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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2761/81

of 22 September 1981

imposing a definitive anti-dumping duty on *o*-xylene (orthoxylene) originating in Puerto Rico and the United States of America

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 12 thereof,

Having regard to the Commission proposal submitted after consultation within the Advisory Committee set up under the said Regulation,

Whereas, by Regulation (EEC) No 1411/81 [2], the Commission imposed a provisional anti-dumping duty of 14·47 % on imports of *o*-xylene (orthoxylene) originating in Puerto Rico and the United States of America, with the exception of *o*-xylene exported by:

— Phillips Paraxylene Inc. and International Petroleum Sales Inc., Panama, members of the Phillips Petroleum Group, who were found not to be dumping,

— Arco Chemical Company, which voluntarily gave an undertaking to increase its prices to levels which eliminated the dumping margins found,

— Commonwealth Oil Refinery Company Inc., for which the rate of duty was 4·43 %,

— Sun Petroleum Products Company, for which the rate of duty was 10·73 %;

Whereas, in the course of the subsequent examination of the matter, completed after the imposition of this provisional duty, the interested parties had the opportunity to make known their views in writing and to be heard by the Commission, to inspect non-confidential information relevant to the defence of their interests and to be informed of the essential facts and considerations on the basis of which it was intended to reach a final decision; whereas some of the exporters and importers concerned availed themselves of these possibilities by making known their views in writing and orally; whereas the Phillips Petroleum Group, Arco Chemical Company, Shell Chemical Company, Commonwealth Oil Refinery Company and Sun Petroleum Products Company did not dispute the findings of the Commission;

Whereas the Tenneco Oil Company, Houston, Texas, contacted the Commission to say that they had written in February 1981 in response to the notice announcing the opening of the anti-dumping proceeding on *o*-xylene and had offered full cooperation in the subsequent investigation; whereas this letter failed to reach the responsible Commission services; whereas an on-the-spot investigation then took place at Tenneco's premises in Houston and a comparison at the fob level of their export prices to the Community with their US domestic prices showed that there had been a weighted average dumping margin in the last three quarters of 1980 of 5·15 %; whereas Exxon Chemical International Supply SA, having provided some information during the preliminary investigation, now came forward with supplementary evidence which showed that there had been a dumping margin of approximately 3 % on their exports in the second and third quarters of 1980; whereas Sunoco Overseas Inc. and Sun International Inc. also wrote to the Commission offering to cooperate in an examination of the facts concerning their exports and an on-the-spot investigation at their premises showed that, in fact, there had been no direct exports of *o*-xylene by these companies in 1980 and that, consequently, it was not possible to determine on the basis of past experience that they would not dump if they began exporting; whereas in these circumstances Sunoco Overseas and Sun International offered price undertakings which reflected the normal values established during the investigation period to allow them to be excluded from the duty;

Whereas the Commission has otherwise received no additional information in respect of dumping such as to lead it to revise the weighted average dumping margins it had provisionally established; whereas

[1] OJ No L 339, 31. 12. 1979, p. 1.
[2] OJ No L 141, 27. 5. 1981, p. 29.

these margins have therefore been considered as definitively established;

Whereas, with regard to the injury caused by the dumped imports to the Community industry, the evidence available to the Commission showed that total imports of *o*-xylene from the sources concerned into the Community increased from approximately 55 000 tonnes in 1978 to approximately 102 000 tonnes in 1980; whereas it was shown that approximately 80 % of these imports were made at dumped prices;

Whereas the market share of these dumped imports in the Community was approximately 14 % in 1980;

Whereas, since most of the importers concerned did not provide information to the Commission, the Commission was unable to verify the resale prices of *o*-xylene imported at dumped prices;

Whereas, however, the resale prices of the Community industry had steadily fallen in 1980 and there was evidence that customers had cancelled their contracts with the Community industry to buy dumped material from the areas concerned, thus further depressing Community producers' prices; whereas all the Community industry has suffered heavy losses in 1980;

Whereas production of *o*-xylene in the Community fell from 560 000 tonnes in 1978 to 291 000 tonnes in 1980 and capacity utilization fell from 70·7 % in 1978 to 58·8 % in 1980;

Whereas the Commission has considered the injury caused by other factors which, individually or in combination, may also be affecting the Community industry; whereas it was determined that the level of demand and consumption in the Community remained relatively stable; whereas imports from countries other than those named in the complaint lodged by the European Council of Chemical Manufacturers' Federations (ECCMF) have been fairly constant at considerably lower volumes than those from Puerto Rico and the United States of America; whereas the Commission has received no information since the adoption of Regulation (EEC) No 1411/81 which might lead it to revise the conclusions reached in the said Regulation in this respect; whereas the Commission has therefore definitively concluded that the dumped imports have caused material injury to the Community industry concerned;

Whereas, in these circumstances, protection of the Community's interests calls for the imposition of a definitive anti-dumping duty on *o*-xylene originating in the United States of America and Puerto Rico which, having regard to the extent of the injury caused, should be equal to the weighted average dumping margin established for the last three quarters of 1980;

Whereas, for the reasons outlined in the preceding recital, the amounts secured by way of provisional duty should be definitively collected up to the rate of the dumping margins found on transactions made by those companies investigated and at the rate of the definitive duty on all other imports;

Whereas the Tenneco Oil Company, Exxon Chemical International Supply SA and the Commonwealth Oil Refinery Company have meanwhile voluntarily undertaken to increase their prices to levels which eliminate the dumping margins found; whereas Sunoco Overseas Inc. and Sun International Inc. have voluntarily undertaken to respect the normal values established during the investigation; whereas the Commission considers these undertakings to be acceptable; whereas it is consequently appropriate to exclude the imports of the products exported by these companies from the application of the duty;

Whereas, for the reasons indicated above, exports of *o*-xylene to the Community by Phillips Petroleum Group and Arco Chemical Company should also be excluded from the application of this definitive anti-dumping duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on *o*-xylene (orthoxylene) falling within Common Customs Tariff subheading ex 29.01 D I and corresponding to NIMEXE code 29.01-65 originating in Puerto Rico and the United States of America.

2. This duty shall not apply to *o*-xylene exported by:

— Arco Chemical Company,
— Phillips Paraxylene Inc. and International Petroleum Sales Inc., Panama, members of the Phillips Petroleum Group,
— Tenneco Oil Company,
— Exxon Chemical International Supply SA,
— Sunoco Overseas Inc. and Sun International Inc.,
— Commonwealth Oil Refinery Co. Inc.

3. The rate of the duty shall be 14·47 % on the basis of the customs value determined in accordance with Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes [1], except for exports made by Sun Petroleum Products Co., Philadelphia, Pennsylvania, for which the rate of duty shall be 10·73 %.

[1] OJ No L 134, 31. 5. 1980, p. 1.

4. The provisions in force concerning customs duties shall apply for the application of this duty.

Article 2

The amounts secured by way of provisional duty pursuant to Regulation (EEC) No 1411/81 shall be definitively collected at the rate of :

— 3·40 % for imports from Exxon Chemical International Supply SA,

— 5·15 % for imports from Tenneco Oil Company,

— 10·73 % for imports from Sun Petroleum Products Co.,

— 14·47 % in respect of all other imports.

Article 3

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

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

Done at Brussels, 22 September 1981.

For the Council

The President

J. BRUCE-GARDYNE