COMMISSION

COMMISSION DECISION

of 27 May 2002

terminating the examination procedure concerning obstacles to trade, consisting of trade practices maintained by Brazil in relation to imports of sorbitol

(2002/440/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 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 2 October 1998 a Netherlands company, Cerestar Holding BV, lodged a complaint pursuant to Article 4 of Regulation (EC) No 3286/94.

(2) The complainant alleged that Community sales of sorbitol in Brazil were hindered by a number of obstacles to trade within the meaning of Article 2(1) of Regulation (EC) No 3286/94. The alleged obstacles to trade were:

(a) the introduction in December 1997 by the Brazilian Government (Departamento de Operaçoes de Comércio Exterior) in accordance with Comunicado DECEX No 20 of 8 July 1997 of a non-automatic licensing procedure for sorbitol, in contravention of the relevant provisions of the WTO Agreement on Import Licensing Procedures;

(b) the alleged arbitrary and/or non-justified refusal (or otherwise withholding) by the Brazilian authorities of import licences in relation to all grades of sorbitol entering Brazil below a minimum fob price;

(c) 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 had not been duly notified to the WTO.

(3) The Commission decided that the complaint contained sufficient evidence to justify the initiation of an examination procedure pursuant to Article 8(1) of Regulation (EC) No 3286/94. A corresponding notice was published in the *Official Journal of the European Communities* [3].

B. FINDINGS OF THE INVESTIGATIONS

(4) According to the final investigation report, the examination procedure led to the conclusion that the Brazilian minimum price system appeared to be in breach of:

(a) Article XI(1) of the 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;

(b) Article 4(2) of the WTO Agreement on Agriculture, for the same reason as above;

(c) Article 2 and 5 of the WTO Agreement on Sanitary and Phyto-sanitary 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.

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

[1] OJ L 349, 31.12.1994, p. 71.
[2] OJ L 41, 23.2.1995, p. 3.
[3] OJ C 361, 24.11.1998, p. 13.

(a) Articles 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;

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

(6) As regards the Brazilian legislation on customs valuation, it appeared that the scale and scope of implementation of reference prices on a systematic basis rendered the manner in which this system was implemented incompatible with Articles 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).

(7) The examination procedure also confirmed that the contested Brazilian practices caused adverse trade effects within the meaning of Article 2(4) and 10(4) of the Trade Barriers Regulation (TBR), as they impeded, *inter alia*, exports of sorbitol from the Community to the Brazilian market.

C. **DEVELOPMENTS AFTER THE END OF THE INVESTIGATION**

(8) On the basis of the findings of the investigation, the Commission, by its Decision of 17 March 1999 ([1]), had decided to initiate a WTO Dispute Settlement procedure on several aspects of the Brazilian import regime found to be WTO incompatible.

(9) Accordingly official WTO consultations, regarding sorbitol and other products, were held on 19 November 1999. Following these consultations, *de facto* minimum prices were not applied any longer on sorbitol and certain other imports.

(10) As a result, the Community industry has improved its ability to enter the Brazilian market.

(11) However, there were still several aspects of the Brazilian import licensing and customs valuation systems that needed to be modified in order to comply fully with Brazil's obligations under the relevant WTO Agreements.

(12) By decision of 21 May 2001 ([2]) the Commission therefore suspended the Cerestar examination procedure, while monitoring the effect of the changes in the Brazilian system for a period of six months from the date of entry into force of the Decision.

(13) During the period of monitoring, the Commission services pursued contacts and exchanged letters with the Community industry affected. On the basis of the information provided by the affected industry, the Commission concluded that the disputed barriers to trade in the importation of sorbitol had been eliminated.

D. **CONCLUSIONS**

(14) In view of the above analysis, it is considered that the Cerestar examination procedure has led to a satisfactory situation with regard to the obstacles that faced the trade of sorbitol in Brazil. The examination procedure should therefore be terminated,

HAS DECIDED AS FOLLOWS:

Article 1

The examination procedure 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 sorbitol, is hereby terminated.

Article 2

Article 1 shall be without prejudice to any decision which the Commission may adopt with regard to imports into Brazil of textile products.

Done at Brussels, 27 May 2002.

For the Commission

Pascal LAMY

Member of the Commission

([1]) OJ L 86, 30.3.1999, p. 22.

([2]) OJ L 153, 8.6.2001, p. 30.