COMMISSION DECISION No 2277/96/ECSC

of 28 November 1996

on protection against dumped imports from countries not members of the European Coal and Steel Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 74 thereof,

(1) Whereas, by Decision No 2424/88/ECSC [1], the Commission adopted common rules for protection against dumped or subsidized imports from countries which are not members of the European Coal and Steel Community;

(2) Whereas those rules were adopted in accordance with existing international obligations, in particular those arising from Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as 'GATT'), from the Agreement on Implementation of Article VI of the GATT (1979 Anti-Dumping Code) and from the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Code on Subsidies and Coutervailing Duties);

(3) Whereas the multilateral trade negotiations concluded in 1994 have led to new Agreements on the implementation of Article VI of GATT and it is therefore appropriate to amend the Community rules in the light of those new Agreements; whereas it is also desirable, in the light of the different nature of the new rules for dumping and subsidies respectively, to have a separate body of Community rules in each of those two areas; whereas, consequently, the new rules on protection against subsidies and countervailing duties will be contained in a separate Decision;

(4) Whereas, in applying the rules it is essential, in order to maintain the balance of rights and obligations which the GATT Agreement establishes, that the Community take account of how they are interpreted by the Community's major trading partners;

(5) Whereas the new agreement on dumping, namely the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as 'the 1994 Anti-Dumping Agreement') contains new and detailed rules, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations; whereas, in view of the extent of the changes and to ensure a proper and transparent application of the new rules, the language of the new agreements should be brought into Community legislation as far as possible;

(6) Whereas the 1994 Anti-dumping Agreement has been implemented by the European Community through Council Regulation (EC) No 384/96 [2], whereas it is therefore appropriate to provide for the analogous application by the European Coal and Steel Community of the principles and definitions contained in Regulation (EC) No 384/96 to ensure the homogeneity of the external trade legislation of the European Communities, whilst taking account of the decision making processes of the European Coal and Steel Community;

(7) Whereas it is desirable to lay down clear and detailed rules on the calculation of normal value; whereas in particular such value should in all cases be based on representative sales in the ordinary course of trade in the exporting country; whereas, it is expedient to define the circumstances in which domestic sales may be considered to be made at a loss and may be disregarded, and in which recourse may be had to remaining sales, or to constructed normal value, or to sales to a third country; whereas it is also desirable to provide for a proper allocation of costs, even in start-up situations; whereas it is also appropriate to lay down guidance as to definition of start-up and the extent and method of allocation; whereas it is also necessary, when constructing normal value, to indicate the methodology that is to be applied in determining the amounts for selling, general and administrative costs and the profit margin that should be included in such value;

(8) Whereas when determining normal value for non-market economy countries, it appears prudent to set out rules for choosing the appropriate market-economy third country that it is to be used for such purpose and, where it is not possible to find a suitable third country, to provide that normal value may be established on some other reasonable basis;

[1] OJ No L 209, 2. 8. 1988, p. 18.

[2] OJ No L 56, 6. 3. 1996, p. 1.

(9) Whereas it is expedient to define the export price and to enumerate the adjustments which are to be made in those cases where a reconstruction of this price from the first open-market price is deemed necessary;

(10) Whereas, for the purpose of ensuring a fair comparison between export price and normal value, it is advisable to list the factors which may affect prices and price comparability and to lay down specific rules as to when and how the adjustments should be made, including the fact that any duplication of adjustments should be avoided; whereas it is also necessary to provide that comparison may be made using average prices although individual export prices may be compared to an average normal value where the former vary by customer, region or time period;

(11) Whereas it is desirable to lay down clear and detailed guidance as to the factors which may be relevant for the determination of whether the dumped imports have caused material injury or are threatening to cause injury; whereas, in demonstrating that the volume and price levels of the imports concerned are responsible for injury sustained by a Community industry, attention should be given to the effect of other factors and in particular prevailing market conditions in the Community;

(12) Whereas it is advisable to define the term 'Community industry' and to provide that parties related to exporters may be excluded from such industry and to define the term 'related'; whereas it is also necessary to provide for anti-dumping action to be taken on behalf of producers in a region of the Community and to lay down guidelines on the definition of such a region;

(13) Whereas it is necessary to lay down who may lodge an anti-dumping complaint, including the extent to which it should be supported by the Community industry, and to lay down the information on dumping, injury and causation which such a complaint should contain; whereas it is also expedient to specify the procedures for the rejection of complaints or the initiation of proceedings;

(14) Whereas it is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require, and should have ample opportunity to present all relevant evidence and to defend their interests; whereas it is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time-limits, if such views and information are to be taken into account; whereas it is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties; whereas there should also be cooperation between the Member States and the Commission in the collection of information;

(15) Whereas it is necessary to lay down the conditions under which provisional duties may be imposed, including the condition that they may be imposed no earlier than 60 days from initiation and no later than nine months thereafter; whereas, for administrative reasons, it is also necessary to provide that such duties may in all cases be imposed by the Commission either directly for a nine-month period or in two stages of six and three months;

