

**EUROPEAN COMMUNITIES – ANTI-DUMPING DUTIES ON
 MALLEABLE CAST IRON TUBE OR PIPE FITTINGS
 FROM BRAZIL**

Report of the Panel
 WT/DS219/R

*Adopted by the Dispute Settlement Body
 on 18 August 2003
 as Modified by the Appellate Body Report*

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I. INTRODUCTION

1.1 On 21 December 2000, Brazil requested consultations with the European Communities pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), Article XXIII of the *General Agreement on Tariffs and Trade 1994* (the "GATT 1994") and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement") concerning the EC anti-dumping measures imposed in respect of imports of malleable cast iron tube or pipe fittings from Brazil.¹ The European Communities and Brazil held consultations on 7 February 2001, but failed to settle the dispute.

1.2 On 7 June 2001, Brazil requested the establishment of a panel pursuant to Article XXIII of the *GATT 1994*, Article 17 of the *Anti-Dumping Agreement* and Article 6 of the *DSU*.²

1.3 At its meeting on 24 July 2001, the Dispute Settlement Body (the "DSB") established a Panel in accordance with Article 6 of the *DSU* to examine the matter

¹ WT/DS219/1.

² WT/DS219/2.

referred to the DSB by Brazil in document WT/DS219/2. At that meeting, the parties to the dispute also agreed that the Panel should have standard terms of reference. The terms of reference are, therefore, the following:

"To examine, in the light of the relevant provisions of the covered agreements cited by Brazil in document WT/DS219/2, the matter referred to the DSB by Brazil in that document and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements".

1.4 On 5 September 2001, the parties agreed to the following composition of the Panel³:

Chairman: Mr. Maamoun Abdel-Fattah
 Members: Ms. Deborah Milstein
 Mr. G. Bruce Cullen

1.5 Chile, Japan, Mexico and the United States reserved their rights to participate in the Panel proceedings as third parties.

1.6 The Panel met with the parties on 4-5 December 2001 and 11-12 June 2002. It met with the third parties on 5 December 2001.

1.7 The Panel submitted its interim report to the parties on 7 October 2002. The Panel submitted its final report to the parties on 10 December 2002.

II. FACTUAL ASPECTS

2.1 This dispute concerns the imposition by the European Communities of anti-dumping measures on imports of malleable cast iron tube or pipe fittings from Brazil.

2.2 Following the filing in April 1999 of an application for an anti-dumping investigation by the Defence Committee of Malleable Cast Iron Pipe Fittings Industry of the European Union⁴, the European Communities published, on 29 May 1999, a Notice of Initiation in its Official Journal⁵, initiating an investigation on malleable cast iron tube or pipe fittings originating in: Brazil, China, Croatia, the Czech Republic, the Federal Republic of Yugoslavia, Japan, South Korea and Thailand.⁶ Industria de Fundicao Tupy Ltda. ("Tupy") was the only Brazilian

³ WT/DS219/3.

⁴ Exhibit BRL-1. The EC producers on whose behalf the application was made – indicated as representing 100 per cent of the EC industry -- are: Georg Fischer Fittings GmbH. of Austria; R. Woeste Co. GmbH & Co. KG. of Germany; Ferriere e Fonderie di Dongo SPA. and Raccordi Pozzi Spoleto S.P.A. of Italy; Accesorios de Tuberia, S.A. of Spain; and Crane Fluid Systems of the United Kingdom.

⁵ O.J. C 151/21, 29 May 1999. Exhibit BRL-2.

⁶ The proceeding against Croatia and the Federal Republic of Yugoslavia was terminated. See Commission Regulation (EC) No. 449/2000, O.J. L 55, 29.02.2000 (the "Provisional Regulation"), Exhibit BRL-12, para. 7.2.2; Council Regulation (EC) No. 1784/2000, O.J. L 208, 18.08.2000 (the "Definitive Regulation"), Exhibit BRL-19, para. K.2. Turkey was listed in the application, but the European Communities decided to exclude it from the investigation as its market share was considered *de minimis* pursuant to Article 5(7) of the Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community. O.J. L 56/6, 6 March 1996 (the "EC basic Regulation"). See Notice of Initiation, *supra*, note 5.

