COMMISSION

COMMISSION DECISION

of 21 May 2001

suspending the examination procedures concerning obstacles to trade, within the meaning of Council Regulation (EC) No 3286/94, consisting of trade practices maintained by Brazil in relation to imports of textile products and sorbitol

(notified under document number C(2001) 1449)

(2001/429/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 amended by Regulation (EC) No 356/95 [2], and in particular Article 11(2)(a) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURAL BACKGROUND

1. Examination on imports of textile products

(1) On 12 January 1998 Febeltex, (Fédération Belge du Textile) lodged a complaint pursuant to Article 4 of Regulation (EC) No 3286/94 (hereinafter 'the Regulation').

(2) Febeltex alleged that Community sales of textile products in Brazil are hindered by a number of obstacles to trade within the meaning of Article 2(1) of the Regulation, i.e. 'a practice adopted or maintained by a third country and in respect of which international trade rules establish a right of action'. The alleged obstacles to trade were:

— Brazil's non-automatic licensing system for imports of textile products into this country, The complainant alleged that this system was not justified since it did not implement any commercial policy measure compatible with the WTO,

— Brazilian requirements on import payment terms operated through an 'horizontal regime' (which Brazil applies to all imports), as well as a 'specific regime' (which it applies to imports of textile products),

— a minimum import pricing scheme. According to Febeltex, several textile products were subject to discretionary minimum import prices operated via both the import licensing and the custom valuation systems.

(3) The Commission decided that the complaint contained sufficient evidence to justify the initiation of an examination procedure. A corresponding notice was published in the *Official Journal of the European Communities* [3].

(4) The Brazilian authorities were informed of the initiation of the investigation and were requested to respond to a questionnaire on the alleged barriers to trade. The Brazilian government replied and provided the Commission with the information requested.

(5) The final report on the examination procedure was circulated to the Member States on 9 November 1998, at the meeting of the Advisory Committee.

2. Examination on imports of sorbitol

(6) On 2 October 1998 Cerestar Holding BV lodged a complaint under Article 4 of the Regulation.

[1] OJ L 349, 31.12.1994, p. 71.
[2] OJ L 41, 23.2.1995, p. 3.
[3] OJ C 63, 27.2.1998, p. 2.

(7) The complainant alleged that Community sales of sorbitol in Brazil are hindered by a number of obstacles to trade within the meaning of Article 2(1) of the Regulation. The alleged obstacles to trade were:

— the introduction in December 1997 by the Brazilian Government (Departamento de Operaçoes de Comércio Exterior) in accordance with Comunicado DECEX No 20 of 8.7.1997 of a non-automatic licensing procedure for sorbitol in violation of the relevant provisions of the WTO Agreement on Import Licensing Procedures,

— the alleged arbitrary and/or non justified refusal (or otherwise non-granting) by the Brazilian authorities of import licences in relation with all sorbitol grades entering Brazil below a minimum fob price,

— the implementation of minimum prices via de facto reference prices included in the customs valuation system.

The complainant also claimed a general lack of transparency of the Brazilian import licensing system, which was not duly notified to the WTO.

(8) The Commission decided that the complaint contained sufficient evidence to justify the initiation of an examination procedure. A corresponding notice was published in the *Official Journal of the European Communities* ([1]).

(9) Following an intervention by the Italian chemical producer Lamberti, the examination procedure was extended to cover also carboxymethylcellulose (CMC), a product affected by the same trade barrier.

(10) The Brazilian authorities were informed of the initiation of the investigation and were requested to respond to a questionnaire on the alleged barriers to trade. The Brazilian government replied and provided the Commission with the information requested.

(11) The final report on the examination procedure was circulated to the Member States on 13 July 1999, at the meeting of the Advisory Committee.

