

COMMISSION DECISION

of 6 January 1999

pursuant to Council Regulation (EC) No 3286/94 concerning the Brazilian import licensing regime for steel plates

(notified under document number C(1998) 4468)

(1999/44/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 last amended by Regulation (EC) No 356/95 ⁽²⁾, and in particular Articles 11 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

A. Procedural background

- (1) On 30 April 1997 Eurofer (European Confederation of Iron and Steel Industries) lodged a complaint under Article 4 of Regulation (EC) No 3286/94 (hereinafter, the Regulation) on behalf of its members, which are both national federations and individual companies located in 12 out of 15 European Union Member States and represent more than 90 % of European Coal and Steel Community crude steel production.
- (2) The complainant alleged that the importation of flat stainless steel products into Brazil was subject to non-automatic import licensing. In the view of Eurofer, in May 1996 the practice of the Brazilian authorities responsible for issuing import licences was changed, to the effect that licences began to be granted only if a payment term of maximum 30 days was foreseen for the merchandise to be imported. The complainant pointed out that no announcement of this change or explanation of the legal basis authorising the dismissal of licence applications experienced by importers of Community products was provided by Brazilian authorities, and that the change appeared to result from internal guidelines of the Brazilian administration.

- (3) According to the complainant, enforcement of the new financing deadline was progressively tightened in November 1996, when a written commitment to respect it began to be required of importers of steel products, and again in January 1997, when a new computerised monitoring system for the issuance of import licences (Siscomex) entered into force.
- (4) Finally, the complainant pointed out that a general regime on exchange rate contracts for payment of imports (requiring advance settlement of exchange rate contracts for payment of imports for which payment terms are below 360 days) was adopted on 25 March 1997 through Brazilian President's *Medida Provisória* No 1569, which in turn was implemented by the Bank of Brazil by means of Circular No 2747, also adopted on 25 March 1997. Eurofer contended that this legislation did not replace the special rules applicable to the granting of import licences to steel products, but allowed Brazilian authorities to enforce the measures specific to steel products more strictly and effectively.
- (5) The complainant alleged that the abovementioned Brazilian practices constituted obstacles to trade within the meaning of Article 2(1) of the Regulation as they were in violation of Brazil's international commitments under the WTO and that such obstacles were producing adverse trade effects for the complainant.
- (6) In particular, the complainant alleged that the Brazilian import licensing regime applicable to stainless steel products was in violation of Articles XI, III:4 and X of GATT 1994 as well as Articles 1(4), 3(3), 5 and 1(9) of the WTO Agreement on import licensing procedures.
- (7) As far as adverse trade effects are concerned, the complainant alleged that Community producers' and exporters' business was severely disrupted. With the introduction of the import licensing regime in question, a number of imports were held up at the port of entry, incurring substantial supplementary costs. In addition, the elimination of the customary payment terms of 180 days meant

⁽¹⁾ OJ L 349, 31. 12. 1994, p. 71.⁽²⁾ OJ L 41, 23. 2. 1995, p. 3.

that importers were no longer in a position to buy goods unless the producer or exporter was willing to bear the cost of a longer payment terms period which placed further financial burdens on the producer or exporter, rendering their sales unprofitable. The uncertainty generated by this import regime meant that orders were delayed and potential new orders lost to the detriment of the Community industry.

- (8) The complaint contained sufficient *prima facie* evidence to justify the initiation of a Community examination procedure pursuant to Article 8 of the Regulation. Consequently, the Commission initiated an examination procedure⁽¹⁾, on 27 June 1997.

B. Response of the Brazilian Government to the 30-day payment term requirement for the granting of non-automatic licences

- (9) Following the initiation of the investigation the Brazilian Government, responding to a questionnaire, informed the Commission services that the list of products subject to non-automatic import licensing would be modified soon to exclude those falling within CN codes 7219 and 7220 as mentioned in the complaint under Regulation (EC) No 3286/94. This was confirmed on 25 August 1997 by the Brazilian authorities through the transmission of a copy of a measure (*Comunicado* No 23 by the *Departamento de Operações de Comércio Exterior* (DECEX) of 11 August 1997, published on 13 August and taking effect on publication) by which this change had been achieved. The confirmation was detailed on 11 December 1997 when the Brazilian authorities explained that the products in question are now subject to the automatic import licensing system and that no special payment term requirement is associated with the granting of such automatic licences.
- (10) This removal from the list of products subject to non-automatic licensing was essential since the non-automatic import licensing was the only tangible administrative means of enforcing the requirement related to the specific 30-day payment term. Written evidence of the obligation to respect such a payment term was collected by the complainant only by means of individual decisions that refused to grant non-automatic import licenses.

- (11) Under these circumstances, it can be considered that the removal of the products mentioned in the complaint from the list of products subject to non-automatic import licensing equates to the removal of the obstacle to trade challenged in the complaint in relation to the specific payment term requirement.

C. Brazilian legislation on a general regime on exchange rate contracts for payment of imports

- (12) The Brazilian legislation on a general regime on exchange rate contracts for payment of imports, adopted on 25 March 1997, provides that importers are obliged to contract exchange operations at a local bank within certain deadlines according to the payment terms for the goods concerned, where these payment terms are less than 360 days. This means that importers must make a deposit in the bank concerned until such time as the invoice is paid, or pay a premium for the exchange rate contract to a local bank.
- (13) According to the Brazilian authorities, neither the granting of the import licence nor the clearance of goods at customs is dependent on compliance with this regime. The consequence of non-compliance would be the imposition of fines by the Brazilian Central Bank. With a view to clarifying its scope and effects and to determining its compatibility with international trade rules, the Commission has been closely monitoring the abovementioned Brazilian legislation since its adoption. In this context, the European Community has acted at the multilateral level by initiating consultations under the relevant WTO provisions in January 1998.

D. Recent developments

- (14) Since 1996 there appears to be a trend by the Brazilian authorities both to enforce trade measures having restrictive effects on specific sensitive sectors, in a non-transparent way, and to adopt horizontal legislation which has at the least the potential of affecting imports in a negative manner. The growing number of examination procedures initiated or envisaged under Regulation (EC) No 3286/94, further to complaints by European exporters, is a clear indication of such a trend.
- (15) In particular, further to a complaint by Febeltex, the Belgian textiles industry association, the Commission initiated an examination procedure under the Regulation on 27 February 1998⁽²⁾. This

⁽¹⁾ OJ C 197, 27. 6. 1997, p. 2.

⁽²⁾ OJ C 63, 27. 2. 1998, p. 2.

procedure is related to the non-automatic import licensing system and the way the system is developed through, notably, compulsory import payment terms and the imposition of minimum prices on imports.

- (16) Although the abovementioned procedure focuses on the system's effects on certain textile products, it is however covering a practice which is similar to the practice which is the subject of the present Decision. Thus, despite the termination of the procedure, the Commission will be in a position to continue monitoring the import licensing regime for steel plates actually applied in Brazil.

E. Recommendation

- (17) The examination procedure concerning the Brazilian import licensing regime for steel plates should therefore be terminated,

HAS DECIDED:

Article 1

The examination procedure concerning the Brazilian import licensing regime for steel plates initiated on 27 June 1997 is hereby terminated.

Article 2

This Decision shall apply from the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 6 January 1999.

For the Commission

Leon BRITTAN

Vice-President
