COMMISSION DECISION

of 20 October 2000

terminating the examination procedure concerning changes made by the United States of America in their rules of origin for textiles and apparel products

(notified under document number C(2000) 3070)

(2000/667/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation [1], as last amended by Regulation (EC) No 356/95 [2], and in particular Article 11(1) thereof,

After consulting the Advisory Committee.

Whereas:

A. PROCEDURAL BACKGROUND

(1) On 11 October 1996, Federtessile (Italian Federation of Textile Industries) lodged a complaint under Article 4 of Regulation (EC) No 3286/94 (hereinafter 'the Regulation') on behalf of the association representing the Italian silk industry and the association representing the Italian luxury finishing textile industry and their members, concerning the new US rules of origin for textile and apparel products, as foreseen under the Uruguay Round Agreements Act adopted by the US Congress in July 1995.

(2) The complainant alleged that the changes made by the USA to their rules of origin legislation for textile products constituted an obstacle to trade within the meaning of Article 2(1) of the Regulation. More specifically, the complainant referred to two Agreements annexed to the Agreement Establishing the World Trade Organisation (hereinafter 'the WTO Agreement'): Article 4(2) of the Agreement on Textiles and Clothing and Article 2(b) and (c) of the Agreement on Rules of Origin. According to the complainant, these new rules refused Community originating status to products which have been dyed, printed and finished in the Community on loom-state fabrics produced in non-member countries. Under previous US legislation, that was prior to July 1995, these products had Community origin. Under the new 1995 rules, certain fabrics, silk handkerchiefs and scarves were considered to originate where the base fabric was knit and woven, notwithstanding any further processing.

(3) The complainant pointed out that this change threatened Community exports of textile products. Community exports no longer benefited from the free access to the US market that they had enjoyed previously but were subject to any quantitative restrictions that the USA was maintaining vis-à-vis the third country where the weaving of the grey cloth (i.e. the fabric on which subsequent finishing operations were made in the EC) took place. A second category of effects invoked by the complainant concerned the labelling of the Community products exported into the USA. For instance, silk scarves made of Chinese fabrics processed in Italy could no longer be sold under the label 'made in Italy' but had to indicate 'made in China', in some cases just next to the trade mark. This marking requirement clearly affected the brand image, in particular since products exported from the European Communities to the USA are in the high-quality/high-value bracket.

(4) After having examined the admissibility of the complaint, the European Commission considered that the complaint contained sufficient evidence to justify the initiation of a procedure under the Regulation. The European Commission considered that Article 4(2) of the Agreement on Textiles and Clothing could provide the basis for an action for all Community textile exports to the USA which would have been or may have been subject to the quantitative restrictions imposed by the USA on fibre producers. This situation is expressly provided for by Article 4(2) of the Agreement on Textiles and Clothing, which specifies, *inter alia*, that the introduction of changes in rules on the implementation or administration of those restrictions notified or applied under the Agreement should not adversely affect the access available to a member or disrupt trade in textiles products.

[1] OJ L 349, 31.12.1994, p. 71.
[2] OJ L 41, 23.2.1995, p. 3.

(5) The Commission also considered that a significant aspect of the problem lay in the requirement to label the products in question as originating in the country which produced the loom-state fabric and not in the European Community or one of its Member States. This practice was likely to turn the US consumer away from Community exports of the textiles in question because they could no longer be identified as such. Hence the Commission considered that the Agreement on Rules of Origin should also be used as a basis of the action, because Article 2 of that Agreement provides that rules of origin may not be used to pursue trade objectives directly or indirectly and may not themselves create restrictive, distorting or disruptive effects on international trade.

(6) An examination procedure was therefore initiated on 22 November 1996 ([1]).

B. **THE INITIATION OF A DISPUTE SETTLEMENT PROCEDURE IN THE WORLD TRADE ORGANISATION**

(7) On publishing the notice of initiation of the examination procedure, the Commission commenced an investigation in order to complete its legal analysis and to determine the actual extent to which exports of Community textiles would be affected by the new US rules. In March 1997, it appeared that the factual information so far gathered by the Commission already provided sufficient proof of certain adverse trade effects and their possible build-up.

