COUNCIL DECISION No 813/86/ECSC

of 14 March 1986

on protection against imports which are the subject of dumping between the Community of Ten and the new Member States or between the new Member States during the period throughout which the transitional measures laid down by the Act of Accession of Spain and Portugal apply

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 380 thereof,

Having regard to the proposal from the Commission,

Whereas Article 380 of the Act of Accession of Spain and Portugal provides that the procedures for applying the Article shall be adopted by the Council upon accession ;

Whereas it is necessary to interpret basic concepts such as dumping, normal value and injury and to lay down the procedures to be followed in the determination of dumping and the imposition of anti-dumping duties ;

Whereas it is desirable that the rules for determining normal value should be presented clearly and in sufficient detail ; whereas it should be specifically provided that where sales on the domestic market of the country of export or origin do not for any reason form a proper basis for determining the existence of dumping, recourse may be had to a constructed normal value ; whereas it is appropriate to give examples of situations which may be considered as not representing the ordinary course of trade, in particular where a product is sold at prices which are less than the costs of production, or where transactions take place between parties which are associated or which have a compensatory arrangement ; whereas it is appropriate to list the possible methods of determining normal value in such circumstances ;

Whereas it is expedient to define the export price and to enumerate the necessary allowances to be made in those cases where reconstruction of this price from the first open-market price is deemed appropriate ;

Whereas, for the purpose of ensuring a fair comparison between export price and normal value, it is advisable to establish guidelines for determining the allowances to be made in respect of differences in physical characteristics, in quantities, in conditions and terms of sale and to draw attention to the fact that the burden of proof falls on any person claiming such allowances ;

Whereas the term 'dumping margin' should be clearly defined ;

Whereas it is necessary to set out certain factors that may be relevant for the determination of injury ;

Whereas it is necessary to lay down procedures for the lodging of complaints on behalf on an industry in the Community as constituted before 1 January 1986, hereinafter referred to as the 'Community of Ten', or in Spain or Portugal that considers itself injured or threatened by dumped imports originating from the Community of Ten or Spain and Portugal ;

Whereas rules should be laid down for the lodging of complaints ;

Whereas there should be cooperation between the Member States and the Commission both as regards information about the existence of dumping and injury resulting therefrom, and as regards the subsequent examination of the matter in these cases ; whereas, to this end, consultations should take place with the Member States concerned ;

Whereas it is appropriate to lay down clearly the procedure to be followed during investigations ;

Whereas it should be made clear that, if information is to be treated as confidential, a request to that effect must be made by the supplier of the information and that the information will be disregarded unless a non-confidential summary is provided, where the information is susceptible of such summary ;

Whereas it is necessary to specify the content of the recommendations and authorizations that the Commission may issue ;

Whereas it is essential, in order to ensure that anti-dumping duties are levied in a correct and uniform manner, that common rules for the application of such duties be laid down ; whereas, by reason of the nature of the said duties, such rules may differ from the rules for the levying of normal import duties ;

Whereas it is appropriate to provide for open and fair procedures for the review of measures taken, and for the investigation to be reopened when the circumstances so require ;

Whereas it is necessary to provide that, after a certain period of time, anti-dumping measures will lapse unless the need for their continuance can be shown;

Whereas appropriate procedures should be established for examining applications for refunds of anti-dumping duties;

Whereas it is appropriate to define more precisely the cost to be taken into consideration for the determination of constructed value and of sales below cost on the domestic market;

Whereas it is also appropriate to ensure consistency of the rules concerning parties which are associated or have a compensatory arrangement with each other;

Whereas it is necessary to clarify the provisions relating to the grant of allowances for differences in conditions and terms of sale, including, in particular, those relating to the level of trade, and for import charges;

Whereas it is derirable to state explicitly that the investigation of dumping or subsidization should normally cover a period of not less than six months immediately prior to the initiation of the proceeding and that final determinations must be based on the facts established in respect of the investigation period;

Whereas it is necessary to lay down explicit rules concerning the procedure to be followed after withdrawal or violation of undertakings,

HAS ADOPTED THIS DECISION:

Article 1

Applicability

This Decision lays down provisions for protection against dumping in imports between the Community of Ten and the new Member States or between the new Member States during the period of application of the transitional measures defined by the Act of Accession of Spain and Portugal.