(16) Whereas it is necessary to specify procedures for accepting undertakings which eliminate dumping and injury instead of imposing provisional or definitive duties; whereas it is also appropriate to lay down the consequences of any breach or withdrawal of undertakings and to provide that provisional duties may be imposed in cases of suspected violation or where further investigation is necessary to supplement the findings; whereas, in accepting undertakings, care should be taken that the proposed undertakings, and their enforcement, do not lead to anti-competitive behaviour;

(17) Whereas it is necessary to provide that the termination of cases should, irrespective of whether definitive measures are adopted or not, normally take place within 12 months, and in no case later than 15 months, from the initiation of the investigation; whereas investigations or proceedings should be terminated where the dumping is *de minimis* or the injury is negligible, and it is appropriate to define those terms; whereas, where measures are to be imposed, it is necessary to provide for the termination of investigations and to lay down that measures should be less than the margin of dumping if such lesser amount would remove the injury, as well as to specify the method of calculating the level of measures in cases of sampling;

(18) Whereas it is necessary to provide for retroactive collection of provisional duties if that is deemed appropriate, and to define the circumstances which may trigger the retroactive application of duties to

avoid the undermining of the definitive measures to be applied; whereas it is also necessary to provide that duties may be applied retroactively in cases of breach or withdrawal of undertakings;

(19) Whereas it is necessary to provide that measures are to lapse after five years unless a review indicates that they should be maintained; whereas it is also necessary to provide, in cases where sufficient evidence is submitted of changed circumstances, for interim reviews or for investigations to determine whether refunds of antidumping duties are warranted; whereas it is also appropriate to lay down that in any recalculation of dumping which necessitates a reconstruction of export prices, duties are not to be treated as a cost incurred between importation and resale where the said duty is being reflected in the prices of the products subject to measures in the Community;

(20) Whereas it is necessary to provide specifically for the reassessment of export prices and dumping margins where the duty is being absorbed by the exporter through a form of compensatory arrangement and the measures are not being reflected in the prices of the products subject to measures in the Community;

(21) Whereas the 1994 Anti-Dumping Agreement does not contain provisions regarding the circumvention of anti-dumping measures, though a separate GATT Ministerial Decision recognizes circumvention as a problem and has referred it to the GATT Anti-dumping Committee for resolution; whereas given the failure of the multilateral negotiations so far and pending the outcome of the referral to the GATT Anti-Dumping Committee, it is necessary to introduce new provisions into Community legislation to deal with practices which have as their main aim the circumvention of anti-dumping measures;

(22) Whereas it is expedient to permit suspension of anti-dumping measures where there is a temporary change in market conditions which makes the continued imposition of such measures temporarily inappropriate;

(23) Whereas it is necessary to provide that imports under investigation may be made subject to registration upon importation in order to enable measures to be applied subsequently against such imports;

(24) Whereas in order to ensure proper enforcement of measures, it is necessary that Member States monitor, and report to the Commission, the import trade of products subject to investigation or subject to measures, and also the amount of duties collected under this Decision;

(25) Whereas it is necessary to provide for consultation of an Advisory Committee at regular and specified stages of the investigation; whereas the Committee should consist of representatives of Member States with a representative of the Commission as chairman;

(26) Whereas it is expedient to provide for verification visits to check information submitted on dumping and injury, such visits being, however, conditional on proper replies to questionnaires being received;

(27) Whereas it is essential to provide for sampling in cases where the number of parties or transactions is large in order to permit completion of investigations within the appointed time-limits;

(28) Whereas it is necessary to provide that where parties do not cooperate satisfactorily other information may be used to establish findings and that such information may be less favourable to the parties than if they had cooperated;

(29) Whereas provision should be made for the treatment of confidential information so that business secrets are not divulged;

(30) Whereas it is essential that provision be made for proper disclosure of essential facts and considerations to parties which qualify for such treatment and that such disclosure be made, with due regard to the decision-making process in the Community, within a time period which permits parties to defend their interests;

(31) Whereas it is prudent to provide for an administrative system under which arguments can be presented as to whether measures are in the Community interest, including the consumers' interest, and to lay down the time periods within which such information has to be presented as well as the disclosure rights of the parties concerned;

(32) Whereas, for the reasons given in particular in recitals 3 and 6, it is appropriate to reformulate the Community provisions concerning protection against dumped imports from countries not members of the European Coal and Steel Community; whereas those provisions contained in Decision 2424/88/ECSC should therefore no longer apply,

HAS ADOPTED THIS DECISION:

Article 1

Principles

1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

2. A product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

3. The exporting country shall normally be the country of origin. However, it may be an intermediate country, except where, for example, the products are merely transhipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.

4. For the purpose of this Decision, the term 'like product' shall be interpreted to mean a product which is identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 2

Determination of dumping

A. *Normal value*

1. The normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country.

However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers.

Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

2. Sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 5 % or more of the sales volume of the product under consideration to the Community. However, a lower volume of sales may be used when, for example, the prices charged are considered representative for the market concerned.

3. When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be constructed on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative.

4. Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only if it is determined that such sales are made within an extended period of time in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

The extended period of time referred to in the first subparagraph shall normally be one year but shall in no case be less than six months, and sales below unit cost shall be considered to be made in substantial quantities within such a period when it is established that the weighted average selling price is below the weighted average unit cost, or that the volume of sales below unit cost is not less than 20 % of sales being used to determine normal value.

5. Costs shall normally be calculated on the basis of records kept by the party under investigation, provided that such records are in accordance with the generally accepted accounting principles of the country concerned and that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised. In the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. Unless already reflected in such cost allocations, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production.

Where the costs for part of the period for cost recovery are affected by the use of new production facilities requiring substantial additional investment and by low capacity-utilization rates which are the result of start-up operations taking place within or during part of the investigation period, the average costs for the start-up phase shall be those applicable, under the abovementioned allocation rules, at the end of such a phase, and shall be included at that level, for the period concerned, in the

weighted average costs referred to in the second subparagraph of paragraph 4. The length of a start-up phase shall be determined in relation to the circumstances of the producer or exporter concerned, but shall not exceed an appropriate initial portion of the period for cost recovery. For this adjustment to costs applicable during the investigation period, information relating to a start-up phase which extends beyond that period shall be taken into account where it is submitted prior to verification visits and within three months of initiation of the investigation.

6. The amounts for selling, for general and administrative costs and for profits shall be based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(a) the weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

(b) the actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;

(c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

7. In the case of imports from non-market economy countries and, in particular, those to which Council Regulation (EC) No 519/94 [1] applies, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

An appropriate market-economy third country shall be selected in a not unreasonable manner, due account being taken of any reliable information made available at the time of selection. Account shall also be taken of time-limits; where appropriate, a market-economy third country which is subject to the same investigation shall be used.

The parties to the investigation shall be informed shortly after its initiation of the market economy third country envisaged and shall be given 10 days to comment.

B. *Export price*

8. The export price shall be the price actually paid or payable for the product when sold for export from the exporting country to the Community.

9. In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer of a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer or if the products are not resold to an independent buyer or are not resold in the condition in which they were imported, on any reasonable basis.

In these cases, adjustment for all costs, including duties and taxes, incurred between importation and resale, and for profits accruing, shall be made so as to establish a reliable export price, at the Community frontier level.

The items for which adjustment shall be made shall include those normally borne by an importer but paid by any party, either inside or outside the Community, which appears to be associated or to have a compensatory arrangement with the importer or exporter, including: usual transport, insurance, handling, loading and ancillary costs; customs duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the goods; and a reasonable margin for selling, general and administrative costs and profit.

C. *Comparison*

10. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at as nearly as possible the same time and with due account taken of other differences which affect price comparability. Where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors which

[1] OJ No L 67, 10. 3. 1994, p. 89.

are claimed, and demonstrated, to affect prices and hence price comparability. Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade. When the specified conditions are met, the factors for which adjustment can be made are as follows:

(a) Physical characteristics

An adjustment shall be made for differences in the physical characteristics of the product concerned. The amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference.

(b) Import charges and indirect taxes

An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Community.

(c) Discounts, rebates and quantities

An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if these are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in earlier periods, including compliance with the conditions required to qualify for the discount or rebates.

(d) Level of trade

An adjustment for differences in levels of trade, including any differences which may arise in OEM (Original Equipment Manufacturer) sales, shall be granted where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade to the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the market value of the difference.

(e) Transport, insurance, handling, loading, and ancillary costs

An adjustment shall be made for differences in the directly related costs incurred for conveying the product concerned from the premises of the exporter to an independent buyer, where such costs are included in the prices charged. Those costs shall include transport, insurance, handling, loading and ancillary costs.

(f) Packing

An adjustment shall be made for differences in the directly related packing costs for the product concerned.

(g) Credit

An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

(h) After-sales costs

An adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract.

(i) Commissions

An adjustment shall be made for differences in commissions paid in respect of the sales under consideration.

(j) Currency conversions

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice but the date of contract, purchase order or order confirmation may be used if these more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

D. *Dumping margin*

11. Subject to the relevant provisions governing fair comparison, the existence of margins of dumping during the investigation period shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all export transactions to the Community, or by a comparison of individual normal values and individual export prices to the Community on a transaction-to-transaction basis. However, a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in the first sentence of this paragraph would not reflect the full degree of dumping being practised. This paragraph shall not preclude the use of sampling in accordance with Article 17.

12. The dumping margin shall be the amount by which the normal value exceeds the export price. Where dumping margins vary, a weighted average dumping margin may be established.

Article 3

Determination of injury

1. Pursuant to this Decision, the term 'injury' shall, unless otherwise specified, be taken to mean material injury to the Community industry, threat of material injury to the Community industry or material retardation of the establishment of such an industry, and shall be interpreted in accordance with the provisions of this Article.

2. A determination of injury shall be based on positive evidence and shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Community market for like products, and (b) the consequent impact of those imports on the Community industry.

3. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Community. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the Community industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.

4. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9 (3) and that the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

5. The examination of the impact of the dumped imports on the Community industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including: the fact that an industry is still in the process of recovering from the effects of past dumping or subsidization; the magnitude of the actual margin of dumping; actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting Community prices; actual and potential negative effects on cash flow, stocks, employment, wages, growth, or ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

6. It must be demonstrated, from all the relevant evidence presented in relation to paragrah 2, that the dumped imports are causing injury within the meaning of this Decision. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph 3 are responsible for an impact on the Community industry as provided for in paragraph 5, and that this impact exists to a degree which enables it to be classified as material.

7. Known factors other than the dumped imports which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6. Factors which may be considered in this respect include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and Community producers, developments in technology and the export performance and productivity of the Community industry.

8. The effect of the dumped imports shall be assessed in relation to the production of the Community industry of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by examination of the production of the narrowest group or range of products that includes the like product, for which the necessary information can be provided.

9. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

In making a determination regarding the existence of a threat of material injury, consideration should be given to *inter alia* such factors as:

(a) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;

(b) sufficient freely disposable capacity of the exporter or an imminent substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;

(c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and

(d) stock-levels of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance, but the totality of the factors considered must lead to the conlcusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.

Article 4

Definition of 'Community industry'

1. For the purposes of this Decision, the term 'Community industry' shall be interpreted as referring to the Community producers, as a whole, of the like products or to those of them whose collective output of the products constitutes a major proportion, as defined in Article 5 (4), of the total Community production of those products, except that:

(a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers;

(b) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (i) the producers within such a market sell all or almost all of their production of the product in question in that market, and (ii) the demand in that market is not to any substantial degree met by producers of the product in question located elsewhere in the Community. In such circumstances, injury may be found to exist even where a major portion of the total Community industry 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 within such market.

2. For the purpose of paragraph 1, producers shall be considered to be related to exporters or importers only if (a) one of them directly or indirectly controls the other, or (b) both of them are directly or indirectly controlled by a third person, or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

3. Where the Community industry has been interpreted as referring to the producers in a certain region, the exporters shall be given an opportunity to offer undertakings pursuant to Article 8 in respect of the region concerned. In such cases, when evaluating the Community interest of the measures, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or the situations set out in Article 8 (9) and (10) apply, a provisional or definitive duty may be imposed in respect of the Community as a whole. In such cases, the duties may, if practicable, be limited to specific producers or exporters.

4. The provisions of Article 3 (8) shall be applicable to this Article.

Article 5

Initiation of proceedings

1. Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry.

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. The complaint shall be deemed to have been lodged on the first working day following its delivery to the Commission by registered mail or following the issuing of an acknowlegement of receipt by the Commission.

Where, in the absence of any complaint, a Member State is in possession of sufficient evidence of dumping and of resultant injury to the Community industry, it shall immediately communicate such evidence to the Commission.

2. A complaint under paragraph 1 shall include evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

(a) identity of the complainant and a description of the volume and value of the Community production of the like product by the complainant. Where a written complaint is made on behalf of the Community industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known Community producers of the like product (or associations of Community producers of the like product) and, to the extent possible, a description of the volume and value of Community production of the like product accounted for by such producers;

(b) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer, and a list of known persons importing the product in question;

(c) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the Community;

(d) information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Community market and the consequent impact of the imports on the Community industry, as demonstrated by relevant factors and indices having a bearing on the state of the Community industry, such as those listed in Article 3 (3) and (5).

3. The Commission shall, as far as possible, examine the accuracy and adequacy of the evidence provided in the complaint to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. An investigation shall not be initiated pursuant to paragraph 1 unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by Community producers of the like product, that the complaint has been made by or on behalf of the Community industry. The complaint shall be considered to have been made by or on behalf of the Community industry if it is supported by those Community producers whose collective output constitutes more than 50 % of the total production of the like product produced by that portion of the Community industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry.

5. The authorities shall, unless a decision has been made to initiate an investigation, avoid publishing the complaint seeking the initiation of an investigation. However, after receipt of a properly documented complaint and before proceeding to initiate an investigation, the government of the exporting country concerned shall be notified.

6. If in special circumstances, it is decided to initiate an investigation without having received a written complaint by or on behalf of the Community industry for the initiation of such investigation, this shall be done on the basis of sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify such initiation.

7. The evidence of both dumping and injury shall be considered simultaneously in the decision as to whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either dumping or of injury to justify proceeding with the case. Proceedings shall not be initiated against countries whose imports represent a market share of below 1 %, unless such countries collectively account for 3 % or more of Community consumption.

8. The complaint may be withdrawn prior to initiation, in which case it shall be considered not to have been lodged.

9. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall do so within 45 days of the lodging of the complaint and shall publish a notice in the Official Journal of the European Communities. Where insufficient evidence has been presented, the complainant shall, after consultation, be so informed within 45 days of the date on which the complaint is lodged with the Commission.

