

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 505 final

Brussels, 27 August 1981

Proposal for a
COUNCIL REGULATION (EEC)

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

(submitted to the Council by the Commission)

COM(81) 505 final

EXPLANATORY MEMORANDUM

In May 1981 the Commission imposed a provisional anti-dumping duty of 14.47% on imports of o-xylene (ortho-xylene) originating in Puerto Rico and the United States of America.

The facts as finally established show that the Shell Chemical Company had a weighted average dumping margin of 14.47% in the last three quarters of 1980. Sun Petroleum had a dumping margin of 10.73%, Arco 4.96% and Corco 4.43%. Phillips Petroleum was found not to be dumping. None of these companies disputed the Commission's findings. Since the imposition of the provisional duty, the Tenneco Oil Company, Exxon Chemicals International Supply SA, Sun International Inc. and Sunoco Overseas Inc offered to co-operate in an investigation of their exports to the Community and subsequently offered undertakings to the Commission which eliminated the dumping found. For those exporters and dealers who did not co-operate with the Commission, it was assumed that their dumping margins would not be lower than the highest margin found for those exporters who did co-operate i.e. 14.47% for Shell Chemical Company, and that this margin should therefore be used for the non-co-operating exporters.

With regard to injury caused to the Community industry it was shown that total imports of o-xylene increased from 55 000 tonnes in 1978 to 102 000 tonnes in 1980 and that approximately 80% of the imports in the investigation period were dumped. The market share of these imports rose from 9% in 1977 to 17% in 1980. The EEC industry's resale prices had fallen in 1980 leading to heavy losses by all the producers concerned. Production had decreased from 560 000 tonnes in 1978 to 291 000 tonnes in 1981.

It is therefore proposed to impose a definitive anti-dumping duty of 14.47% on o-xylene originating in Puerto Rico and the United States of America. It is, however, proposed to exclude from the application of this duty the exports of the one firm found not to be dumping and of the firms who offered undertakings to the Commission.

It is further proposed that the amounts secured by way of provisional duty should be definitively collected.

COUNCIL REGULATION (EEC)

imposing a definitive anti-dumping duty on o-xylene (ortho-xylene) 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 proposal submitted by the Commission after consultation within the Advisory Committee set up under Regulation(EEC) No 3017/79,

Whereas the Commission, by Regulation (EEC) No 1411/81(2), imposed a provisional anti-dumping duty of 14.47% on imports of o-xylene 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 make a final determination; whereas some of the exporters and importers concerned availed themselves of these possibilities by making known their views in writing and orally; whereas

(1) OJ No L 339, 31.12.1979, p. 1

(2) OJ No L 141, 27.5.1981, p. 29

Shell Chemical Company,
the Phillips Petroleum Group, Arco 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 co-operation in the subsequent investigation; whereas this letter failed to reach the responsible Commission services; whereas an on-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 U.S. 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 co-operate in an examination of the facts concerning their exports and an on-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 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 were not willing to 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 EEC 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 the EEC 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 (CEFC) 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, and for the definitive collection in their entirety of the amounts secured by way of provisional anti-dumping duty;

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 (ortho-xylene) 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%.

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 anti-dumping duty pursuant to Regulation (EEC) No 1411/81 shall be definitively collected.

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,

For the Council

(1) OJ No L 134, 31.5.1980, p. 1