Article 2

Principles and definitions

A. DUMPING

1. The products referred to are products originating in the Community of Ten or in Spain or Portugal.

2. An anti-dumping duty may be applied to any dumped product whose clearance for home use in the Community of Ten or in Spain or Portugal causes inury, where the interests of the Community require Community action.

3. A product shall be considered to have been dumped if its export price to the Community of Ten or to Spain or Portugal is less than the normal value of a like product.

B. NORMAL VALUE

4. For the purposes of this Decision, normal value means:

(a) the comparable price actually paid or payable in the ordinary course of trade for the like product intended for home use in the exporting country or country of origin, providing that if there is considerable variation in prices within the Community of Ten, the weighted average of the prices prevailing within the Community of Ten may be taken as the comparable price; or

(b) when there are no sales of the like product in the ordinary course of trade on the domestic market of the exporting country or country of origin, or when such sales do not permit a proper comparison:

(i) the comparable price of the like product when exported to any third country, which may be the highest such export price but should be a representative price; or

(ii) the constructed value, determined by adding cost of production and a reasonable margin of profit. The cost of production shall be computed on the basis of all costs, in the ordinary course of trade, both fixed and variable, in the country of origin, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses. As a general rule, and provided that a profit is normally realized on sales of products of the same general category on the domestic market of the country of origin, the addition for profit shall not exceed such normal profit. In other cases, the addition shall be determined on any reasonable basis, using available information.

5. Whenever there are reasonable grounds for believing or suspecting that the price at which a product is actually sold for home use in the country of origin is less than the cost of production as defined in paragraph 4 (b) (ii), sales at such prices may be considered as not having been made in the ordinary course of trade if they:

(a) have been made over an extended period of time and in substantial quantities; and

(b) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

In such circumstances, the normal value may be determined on the basis of the remaining sales on the domestic market made at a price which is not less than the cost of production or on the basis of export sales to third countries or on the basis of the constructed value or by adjusting the sub-production-cost price referred to above in order to eliminate loss and provide for a reasonable profit. Such normal-value calculations shall be based on available information.

6. Where a product is not imported directly from the country of origin but is exported to the Community of Ten or to Spain or Portugal from an intermediate country, the normal value shall be the comparable price actually paid or payable for the like product on the domestic market of either the country of export or the country of origin. The latter basis might be appropriate *inter alia* where the product is merely transhipped through the country of export, where such products are not produced in the country of export, or where no comparable price for it exists in the country of export.

7. For the purpose of determining normal value, transactions between parties which appear to be associated or to have a compensatory arrangement with each other may be considered as not being in the ordinary course of trade unless the Community authorities are satisfied that the prices and costs involved are comparable to those involved in transactions between parties which have no such link.

C. EXPORT PRICE

8. (a) The export price shall be the price actually paid or payable for the product sold for export to the Community of Ten or to Spain or Portugal, as the case may be.

(b) In cases where there is no export price or where it appears that there is an association or a compensatory arrangement between the exporter and the importer or a third party or that for other reasons the price actually paid or payable for the product sold for export to the Community of Ten, Spain or Portugal is unreliable, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis. In such cases, allowance shall be made for all costs incurred between importation and resale, including all duties and taxes, and for a reasonable profit margin.

Such allowances shall include, in particular, the following :

(i) usual transport, insurance, handling, loading and ancillary costs ;

(ii) customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods ;

(iii) a reasonable margin for overheads and profit and/or any commission usually paid or agreed.

D. COMPARISON

9. For the purpose of a fair comparison, the export price and the normal value shall be on a comparable basis as regards physical characteristics of the product, quantities and conditions and terms of sale. They shall normally be compared at the same level of trade, preferably at the ex factory level, and as nearly as possible at the same time.

10. If the export price and the normal value are not on a comparable basis in respect of the factors mentioned in paragraph 9, due allowance shall be made in each case, on its merits, for differences affecting price comparability. Where an interested party claims such an allowance, it must prove that its claim is justified.

