II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 May 2003

on suspending the examination procedure concerning obstacles to trade, consisting of trade practices maintained by the Republic of Colombia in relation to imports of motor vehicles

(2003/421/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(2) thereof,

Whereas:

(1) On 7 July 2000 Volkswagen AG lodged a complaint pursuant to Article 4 of Regulation (EC) No 3286/94 (hereinafter referred to as the 'Regulation'.

(2) Volkswagen AG alleged that Community exports of motor vehicles to the Republic of Colombia 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 general Colombian tax law of 1996 (as amended) (*Estatuto Tributario*), which provides for a distinction between vehicles assembled or manufactured in Colombia and those manufactured or assembled outside Colombia for the purposes of the application of VAT. This law stipulated that the vehicles in the category up to 1 400 cc manufactured or assembled in Colombia are subject to a VAT rate of 20 % compared with a VAT rate of 35 % for imported cars.

(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 18 August 2000 [3].

(5) The investigation provided sufficient evidence for assessing that:

— the Republic of Colombia is in breach of its obligations deriving from Article III.2 of GATT 1994. Therefore, the practice contested by the complainant appeared to be an obstacle to trade within the meaning of Article 2(1) of the Trade barriers Regulation,

— the above described discriminatory VAT regime imposed by Colombia on imported cars causes adverse trade effects within the meaning of Article 2(4) of the Trade barriers Regulation.

(6) Accordingly, as a result of the examination procedure, it was found that action was necessary, in the interests of the Community, to remove the adverse trade effects resulting from obstacles to trade maintained by Colombia.

(7) In order to ensure the exercise of the Community's rights under international trade rules, it appeared reasonable to explore with the Colombian side the possibility for an amicable solution, also in consideration of the difficult political and economic situation of Colombia.

(8) In December 2001, the European Commission and Colombia reached an understanding according to which Colombia committed itself not to increase the present tax differential vis-à-vis imported motor cars up to 1 400 cc and to eliminate the abovementioned VAT differential by 1 July 2005. Under these conditions, the Commission committed itself not to initiate WTO dispute settlement procedures as regards the measures covered by the Trade barriers Regulation investigation. The arrangement stated that it remained without prejudice to the legal position of the European Community and Colombia.

[1] OJ L 349, 31.12.1994, p. 71.
[2] OJ L 41, 23.2.1995, p. 3.
[3] OJ C 236, 18.8.2000, p. 4.

(9) The arrangement provided that the Commission would suspend the examination procedure on this matter, as soon as legislation was adopted by the Colombian parliament to implement the agreement.

(10) A draft law providing for the above gradual elimination of the VAT differential was presented by the Colombian Government to the Colombian parliament on 20 May 2002 and it was adopted on 27 December 2002.

(11) The examination procedure should therefore be suspended.

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

HAS ADOPTED THIS DECISION:

Sole Article

The examination procedure concerning obstacles to trade, consisting of trade practices maintained by Colombia in relation to imports of motor vehicles initiated on 18 August 2000 is hereby suspended.

Done at Brussels, 20 May 2003.

For the Commission

Pascal LAMY

Member of the Commission