10. The notice of initiation of the proceedings shall announce the initiation of an investigation, indicate the product and countries 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 periods within which interested parties may make themselves known, present their views in writing and submit information if such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard by the Commission in accordance with Article 6 (5).

11. The Commission shall advise the exporters, importers and representative associations of importers or exporters known by it to be concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings and shall, with due regard to the protection of confidential information, supply the full text of the written complaint received pursuant to paragraph 1 to the known exporters and to the authorities of the exporting country, and make it available upon request to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written complaint may instead be supplied only to the authorities of the exporting country or to the relevant trade association.

12. An anti-dumping investigation shall not hinder the procedures for customs clearance.

Article 6

The investigation

1. Following the initiation of the proceeding, the Commission, acting in cooperation with the Member States, shall commence an investigation at Community level. Such investigation shall cover both dumping and injury and these shall be investigated simultaneously. For the purpose of a representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of not less than six months immediately prior to the initiation of the proceeding. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. Parties receiving questionnaires used in an anti-dumping investigation shall be allowed at least 30 days to reply. The time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country. An extension to the 30 day period may be granted, due account being taken of the time-limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

3. The Commission may request Member States to supply information, and Member States shall take whatever steps are necessary in order to give effect to such requests. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out. 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.

4. The Commission may request Member States to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers, and to carry out investigations in third countries, provided that the firms concerned give their consent and that the government of the country in question has been officially notified and raises no objection. Member States shall take whatever steps are necessary in order to give effect to such requests from the Commission. 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.

5. The interested parties which have made themselves known in accordance with Article 5 (10) shall be heard 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 result of the proceeding and that there are particular reasons why they should be heard.

6. Opportunities shall, on request, be provided for the importers, exporters, representatives of the government of the exporting country and the complainants which have made themselves known in accordance with Article 5 (10), to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to 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. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.

7. The complainants, importers and exporters and their representative associations, users and consumer organizations, which have made themselves known in accordance with Article 5 (10), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and that is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

8. Except in the circumstances provided for in Article 18, the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

9. For proceedings initiated pursuant to Article 5 (9), an investigation shall, whenever possible, be concluded within one year. In any event, such investigations shall in all cases be concluded within 15 months of initiation, in accordance with the findings made pursuant to Articles 8 and 9.

Article 7

Provisional measures

1. Provisional duties may be imposed if proceedings have been initiated in accordance with Article 5, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments in accordance with Article 5 (10), if a provisional affirmative determination has been made of dumping and consequent injury to the Community industry, and if the Community interest calls for intervention to prevent such injury. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but not later than nine months from the initiation of the proceedings.

2. The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it shall be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

3. Provisional duties shall be secured by a guarantee, and the release of the products concerned for free circulation in the Community shall be conditional upon the provision of such guarantee.

4. The Commission shall take provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place ten days, at the latest, after notification to the Member States of the action taken by the Commission.

5. Where a Member State requests immediate intervention by the Commission and where the conditions in paragraph 1 are met, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping duty shall be imposed.

6. The Commission shall forthwith inform the Member States of any decision taken under paragraphs 1 to 5.

7. Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine month period, where exporters representing a significant proportion of the trade involved so request or do not object upon notification by the Commission.

Article 8

Undertakings

1. Investigations may be terminated without the imposition of provisional or definitive duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices, so that the Commission, after consultation, is satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and they shall be less than the margin of dumping if such increases would be adequate to remove the injury to the Community industry.

2. Undertakings may be suggested by the Commission, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice consideration of the case. However, it may be determined that a threat of injury is more likely to materialize if the dumped imports continue. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to Article 20 (5).

3. Undertakings offered need not be accepted if their acceptance is considered impractical, such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. The exporter concerned may be provided with the reasons for which it is proposed to reject the offer of an undertaking and may be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

4. Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking, so that it may be made available to interested parties to the investigation.

5. Where undertakings are, after consultation, accepted, the investigation shall be terminated by the Commission.

6. If the undertakings are accepted, the investigation of dumping and injury shall normally be completed. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases it may be required that an undertaking be maintained for a reasonable period. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue, consistently with its terms and the provisions of this Decision.

7. The Commission shall require any exporter from which an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.

8. Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of Article 11, be deemed to take effect from the date on which the investigation is concluded for the exporting country.

9. In case of breach or withdrawal of undertakings by any party, a definitive duty shall be imposed in accordance with Article 9, on the basis of the facts established within the context of the investigation which led to the undertaking, provided that such investigation was concluded with a final determination as to dumping and injury and that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment.

10. A provisional duty may, after consultation, be imposed in accordance with Article 7 on the basis of the best information available, where there is reason to believe that an undertaking is being breached, or in case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded.

Article 9

Termination without measures; imposition of definitive duties

1. Where the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest.

2. Where, after consultation, protective measures are unnecessary, the investigation or proceeding shall be terminated by the Commission.