The following guidelines shall apply in determining these allowances :

(a) differences in physical characteristics of the product : allowance for such differences shall normally be based on the effect on the market value in the country of origin or export ; however, where domestic pricing data in that country are not available or do not permit a fair comparison, the calculation shall be based on the production costs accounting for such differences ;

(b) differences in quantities : allowances shall be made when the amount of any price differential is wholly or partly due to either :

(i) price discounts for quantity sales which have been made freely available in the ordinary course of trade over a representative preceding period of time, usually not less than six months, and in respect of a substantial proportion, usually not less than 20 %, of the total sales of the product under consideration on the domestic market, or where applicable, on a third-country market ; deferred discounts may be recognized if they are based on consistent practice in prior periods, or on an undertaking to comply with the conditions required to qualify for the deferred discount, or

(ii) savings in the cost of producing different quantities.

However, when the export price is based on quantities which are less than the smallest quantity sold on the domestic market, or, if applicable to third countries, then the allowance shall be determined in such a manner as to reflect the higher price for which the smaller market quantity would be sold on the domestic, or, if applicable, on a third-country market ;

(c) differences in conditions and terms of sale : allowances shall be limited to those differences which bear a direct relationship to the sales under consideration, and include, for example, differences in credit terms, guarantees, warranties, technical assistance, servicing, commissions or salaries paid to salesmen, packing, transport, insurance, handling, loading and ancillary costs and, in so far as no account has been taken of them otherwise, differences in the level of trade ; allowances generally will not be made for differences in overheads and general expenses, including research development or advertising costs ; the amount of these allowances shall normally be determined by the cost of such differences to the seller, though consideration may also be given to their effect on the value of the product ;

(d) differences in import charges: an allowance shall be made by reason of the exemption of a product exported to the Community of Ten, to Spain or Portugal, from any import charges borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin or export, or by reason of the refund of such charges.

E. ALLOCATION OF COSTS

11. In general, all cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.

F. LIKE PRODUCT

12. For the purposes of this Decision 'like product' means a product which is identical, i.e. alike in all respects to the product under consideration, or, in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration.

G. DUMPING MARGIN

13. (a) 'Dumping margin' means the amount by which the normal value exceeds the export price.

(b) Where prices vary, the dumping margin may be established on a transaction-by-transaction basis or by reference to the most frequently occurring, representative or weighted average, prices.

(c) Where dumping margins vary, weighted averages may be established.

H. CONSULTATION OF INTERESTED MEMBER STATES

14. For the purposes of this Decision consultation of interested Member States in connection with anti-dumping proceedings means the consultation, in writing and, if necessary, orally, of Member States which have an economic interest in the proceedings and have declared such interest within the period laid down by the Commission when it sent them the information referred to in Article 4 (3) and (6).

Article 3

Injury

1. A determination of injury shall be made only if the dumped imports cause injury, i.e. are causing or threatening to cause, through the effects of the dumping, material injury to an established industry in the Community of Ten or in Spain or Portugal or are materially retarding the establishment of such an industry. Injuries due to other factors, such as the volume and prices of imports that are not dumped or contraction in demand, which, individually or in combination, also adversely affect the industry in the Community of Ten or in Spain or in Portugal, must not be attributed to the dumped imports.

2. An examination of injury shall involve the following factors, no one or several of which can necessarily give decisive guidance:

(a) volume of dumped imports, in particular whether there has been a significant increase, either in absolute terms or relative to production or consumption in the Community of Ten, Spain or Portugal;

(b) the prices of the dumped imports, and in particular whether there has been significant price undercutting as compared with the prices of a like product in the Community of Ten or in Spain or Portugal, as the case may be;

(c) the consequent impact on the industry concerned as indicated by actual or potential trends in the relevant economic factors such as:

— production,

— utilization of capacity,

— stocks,

— sales,

— market share,

— prices (i.e. depression of prices or prevention of price increases which otherwise would have occurred),

— profits,

— return on investment,

— cash flow,

— employment.

3. A determination of threat of injury may only be made where a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

(a) rate of increase of the dumped exports to the Community of Ten or to Spain or Portugal;

(b) export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community of Ten or to Spain or Portugal.

