Article XIII:1 of GATT 1994, because it applies a prohibition and restriction on the importation of a product of the territory of another Member, although the importation of the like product of all third countries is not similarly prohibited or restricted.

On 20 June 2005, the European Communities requested consultations with Brazil with a view to reaching a mutually satisfactory solution of the matter. The request was circulated in document WT/DS332/1 dated 23 June 2005. The consultations were held on 20 July 2005 in Geneva on the above-mentioned and other measures. They have allowed a better understanding of the measures at issue and the respective positions but have not led to a satisfactory resolution of the matter. Rather, the Brazilian government has submitted, on 31 October 2005, a draft law (No. 6.136/2005) to the Brazilian legislature that would confirm in an act of parliament the above-mentioned import ban on retreaded tyres and an exemption for imports under a regional integration agreement.

Therefore, the European Communities respectfully requests that a panel be established, with standard terms of reference, to consider the above complaint with a view to finding that Brazil's measures are inconsistent with Brazil's obligations under the GATT 1994, in particular, but not necessarily exclusively, under Articles I:1, III:4, XI:1 and XIII:1 of GATT 1994.

The European Communities asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 28 November 2005.

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