(8) Moreover, it had emerged from the many consultations held before and after the initiation of an examination procedure between representatives of the European Commission and the USA in view of finding a satisfactory solution to the problem, that only a further change to US legislation on origin rules for textiles would restore the security of Community exporters. Therefore, the European Commission took the view that until the US Congress examined such an amendment, further consultations with the US administration would not produce final and satisfactory results since it did not have the power to enter into any undertaking.

(9) Hence, in the absence of a bill to amend US rules of origin for textiles put before the US Congress and resulting in the adoption of legislation in full compliance with US commitments arising from the Uruguay Round, the Commission considered that it was in the Community's interest to act rapidly against the US through official action.

(10) A Commission Decision to initiate a WTO dispute settlement procedure, taken in accordance with Article 14 of the Regulation, was published in the *Official Journal of the European Communities* on 4 March 1997 ([2]).

(11) On 22 May 1997, the European Community requested consultations with the United States of America in the World Trade Organisation (WT/DS85/1) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 8(4) of the Agreement on Textiles and Clothing, Article 7 of the Agreement on Rules of Origin, Article 14(1) of the Agreement on Technical Barriers to Trade (TBT Agreement) and Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 94) regarding the change to US rules of origin for textiles and apparel products.

(12) The request for consultations first pointed out that Article 2.4 of the Agreement on Textile and Clothing requires that no new restriction in terms of products or Members shall be introduced. Article 4(2) of the same Agreement prescribes that the introduction of changes in the implementation or administration of restrictions notified to the WTO shall not: upset the balance of rights and obligations between the members; adversely affect the access available to a member; impede the full utilisation of such access; or disrupt trade under the Agreement. In this respect, the European Communities took the view that the 1995 change in US rules of origin caused precisely those effects and that the United States should have initiated consultations with the European Communities prior to the implementation of such changes, in accordance with Article 4(4) of the Agreement.

(13) The request for consultations further questioned the compatibility of the above mentioned changes in US rules of origin with Article 2 of the Agreement on Rules of Origin which contains disciplines that a Member must abide by when changing its rules of origin during the transitional period. These disciplines prescribe, *inter alia*, that the rules may not be used as instruments to pursue trade objectives, directly or indirectly; that they should not themselves create restrictive, distorting or disruptive effects on international trade; and that they must be administered in a consistent, uniform, impartial and reasonable manner. The European Communities expressed the view that the 1995 US rules of origin did not respect such requirements.

([1]) OJ C 351, 22.11.1996, p. 6.

([2]) OJ L 62, 4.3.1997, p. 43.

(14) Finally, the request for consultations expressed the view that the US requirements on country of origin marking corresponded to a technical regulation as defined in Annex I to be TBT Agreement and, as applied since the changes to the US rules of origin, do not guarantee to imported Community products a treatment equivalent to the one granted to domestic products; a difference in treatment which was not compatible with Article III of GATT 94 and Article 2 of the TBT Agreement.

C. **CONTINUATION OF THE INVESTIGATION**

(15) Meanwhile the investigation was continued with a view to establishing more accurately the effects of the US practice on Community exports of the products in question.

(16) An investigation report was transmitted to the EC Member States on 28 May 1997. The findings of the investigation confirmed that the new US origin rules introduced on 1 July 1996 were contrary to Articles 2(4) and 4(2) of the WTO Agreement on Textiles and Clothing, Article 2 of the WTO Agreement on Rules of Origin, Article 2 of the TBT and Article III of GATT 94. According to the Commission, the implementation of this system was adversely affecting EC exports into the USA of dyed and printed fabrics and flat products resulting therefrom (such as scarves, bed and table linen, handkerchiefs, etc) and that Italy was particularly affected.

D. **NEGOTIATED SOLUTION TO THE DISPUTE**

(17) The WTO dispute settlement procedure was suspended on 15 July 1997, in the light of an apparent negotiated solution to the dispute, laid down in a *procès-verbal* concluded between the two parties that same day. In this *procès-verbal*, the US Administration agreed to bring about legislative change in view of reintroducing the pre-Uruguay Round Act rules of origin for those textiles affected by the procedure. This solution was notified to the Chairman of the WTO Dispute Settlement Body on 11 February 1998. Unfortunately, the United States did not implement the commitments as contained in this notification. Thus, in the European Communities' view, the situation remained inconsistent with the US obligations under the WTO rules.

