

BRAZIL – MEASURES AFFECTING IMPORTS OF RETREADED TYRES

Status Report by Brazil

The following communication, dated 9 March 2009, from the delegation of Brazil to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.6 of the DSU.

Status Report Regarding Implementation of the
DSB Recommendations and Rulings in the Dispute
Brazil – Measures Affecting Imports of Retreaded Tyres
(WT/DS332)

1. Brazil submits this report in accordance with Article 21.6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.
2. On 17 December 2007, the Dispute Settlement Body ("DSB") adopted the Panel and the Appellate Body reports in *Brazil – Measures Affecting Imports of Retreaded Tyres* (WT/DS332). At the DSB meeting on 15 January 2008, Brazil informed the DSB of its intention to implement the recommendations and rulings of the DSB. At the same meeting, Brazil stated that it would need a "reasonable period of time" to do so, according to Article 21.3 of the DSU.
3. In January 2008, Brazil and the EC initiated discussions with a view to agreeing on a "reasonable period of time". The matter was referred to arbitration by the EC pursuant to Article 21.3(c) of the DSU on 4 June 2008. The Arbitrator was composed by the Director-General on 26 June 2008. The arbitration award, circulated on 29 August 2008, established that the reasonable period of time for the implementation was 12 months.
4. The Brazilian Government has been actively working with the objective of reinforcing and strengthening the effectiveness of Brazil's comprehensive strategy to deal with waste tyres. In September 2006, the President of Brazil petitioned the Supreme Court to issue a final ruling to prevent lower courts from issuing preliminary injunctions allowing imports of used tyres in Brazil, as well as to revoke injunctions already granted¹.

¹ See Panel Report, para. 7.240/ Brazil's answer to panel's question no. 14. See ADPF 101, electronic petition in <http://www.stf.jus.br/portal/cms/verTexto.asp?servico=processoAudienciaPublicaAdpf101>.

5. The judicial action was brought to the Supreme Court in the form of an Allegation of Violation of Fundamental Precept ("ADPF" in Portuguese), an instrument introduced in Brazil's legal system in 1999² to address acts that violate constitutional rights and guarantees. The ADPF is also a measure of last resort having binding power over all other judicial decisions in Brazil. The judicial action at hand, "ADPF 101", was presented following the Executive's understanding that imports of used tyres infringe on the constitutional right to health (Article 196 of the Federal Constitution³) and to an ecologically balanced environment (Article 225 of the Federal Constitution⁴).

6. On 27 June 2008, a public hearing took place concerning ADPF 101⁵, where representatives of the Government, the civil society and the private sector had the opportunity to express their perspectives on the case. On 5 November 2008, as part of the Procedures of this judicial action, the General Prosecutor of Brazil addressed his Opinion to the Supreme Court, which was in favor to the requirement presented by the Executive. The report from the judge-rapporteur for ADPF 101 is expected to be considered by the members of the Supreme Court in the following days. Detailed information about the ADPF 101 and its procedural steps can be found in the Supreme Court's website: www.stf.jus.br⁶.

7. Brazil believes that a result favourable to the Executive's request will bring Brazilian measures into compliance as regards to the imports of used tyres. The judgment of ADPF 101 constitutes a fundamental step in the strengthening of Brazil's environmental policy as well as for the implementation of this dispute, as has been acknowledged by the Arbitrator in the Article 21.3 proceedings.

8. Brazil has been in permanent contact with its partners from Mercosur on this issue through all the panel and Appellate Body procedures. As soon as the DSB adopted the Reports of the Panel and the Appellate Body, Brazil initiated consultations with Argentina, Paraguay and Uruguay about the implementation of the recommendations and rulings of the DSB concerning the MERCOSUR exemption.

² See Law N. 9882/1999. The law was based on Article 102, Brazil's Federal Constitution of 1988, which provides: "par. 1. A arguição de descumprimento de preceito fundamental, decorrente desta Constituição será apreciada pelo Supremo Tribunal Federal, na forma da lei". (Unofficial translation: "Paragraph 1. An allegation of violation of a fundamental precept derived from this Constitution shall be examined by the Federal Supreme Court, under the terms of the law").

³ ("Art. 196. A saúde é direito de todos e dever do Estado, garantido mediante políticas sociais e econômicas que visem à redução do risco de doença e de outros agravos e ao acesso universal e igualitário às ações e serviços para sua promoção, proteção e recuperação.") (Unofficial translation: "Health is a right of all and a duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and to the universal and equal access to actions and services for its promotion, protection and recovery").

⁴ "Art. 225. Todos têm direito ao meio ambiente ecologicamente equilibrado, bem de uso comum do povo e essencial à sadia qualidade de vida, impondo-se ao Poder Público e à coletividade o dever de defendê-lo e preservá-lo pra as presentes e futuras gerações") (Unofficial translation: "Every person has the right to a balanced environment, a common good essential to a healthy quality of life, and both the Government and the people shall have the duty to protect and preserve it for present and future generations").

⁵ In this hearing, Brazil's Minister of Environment, as well as experts from Brazil's environmental agency (IBAMA), the Health Ministry, and an NGO, spoke against the importation of used tyres due to its impact on Brazil's public health and environment. The General Prosecutor, heard as *custos legis*, endorsed these arguments and supported the claim presented by the Solicitor General on behalf of the President of the Republic. Following the hearing, which was broadcast by the Supreme Court's television channel, the reporting Justice, Carmen Lúcia Antunes Rocha, explained that the Parties and the General Prosecutor would next be asked to present additional information.

⁶ <http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?numero=101&classe=ADPF&origem=AP&recurso=0&tipoJulgamento=M>

9. As a result of these consultations, Brazil took the initiative to propose the negotiation of a common trade regime for tyres with its MERCOSUR partners. At the first ordinary meeting of the Common Market Group ("GMC") following the adoption of the Panel and Appellate Body Reports, held on 15-16 April 2008, Brazil proposed a GMC Resolution to create an *Ad Hoc* Working Group on the Regional Policy for Tyres. In a meeting held on 29 June 2008, the GMC approved the Resolution and established the Working Group.⁷ The *Ad Hoc* Working Group on tyres met formally for the first time in 2 September 2008 and is currently engaged in technical debate with a view to fulfilling its mandate.

10. On 5 January 2009, Brazil and European Communities celebrated a procedural agreement regarding Article 22 of the DSU. Details of this agreement are provided in WT/DS332/13. Brazil and the EC continue to engage in bilateral discussion and exchange of information with the goal of resolving this dispute.

⁷ See GMC Resolution of 29 June 2008, establishing a Mercosur *Ad Hoc* Working Group on Tyres. http://www.mercosur.int/msweb/SM/Actas%20TEMPORARIAS/GMC/2008_ACTA01_EXT/ANEXO%20III%20Resoluciones/RES_025-2008_PT_GrupoAdHocPneumaticos.doc