

DECISIONS

COMMISSION DECISION

of 5 January 2011

terminating the examination procedure concerning the measures imposed by Brazil affecting the import of textile products

(2011/2/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 12 January 1998 Febeltex, (Fédération Belge du Textile) lodged a complaint pursuant to Article 4 of Regulation (EC) No 3286/94.
- (2) The complainant alleged that European Community sales of textile products in Brazil were hindered by a number of obstacles to trade within the meaning of Article 2(1) of Regulation (EC) No 3286/94, including a non-automatic import licensing system and the way this system is developed through, notably, compulsory import payment terms and minimum import prices.
- (3) The Commission decided, after consultation of the Advisory Committee established by Regulation (EC) No 3286/94, 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 27 February 1998 ⁽²⁾.

B. THE FINDINGS OF THE EXAMINATION PROCEDURE

- (4) The final report on the investigation procedure was circulated to EU Member States at the 9 November 1998 meeting of the Advisory Committee.

- (5) The report concluded that the Brazilian non-automatic import licensing system, as applied with a minimum price requirement, appeared to be in breach of:

- (a) Articles 1, 3 and 5 of the WTO Agreement on Import Licensing Procedures, as: (a) it was not neutral in application; (b) it was not administered in a fair and equitable manner; (c) it did not implement any WTO compatible restrictions and therefore was not limited in scope and duration to a measure it implemented; and (d) it had additional trade-restrictive and distortive effects on imports. In addition, the list of products submitted to non-automatic licensing was not published and the applications for licenses for imports under the minimum price were left without official reply for several months;
- (b) Articles X.1 and X.3 of the General Agreement on Tariffs and Trade (GATT) 1994, as the non-automatic import licensing system was not published and was not administered in a uniform, impartial and reasonable manner;
- (c) Article XI.1 of GATT (1994) as the minimum price system was a restriction other than duties, taxes or other charges made effective through import licenses on the importation of any product of the territory of any other contracting party, without any WTO compatible justification.

C. DEVELOPMENTS AFTER THE INVESTIGATION

- (6) On 17 March 1999 ⁽³⁾, the Commission decided to initiate a WTO Dispute Settlement procedure. WTO consultations were held on 19 November 1999. On this occasion, while denying all allegations relative to minimum pricing practices both at import licensing or customs valuation levels, Brazil admitted that it did not comply with several of its WTO obligations concerning notification in relation with its import licensing system.

⁽¹⁾ OJ L 349, 31.12.1994, p. 71.

⁽²⁾ OJ C 63, 27.2.1998, p. 2.

⁽³⁾ OJ L 86, 30.3.1999, p. 22.

- (7) Following these consultations, the Brazilian import licensing and customs valuation systems underwent significant changes and the Community industry's access to the Brazilian market for textile products improved. However there were still several aspects of the Brazilian import licensing and customs valuation systems that needed to be modified in order to ensure Brazil's full compliance with its obligations under the relevant WTO Agreements.
- (8) The Commission therefore decided, by Decision 2001/429/EC ⁽¹⁾, to suspend the abovementioned examination procedure for a period of 6 months, while monitoring the effect of the changes in the Brazilian system.
- (9) During the first quarter of 2002, several contacts with the Brazilian authorities took place with the aim of finding a mutually acceptable solution. The European Community and Brazil signed a Memorandum of Understanding on arrangements in the area of market access for textiles and clothing products on 6 November 2002, under which both parties agreed to refrain from applying non-tariff barriers. In addition the Memorandum of Understanding addressed also the problem concerning customs valuation.
- (10) In the more than 7 years since the signature of the Memorandum of Understanding, the Commission has not been notified of any particular problems or new obstacles related to market access in Brazil for textile products.

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 identified in the complaint lodged by Febeltex. The examination procedure should therefore be terminated in accordance with Article 11(1) of Regulation (EC) No 3286/94.
- (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 Brazil affecting the import of textile products is hereby terminated.

Article 2

This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 5 January 2011.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 153, 8.6.2001, p. 30.