

Commission Decision of 20 February 2008 terminating the examination procedure concerning trade practices maintained by Argentina in relation to the imports of textile and clothing products (2008/200/EC)

COMMISSION DECISION

of 20 February 2008

terminating the examination procedure concerning trade practices maintained by Argentina in relation to the imports of textile and clothing products

(2008/200/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<sup>(1)</sup>, and in particular Articles 11 (1) thereof,

Whereas:

A. PROCEDURAL BACKGROUND

- (1) On 11 October 1999, Euratex (European Apparel and Textile Organisation) lodged a complaint under Article 4 of Council Regulation (EC) No 3286/94 (hereinafter the Regulation) on behalf of those of its members which export to Argentina or wish to do so.
- (2) The complainant alleged that the Community sales of textile and clothing products in Argentina were hindered by 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'. The alleged obstacles to trade were the following.
  - (a) pre-shipment inspection and minimum customs values,
  - (b) excessive requirements for certificates of origin,
  - (c) requirement to submit a Declaration Form on Product Composition,
  - (d) excessively burdensome labelling requirement,
  - (e) statistical tax and discriminatory VAT.
- (3) The complainant also claimed that these practices were causing adverse trade effects within the meaning of Article 2(4) of the Regulation.

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- (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 27 November 1999<sup>(2)</sup>.

#### B. THE FINDINGS OF THE EXAMINATION PROCEDURE

- (5) In 2000, the investigation concluded on the certificate of origin that the burdensome requirements appeared to infringe Article VIII.3 and X of GATT 1994, Article 7.1 of the WTO Agreement on Textiles and Clothing and to contravene the recommendations of Article VIII.1(c) of GATT 1994. The measures on labelling requirements appeared to violate Article 2.2 of the WTO Agreement on Technical Barriers to Trade and to contravene the recommendations of Article VIII.1(c) of GATT 1994. As regards the requirements of the Declaration Form On Product Composition, they appeared to be in breach of Article 2 of the WTO Agreement on Import Licensing Procedures. As for the procedure for controlling the customs value, the Commission services could not express a definitive position due to the recent introduction of a new law regulating this matter. On the pre-shipment inspection issue, no violation of any particular provision of the WTO Agreement on Pre-shipment Inspection could be found. However, it did not appear to adhere to the purpose and spirit of the Agreement. Finally, no violation of WTO rules had been identified with respect to the statistical tax, and the issue of the discriminatory VAT was already addressed in the context of another TBR procedure concerning the import of finished leather in Argentina<sup>(3)</sup>.
- (6) The investigation also concluded that the investigated measures had cumulatively caused or threaten to cause adverse effects within the meaning of Article 2(4) of the Regulation.

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

- (7) Following the investigation, discussions took place over the years with the Argentinean authorities with the aim of achieving an amicable settlement eliminating or gradually easing the above trade barriers.
- (8) With regard to customs valuation practices, the situation has improved over the last years. Transparency has improved while European manufacturers and exporters can participate in the determination of the indicative values for customs valuation. Pre-shipment inspection has been eliminated, and the requirement of a Declaration Form on Products Composition does not appear to create any problem to exporters.
- (9) On the question of the certificate of origin, substantial progress was achieved through the adoption of *Instrucción General No 9/2002 de la Dirección General de Aduanas* on 8 February 2002. Until recently, the main remaining

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obstacle to trade faced by the European industry was the requirement, in the case of triangular trade, to provide the Argentinean authorities not only with the certificate of origin but also with the invoice between the producer of the goods originating in a third country and the exporter in the country of shipping, thereby raising concerns of confidentiality on the original transaction. Through the adoption of *Nota Externa No 3/07* of the *Administracion Federal de Ingresos Publicos (Subdireccion general tecnico legal aduanera)*, Argentina effectively repealed the requirement of providing a copy of the original invoice, which is now replaced by a certificate issued by the competent authorities of the country of shipment, e.g. a Chamber of Commerce, and then legalised in the country of shipment by the Argentinean consulate.

- (10) With regard to the labelling requirements linked to the compulsory sewing of fiscal stamps, the Argentinean authorities provided information according to which the costs of such requirement compared to the value of the shipment is very limited. It thus appears that the possible adverse effects of this remaining obstacle to trade do not have and cannot have a material impact on the economy of the Community or of a region of the Community, or on the textile-producing sector therein.

#### 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 Euratex, or that, in the case of the sewing of fiscal stamps, the investigated measure does not have on its own a material impact on the textile-producing regions of the European Community. 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 DECIDED:

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- (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 340, 27.11.1999, p. 70.
- (3) OJ L 295, 4.11.1998, p. 46.

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