(18) A new request for WTO consultations was therefore circulated on 25 November 1998 (WT/DS151/1). Consultations were held in Geneva on 15 January 1999, in presence of El Salvador, Honduras, Hong Kong, China, India, Japan, Pakistan and Switzerland. These consultations failed to solve the dispute.

(19) As a result of further bilateral negotiations, the United States and the EC finally found common ground to settle the dispute and on 16 August 1999 both parties signed a second *procès-verbal*. This new compromise took note of the fact that the 1997 *procès-verbal* had not led to a rapid solution and that it was therefore agreed to amend the 1997 *procès-verbal*. The new arrangement obligated the US Administration to submit legislation which amends the rule-of-origin requirements in section 334 of the Uruguay Round Agreements Act in order to allow dyeing, printing, and two or more finishing operations to confer origin on certain fabrics and goods. In particular, it was agreed that: (1) the US Administration would propose to Congress that it adopt a Bill as annexed to the *procès-verbal*, containing an amendment to the US origin rules, set forth in 19 U.S.C. 3592 and to make its best efforts to ensure that the Congress enact this Bill expeditiously, and (2) new rules on visas would provide that a single import visaed invoice/licence could be used on multiple shipments of textile products of cotton or consisting of fibre blends containing 16 % or more by weight of cotton exported from the EC or products of cotton when these products are made up in the EC from fabric which is dyed and printed in the EC and has undergone in the EC two or more finishing operations.

(20) In implementation of point (2) of the *procès-verbal*, the US Administration published in the Federal Register of 6 December 1999 (Vol. 64 NO 233/Notices) an 'Amendment of export visa and quota requirements for certain textile products produced and manufactured in all countries and made up in the European Community'. It amends the United States' visa and quota systems to permit the use of a single visaed document for certain types of products exported from the EC on and after 16 August 1999. These products are: textile products of cotton or consisting of fibre blends containing 16 % or more by weight of cotton exported from the EC or products of cotton made up in the EC from fabric, if they are dyed and printed in the EC and have undergone in the EC two or more finishing operations, and provided that the original visaed invoice/licence is valid and the quantity is not exceeded.

(21) In implementation of point (1) of the *procès-verbal*, an amendment to the US origin rules was attached to the Bill on the Trade and Development Act of 2000. The Trade and Development Act of 2000 was adopted by the US House of Representatives on 2 May 2000, by the US Senate on 11 May 2000 and enacted by the US President on 21 May 2000.

(22) Section 405 thereof, entitled 'Clarification of Section 33 of the Uruguay Round Agreements Act', reinstates the rules of origin that existed prior to the Uruguay Round Agreements Act for certain products. Specifically, the new rules confer origin as to the country in which dyeing, printing, and two or more finishing operations were done on fabrics classified under the HTS as silk, cotton, man-made and vegetable fibres. It also applies to various products classified in 18 identified HS headings (mostly flat products) except for goods made from cotton, wool or fibre blends containing 16 % or more cotton.

(23) After careful examination of the 'Amendment of export visa and quota requirements for certain textile products produced and manufactured in all countries and made up in the European Community' and section 405 of the Trade and Development Act of 2000, and after consultations with the complainant, who expressed his satisfaction, the European Commission concluded that section 405 of the Trade and Development Act of 2000 was in conformity with the US commitments under the *procès-verbal* of 16 August 1999 and effectively removed the obstacles to trade addressed in Federtessile's complaint of 11 October 1996.

E. **RECOMMENDATION**

(24) The examination procedure concerning changes made by the United States of America in their rules of origin for textiles and apparel products should therefore be terminated,

HAS DECIDED AS FOLLOWS:

Sole Article

The examination procedure concerning changes made by the United States of America in their rules of origin for textiles and apparel products initiated on 22 November 1996 is hereby terminated.

Done at Brussels, 20 October 2000.

For the Commission

Pascal LAMY

Member of the Commission