B. **FINDINGS OF THE INVESTIGATIONS**

(12) According to the final investigation reports, the two examination procedures led to the conclusion that the Brazilian minimum price system appeared to be in breach of:

— Article XI.1 of the General Agreement on Tariffs and Trade (GATT (1994), as it is a restriction other than duties, taxes or other charges, made effective through import licences on the importation of any product of the territory of any other contracting party, without any WTO compatible justification,

— Article 4.2 of the WTO Agreement on Agriculture, for the same reason as above (in relation with trade in sorbitol),

— Article 2 and 5 of the WTO Agreement on Sanitary and Phytosanitary measures, as it imposes sanitary controls more trade-restrictive than necessary, which are not applied only to the extent necessary to protect human life or health (in relation with trade in sorbitol and CMC).

(13) In addition, the Brazilian non-automatic import licensing system, as applied with a minimum price requirement, appeared to be also in breach of:

— Article 1, 3 and 5 of the WTO Agreement on Import Licensing Procedures, as it is not neutral in application, it is not administered in a fair and equitable manner, it has additional trade-restrictive and -distortive effects on imports without applying any WTO compatible restriction. Moreover, as the system does not implement any measure, so it can not be limited in scope and duration to the measure it implements. In addition, the list of products submitted to non-automatic licensing is not published and the applications for licenses for imports under the minimum price are left without official reply for several months,

— Article X.1 and X.3 of GATT (1994), as it is not published and it is not administered in a uniform, impartial and reasonable manner.

(14) As regards the Brazilian legislation on customs valuation, it appeared that the scale of implementation of reference prices on a systematic basis rendered the way this system was implemented incompatible with Article 1 to 7 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade — GATT (1994) (the Customs Valuation Agreement).

(15) The examination procedures also confirmed that the Brazilian contested practices caused adverse trade effects within the meaning of Article 2(4) and 10(4) of the Trade Barriers Regulation (TBR), as impeded exports of textile products, sorbitol and CMC from the Community to the Brazilian market.

(16) Following the Febeltex investigation, the Commission, by its Decision of 17 March 1999 ([2]), had decided to initiate a WTO Dispute Settlement Procedure. Once the Cerestar investigation was concluded, it was considered appropriate to join the two cases in a single request for consultations on all aspects of the Brazilian import regime found to be WTO incompatible. This request was lodged with a view also to ask Brazil for a radical review of the operation of its laws and regulations on imports according to Article VIII.2 of GATT.

([1]) OJ C 361, 24.11.1998, p. 13.

([2]) OJ L 86 of 30.3.1999.

(17) These consultations were held on 19 November 1999. On this occasion, while declining all allegations relative to minimum pricing practices both at import licensing or customs valuation levels, Brazil admitted that it did not comply with several of its WTO obligations concerning notification in relation with its import licensing system. Moreover, following these consultations, de facto minimum prices were not applied any longer on CMC and sorbitol imports and certain textile products were excluded from the non-automatic licensing requirement.

(18) The Commission acknowledges that the Brazilian systems concerned have undergone significant changes since the lodging of the complaint under the Regulation and that these substantial modifications have improved the possibility for the Community industry to enter the Brazilian market.

(19) However, there are still several aspects of the Brazilian import licensing and customs valuation systems that need to be modified in order to fully comply with Brazil's obligations under the relevant WTO Agreements. In addition, the transparency of the whole import system still needs improvements.

(20) The Commission considers therefore that it would be appropriate to monitor the effect of the changes in the Brazilian system for a period of not less than six months from the date of entry into force of this Decision. Such monitoring would give an indication whether the changes have lastingly improved the situation with regard to the barriers to trade in Brazil.

(21) The examinations procedure concerning obstacles to trade related to import licensing, customs valuation and minimum import prices on the market of the Republic of Brazil should therefore be suspended and the Commission should supervise the situation in accordance with Article 11 (2)(b) of the Regulation.

(22) A report on the enforcement of relevant Brazilian laws and regulations will be issued covering a period of six months from the date of the suspension. Any further action which might appear necessary will be proposed on the basis of that report,

HAS ADOPTED THIS DECISION:

Sole Article

The examination procedures concerning obstacles to trade, within the meaning of Regulation (EC) No 3286/94, consisting of trade practices maintained by Brazil in relation to imports of textile products and sorbitol are hereby suspended.

Done at Brussels, 21 May 2001.

For the Commission

Pascal LAMY

Member of the Commission