# COMMISSION DECISION

## of 10 September 2008

## terminating the examination procedure concerning the measures imposed by the Republic of Korea affecting the import, distribution and advertising of cosmetics, perfume and toiletries products

*(notified under document number C(2008) 4837)*

(2008/747/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,

Whereas:

### A. PROCEDURAL BACKGROUND

(1) On 2 April 1998, COLIPA (European Cosmetic, Toiletry and Perfumery Association) lodged a complaint under Article 4 of Regulation (EC) No 3286/94 (hereinafter the Regulation) on behalf of those of its members which export to the Republic of Korea or wish to do so.

(2) The complainant alleged that the Community sales of cosmetics products in the Republic of Korea were hindered by various obstacles to trade within the meaning of Article 2(1) of the Regulation. The alleged obstacles to trade were the following:

(a) conformity assessment procedure whereby testing of imported cosmetics had to be carried out by the Korean Administration, in Korea;

(b) burdensome administrative tracking of products, including providing sensitive commercial information to the Korean industry association;

(c) discriminatory authorisation procedure for advertisements;

(d) other practices: labelling procedures, the non-recognition of the EU inventory of cosmetics ingredients, the prohibition of gift with purchase and some advertising difficulties.

(3) The complainant also claimed that these practices were causing adverse trade effects within the meaning of Article 2(4) of the Regulation.

(4) The Commission decided therefore, after consultation of the Advisory Committee established by the Regulation, that there was sufficient evidence to justify initiating an examination procedure for the purpose of considering the legal and factual issues involved. Consequently, an examination procedure was initiated on 19 May 1998 [2].

### B. THE FINDINGS OF THE EXAMINATION PROCEDURE

(5) In 1999, the investigation concluded on the conformity assessment procedure that it was both discriminatory and more burdensome than necessary and therefore was in violation of Articles 5.1.1 and 5.1.2 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement), mainly because the Korean products, contrary to imported cosmetics, were not subject to an authorisation procedure prior to being put on the market. The compulsory documentation for the administrative tracking of products was found to create an unnecessary duplication of administrative work for importers and therefore contrary to Article 5.1.2 of the TBT Agreement. As regards the advertising regime for cosmetics, the Commission did not find evidence that the legislation or its enforcement were discriminatory. Finally, with respect to the other practices mentioned in the complaint, the Korean Regulation on labelling had already been modified and the EU inventory had been recognised. No complaint was possible on the Korean regime for gift with purchase since a complete prohibition could also be found in some Member States. The investigation also concluded that some of the investigated measures had cumulatively caused or threaten to cause adverse effects within the meaning of Article 2(4) of the Regulation.

[1] OJ L 349, 31.12.1994, p. 71.

[2] OJ C 154, 19.5.1998, p. 12.

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

(6) Following the investigation, an agreement on the elimination of the testing of imported cosmetics was reached through an Exchange of Letters at the end of July 1999.

(7) In the meantime, Korea introduced a new legislation on cosmetics regulating the manufacturing, distribution and sale of cosmetics and creating a new category of cosmetic products (functional cosmetics) for which more burdensome procedures were established as compared to 'ordinary cosmetics'. The Commission adopted a decision suspending the TBR procedure [1] in order to monitor the functioning and administration of the new rules on cosmetics. The provisional conclusion of the evaluation of the new regime in 2000 was that it was too burdensome and potentially trade restrictive.

(8) Following a series of discussions with Korean authorities, substantial progress was achieved through two consecutive revisions of the Screening Rules for Functional Cosmetics by the Korean Food and Drug Administration (KFDA). The amendment introduced in 2003 brought some improvements to the screening of functional cosmetics, by accepting 'in vivo' test data, accepting efficacy data for the whole formula (instead of data for specific active ingredients), waiving certain products from efficacy screening and improving the ingredient specification. The amendment adopted in 2004 waived the requirement of stability data, further improved ingredient specification, and listed a number of active ingredients as exempted from efficacy screening.

(9) However, some issues remained unresolved and the importers of EU cosmetics could still not benefit from most of the improvements brought by those amendments due to the strict interpretation and application of the Korean regulations by KFDA in practice.

(10) After four years of continued discussions, the Korean authorities have finally agreed to remove the remaining obstacles on imports and sale of EU cosmetic products in Korea resulting from the implementation of the Korean regulations. Those commitments consist, more specifically in: (a) the determination on a case-by-case basis, subject to review, and taking into account the product as a whole, of whether the label of a cosmetic product leads the consumer to believe that it is a functional cosmetic product (therefore subject to efficacy screening); (b) the recognition of before-and-after comparison tests on finished products (as compared to earlier requirement of comparison tests using placebos); (c) less burdensome procedures for registration and in-market control of anti-wrinkle products; (d) the exemption from efficacy data of same-line products; (e) increased transparency on the approval of active ingredients of functional cosmetics; (f) in relation to customs clearance of imported cosmetic products, the elimination of the obligation to provide confidential data to the Korean industry association and the commitment to specific deadlines; (g) consultation with importers in relation to the preparation, adoption and application of legislation and administrative guidelines related to cosmetic products. These commitments are considered by the complainant (COLIPA) as satisfactory.

D. **CONCLUSION AND RECOMMENDATIONS**

(11) In view of the above analysis, it is considered that the examination procedure has led to a satisfactory situation with regard to the obstacles that faced the trade as alleged in the complaint lodged by COLIPA. The examination procedure should therefore be terminated in accordance with Article 11(1) of the Regulation.

(12) The Advisory Committee has been consulted on the measures provided for in this Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

The examination procedure concerning the measures imposed by the Republic of Korea affecting the import, distribution and advertising of cosmetics, perfume and toiletries products is hereby terminated.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 10 September 2008.

*For the Commission*
Peter MANDELSON
*Member of the Commission*

[1] OJ L 4, 9.1.2001, p. 29.