4. The effect of the dumped imports shall be assessed in relation to the production in the Community of Ten or Spain or Portugal of the like product when available data permit its separate identification. When the production in the Community of Ten or Spain or Portugal of the like product has no separate identity, the effect of the dumped imports shall be assessed in relation to the production of the narrowest group or range of production which includes the like product for which the necessary information can be found.

5. The term 'industry in the Community of Ten, in Spain or in Portugal' shall be interpreted as referring to all the producers of the like products in the Community of Ten or in Spain or Portugal, as the case may be, or to those of them whose collective output of the products constitutes a major proportion of the relevant production of those products, except that:

— where some of the producers are related to the exporters or importers or are themselves importers of the allegedly dumped product the term 'industry in the Community of Ten, in Spain or in Portugal' may be interpreted as referring to the rest of the producers,

— in exceptional circumstances the Community of Ten may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as an industry of the Community of Ten, if,

  (a) the producers within such market sell all or almost all their production of the product in question in that market, and

  (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community of Ten.

In such circumstances injury may be found to exist even where a major proportion of the total industry in the Community of Ten is not injured, provided that there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production of the product within such markets.

Article 4

Complaint

1. Any natural or legal person, or any association not having legal personality, acting on behalf of an industry of the Community of Ten, of Spain or Portugal which considers itself injured or threatened by dumped imports may lodge a written complaint.

2. The complaint shall contain sufficient evidence of the existence of dumping and the injury resulting therefrom.

3. The complaint may be submitted to the Commission, or to a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives.

4. The complaint may be withdrawn, in which case proceedings may be terminated unless such termination would not be in the interest of the Community.

5. Where it becomes apparent, after consultation of the Member States concerned, that the complaint does not provide sufficient evidence to justify initiating an investigation, then the complainant shall be so informed.

6. Where, in the absence of any complaint, a Member State is in possession of sufficient evidence both of dumping and of injury resulting therefrom for an industry of the Community of Ten, Spain or Portugal, it shall immediately communicate such evidence to the Commission, which shall send the other Member States a copy thereof.

Article 5

Initiation and subsequent conduct of proceedings

1. Where, after consultation of the interested Member States, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall immediately:

(a) announce the initiation of a proceeding in the *Official Journal of the European Communities;* such announcements shall indicate the product and the Member States concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with paragraph 5;

(b) so advise interested Member States, the complainants and the exporters and importers known to the Commission to be concerned;

(c) commence an investigation at Community level, acting in cooperation with the Member States; such investigation shall cover both dumping and the injury resulting therefrom and shall be carried out in accordance with paragraphs 2 to 8; the investigation of dumping shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding.

2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, examine and verify the records of importers, exporters, traders, agents, producers, trade associations and organizations.

3. (a) The Commission may request Member States :

— to supply information,

— to carry out all necessary checks and inspections, particularly on importers, traders and producers,

— to afford the necessary assistance to the Commission's duly authorized officials to enable them to carry out their duties of conducting checks.

(b) Member States shall take whatever measures are necessary to give effect to requests from the Commission. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.

(c) Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

(d) Officials of the Commission shall be authorized, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

4. (a) The complainant and the importers and exporters known to be concerned, as well as the representatives of the exporting Member State, may inspect all information made available to the Commission by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 6 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission indicating the information required.

(b) Exporters and importers of the product subject to investigation may request to be informed of the essential facts and considerations on the basis of which it is intended to authorize the injured Member State or States to impose anti-dumping measures.

(c) (i) Requests for information pursuant to (b) shall :

(aa) be addressed to the Commission in writing ;

(bb) specify the particular issues on which information is sought ;

(cc) be received, in cases where a recommendation has been addressed to the party or parties who have been found to be at the origin of the dumping, not later than one month after publication of the recommendation.

(ii) the information may be given either orally or in writing, as considered appropriate by the Commission. It shall not prejudice any subsequent recommendation or authorization which may be made or given by the Commission. Confidential information shall be treated in accordance with Article 6.

