

COMMISSION

COMMISSION DECISION

of 7 November 2006

concerning initiation of dispute settlement proceedings against India under the Understanding on Rules and Procedures Governing the Settlement of Disputes and other relevant WTO provisions as regards an obstacle to trade constituted by an Additional Duty on imported wines and spirits and an Extra Additional Duty on imported spirits maintained by India, and a ban on sale of imported wines and spirits maintained by the Indian State of Tamil Nadu

(2006/790/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⁾, and in particular Articles 12(1) and 13(2) thereof,

Whereas:

- (1) On 20 July 2005, the Commission received a complaint pursuant to Article 4 of Regulation (EC) No 3286/94 (the 'Trade Barriers Regulation'). The complaint was lodged jointly by the Comité européen des entreprises vins ('CEEV') and The European Spirits Organisation ('CEPS').
- (2) The complaint concerned certain alleged Indian trade practices that adversely affected the importation and sale of wines and spirits in India ⁽²⁾. These practices included an Additional Duty applied upon importation

by India to wines and spirits, indirect taxes applied by certain Indian States to imported wines and spirits and restrictions on the sale of imported wines and spirits applied by certain Indian States.

- (3) The complainants alleged that these practices were inconsistent with Articles II, III and XI of the General Agreement on Tariffs and Trade 1994 ('GATT 1994'). On that basis, the complainants asked the Commission to take the necessary action.
- (4) The complaint contained sufficient evidence to justify the initiation of a Community examination procedure pursuant to Article 8(1) of the Trade Barriers Regulation. Consequently, the Commission initiated that procedure after consulting with the Member States in the framework of the Advisory Committee, on 17 September 2005 ⁽³⁾.
- (5) During the examination procedure, the complainants withdrew the claims made in relation to indirect taxes applied by certain Indian States to imported wines and spirits, and India introduced a new Additional Duty ('Extra Additional Duty') which is applied upon importation to wines and spirits. In the framework of that procedure, the Commission therefore carried out an investigation of the Additional Duty, the Extra Additional Duty and the alleged restrictions on the sale of imported wines and spirits applied by certain Indian States.
- (6) The investigation considered the relevant Indian legislation and took into account the views expressed by the various Indian Government Ministries, as well as Community and Indian enterprises and Trade Associations.

⁽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⁾ The proceeding concerns wines, vermouths, aromatised wines and spirits classified under HS headings 2204, 2205, 2206 and 2208. They include still and sparkling wines, vermouths and other fortified wines such as port and sherry, and spirit drinks distilled from raw materials of agricultural origin such as brandies and wine spirits, whiskies, gin, vodka, rum and liqueurs.

⁽³⁾ OJ C 228, 17.9.2005.

- (7) The investigation concluded that the Additional Duty is inconsistent with Article II:1 of GATT 1994, and not justified under Article II:2(a) of GATT 1994, to the extent that it applies to wines and spirits, and that the Extra Additional Duty is inconsistent with Article II:1 of GATT 1994, and not justified under Article II:2(a) of GATT 1994, to the extent that it applies to spirits. Since the WTO Agreement prohibits these practices, there is evidence of an obstacle to trade in the sense of Article 2(1) of the Trade Barriers Regulation.
- (8) The investigation also concluded that further analysis of the alleged restrictions on the sale of imported wines and spirits in certain Indian States was required. An analysis conducted after the completion of the investigation showed that the legislation of the Indian State of Tamil Nadu contains a ban on sale of imported wines and spirits, which is inconsistent with Article III:4 of GATT 1994. Since the WTO Agreement prohibits this practice, there is evidence of an obstacle to trade in the sense of Article 2(1) of the Trade Barriers Regulation.
- (9) The investigation showed that despite the elimination, in 2001, of quantitative restrictions on the importation of wines and spirits following dispute settlement proceedings against India under the Understanding on Rules and Procedures Governing the Settlement of Disputes, imports of wines and spirits from the EC decreased in 2002 and have since 2003 increased only in line with the overall growth in consumption in India of wines and spirits. The effects that reasonably could be expected to flow from the elimination of the quantitative restrictions have therefore not occurred, due to the application of the measures under investigation.
- (10) The investigation showed furthermore that Indian total consumption of wines and spirits amounted in 2004 to respectively 0,67 and 87,1 million nine-litre cases, with an expected growth of between 5 % and 10 % per year over the next decade, and that less than 0,5 % per cent of spirits and less than 9 % of wines consumed in India are imported products, which are subject to the Additional Duty and the Extra Additional Duty.
- (11) The investigation confirmed that there is a large potential market in India for imported wines and spirits, and that elimination of the Additional Duty for wines and spirits and of the Extra Additional Duty for spirits would entail a reduction in retail prices of imported wines and spirits of respectively 22 % to 35 % and 23 % to 48 % in different Indian States. A reduction of that magnitude would significantly increase demand for imported wines and spirits given Indian consumer preferences and the expected growth of the Indian market for wines and spirits.
- (12) This evidence clearly shows that the Community industry has suffered and continues to suffer adverse effects within the meaning of Article 2(4) of the Trade Barriers Regulation.
- (13) The complainants represent a major sector of the economy of the Community, consisting of producers of wines and spirits in respectively 11 and 21 EC Member States. Those producers exported in 2005 goods amounting to EUR 10,45 billion to some 150 third country markets and employed over 600 000 people directly. The investigation showed that the Additional Duty and the Extra Additional Duty has prevented producers within this sector from gaining access to the potentially large Indian market
- (14) On the basis of the above, it can be concluded that it is in the Community's interest in the sense of Article 12(1) of the Trade Barriers Regulation to take action, within the WTO framework, to seek a rapid removal of the Indian Additional Duty on imported wines and spirits, the Indian Extra Additional Duty on imported spirits and the ban on sale of imported wines and spirits in the Indian State of Tamil Nadu, which represent a breach of fundamental WTO rules and an obstacle to trade in the sense of Article 2(1) of the Trade Barriers Regulation.
- (15) It is also of utmost importance for the Community to ensure that WTO partners fully comply with their obligations, just as the Community is required to do. It is therefore fundamental for the good functioning of the multilateral trading system that this incompatibility with WTO rules should be addressed in that forum.
- (16) Attempts to resolve this dispute through numerous meetings with the Indian authorities since the introduction of the Additional Duty, the Extra Additional Duty and the ban on sale in the Indian State of Tamil Nadu, and throughout the course of this investigation, have failed to identify a willingness on the part of the Indian authorities to reach a mutually agreed solution. In the absence of any likelihood that the Indian position will change, the initiation of a procedure within the framework of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes is therefore deemed necessary.
- (17) The measures provided for in this Decision are in accordance with the opinion of the TBR Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The maintenance and application of an Additional Duty on imported wines and spirits and of an Extra Additional Duty on imported spirits by India, and the maintenance and application of a ban on sale of imported wines and spirits by the Indian State of Tamil Nadu appear to be inconsistent with India's obligations under the Marrakech Agreement Establishing the World Trade Organisation and, in particular, under the provisions of the General Agreement on Tariffs and Trade 1994, and constitute an obstacle to trade within the meaning of Article 2(1) of Regulation (EC) No 3286/94.

Article 2

The Community will initiate dispute settlement proceedings against India pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes and the other relevant WTO provisions with a view to securing removal of the obstacle to trade referred to in Article 1.

Done at Brussels, 7 November 2006.

For the Commission

Peter MANDELSON

Member of the Commission