II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 May 2005

concerning the measures necessary as regards an obstacle to trade constituted by trade practices maintained by Brazil affecting trade in retreaded tyres

(notified under document number C(2005) 1302)

(2005/388/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 [1] 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 (WTO), and in particular Articles 12(1) and 13(2) thereof,

Whereas:

(1) On 5 November 2003, the Commission received a complaint pursuant to Article 4 of Regulation (EC) No 3286/94 (the Trade Barriers Regulation). The complaint was lodged by the Bureau international permanent des associations de vendeurs et rechapeurs de pneumatiques (Bipaver).

(2) The complaint concerned certain alleged Brazilian trade practices that prevented the importation into Brazil of retreaded tyres [2]. In particular, the complaint alleged that these practices were inconsistent with Articles III and XI of the General Agreement on Tariffs and Trade 1994 (GATT 1994). On that basis, the complainant asked the Commission to take the necessary action.

(3) The complaint contained sufficient evidence to justify the initiation of a Community examination procedure pursuant to Article 8(1) of the Trade Barriers Regulation. Consequently, the Commission initiated the procedure after consulting with the Member States in the framework of the Advisory Committee, on 7 January 2004 [3].

(4) Following the initiation of the examination procedure, the Commission carried out an investigation. The investigation concerned an alleged import ban and financial penalties relating to imported retreaded tyres.

(5) The investigation considered the relevant Brazilian legislation relating to the import ban and the imposition of financial penalties, and equally took into account the views expressed by the various Brazilian Government Ministries, as well as Brazilian trade associations.

(6) The investigation concluded that the Brazilian measures under investigation are inconsistent with several provisions of GATT 1994, specifically Articles I:1, III:4, XI:1 and XIII:1, and are not justified under Article XX of GATT 1994, the Enabling Clause or other applicable instruments of international law. Since the WTO Agreement prohibits the challenged practices, there is evidence of an obstacle to trade in the sense of Article 2(1) of the Trade Barriers Regulation.

(7) The investigation showed that Brazil was an important market for European manufactures of retreaded tyres prior to the introduction of the ban on 25 September 2000. In the period 1995 to 2000 exports of retreaded tyres to Brazil for passenger cars rose at an average of 58 % and for the first time in the six-year period dropped by 32 % in 2001, i.e. after the imposition of the ban.

[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] The proceeding concerns retreaded tyres falling under the codes 4012 11, 4012 12, 4012 13 and 4012 19 of the Combined Nomenclature. Retreaded tyres (also referred to as retreads) are tyres that are produced by removing the worn part of a used tyre and reconditioning it with a new tread.

[3] OJ C 3, 7.1.2004, p. 2.

(8) Whilst exports continued after the ban's imposition, either on account of import licenses that were still in circulation, or as result of legal challenge by some importers through the Brazilian courts, it is evident that the market was gradually being closed off to European exporters. Whilst many of the Community exporters were eventually able to find new markets, they were still unable to compensate for what had been a large proportion of their export revenue. Not all were successful in finding new markets, or in creating new lines of retreaded tyre for specialist vehicles (4×4, sports, etc.) and therefore the ban, combined with other factors (late payment by the Brazilian importer, exchange-rate fluctuations) drove some Community producers into receivership.

(9) The evidence clearly shows that Community industry has suffered and continues to suffer adverse effects within the meaning of Article 2(4) of the Trade Barriers Regulation.

(10) Export data and the replies to the questionnaires sent by the Commission to European producers and exporters of retreaded tyres support Community industry's claim that Brazil had been an important export market prior to the imposition of the ban and that they had anticipated annual sales reaching 3 million units by the end of 2002. The evidence also corroborates their claim that they have been suffering for the past three years as a result of the Brazilian import ban. In some instances, companies which were unable to find new export markets went into liquidation.

(11) On the basis of the above, it can be concluded that it is in the Community's interest in the sense of Article 12(1) of the Trade Barriers Regulation to take action, within the WTO framework, to seek a rapid removal of the Brazilian import ban on retreaded tyres, which represents a breach of fundamental WTO rules and an obstacle to trade in the sense of Article 2(1) of the Trade Barriers Regulation.

(12) It is of utmost importance for the Community to ensure that WTO partners fully comply with their obligations, just as the Community is required to do. It is therefore fundamental for the good functioning of the multilateral trading system that this incompatibility with WTO rules should be addressed in that forum.

(13) Attempts to resolve this dispute through numerous meetings with the Brazilian authorities since the imposition of the ban, and throughout the course of this investigation, have failed to identify a willingness on the part of the Brazilian authorities to reach a mutually agreed solution. In the absence of any likelihood that the Brazilian position will change, the initiation of a procedure within the framework of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes is therefore deemed necessary.

(14) The measures provided for in this Decision are in accordance with the opinion of the TBR Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The Brazilian Government's imposition of an import ban on retreaded tyres and the related financial penalties appear to be inconsistent with Brazil's obligations under the Marrakech Agreement Establishing the World Trade Organisation and, in particular, provisions of the General Agreement on Tariffs and Trade 1994, and constitutes an obstacle to trade within the meaning of Article 2(1) of Regulation (EC) No 3286/94.

Article 2

The Community will initiate dispute settlement proceedings against Brazil under the Understanding on Rules and Procedures Governing the Settlement of Disputes and other relevant WTO provisions with a view to securing removal of the obstacle to trade.

Done at Brussels, 2 May 2005.

For the Commission

Peter MANDELSON

Member of the Commission