COMMISSION DECISION

of 9 July 2002

terminating the examination procedures concerning obstacles to trade, within the meaning of Council Regulation (EC) No. 3286/94, consisting of trade practices maintained by the United States of America in relation to imports of prepared mustard

(2002/604/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 (hereinafter 'the Regulation') 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 7 June 2001 the Federation of the French Condiment Industries (FICF) lodged a complaint pursuant to Article 4 of the Regulation.

(2) FICF alleged that Community exports of prepared mustard to the United States of America are hindered by an obstacle to trade within the meaning of Article 2(1) of the Regulation.

(3) The alleged obstacle to trade was constituted by the United States decision to apply the suspension of trade concessions imposed on prepared mustard, following the Hormones Case, only to exports originating in certain Community Member States (the United Kingdom is included).

(4) The Commission decided, after consultation of the Advisory Committee established by the Regulation, that the complaint contained sufficient evidence to justify the initiation of an examination procedure. Consequently, an examination procedure was initiated on 1 August 2001 [3].

B. FINDINGS OF THE INVESTIGATION

(5) Article 1 of the Regulation states that 'this Regulation establishes 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 […] which […] are aimed at: (a) […]; (b) responding to obstacles to trade that have an effect on the market of a third country, with a view to removing the adverse trade effects resulting therefrom'. Furthermore, Article 4(1) of the Regulation provides that a written complaint may be lodged by Community enterprises that are considered to 'have suffered adverse trade effects as a result of obstacles to trade that have an effect on the market of a third country'.

(6) The examination procedure led to the conclusion that the alleged adverse trade effects do not appear to stem from the obstacle to trade claimed in the complaint, i.e. the United States of America practice of applying withdrawal of concessions selectively against some but not all the Member States (selective sanctioning). In fact, the investigation did not provide any evidence of the fact that making the suspension of concessions also applicable to the United Kingdom would result in greater export opportunities for the complainant for prepared mustard to the United States market. Therefore, no adverse trade effect, as defined in the Regulation, can be attributed to the obstacle to trade claimed by the complaint, other than the trade effects resulting from the suspension of concessions which are authorised and lawfully applied by the United States of America under the WTO Agreement. Therefore, in accordance with Article 11, the examination procedure has demonstrated that the interests of the Community do not require that a specific action be taken against the alleged obstacle to trade under the Regulation.

C. CONCLUSIONS AND RECOMMENDATIONS

(7) The examination procedure did not provide sufficient evidence that the interests of the Community require a specific action to be taken under the Regulation against the adverse trade effects produced by the alleged obstacle to trade. The examination procedure should therefore be terminated.

(8) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee established by the Regulation.

[1] OJ L 349, 31.12.1994, p. 71.
[2] OJ L 41, 23.2.1995, p. 3.
[3] OJ C 215, 1.8.2001, p. 2.

HAS ADOPTED THIS DECISION:

Sole Article

The examination procedure concerning obstacles to trade, within the meaning of the Regulation, consisting of trade practices maintained by the United States of America in relation to imports of prepared mustard initiated on 1 August 2001 is hereby terminated.

Done at Brussels, 9 July 2002.

For the Commission

Pascal LAMY

Member of the Commission