

BRAZIL – MEASURES AFFECTING IMPORTS OF RETREADED TYRES

Understanding between Brazil and the European Communities
Regarding Procedures under Article 22 of the DSU

The following communication, dated 7 January 2009, from the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

Please find attached a procedural agreement, concluded on 5 January 2009, between Brazil and the European Communities in the dispute referred to above.

We kindly request that you circulate this communication to the Members of the DSB.

Procedural Agreement between Brazil and the European Communities
regarding Article 22 of the DSU

The Dispute Settlement Body (DSB) adopted the Appellate Body report and the Panel report as modified by the Appellate Body report on 17 December 2007. An arbitrator determined that the reasonable period of time to implement the DSB recommendations and rulings would be 12 months, expiring on 17 December 2008 (WT/DS332/16).

The European Communities and Brazil ("the parties to the dispute") have agreed on the following procedures for the exclusive purposes of this dispute:

1. In the event that the European Communities does not request, by 16 January 2009, the DSB to authorize the suspension of concessions or other obligations, Brazil shall not assert that the European Communities is precluded from obtaining the DSB's authorization to suspend concessions or other obligations on the grounds that the request was made outside the 30-day time-period specified in Article 22.6 of the DSU. This is without prejudice to Brazil's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.
2. This is agreed on the understanding that the rights of the parties to the dispute with respect to the authorization to suspend concessions or other obligations do not change, compared to the situation in which the European Communities would request the DSB to grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time.
3. If the European Communities requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, and if Brazil objects under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claims that the principles and procedures set forth in DSU Article 22.3 have not been followed, the matter will be referred to arbitration pursuant to DSU Article 22.6.
4. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
5. If measures taken by Brazil to fully comply with the relevant recommendations and rulings of the DSB are presented to the European Communities, the European Communities agrees to initiate proceedings under Article 21.5 of the DSU before initiating proceedings for requesting authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU.
6. The parties will continue to cooperate in all matters related to this procedural agreement and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in these procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

H.E. Mr. Roberto Azevedo
Ambassador
Permanent Representative of Brazil

H.E. Mr. Eckart Guth
Ambassador
Permanent Representative
for the European Communities