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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 905/83

of 18 April 1983

amending Regulation (EEC) No 2940/81 imposing a definitive anti-dumping duty on p-xylene (paraxylene) originating in Puerto Rico, the United States of America and the United States Virgin Islands

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) as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultations with the Advisory Committee set up by the above Regulation,

Whereas, by Regulation (EEC) No 2940/81 (3), the Council imposed a definitive anti-dumping duty of 14,70 % on imports of p-xylene, falling within subheading ex 29.01 D I b) of the Common Customs Tariff corresponding to NIMEXE code 29.01-67 and originating in Puerto Rico, the United States of America and the United States Virgin Islands ; whereas the rate of duty for Sun Petroleum Products Company was 6,14 % and for Shell Chemical Company 2,37 % ; whereas six exporters were excluded from the duty as they gave voluntary undertakings to increase their prices to levels which eliminated dumping ;

Whereas that Regulation was subsequently amended by Regulation (EEC) No 3644/81 (4) which exempted from the duty a further company which had voluntarily undertaken to respect the normal value established during the investigation period ;

Whereas the Commission has since received requests from three United States companies to review the duties in so far as they apply to them ;

Whereas, since the said requests provided sufficient evidence to justify opening a review procedure, the Commission announced by a notice published in the *Official Journal of the European Communities* (5) a review of the definitive anti-dumping duty on imports of p-xylene originating in Puerto Rico, the United States of America and the United States Virgin Islands and commenced an investigation of the matter at Community level ;

Whereas the Commission officially so advised the exporters and importers known by it to be concerned as well as the representatives of the exporting country and the complainants ;

Whereas the Commission has given the parties directly concerned the opportunity to make known their viewes in writing and to be heard ;

Whereas certain of the exporters known to be concerned and some importers took this opportunity to present written and oral observations ; whereas, however, several traders and dealers failed to respond to the Commission's invitation to make known their views ;

Whereas the Commission sought and verified all information it deemed to be necessary for the purposes of the review procedure and carried out investigations at the premises of the following :

Community producers :

— ICI, Wilton,

— Total Chimie, Paris,

— Veba Öl, Gelsenkirchen,

— Shell Chemical, London ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 296, 15. 10. 1981, p. 1.
(4) OJ No L 364, 19. 12. 1981, p. 3.
(5) OJ No C 124, 15. 5. 1982, p. 3.

Exporters :

— Arco Chemical Co., Philadelphia, Pennsylvania,

— Exxon Chemical Co., Darien, Connecticut,

— Hercofina, Wilmington, North Carolina,

— Koch Chemical Co., Wichita, Kansas,

— Phillips Petroleum Chemicals, Overijse on behalf of International Petroleum Sales Inc., Panama and Phillips Paraxylene Inc., Puerto Rico,

— Sun Refining and Marketing Co. and Sunoco Overseas Inc., Philadelphia, Pennsylvania,

— Tenneco Oil, Houston, Texas ;

Whereas Amoco Chemicals Corporation and Pecten Chemicals Inc., a subsidiary of Shell Oil Company, also made information available at the Commission's offices in Brussels ;

Whereas the Commission selected the last quarter of 1981 and the first three-quarters of 1982 as the relevant investigation period ;

Whereas normal values were established by taking the weighted average quarterly prices of the respective domestic sales of the companies concerned ; whereas these prices fluctuated by quarter and had generally declined in the third quarter of 1982 to levels slightly below those established during the previous investigation ;

Whereas, in establishing the profitability of the domestic sales, evidence was submitted which satisfied the Commission that sales generally had not been at a loss ;

Whereas export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community during the period of investigation ;

Whereas, in comparing normal value with export prices, the Commission took account, where appropriate, of differences affecting price comparability such as differences in transport, handling, loading and ancillary costs ; whereas all comparisons were made at fob level ;

Whereas the above examination of the facts showed that these companies which had given undertakings after the original investigation had respected the terms of their undertakings and had not exported to the Community at prices lower than the normal values on their domestic markets and therefore had not resumed dumping ; whereas Shell Chemical Company had not exported during the investigation period ; whereas the three companies which had requested the review (i.e. Hercofina, the Koch Chemical Company and Sun Refining and Marketing Co.), which had not exported during the original investigation, had not dumped in the Community in the period covered by the review with the exception of one *de minimis* shipment made by Hercofina ;

Whereas for those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the review investigation, and who are estimated to account for 41 % of the exports concerned, the Commission considered that it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the dumping margin of 14,7 % ascertained with regard to their following the original investigation ;

Whereas, as regards injury, the Commission has received no new evidence to alter its view that the continued application of the existing duty and the maintenance of price undertakings were requirements for the elimination of injury and the prevention of its recurrence ; whereas the volatile price movements in recent quarters and the continuing depressed state of both United States and Community markets suggest that any removal of the existing definitive duty or withdrawal of undertakings might lead the exporters concerned to export surplus inventory to the Community, thereby aggravating the situation for Community industry ;

Whereas no interested party in the Community has argued that the continuation of protective measures would be against the Community interest ; whereas, in view of the particularly serious difficulties facing the Community industry, the Commission has come to the conclusion that it is in the Community's interests that definitive measures be continued, particularly in view of the fact that those exporters who cooperated in the Commission's investigation and who subsequently offered price undertakings only account for 59 % of United States exports to the Community ;

Whereas, accordingly, the facts as finally established show that the interests of the Community call for the maintenance of the existing definitive anti-dumping duty on p-xylene originating in Puerto Rico, the United States of America and the United States Virgin Islands ;

Whereas the exporters concerned were informed of the main findings of the review and commented on them ; whereas those companies which had offered undertakings in the original proceedings volunteered to renew them ; whereas Koch Chemical Company and Hercofina also voluntarily undertook to respect a minimum price for their exports ;

Whereas the effect of the said undertakings will be to maintain import prices at the level necessary to prevent injury ;

Whereas the Council has, therefore, determined that imports of p-xylene exported by Amoco Chemicals Corporation, Arco Chemical Co., Exxon Chemical Co., Hercofina, Koch Chemical Co., Phillips Paraxylene Inc., International Petroleum Sales Inc., Sunoco Overseas Inc. and Tenneco Oil should be excluded from the application of the duty;

Whereas Sun Refining and Marketing Company, successor to Sun Petroleum Products Company, declined to offer voluntary undertakings to respect minimum prices on its exports and there is therefore no reason for this company to be excluded from the general application of the duty;

Whereas Shell Chemical Company is no longer producing p-xylene and reference to that company with regard to application of the duty should therefore be deleted,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (2) and (3) of Regulation (EEC) No 2940/81 is hereby replaced by the following:

'2. The duty shall not apply to p-xylene exported by:

— Amoco Chemicals Corporation,

— Arco Chemical Company,

— Exxon Chemical International Supply SA,

— Hercofina,

— Koch Chemical Co.,

— Phillips Paraxylene Inc. and International Petroleum Sales Inc., Panama, members of the Phillips Petroleum Group,

— Sunoco Overseas Inc. and Sun International Inc.,

— Tenneco Oil Company.

3. The rate of the duty shall be 14,70 % of the customs value determined in accordance with the provisions in force with regard to customs duties.'

Article 2

The Regulation shall enter into force on the day following 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 Luxembourg, 18 April 1983.

For the Council

The President

I. KIECHLE