

COMMISSION DECISION**of 27 December 2000****pursuant to Council Regulation (EC) No 3286/94 to suspend the examination procedure concerning obstacles to trade in cosmetics in the Republic of Korea***(notified under document number C(2000) 4128)*

(2001/15/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:

Association (KCIA) containing sensitive commercial information;

(iii) Authorisation procedure for advertisements: allegedly leading to discrimination.

(3) The complainant alleged that the conformity assessment procedure and the administrative tracking requirements were burdensome and unnecessary and that the procedures for testing imposed on imported goods differed from those for domestic products and were therefore discriminatory. The complainant also alleged that the flexible interpretation of the Pharmaceutical Affairs Law with regard to advertising led to discrimination against imported products. The complainant therefore asserted that the Korean practices mentioned above contravened Articles 5.1.1 and 5.1.2 of the WTO Agreement on Technical Barriers to Trade and Article III(4) of GATT 1994.

A. PROCEDURAL BACKGROUND

(1) On 2 April 1998, Colipa, the Liaison Committee of the 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 Korea or wish to do so.

(2) The complainant alleged that Community sales of cosmetic products in the Republic of Korea were hindered by three 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:

(i) Conformity assessment procedure: testing on imported cosmetics carried out by the Korean administration, in Korea, often requiring a period of three months in order to complete the different stages of the procedure;

(ii) Administrative tracking of products: obligation for importers to keep, for three years, registers containing customs, commercial and quality-related information on all cosmetic products that they import. In addition, importers also required to send an annual report to the Korean Cosmetics Industry

(4) The complainant also claimed that its members were suffering adverse trade effects within the meaning of Article 2(4) of the Regulation and that they were in danger of being more adversely affected in the near future. The complainant claimed that additional costs were incurred due to the rigorous conditions imposed on imports of cosmetics in Korea, those costs being in the order of 1,5 % of net sales of products imported into Korea. Those additional costs arose from an excessive workload for its administrative and technical staff, the supplementary costs involved in the tests themselves and the handling and warehousing of the stocks during tests. In addition, the complainant asserted that the discrimination affecting advertising for imported products made it more difficult for them to increase their market share to help compensate for the additional costs incurred by the conformity assessment procedure and excessive administrative requirements.

(5) 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 ⁽³⁾.

⁽¹⁾ OJ L 349, 31.12.1994, p. 71.

⁽²⁾ OJ L 41, 23.2.1995, p. 3.

⁽³⁾ OJ C 154, 19.5.1998, p. 12.

B. THE FINDINGS OF THE EXAMINATION PROCEDURE

- (6) During the examination procedure, which focused on the Korean market, Commission officials met with importers in Korea, the Korean association of cosmetics manufacturers and the Korean authorities. In addition, the Commission officials met with manufacturers in the Community and scientific experts from Colipa to discuss the testing of products and the legislation governing the production and marketing of cosmetics in the Community.
- (7) The examination procedure found that the conformity assessment procedure was both discriminatory and more burdensome than necessary and was thus a violation of Articles 5.1.1 and 5.1.2 of the WTO Agreement on Technical Barriers to Trade. The examination procedure also found that the compulsory documentation requirement, which created an unnecessary duplication of administrative work for importers, was contrary to Article 5.1.2 of the WTO Agreement on Technical Barriers to Trade. The examination procedure found that the legislation governing the advertising regime for cosmetics was not discriminatory.

C. REACTION OF THE KOREAN GOVERNMENT TO THE INITIATION OF THE TBR EXAMINATION PROCEDURE

- (8) The Korean authorities were cooperative and provided the information requested by the Commission.
- (9) The Korean authorities also indicated a willingness to join the Commission in seeking a negotiated agreement that would lead to a solution to the problems encountered by imported cosmetics and, for this purpose, to discuss changes in the Korean legal regime affecting cosmetics.

D. OUTCOME OF THE EXAMINATION PROCEDURE

- (10) Following a series of discussions, the Commission and the Korean authorities reached an agreement whereby the Korean legislation on cosmetics would be amended in regard to the testing of cosmetic products imported into the Republic of Korea. That agreement was confirmed by an Exchange of Letters between the European Commission and the Mission of the Republic of Korea to the European Union. The agreement stated that cosmetics manufactured by producers whose premises had been approved by the competent Korean authorities as being of an equivalent or higher standard than that specified by Korean Good Manufacturing Practice would be exempted from testing at the moment of import. This does not apply to the first import of a product but to all subsequent imports.

- (11) In accordance with the agreement Korea introduced an amendment to its legislation which entered into force on 24 January 2000. Furthermore, Korean officials carried out on-site inspections at the premises of various Community producers and granted the required approvals in February and July 2000. Finally, on 1 July 2000 Korea enacted a law on cosmetics regulating issues relating to the manufacture, importation and sale of 'cosmetics' and 'cosmeceuticals' (a special category of cosmetics for sun and anti-wrinkle protection). The new Cosmetics Law is to be implemented through enforcement regulations, notably, Ministry of Health and Welfare (MHW) Notice No 163 which entered into force on 19 July 2000.

E. RECOMMENDATION

- (12) The Commission services are of the opinion that the agreement reached between the Commission and the Korean authorities has been implemented in its major elements. The Commission services wish to monitor the enforcement guidelines, introduced during 2000, and their implementation in order to be satisfied that their provisions do not contradict any aspect of the agreement. The examination procedure concerning measures imposed by the Republic of Korea affecting the import, distribution and advertising of cosmetics, perfume and toiletries products should be suspended for a period of six months to enable such examination to take place. At the end of that period the Commission services will report to Member States their conclusions on the enforcement guidelines and their compatibility with the agreement. At that time, if all interested parties are satisfied that no concerns remain, the TBR examination procedure will be terminated,

HAS DECIDED AS FOLLOWS:

Sole Article

The examination procedure concerning measures imposed by the Republic of Korea affecting the import, distribution and advertising of cosmetics, perfume and toiletries products initiated on 19 May 1998 is hereby suspended.

Done at Brussels, 27 December 2000.

For the Commission

Pascal LAMY

Member of the Commission