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exporting producer investigated. Imports from certain third countries, including Bulgaria, Poland and Turkey, were not included in the investigation.⁷

2.3 The investigation of dumping and injury covered the period from 1 April 1998 to 31 March 1999 ("Investigation Period"). The EC examination of "trends" in the context of the injury analysis covered the period from 1 January 1995 to 31 March 1999 ("Injury Investigation Period").⁸

2.4 A 42 per cent devaluation of the Brazilian Real occurred in January 1999.

2.5 Numerous communications and exchanges, including the questionnaire and hearings, occurred between the European Communities and Tupy and/or Tupy's legal counsel in the course of the investigation.⁹ A verification visit occurred at the premises of Tupy in September 1999.¹⁰ Communications also occurred between government officials of the European Communities and Brazil relating to aspects of the investigation.¹¹

2.6 On 28 February 2000, the European Communities imposed provisional anti-dumping duties on imports of malleable cast iron tube or pipe fittings from, *inter alia*, Brazil as reflected in the Provisional Regulation.¹²

2.7 On 11 August 2000, the European Communities adopted the Definitive Regulation imposing, *inter alia*, definitive anti-dumping duties of 34.8% on imports of malleable cast iron tube or pipe fittings from Brazil.¹³

III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

A. Brazil

3.1 Brazil requests that the Panel:

⁷ Definitive Regulation, Exhibit BRL-19, paras. 7 and 8.

⁸ Provisional Regulation, Exhibit BRL-12, para. 6.

⁹ These included the following that have been submitted in these Panel proceedings as forming part of the record of the EC investigation (in chronological order): 15 July 1999: first submission of Tupy in the EC investigation, Exhibit BRL-5, and Tupy's questionnaire response, Exhibit BRL-4; 9 August 1999: EC deficiency letter to Tupy, Exhibit BRL-6; 20 August 1999: Tupy's reply to deficiency letter, Exhibit BRL-7; 22 November 1999: second submission of Tupy in the EC investigation, Exhibit BRL-9.; 7 December 1999: hearing and third submission of Tupy in the EC investigation, Exhibit BRL-10; 28 February 2000: EC Disclosure Preceding the Provisional Regulation, Exhibit BRL-11; 30 March 2000; fourth submission of Tupy, Exhibit BRL-13; 29 May 2000: hearing, Exhibit BRL-14; 30 May 2000: Tupy's post-hearing document, Exhibit, BRL-15; 31 May 2000: EC Disclosure Preceding the Definitive Regulation, Exhibit BRL-16; 13 June 2000: fifth submission of Tupy in the EC investigation, Exhibit BRL-17; 20 July 2000: EC transparency letter, Exhibit BRL-18.

¹⁰ An EC letter dated 7 September 1999 to Tupy's legal counsel concerning the verification was submitted in these Panel proceedings as Exhibit BRL-8.

¹¹ These included: meetings between EC and Brazilian officials that occurred on: 23 March 2000 (including the EC Trade Commissioner, Mr. Lamy, and a Brazilian delegation that included Brazil's Minister of Development, Industry and Trade and the Executive Secretary of the Brazilian Foreign Trade Chamber, reflected in Exhibit EC-6); 9 May 2000 (preparatory meeting, reflected in Exhibit EC-2); and 25-26 May 2000 (the European Community-Brazil Joint Committee, reflected in Exhibit EC-4) and written communications from Brazil's Ambassador in Brussels to EC officials dated 10 December 1999, 29 January 2000 and 23 February 2000 (Exhibits EC-27-29).

¹² Provisional Regulation, Exhibit BRL-12.

¹³ Definitive Regulation, Exhibit BRL-19.