COUNCIL REGULATION (EEC) No 3723/89

of 6 November 1989

on the restriction of exports of steel pipes and tubes to the United States of America

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Community has concluded an Arrangement (1), hereinafter referred to as 'the Arrangement', with the United States of America under which exports to the United States of certain steel pipes and tubes originating in the Community are to be limited to certain levels over an agreed period; whereas, moreover, it is necessary, pursuant to this Arrangement, to introduce in the Community measures to restrict the amount of these products exported to the United States;

Whereas, in accordance with the Arrangement, the export restrictions cover steel pipes and tubes originating in the Community; whereas the origin of these products is determined in accordance with applicable Community legislation, that is to say Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (2), as last amended by Regulation (EEC) No 1769/89 (3);

Whereas, for practical and management reasons, the quantitative export limits agreed by the Community must be allocated among the Member States; whereas, in order to do so, an allocation method must be established; whereas, thereafter, the Member States must share out the amounts allocated to them among undertakings in accordance with objective criteria;

Whereas utilization of the Community limits, based on allocations among Member States made in this way, would seem to be in keeping with the Community nature of these limits; considering that, in particular, the allocation method provides for a maximum use of export possibilities;

Whereas the allocation among the Member States of the total export possibilities which the Arrangement affords should take account of traditional trade patterns;

Whereas measures must be taken to avoid abnormal concentration at certain times of exports to the United States;

Whereas, in order to keep a check on exports, a system of export licences and certificates should be introduced;

Whereas it is necessary to provide that export licences issued to undertakings shall indicate the undertaking engaged in production of steel pipes and tubes within the Community and established in the issuing Member States that is holding the allocation against which the licence is issued;

Whereas, in order to take account of the interests of distributive undertakings, it must be possible for these licences to be transferred not only between undertakings producing steel pipes and tubes but also by undertakings producing steel pipes and tubes to distributive undertakings, in particular where the undertakings producing steel pipes and tubes decide to sell their products to such distributive undertakings;

Whereas it appears necessary, and for the moment sufficient, that Member States ensure compliance with the different provisions of the regime laid down by applying the various penalties provided for in their laws;

Whereas, in order to facilitate the application of the envisaged provisions, it is appropriate to set up a procedure establishing close cooperation between Member States and the Commission within a committee; whereas it is sufficient for this purpose to apply the procedure set up in Council Regulation (EEC) No 1023/70 of 25 May 1970 establishing a common procedure for administering quantitative quotas (4),

HAS ADOPTED THIS REGULATION:

Article 1

1. Community export limits are hereby established for the period 1 October 1989 to 31 December 1990 (hereinafter referred to as 'the initial period') for the year 1991 and for the period 1 January 1992 to 31 March 1992 (hereinafter referred to as 'the end period'), for exports effected after 1 October 1989 from the Community to the United States of America (hereinafter referred to as 'the United States') of the steel pipes and tubes originating in the Community which are listed in Annex I.

For the purpose of this Regulation, the United States shall comprise United States customs territory and United States foreign trade zones as described in Annex II.

(1) See page 126 of this Official Journal.
(2) OJ No L 148, 28. 6. 1968, p. 1.
(3) OJ No L 174, 22. 6. 1989, p. 11.
(4) OJ No L 124, 8. 6. 1970, p. 1

2. The origin of the products covered by this Regulation shall be determined in accordance with the rules in force in the Community.

Article 2

1. The Community export limit for steel pipes and tubes is hereby fixed at 8,82 % of the United States apparent consumption.

In the case of what are termed OCTG tubes, as referred to in Annex I, the Community limit, forming part of the overall limit for steel pipes and tubes, is hereby fixed at 9 % of apparent consumption of these tubes in the United States.

The limits shall be calculated by the Commission on the basis of the level of apparent consumption of these products in the United States, as laid down in the Arrangement.

2. The Community export limits calculated pursuant to paragraph 1 shall be adjusted by the Commission to take account of revisions of the said United States apparent consumption.

3. These limits may also be adjusted by the Commission after consulting the Arrangement Committee:

— for advance use or carry-over of licences,

— to enable transfers between product categories to be made, including transfers between, on the one hand, the products covered by this Regulation and, on the other, those covered by Regulation (EEC) No 3722/89 [1] and by Decision 3724/89/ECSC [2],

— for additional quotas in case of short supply,

— to take account of exports effected by the Community between 1 October 1989 and the date of entry into force of this Regulation,

under the conditions provided for in the Arrangement.

Article 3

1. (a) The Community quantitative export limits established and calculated pursuant to Article 2 shall be allocated for the initial period, 1991 and the end period by the Commission in accordance with Annex III with the exception of any quantities granted under Article 7 of the Arrangement which shall be allocated by the Commission on the basis of the circumstances and conditions under which these quantities have been granted.

