

BRAZIL – MEASURES AFFECTING IMPORTS OF RETREADED TYRES

Status Report by Brazil

Addendum

The following communication, dated 9 July 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. As announced in Brazil's previous status reports in this dispute (WT/DS332/19; WT/DS332/19/Add.1; WT/DS332/19/Add.2; WT/DS332/19/Add.3), Brazil's Supreme Court was in the final stages of deciding the judicial action filed by the Executive Branch (Allegation of Violation of Fundamental Precept – ADPF – No 101) to obtain a definitive ruling that prevents lower courts from issuing injunctions allowing imports of used tyres and revokes injunctions already granted.
5. On 24 June 2009, Brazil's Supreme Court reached a final decision on ADPF 101. Eight out of nine Justices decided in favour of the Executive Branch's proposition that the importation of used tyres infringe on fundamental constitutional precepts relating to the human rights to health and to a balanced environment, contained in Articles 170, 196 and 225 of the Constitution of the Federal

Republic of Brazil. More specifically, the reporting Justice concluded – and was followed in these conclusions by seven of her peers involved in the judgment – that:

- The regulations banning the importation of used tyres into Brazil are constitutionally valid;
- Court decisions that allow the importation of used tyres violate the Federal Constitution and lose, retroactively and prospectively, any legal effects;
- Court decisions that became *res iudicata* also lose their legal effects, except for the entries of used tyres that already took place.

6. The outcome of ADPF 101 is in line with core values and principles that guide Brazil's constitutional order. The Supreme Court decision supports a critical public policy pursued by the Brazilian Government to protect the Brazilian population from the risks associated with the generation, transportation and accumulation of used tyres. Within the legal framework provided by Article XX(b) of the GATT 1994, the Panel and the Appellate Body recognized the key role played by the prohibition on the importation of retreaded tyres for the success of such policy. Brazil's Supreme Court reached a similar conclusion with regard to the importation of used tyres authorized by some lower courts and, in so doing, took an extremely important step to bring Brazil into full compliance with the recommendations and rulings adopted by the DSB in this dispute.