3. For a proceeding initiated pursuant to Article 5 (9), injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 5 (7). For the same proceeding, there shall be immediate termination where it is determined that the margin of dumping is less than 2 %, expressed as a percentage of the export price, provided always that it is only the investigation that shall be terminated where the margin is below 2 % for individual exporters and they shall remain subject to the proceeding and may be re-investigated in any subsequent review carried out for the country concerned pursuant to Article 11.

4. Where the facts as finally established show that there is dumping and injury caused thereby, and the Community interest calls for intervention in accordance with Article 21, a definitive anti-dumping duty shall be imposed by the Commission, after consultation of the Advisory Committee. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry.

5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this Decision have been accepted. The decision imposing the duty shall specify the duty for each supplier or, if that is impracticable, and as a general rule in the cases referred to in Article 2 (7), the supplying country concerned.

6. When the Commission has limited its examination in accordance with Article 17, any anti-dumping duty applied to imports from exporters or producers which have made themselves known in accordance with Article 17 but were not included in the examination shall not exceed the weighted average margin of dumping established for the parties in the sample. For the purpose of this paragraph, the Commission shall disregard any zero and *de minimis* margins, and margins established in the circumstances referred to in Article 18. Individual duties shall be applied to imports from any exporter or producer which is granted individual treatment, as provided for in Article 17.

Article 10

Retroactivity

1. Provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Articles 7 (1) or 9 (4), as the case may be, enters into force, subject to the exceptions set out in this Decision.

2. Where a provisional duty has been applied and the facts as finally established show that there is dumping and injury, the Commission shall decide, irrespective of whether a definitive anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitively collected. For this purpose, 'injury' shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury. In all other cases involving such threat or retardation, any provisional amounts shall be released and definitive duties can only be imposed from the date that a final determination of threat or material retardation is made.

3. If the definitive anti-dumping duty is higher than the provisional duty, the difference shall not be collected. If the definitive duty is lower than the provisional duty, the duty shall be recalculated. Where a final determination is negative, the provisional duty shall not be confirmed.

4. A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, provided that imports have been registered in accordance with Article 14 (5), the Commission has allowed the importers concerned an opportunity to comment, and:

(a) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and injury alleged or found; and

(b) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

5. In cases of breach or withdrawal of undertakings, definitive duties may be levied on goods entered for free circulation not more than 90 days before the application of provisional measures, provided that imports have been registered in accordance with Article 14 (5), and that any such retroactive assessment shall not apply to imports entered before the breach or withdrawal of the undertaking.

Article 11

Duration, reviews and refunds

1. An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

2. A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent reveiw which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurence of dumping and injury. Such an expiry review shall be initiated on the intiative of the Commission, or upon request made by or on behalf of Community producers, and the measure shall remain in force pending the outcome of such review.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such a likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping.

In carrying out investigations under this paragraph, the exporters, importers, the representatives of the exporting country and the Community producers shall be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request, and conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

A notice of impending expiry shall be published in the *Official Journal of the European Communities* at an appropriate time in the final year of the period of application of the measures as defined in this paragraph. Thereafter, the Community producers shall, no later than three months before the end of the five year period, be entitled to lodge a review request in accordance with the second subparagraph. A notice announcing the actual expiry of measures pursuant to this paragraph shall also be published.

3. The need for the continued imposition of measures may also be reviewed, where warranted, on the initiative of the Commission or at the request of a Member State or, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Community producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be intiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied, or that the existing measure is not, or is no longer, sufficient to counteract the dumping which is causing injury.

In carrying out investigations pursuant to this paragraph, the Commission may, *inter alia,* consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are

achieving the intended results in removing the injury previously established under Article 3. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.

4. A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question which have not exported the product during the period of investigation on which the measures were based.

The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, and that it has actually exported to the Community following the abovementioned investigation period, or where it can demonstrate it has entered into a an irrevocable contractual obligation to export a significant quantity to the Community.

A review for a new exporter shall be initiated, and carried out on an accelerated basis, after consultation of the Advisory Committee and after Community producers have been given an opportunity to comment. The Commission decision initiating a review shall repeal the duty in force with regard to the new exporter concerned by amending the Decision which has imposed such duty, and by making imports subject to registration in accordance with Article 14 (5) in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

The provisions of this paragraph shall not apply where duties have been imposed under Article 9 (6).

5. The relevant provisions of this Decision with regard to procedures and the conduct of investigations, excluding those relating to time-limits, shall apply to any review carried out pursuant to paragraphs 2, 3 and 4. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

6. Reviews pursuant to this Article shall be initiated by the Commission after consultation of the Advisory Committee. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraph 2, or repealed, maintained or amended pursuant to paragraphs 3 and 4. Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceeding and may, automatically, be re-investigated in any subsequent review carried out for that country pursuant to this Article.

7. Where a review of measures pursuant to paragraph 3 is in progress at the end of the period of application of measures as defined in paragraph 2, such review shall also cover the circumstances set out in paragraph 2.

8. Notwithstanding paragraph 2, an importer may request reimbursement of duties collected where it is shown that the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.

In requesting a refund of anti-dumping duties, the importer shall submit an application to the Commission. The application shall be submitted via the Member State of the territory in which the products were released for free circulation, and within six months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. Member States shall forward the request to the Commission forthwith.

