

COMMISSION DECISION

of 23 June 2003

suspending the examination procedure concerning an obstacle to trade consisting of trade practices maintained by Canada in relation to certain geographical indications for wines

(2003/502/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 amended by Regulation (EC) No 356/95 ⁽²⁾, and in particular Articles 11 and 14 thereof,

Whereas:

- (1) On 6 December 2001 CIVB (Conseil Interprofessionnel du Vin de Bordeaux) lodged a complaint pursuant to Article 4 of Council Regulation (EC) No 3286/94 (hereinafter the Regulation).
- (2) CIVB claimed that Community sales of Bordeaux and Médoc in Canada are hindered by a number of 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'.
- (3) The alleged obstacle results from the C-57 Amendment to the Canadian Trademarks act, which deprives the geographical indications Bordeaux and Médoc of a standard protection in compliance with the protection requirements laid down by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for geographical indications for wines.
- (4) The Commission decided that the complaint contained sufficient evidence to justify the initiation of an examination procedure. A corresponding notice was published in the *Official Journal of the European Communities* ⁽³⁾.
- (5) The investigation confirmed the complainant's legal claim that the C-57 Amendment to the Canadian Trade-Marks Act violates Articles 23.1 and 2 as well as Article 24.3 (the so-called standstill clause) of TRIPS and that such infringements cannot be justified on the basis of the exception under Article 24.6 of TRIPS.
- (6) The examination procedure also confirmed that Bordeaux wines have a considerable market share in Canada, which is strictly connected with the Bordeaux/Médoc product's name. If such an asset is not duly protected, holders of the 'Bordeaux' and 'Médoc' geogra-

phical indications could see their market position in Canada seriously curtailed. This prejudice could eventually result in adverse trade effects for the producers of 'Bordeaux' and 'Médoc' wine. It can therefore be concluded that the C-57 Amendment threatens to cause adverse trade effects to the complainant, within the meaning of Article 2(4) and 10(4) of the Regulation.

- (7) On 12 February 2003, the Advisory Committee established by the Regulation considered the final report on the examination procedure.
- (8) On 24 April 2003, the Commission initialled a bilateral agreement with Canada on trade in wine and spirits, which once it has entered into force, would contribute to the protection of Community interests in this field. In particular, this agreement would provide for the definitive elimination of the names listed as 'generic' in Canada, including 'Bordeaux', 'Médoc' and 'Medoc' by the entry into force of the agreement.
- (9) However, the procedure cannot be terminated until the denominations 'Bordeaux', 'Médoc' and 'Medoc' are effectively eliminated from the list of generics of the C-57 Amendment.
- (10) The Commission considers therefore that it is appropriate to suspend the procedure.
- (11) The measures provided for in this decision are in accordance with the opinion of the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Sole Article

The examination procedure concerning obstacles to trade, consisting of trade practices maintained by Canada in relation to certain geographical indications for wines, is hereby suspended.

Done at Brussels, 23 June 2003.

For the Commission

Pascal LAMY

Member of the Commission

⁽¹⁾ OJ L 349, 31.12.1994, p. 71.

⁽²⁾ OJ L 41, 23.2.1995, p. 3.

⁽³⁾ OJ C 124, 25.5.2002, p. 6.