COMMISSION

COMMISSION DECISION

of 19 November 2004

terminating the examination procedure concerning obstacles to trade consisting of trade practices maintained by Canada in relation to certain geographical indications for wines (*)

(notified under document number C(2004) 4388)

(2004/891/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], and in particular Article 11(1) thereof,

After consulting the Advisory Committee,

Whereas:

(1) On 6 December 2001, the *Conseil interprofessionnel du vin de Bordeaux* (CIVB) lodged a complaint pursuant to Article 4 of Regulation (EC) No 3286/94 (hereinafter 'the Regulation').

(2) CIVB claimed that Community sales of Bordeaux and Médoc in Canada 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'.

(3) The alleged obstacle to trade resulted from the C-57 Amendment to the Canadian Trademarks Act, which deprived the geographical indications Bordeaux and Médoc of a standard protection in compliance with the protection requirements laid down by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for geographical indications for wines.

(4) 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* [2].

(5) The investigation confirmed the complainant's legal claim that the C-57 Amendment to the Canadian Trademarks Act violated Article 23.1 and 2 as well as Article 24.3 (the standstill clause) of TRIPS and that such infringements could not be justified on the basis of the exception under Article 24.6 of TRIPS.

(6) The examination procedure also concluded that the C-57 Amendment threatens to cause adverse trade effects to the complainant, within the meaning of Article 2(4) and 10(4) of the Regulation.

(7) On 12 February 2003, the Advisory Committee established by the Regulation considered the final report on the examination procedure.

(8) On 24 April 2003, the Commission initialled a Bilateral Agreement with Canada on trade in wine and spirits, which provided for the definitive elimination of the names listed as 'generic' in Canada, including 'Bordeaux', 'Médoc' and 'Medoc' by the entry into force of the agreement.

(*) Annuls and replaces Commission Decision 2004/806/EC (OJ L 354, 30.11.2004, p. 30).

[1] OJ L 349, 31.12.1994, p. 71. Regulation as amended by Regulation (EC) No 356/95 (OJ L 41, 23.2.1995, p. 3).

[2] OJ C 124, 25.5.2002, p. 6.

(9) On 9 July 2003, the Commission decided to suspend [1] the examination procedure with a view to terminate it as soon as Canada effectively eliminated these names from the list of generic names provided by the C-57 Amendment.

(10) On 30 July 2003, the Council approved the conclusion, on behalf of the European Community, of the Bilateral Agreement with Canada on trade in wine and spirits [2]. On 1 June 2004, the Bilateral Agreement entered into force [3].

(11) By the Order Amending Subsections 11.18(3) and (4) of the Trade-marks Act [4], Canada eliminated Bordeaux, Médoc and Medoc from the list of generic names provided by the C-57 Amendment.

(12) Accordingly, it is appropriate to terminate the examination procedure,

HAS DECIDED AS FOLLOWS:

Sole Article

The examination procedure concerning obstacles to trade, consisting of trade practices maintained by Canada in relation to certain geographical indications for wines, is hereby terminated.

Done at Brussels, 19 November 2004.

For the Commission
Pascal LAMY
Member of the Commission

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[1] OJ L 170, 9.7.2003, p. 29.
[2] OJ L 35, 6.2.2004, p. 1.
[3] Article 41 of the Bilateral Agreement provided that: 'This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have exchanged diplomatic notes confirming the completion of their respective procedures for the entry into force of this Agreement'. The EC note was delivered on 16 September 2003 and Canada's response was delivered on 26 April 2004.
[4] The Department of Industry published the *Order Amending Subsections 11.18(3) and (4) of the Trade-marks Act* in the Part II of the *Canada Gazette* of 5 May 2004. The Order is effective as of the date of registration, which is 22 April 2004.