An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of normal values and export prices to the Community for the exporter or producer to which the duty applies. In cases where the importer is not associated with the exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence will be supplied to the Commission. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

The Commission shall, after consultation of the Advisory Committee, decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, whereupon the information and findings from such review carried out in accordance with the provisions applicable for such reviews, shall be used to determine whether and to what extent a refund is justified. Refunds of duties shall normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The payment of any refund authorized should normally be made by Member States within 90 days of the abovementioned decision.

9. In all review or refund investigations carried out pursuant to this Article, the Commission shall, provided that circumstances have not changed, apply the same

methodology as in the investigation which led to the duty, with due account being taken of Article 2, and in particular paragraphs 11 and 12 therof, and of Article 17.

10. In any investigation carried out pursuant to this Article, the Commission shall examine the reliability of export prices in accordance with Article 2. However, where it is decided to construct the export price in accordance with Article 2 (9), it shall calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected is resale prices and the subsequent selling prices in the Community.

Article 12

1. Where the Community industry submits sufficient information showing that measures have led to no movement, or insufficient movement, in resale prices or subsequent selling prices in the Community, the investigation may, after consultation, be reopened to examine whether the measure has had effects on the abovementioned prices.

2. During a re-investigation prusuant to this Article, exporters, importers and Community producers shall be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices; if it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury previously established in accordance with Article 3, export prices shall be reassessed in accordance with Article 2 and dumping margins shall be recalculated to take account of the reassessed export prices. Where it is considered that a lack of movement in the prices in the Community is due to a fall in export prices which has occured prior to or following the imposition of measures, dumping margins may be recalculated to take acount of such lower export prices.

3. Where a re-investigation pursuant to this Article shows increased dumping the measures in force shall, after consultation of the Advisory Committee, be amended by the Commission, in accordance with the new findings on export prices.

4. The relevant provisions of Article 5 and 6 shall apply to any review carried out pursuant to this Article, except that such review shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the re-investigation.

5. Alleged changes in normal value shall only be taken into account under this Article where complete information on revised normal values, duly substantiated by evidence, is made available to the Commission within the time-limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of normal values, imports may be made subject to registration in accordance with Article 14 (5) pending the outcome of the re-investigation.

Article 13

Circumvention

1. Anti-dumping duties imposed pursuant to this Decision may be extended to imports from third countries of like products, or parts thereof, when circumvention of the measure in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community which stems from a pratice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like products and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

2. Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Decision which shall also instruct the customs authorities to make imports subject to registration in accordance with Article 14 (5) or to request guarantees. Investigations shall be carried out by the Commision, which may be assisted by customs authorities and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done by the Commission, after consultation of the Advisory Committee, from the date on which registration was imposed pursuant to Article 14 (5) or on which guarantees were requested. The relevant procedural provisions of this Decision with regard to initiations and the conduct of investigations shall apply pursuant to this Article.

3. Products shall not be subject to registration pursuant to Article 14 (5) or measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. These certificates may be issued to importers, upon written application following authorization by decision of the Commission and they shall remain valid for the period, and under the conditions, set down therein.

4. Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

Article 14

General provisions

1. Provisional or definitive anti-dumping duties shall be imposed by a Commission Decision, and collected by Member States in the form and at the rate specified and according to the other criteria laid down in the Decision imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports. No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidization.

2. Decisions imposing provisional or definitive anti-dumping duties, and Decisions accepting undertakings or terminating investigations or proceedings, shall be published in the *Official Journal of the European Communities*. Such Decisions shall contain in particular, due regard being had to the protection of confidential information, the names of the exporters, if possible, or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations. In each case, a copy of the Decision shall be sent to known interested parties. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

3. Special provisions, in particular with regard to the common definition of the concept of origin as contained in Council Regulation (EEC) No 2913/92 [1], may be adopted pursuant to this Decision.

4. In the Community interest, measures imposed pursuant to this Decision may, after consultation of the Advisory Committee, be suspended by a decision of the Commission for a period of nine months. The suspension may be extended for a further period, not exceeding one year, if the Commission after consultation so decides. Measures may only be suspended where market conditions have temporarily changed to such an extent that injury would be unlikely to resume as a result of the suspension, and provided that the Community industry has been given an opportunity to comment and these comments have been taken into account. Measures may, at any time and after consultation, be reinstated if the reason for suspension is no longer applicable.

5. The Commission may, after consulting the Advisory Committee, direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the Community industry which contains sufficient evidence to justify such action. Registration shall be introduced by a Commission Decision which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.

6. Member States shall report to the Commission every month, on the import trade in products subject to investigation and to measures, and on the amount of duties collected pursuant to this Decision.

Article 15

Consultations

1. Any consultations provided for in this Decision shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request of a Member State or on the initiative of the Commission and in any event within a period of time which allows the time-limits set by this Decision to be adhered to.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Where necessary, consultation may be in writing only; in that event, the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation which the chairman shall arrange, provided that such oral consultation can be held within a period of time which allows the time-limits set by this Decision to be adhered to.

