COUNCIL REGULATION (EEC) No 906/83

of 18 April 1983

amending Regulation (EEC) No 2761/81 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), 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 consultation with the Advisory Committee set up by the above Regulation,

Whereas, by Regulation (EEC) No 2761/81 (3), the Council imposed a definitive anti-dumping duty of 14,47 % on imports of o-xylene falling within sub-heading ex 29.01 D I of the Common Customs Tariff corresponding to NIMEXE code 29.01-65, originating in Puerto Rico and the United States of America; whereas the rate of duty for Sun Petroleum Products Company was 10,73 % ; whereas five exporters were excluded from the duty as they gave voluntary undertakings to increase their prices to levels which eliminated dumping; whereas one exporter was exempted from the duty since sales to the Community made during the investigation period were not dumped;

Whereas that Regulation was subsequently amended by Regulation (EEC) No 3493/81 (4) which specified the rate at which a certain provisional duty should be definitively collected;

Whereas the Commission has since received requests from two United States companies to review the duties in so far as they apply to them and from one Community consumer requesting a general review of the duty;

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 o-xylene originating in Puerto Rico and the United States of America 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 views 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:

— Total Chemie, Paris,
— Veba Öl, Gelsenkirchen,
— Shell Chemical, London;

Exporters:

— Arco Chemical Co., Philadelphia, Pennsylvania,
— Exxon Chemical Co., Darien, Connecticut,
— Koch Chemical Co., Wichita, Kansas,
— Phillips Petroleum Chemicals, POverijse, on behalf of International Petroleum Sales Inc., Panama Phillips Paraxylene Inc., Puerto Rico and Phillips Puerto Rico Core Inc.,
— Sun Refining and Marketing Co., and Sunoco Overseas Inc., Philadelphia, Pennsylvania,
— Tenneco Oil, Houston, Texas;

Whereas the following companies also made information available at the Commission's offices in Brussels:

— Montedipe, Milan,
— Alusuisse Italia SpA, Milan,
— Pecten Chemicals Inc., Houston, Texas,
— BASF, Ludwigshafen;

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

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 270, 25. 9. 1981, p. 1.
(4) OJ No L 353, 9. 12. 1981, p. 1.
(5) OJ No C 124, 15. 5. 1982, p. 3.

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 1982;

Whereas in establishing the profitability of the domestic sales, evidence was submitted which satisfied the Commission that sales generally had not been made 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 where appropriate of differences affecting price comparability such as differences in transport, handling, loading and ancillary costs; whereas all comparisions were made at fob level;

Whereas the above examination of the facts showed that those companies which had given undertakings after the original investigation had respected the terms of their undertakings but that, in some cases, the increase of prices on their United States domestic market meant that dumping had resumed; whereas the dumping margins vary according to the exporter; whereas the weighted average margin for each of the exporters cooperating in the investigation was:

— Arco Chemical Co.	2 %
— Exxon Chemical Co.	9,55 %
— Koch Chemical Co.	4 %
— Phillips Petroleum	0 %
— Sun Refining and Marketing Co.	1,8 %
— Sunoco Overseas Inc.	no sales
— Tenneco Oil.	0 %

— Pecten Chemicals Inc. export sales are made via international brokers; the company was unable to identify sales to the Community;

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 34 % of the exporters 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 14,47 % ascertained with regard to them following the original investigation;

Whereas, with regard to the injury caused by the dumped imports, the evidence available to the Commission shows that imports into the Community from Puerto Rico and the United States of America of o-xylene, which fell after the imposition of the provisional and definitive duties in 1981, were likely to increase in 1982 to the same level as they had been at in 1979;

Whereas the selling price of this product in the Community in most cases do not allow Community producers to cover their costs or to make a reasonable profit;

Whereas the consequent impact on this Community industry has been a fall in production of 10 % from 1981 to 1982, a reduction of 11 % in capacity utilization in the same period and an accelerating loss-making trend in 1982;

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 was a requirement 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 the 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 Community processing industries have argued that the continuation of protective measures would not be in the Community interest because it would make them less competitive; whereas, in view of the particularly serious difficulties facing the Community industry, the Commission has, nevertheless, 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 account for only 66 % of United States exports to the Community;

Whereas, accordingly, the facts as finally established show that there is dumping and injury caused thereby and the interests of the Community call for the maintenance of the existing definitive anti-dumping duty on o-xylene originating in Puerto Rico and the United States of America;

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 proceeding volunteered to renew them at a level considered necessary to prevent renewed injury to the Community industry; whereas Koch Chemical Company also voluntarily undertook to respect a minimum price for its exports;

Whereas the effect of the said undertakings will be to maintain import prices at the level necessary to prevent injury; whereas these undertakings in no case exceed the dumping margin;

Whereas the Council has, therefore, determined that imports of o-xylene exported by Arco Chemical Co., Exxon Chemical Co., Koch Chemical Co., Phillips Paraxylene Inc., Phillips Puerto Rico Core 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 the Sun Petroleum Products Company, declined to offer voluntary undertakings to respect minimum prices for its exports and there is therefore no reason for this company to be excluded from the general application of the duty;

Whereas Commonwealth Oil Refinery Co. Inc., which was previously excluded from the definitive duty, is now out of business and reference to that company should, therefore, be deleted from the list of exclusions,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (2) and (3) of Regulation (EEC) No 2761/81 is hereby replaced by the following:

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

— Arco Chemical Company,

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

— Tenneco Oil Company,

— Exxon Chemical International Supply SA,

— Sunoco Overseas Inc. and Sun International Inc.,

— Koch Chemical Company.

3. The rate of the duty shall be 14,47 % of the customs value determined in accordance with the provisions in force with regard to customs duties.'

Article 2

This 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