

BRAZIL – RETREADED TYRES¹

(DS332)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	<i>European Communities</i>	<i>GATT Arts. I:1, III:4, XI:1, XIII:1, XX(b) and (d), and XXIV</i>	Establishment of Panel	<i>28 November 2005</i>
			Circulation of Panel Report	<i>12 June 2007</i>
Respondent	<i>Brazil</i>		Circulation of AB Report	<i>3 December 2007</i>
			Adoption	<i>17 December 2007</i>

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: (i) Brazil's import prohibition on retreaded tyres ("Import Ban"); (ii) fines on importing, marketing, transportation, storage, keeping or warehousing of retreaded tyres; (iii) Brazilian state law restrictions on the marketing of imported retreaded tyres; (iv) exemptions of retreaded tyres imported from Mercosur countries from the Import Ban and fines ("MERCOSUR exemption").
- Product at issue: Retreaded tyres.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- GATT Art. XI: The Panel concluded that Brazil's import prohibition on retreaded tyres and the fines imposed by Brazil on importation, marketing, transportation, storage, keeping or warehousing of retreaded tyres were inconsistent with Art. XI:1.
- GATT Art. III:4: The Panel found that the measure maintained by the Brazilian State of Rio Grande do Sul in respect of retreaded tyres, Law 12.114, as amended by Law 12.381, was inconsistent with Art. III:4.
- GATT Art. XX(b) (exceptions): The Appellate Body upheld the Panel's finding that the Import Ban was provisionally justified as "necessary" within the meaning of Art. XX(b). The Panel "weighed and balanced" the contribution of the Import Ban to its stated objective against its trade restrictiveness, taking into account the importance of the underlying interests or values. The Panel correctly held that none of the less trade-restrictive alternatives suggested by the European Communities constituted "reasonably available" alternatives to the Import Ban.
- The "chapeau" of GATT Art. XX: The Appellate Body reversed the Panel's findings that the MERCOSUR exemption and imports of used tyres through court injunctions (i) would not result in the Import Ban being applied in a manner that constituted "arbitrary discrimination", and (ii) would lead to "unjustifiable discrimination" and a "disguised restriction on international trade" only to the extent that they result in import volumes that would significantly undermine the achievement of the objective of the Import Ban. The Appellate Body determined that the assessment of whether discrimination is arbitrary or unjustifiable should be made in the light of the objective of the measure, and found that the MERCOSUR exemption, as well as the imports of used tyres under court injunctions, had resulted in the Import Ban being applied in a manner that constituted arbitrary or unjustifiable discrimination and a disguised restriction on international trade within the meaning of the chapeau of Art. XX. The Appellate Body thus upheld, albeit for different reasons, the Panel's findings that the Import Ban was not justified under Art. XX of the GATT.
- GATT Art. XX(d) (designed to secure compliance): Having found that the Import Ban could not be justified by Art. XX(b), the Panel also found that the fines could not be justified under Art. XX(d) since they did not fall within the scope of measures that were designed to secure compliance with "laws or regulations that are *not themselves inconsistent* with" some provision of the GATT.

¹ *Brazil – Measures Affecting Imports of Retreaded Tyres*

² *Other issues addressed in this case: Panel's discretion as trier of the facts (DSU Art.11); judicial economy.*