4. Consultation shall cover, in particular:

(a) the existence of dumping and the methods of establishing the dumping margin;

(b) the existence and extent of injury;

(c) the causal link between the dumped imports and injury;

(d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping and the ways and means of putting such measures into effect.

Article 16

Verification visits

1. The Commission shall, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organizations, to verify information provided on dumping and injury. In the absence of a proper and timely reply, a verification visit may not be carried out.

[1] OJ No L 302, 19. 10. 1992, p. 1.

2. The Commission may carry out investigations in third countries as required, provided it obtains the agreement of the firms concerned, that it notifies the representatives of the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Commission should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

3. The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests made during the verification for further details to be provided in the light of information obtained.

4. In investigations carried out pursuant to paragraphs 1, 2 and 3, the Commission shall be assisted by officials of those Member States who so request.

Article 17

Sampling

1. In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

2. The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a representative sample to be chosen.

3. In cases where the examination has been limited in accordance with this Article, an individual margin of dumping shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time-limits provided for in this Decision, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.

4. Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected which is likely materially to affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 18 shall apply.

Article 18

Non-cooperation

1. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limits provided in this Decision, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available. Interested parties shall be made aware of the consequences of non-cooperation.

2. Failure to give a computerized response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

3. Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

4. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time-limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

5. If determinations, including those regarding normal value, are based on the provisions of paragraph 1, including the information supplied in the complaint, they shall, where practicable and with due regard to the time-limits of the investigation, be checked by reference to information from other independent sources which may be available, such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

6. If an interested party does not cooperate, or cooperates only partially, so that relevant information is thereby withheld, the result may be less favourable to the party than if it had cooperated.

Article 19

Confidentiality

1. Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the authorities.

2. Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

3. If it is considered that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information available or to authorize its disclosure in generalized or summary from, such information may be disregarded unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Requests for confidentiality shall not be arbitrarily rejected.

4. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken pursuant to this Decision are based, or disclosure of the evidence relied on by the Community authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business secrets shall not be divulged.

5. The Commission and Member States, or the officials of any of these, shall not reveal any information received pursuant to this Decision for which confidential treatment has been requested by its supplier, without specific permission from the supplier. Exchanges of information between the Commission and Member States, or any information relating to consultations made pursuant to Article 15, or any internal documents prepared by the authorities of the Communtiy or its Member States, shall not be divulged except as specifically provided for in this Decision.

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

Article 20

Disclosure

1. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph 1 may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures, particular attention being paid to the disclosure of any facts or considerations which are different from those used for any provisional measures.

3. Requests for final disclosure, as defined in paragraph 2, shall be addressed to the Commission in writing and shall have been received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty. Where a provisional duty has not been applied, parties shall be provided with an opportunity to request final disclosure within time-limits set by the Commission.

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, as soon as possible and, normally, not later than one month prior to a definitive decision by the Commission. Where the Commission is not in a position to disclose certain facts or considerations at that time, they shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission but where such decision is based on any different facts and considerations, they shall be disclosed as soon as possible.

5. Representations made after final disclosure 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.

Article 21

Community interest

1. A determination as to whether the Community interest calls for the intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination pursuant to this Article shall be made only where all parties have been given the opportunity to make their views known pursuant to paragraph 2. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that is is not in the Community interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the Community interest, the complainants, importers and their representative associations, representative users and representative consumer organizations may, within the time-limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Commission. Such information, or appropriate summaries thereof, shall be made available to the other parties specified in this Article, and they shall be entitled to respond to such information.

3. The parties which have acted in conformity with paragraph 2 may request a hearing. Such requests shall be granted when they are submitted within the time-limits set in paragraph 2, and when they set out the reasons, in terms of the Community interest, why the parties should be heard.

4. The parties which have acted in conformity with paragraph 2 may provide comments on the application of any provisional duties imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

5. The Commission shall examine the information which is properly submitted and the extent to which it is representative and the results of such analysis, together with an opinion on its merits, shall be transmitted to the Advisory Committee for consultation.

6. The parties which have acted in conformity with paragraph 2 may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Commission.

7. Information shall only be taken into account where it is supported by actual evidence which substantiates its validity.

Article 22

Final provisions

This Decision shall not preclude the application of:

(a) any special rules laid down in agreements concluded between the Community and third countries;

(b) special measures, provided that such action does not run counter to obligations under the GATT.

Article 23

Non-application of existing legislation and transitional measures

As from the date of entry into force of this Decision the provisions of Decision 2424/88/ECSC shall no longer apply as regards protection against dumped imports from countries not members of the European Coal and Steel Community.

References to those provisions shall be construed as references to this Decision.

Article 24

Entry into force

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

The time-limits provided for in Articles 6 (9) and 7 (1) of this Decision shall not apply to investigations initiated before the date of entry into force of this Decision.

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

Done at Brussels, 28 November 1996.

For the Commission

Leon BRITTAN

Vice-President