(iii) information shall normally be given no later than 15 days before the Commission authorizes the injured Member State or Member States to adopt the anti-dumping measures. Representations made after the information is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

5. The Commission may hear the interested parties. It shall so hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities,* made a written request for a hearing showing that they are an interested party likely to be affected by the outcome of the proceedings and that there are particular reasons why they should be heard orally.

6. Furthermore the Commission shall, on request, give the parties directly concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity, the Commission shall take account of the need to preserve confidentiality and of the convenience of the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

7. Anti-dumping proceedings shall not constitute a bar to customs clearance of the product concerned.

8. A proceeding shall be concluded either when it appears at the end of the investigation that it is not necessary to take measures, or when, as a result of a Commission recommendation, the enterprise undertakes to terminate dumping or by the Commission's authorizing the injured Member State or Member States to impose anti-dumping duties as provided for in Article 10.

Article 6

Confidentiality

1. Information received pursuant to this Decision shall be used only for the purpose for which it was requested.

2. (a) Neither the Commission, the Member States, nor the officials of any of these shall reveal any information received pursuant to this Decision for which confidential treatment has been requested by its supplier, without specific permission from the supplier.

(b) Requests for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information, or a statement of the reasons why the information is not susceptible of such summary.

3. Information will ordinarily be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of the information.

4. However, if it appears that a request for confidentiality is not warranted and if the supplier is unwilling to make the information public or to authorize its disclosure in generalized or summary form, the information in question may be disregarded.

The information may also be disregarded where such request is warranted, but the supplier is unwilling to provide a non-confidential summary, provided that the information is susceptible of such summary.

5. This Article shall not preclude the disclosure of general information by the Commission and in particular of the reasons on which the recommendations or authorizations referred to in Articles 8 and 9 are based, or disclosure of the evidence relied on by the Commission in so far as necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

Article 7

Termination of proceedings where protective measures are unnecessary

1. If it becomes apparent, after consultation of the interested Member States, that protective measures are unnecessary, the proceeding shall be terminated.

2. The Commission shall announce the termination in the *Official Journal of the European Communities* setting forth its basic conclusions and a summary of the reasons therefor.

Article 8

Recommendations and undertakings

1. Where the facts indicate that there was dumping during the period covered by the investigation, and injury, the Commission may address to the party or parties who were the originators of the dumping recommendations that dumping be terminated, within the period it lays down, by means of a measure which eliminates the dumping margin or puts an end to the injury resulting therefrom.

2. The party or parties who are the originators of the dumping shall communicate, to the Commission, their undertakings to this effect before expiry of the period laid down.

3. Before addressing its recommendations to the enterprises, the Commission shall consult with the Member States concerned.

4. The Commission may require any party from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.

5. Where an undertaking has been withdrawn or where Commission has reason to believe that it has been violated, the Commission may, if Community interests call for such intervention, after consultations with the interested Member States and after having offered the exporter concerned an opportunity to comment, authorize the introduction of anti-dumping duties on the basis of the facts established before the acceptance of the undertaking.

Article 9

Protective measures

Where the originator or originators of the dumping fail to comply with the recommendation of the Commission or fail to give an undertaking to this end within the period laid down, or fail to comply with such undertaking, the Commission shall authorize the injured Member State or Member States to introduce anti-dumping duties and shall define the conditions and procedures for such duties after consultation of the interested Member States.

Article 10

General provisions on duties

1. Authorizations to impose anti-dumping duties shall state, in particular, the amount and type of duty imposed, the product concerned, the exporting country or country of origin, the name of the supplier, if available, and the grounds on which they are based.

2. The amount of such duties shall not exceed the dumping margin established; it should be less if such lesser duty would be adequate to remove the injury.

3. (a) Anti-dumping duties shall be neither imposed nor increased with retroactive effect.

(b) However, where the Commission determines for dumped products that an undertaking has been violated, the definitive anti-dumping duties may be imposed on products in relation to which the obligation to pay import duties under Council Directive No 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt [1] has been or would have been

[1] OJ No L 179, 17. 7. 1979, p. 31.

incurred not more than 90 days prior to the date of application of duties, except that in the case of violation of an undertaking such retroactive assessment shall not apply to imports which were released for home use in the Community of Ten before the violation.

