COMMISSION DECISION

of 20 December 1995

refusing Germany's application for protective measures with regard to pharmaceutical products coming from Spain

(Only the German text is authentic)

(96/320/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 379 thereof,

Having regard to the application by Germany,

Whereas Germany, by letter of 29 September 1995, applied to the Commission for authorization to invoke Article 379 of the Act of Accession for safeguard measures, aimed at solving the problem caused by the expiry of the transitional period provided for by Article 47 of the Act of Accession, concerning pharmaceutical products coming from Spain, which are protected in Germany by a product patent but not in Spain;

Whereas in their request, the German authorities provided the Commission with the material facts to enable it to evaluate the validity of the application;

Whereas the German authorities base their application upon the economic difficulties to which the pharmaceutical products market in Germany would, according to them, be subjected as a result of the expiry of the transitional period provided for by Article 47 of the Act of Accession, namely as from 7 October 1995; whereas the specialists argue that since the price of pharmaceuticals on the Spanish market is lower by 50 to 75 % than the observed price for the same speciality products on the German market, the expiry of the transitional period will lead to an appreciable increase in parallel imports from Spain into Germany;

Whereas Article 379 of the Act of Accession derogates from a fundamental principle of the EC Treaty, that of the free movement of goods; whereas consequently in accordance with the well-established case-law of the Court of Justice it should be restrictively interpreted;

Whereas consequently, in accordance with that case-law and with the established practice of the Commission in the past, Article 379 of the Act of Accession cannot apply;

Whereas the purpose of Article 379 is to rectify and adjust to the economy of the common market a given economic sector experiencing economic difficulties which are serious and liable to persist;

Whereas an analysis of the economic data provided by the German authorities has shown that the conditions for the application of Article 379 are not fulfilled; whereas, more particularly, it has revealed that the German pharmaceutical industry is not experiencing economic difficulties which are serious and liable to persist; whereas an increase in the volume of imports coming from Spain of pharmaceutical products patented in Germany but not in Spain would not appear to be so significant in the long run as to bring about, by itself, serious economic difficulties on the German pharmaceutical market,

HAS ADOPTED THIS DECISION:

Article 1

The application for safeguard measures made by Germany under Article 379 of the Act of Accession, aimed at solving the problem caused by the expiry of the transitional period provided for by Article 47 of the Act of Accession, concerning pharmaceutical products coming from Spain, which are protected by a product patent in Germany but not in Spain, is rejected.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 December 1995.

For the Commission

Mario MONTI

Member of the Commission