COMMISSION DECISION

of 20 December 1995

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

(Only the Danish text is authentic)

(96/322/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 Denmark,

Whereas Denmark, by letter of 3 October 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 Denmark by a product patent but not in Spain;

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

Whereas the Danish authorities base their application upon the economic difficulties to which the Danish pharmaceutical products market 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 than the observed price for the same products on the Danish market, the expiry of the transitional period will lead to an appreciable increase in parallel imports from Spain into Denmark; whereas this increase will thus damage the market shares of Danish operators in the export market as from 1996;

Whereas Article 379 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 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 Danish authorities has shown that the conditions for the application of Article 379 are not fulfilled; whereas, more particularly, it has revealed that the Danish 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 Denmark 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 Danish pharmaceutical market,

HAS ADOPTED THIS DECISION:

Article 1

The application for safeguard measures made by Denmark 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 Denmark but not in Spain, is rejected.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 20 December 1995.

For the Commission

Mario MONTI

Member of the Commission