4. Where a product is imported into the Community of Ten or into Spain or Portugal from more than one country, duty shall be levied at an appropriate amount on a non-discriminatory basis on all imports of such product found to be dumped and, causing injury, other than imports from those sources in respect of which undertakings have been accepted.

5. Where industry in the Community of Ten has been interpreted as referring to the producers in a certain region, the Commission shall give exporters an opportunity to offer undertakings pursuant to Article 8 in respect of the region concerned. If an adequate undertaking is not given promptly or is not fulfilled, a duty may be imposed in respect of the injured Member State or States.

6. In the absence of any special provisions to the contrary adopted when an anti-dumping duty was imposed, the rules on the common definition of the concept of origin and the relevant common implementing provisions shall apply.

7. Anti-dumping duties shall be collected by the injured Member State or Member States authorized to take protective measures in the form, at the rate and according to the other criteria laid down when the duties were imposed, and independently of the customs duties, taxes and other charges normally imposed on imports.

Article 11

Review

1. The undertakings entered into pursuant to Article 8 and the measures imposing anti-dumping duties shall be subject to review, in whole or in part, where warranted.

Such review may be held either at the request of a Member State or on the initiative of the Commission. A review shall also be held where an interested party so requests and submits evidence of changed circumstances sufficient to the need for such review. Such requests shall be addressed to the Commission, which shall inform the interested Member States.

2. Where, after consultations of the interested Member States, it becomes apparent that review is warranted, the proceedings shall be reopened in accordance with Article 5, where the circumstances so require. Such reopening shall not *per se* affect the measures in operation.

3. Where warranted by the review, carried out either with or without reopening of the proceedings, the recommendations, undertakings or anti-dumping duties shall be amended or cancelled according to procedures laid down by the Commission after consulting the interested Member States.

Article 12

1. Subject to paragraph 2, anti-dumping duties and undertakings shall lapse after five years from the date on which they entered into force or were last modified or confirmed.

2. The duties and undertakings shall also lapse on expiry of the period of application of the transitional measures applicable to the product in question pursuant to the terms of the Treaty of Accession of Spain and Portugal.

3. The Commission shall normally, after consultation of the interested Member States, and within six months prior to the end of the five-year period referred to in paragraph 1, publish in the *Official Journal of the European Communities* a notice of the impending expiry of the measures in question and inform the Community industry known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with Article 5 (5).

Where an interested party shows that the expiry of the measure would lead again to injury or threat of injury, the Commission shall carry out a review of the measure. The measure shall remain in effect pending the outcome of the review.

Where anti-dumping duties and undertakings lapse pursuant to this Article, the Commission shall publish a notice to that effect in the *Official Journal of the European Communities.*

Article 13

Refund

1. Where an importer can show that the duty collected exceeds the actual dumping margin, consideration being given to any application of weighted averages, the excess amount shall be reimbursed.

2. In order to request the reimbursement referred to in paragraph 1, the importer shall submit an application to the Commission. The application shall be submitted via the Member State in the territory of which the products were released for home use and within three months of the date on which the amount of the duties to be levied was duly determined by the competent authorities.

The Member State shall forward the application to the Commission as soon as possible, either with or without an opinion as to its merits.

The Commission shall, after consultation of the interested Member States decide whether, and to what extent, the application should be granted.

Article 14

Entry into force

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

It shall apply to :

— proceedings initiated after 1 January 1986,

— proceedings initiated before accession in Spain, Portugal or the Community of Ten,

— the review of measures decided before accession pursuant to Recommendation No 3018/79/ECSC (1) as last amended by Recommendation No 3025/82/ECSC (2), and Decision No 2177/84/ECSC (3)

— the review of measures decided before accession pursuant to the anti-dumping legislation of the new Member States with regard to the Community of Ten.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 March 1986.

For the Council

The President

N. SMIT-KROES

(1) OJ No L 339, 31. 12. 1979, p. 15.
(2) OJ No L 317, 13. 11. 1982, p. 17.
(3) OJ No L 201, 30. 7. 1984, p. 17.