

BRAZIL – MEASURES AFFECTING IMPORTS OF RETREADED TYRES

Request for Consultations by the European Communities

The following communication, dated 20 June 2005, from the delegation of the European Communities to the delegation of Brazil and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The European Communities hereby requests consultations with the Government of Brazil pursuant to Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") regarding Brazil's imposition of measures that adversely affect exports of retreaded tyres from the European Communities to the Brazilian market.

The issues which the European Communities would like to raise in the course of the consultations include, but are not limited to, the following measures:

- Brazil's imposition of an import ban on retreaded tyres, notably by virtue of Portaria No. 17 of 1 December 2003 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,¹ which are sometimes applied against imports of retreaded tyres, despite the fact that these are not used tyres.
- 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. 2 of 8 March 2002 of the Secretariat of Foreign Trade of 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.

¹ 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.

For each of the measures referred to above, this request also covers any amendments, 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 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 ban on retreads as well as the financial penalty 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.

The European Communities reserves the right to address additional measures and claims under other provisions of the WTO Agreement regarding the above matters during the course of the consultations.

The European Communities looks forward to receiving in due course a reply from Brazil to this request. The European Communities is ready to consider with Brazil mutually convenient dates to hold consultations in Geneva.
