

COMMISSION DECISION

of 5 October 2009

terminating the examination procedure concerning the measures imposed by the Eastern Republic of Uruguay affecting the importation and sale of whisky in Uruguay

(2009/737/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(c) a requirement to affix strip stamps on imported whiskies;

Having regard to the Treaty establishing the European Community,

(d) a requirement to pay taxes in advance on imports.

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 Article 11(1) thereof,

(3) The complainant also claimed that these practices were causing adverse trade effects within the meaning of Article 2(4) of the Regulation.

(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 23 October 2004 ⁽²⁾.

Whereas:

A. PROCEDURAL BACKGROUND

(1) On 2 September 2004 SWA (the Scotch Whisky Association) lodged a complaint under Article 4 of Regulation (EC) No 3286/94 (hereinafter 'the Regulation') on behalf of its members representing the Scotch whisky industry.

(2) The complainant alleged that the Community sales of Scotch whisky in the Eastern Republic of Uruguay were hindered by various obstacles to trade within the meaning of Article 2(1) of the Regulation. The alleged obstacles to trade were all directly linked to the IMESI excise taxes in Uruguay (*IMESI — Impuesto Especifico Interno*), and they consisted in:

(a) the exclusion of whiskies matured for three or more years from the lowest category of taxation;

(b) a lack of transparency and predictability of the IMESI system;

B. THE FINDINGS OF THE EXAMINATION PROCEDURE

(5) During the investigation procedure, the Uruguayan authorities expressed their willingness to explore the prospects for a mutually satisfactory solution. The Commission services agreed to discuss possible means of addressing the issues raised in the Complaint. On the basis of the discussion, the Uruguayan authorities proposed to settle the case on the basis of the following elements:

(a) in response to the first practice of the Uruguayan authorities consisting in excluding from the lowest tax category all whiskies aged more than three years (and EU regulations require that whiskies be matured for at least 3 years), Uruguay proposed to withdraw this requirement with effect from 1 July 2005;

(b) as regards the discriminatory requirement to affix strip stamps on imported whisky bottles, Uruguay committed to amend its regulations by 30 June 2005, with an entry force within 90 days;

⁽¹⁾ OJ L 349, 31.12.1994, p. 71.

⁽²⁾ OJ C 261, 23.10.2004, p. 3.

- (c) thirdly, SWA had also claimed that Uruguay's internal tax arrangements for spirits are in breach of GATT insofar as they are not administered in a uniform, impartial and reasonable manner. The Uruguayan authorities proposed to promote a change in the structure of the IMESI excise tax in order to 'bring it in line with the most usual tax systems at the international level' by 2006;
- (d) concerning the fourth aspect, i.e. the requirement to pre-pay the import tax at a rate of 80 % of the customs value of the goods, we agreed that Uruguay could maintain its system of advance payment of the IMESI tax in order to prevent cases of tax evasion.

C. DEVELOPMENTS AFTER THE END OF THE INVESTIGATION

- (6) The first two steps envisaged by Uruguayan authorities were implemented within the agreed deadlines, but the change of the IMESI structure was delayed until 2007, when, with the Decree No 520/2007 of 27 December 2007, Uruguay introduced a new legislation on its excise taxes.
- (7) In early 2008 the Commission requested Uruguay a number of clarifications as regards the revisions to the structure of the specific internal tax, which have been provided in May 2009. The clarifications provided by the government of Uruguay confirmed that the

Uruguayan system is operating in a manner consistent with the relevant WTO obligations and Uruguay's engagements in the settlement.

D. CONCLUSION AND RECOMMENDATIONS

- (8) 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 SWA. The examination procedure should therefore be terminated in accordance with Article 11(1) of the Regulation.
- (9) The Advisory Committee has been consulted on the measures provided for in this Decision,

HAS DECIDED AS FOLLOWS:

Sole Article

The examination procedure concerning measures imposed by the Eastern Republic of Uruguay affecting the importation and sale of whisky in Uruguay is hereby terminated.

Done at Brussels, 5 October 2009.

For the Commission
Catherine ASHTON
Member of the Commission