

EC – TUBE OR PIPE FITTINGS¹

(DS219)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	<i>Brazil</i>	<i>ADA Arts. 1, 2 and 3 GATT Art. VI:2</i>	Establishment of Panel	<i>24 July 2001</i>
			Circulation of Panel Report	<i>7 March 2003</i>
Respondent	<i>European Communities</i>		Circulation of AB Report	<i>22 July 2003</i>
			Adoption	<i>18 August 2003</i>

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC Regulation imposing anti-dumping duties on certain imports.
- **Product at issue:** Malleable cast iron tube or pipe fittings imported from Brazil.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **GATT Art. VI:2 (imposition and collection of anti-dumping duties) and ADA Art. 1 (principles):** The Appellate Body agreed with the Panel that there was nothing in the ADA that requires investigating authorities to reassess a determination of dumping on the basis of a devaluation occurring during the period of investigation (POI), and thus upheld the Panel's rejection of Brazil's claims.
- **ADA Art. 2.2.2, chapeau (dumping determination – normal value):** The Panel rejected Brazil's claim that the EC authorities should have excluded low volume sales figures from their calculation of "normal value" on the ground that the chapeau only allows investigating authorities to exclude data from production and sales that were not made in the ordinary course of trade. The Appellate Body upheld the Panel's findings.
- **ADA Arts. 3.2 (injury determination – volume of imports) and 3.3 (injury determination – cumulative assessment of the effects of imports):** The Appellate Body upheld the Panel's findings that European Communities did not act inconsistently with Arts. 3.2 and 3.3 by cumulatively assessing the effects of the dumped imports. The Appellate Body concluded volumes and prices could be assessed cumulatively without a prior country-specific assessment.
- **ADA Art. 3.5 (injury determination – causation):** While upholding the Panel's ultimate finding that the European Communities did not violate Art. 3.5, the Appellate Body rejected the reasoning used by the Panel and found that (i) under the particular facts of the case the European Communities had no obligation to examine the collective effects of all "causal" factors in determining whether injury to domestic industry might have been caused by those factors; and (ii) the European Communities had determined the cost of production difference to be minimal; and the factor claimed to be injuring the domestic industry had effectively been found not to exist.
- **ADA Arts. 6.2 (evidence – defence of parties' interests) and 6.4 (evidence – access):** The Appellate Body reversed the Panel's findings and found instead that the European Communities acted inconsistently with Art. 6.2 and 6.4 by failing to disclose to the interested parties certain information. The undisclosed information was relevant to the interested parties, had already been used by the EC authorities in the investigation, and was not confidential.

¹ *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*

² Other issues addressed: "implicit" analysis of the "growth" factor (ADA Art. 3.4); exhibit as evidence and Panel's obligation (Arts. 3.1, 3.4 and 17.6(i)); panels terms of reference.