(b) Notwithstanding point (a), the Community quantitative export limits to be allocated by the Commission in accordance with Annex III shall be reduced by 10 % in the initial period and 1991 for those Member States which, on the basis of certificates referred to in Article 4 (1) issued by them, have used less than 40 % of their quota by 30 June 1990 and 33 % of their quota by 30 June 1991 respectively.

The quantities represented by such reductions shall be allocated by the Commission, after consulting the Arrangement Committee, on 1 August 1990 and 1 August 1991 respectively so as to facilitate the optimal use and administration of the Community export possibilities taking account of the share of Community exports effected by each Member State in each product category by 30 June 1990 and 30 June 1991 respectively.

(c) Where the Community limits for arrangement products are adjusted in accordance with the fourth indent of Article 2 (3), the Commission shall adjust the allocation of quantity limits, taking account of the origin of the exports before the entry into force of this Regulation which gave rise to this adjustment.

2. The Commission shall hold regular consultations with the Arrangement Committee set up by Decision No 3724/89/ECSC [1] on the situation regarding licences issued and on the measures to be taken with a view to ensuring best use of the overall limit.

Article 4

1. The Community exports described in Article 1 shall, from the date of entry into force of this Regulation to 31 March 1992, be subject to the production to the competent Community customs office where the export formalities are carried out of an export licence and an export certificate. The export licences shall be issued by the competent authorities of each Member State within the limits of the amounts allocated to it pursuant to Article 3.

Member States shall fix for each quarter the amounts for which they anticipate that licences will be issued for all steel pipes and tubes, on the one hand, and for OCTG, on the other; they shall inform the Commission thereof in the first 15 days of the relevant quarter. In doing so, they shall make sure that the export licences for each quarter ensure an adequate spread of exports over the whole year, taking into account the seasonal variations in trade in each product category. However, Member States shall not, without the prior authorization of the Commission, issue in any two consecutive quarters licences for amounts which exceed 52 % of their allocation in the initial period or 65 % of their allocation in 1991.

Member States may, subject to the second subparagraph, issue further licences in the initial period, 1991 and the end period respectively, in respect of the unused part of licences issued which have been returned to their competent authorities in the initial period, 1991 and the end period.

2. Licences shall be issued according to the following criteria:

(1) See page 1 of this Official Journal.
(2) See page 21 of this Official Journal.

— compliance with the rules prescribed by this Regulation, in particular those concerning the quota allocated by the Commission pursuant to Article 3,

— compliance with the traditional export patterns of undertakings taking account of the reduction principles established by this Regulation,

— where appropriate the taking into account of the situation of new producers of pipes and tubes while giving preference to traditional export patterns,

— compliance with the rates of exports to the United States as traditionally spread out over the year,

— optimum use and administration of the export possibilities afforded by this Regulation,

— compliance with the possibilities afforded by Article 3 (1) (b) of this Regulation,

— best use being made of any new possibilities provided for, where appropriate, by this Regulation.

Each licence shall indicate the undertaking engaged in the production of steel pipes and tubes in the Community, and established in the issuing Member State that is holding the allocation against which the licence is issued.

3. Transfers of export licences between undertakings producing steel tubes and pipes, or by undertakings producing steel pipes and tubes to distributive undertakings, may take place after prior notifications to the authorities of the Member State in which the undertaking transferring the licence is established. Such transfers may take place between undertakings established in different Member States.

4. The licence must specify whether the tubes are OCTG tubes or other steel pipes or tubes.

5. Licences issued in one Member State of the Community shall be valid throughout the Community.

6. Member States shall ensure the appropriate penalties are applied in respect of all exports effected without production of the licence referred to in this Article and in respect of any other breaches of the provisions relating to such licences. Member States shall keep the Commission informed of all breaches of the abovementioned rules and of all penalties imposed in respect thereof, at intervals to be specified by the Commission.

7. The detailed rules for the application of this Regulation and the information to be supplied to the Commission concerning the licences and exports shall be laid down by the Commission.

Article 5

1. Member States shall charge the amounts set out on the licences issued by them against their respective allocations made pursuant to Article 3, including all licences subsequently transferred to an undertaking of another Member State.

2. Member States shall keep records of the exports of the products covered by this Regulation. The products shall be deemed to be exported on the date of acceptance, by the customs office of the Member State of export, of the export declaration or of the document provided for in Article 18 of Council Directive 81/177/EEC of 24 February 1981 on the harmonization of procedures for the export of Community goods [1].

3. The extent to which a Member State has used up its allocation shall be determined on the basis of licences issued in accordance with Article 4.

Article 6

1. Exports to the United States of products which are to be re-exported from the United States in the same form or without having been subject to substantial transformations shall be charged against the allocation of the Member State where the licence was issued. Upon production to the authorities of such Member State of proof of such re-exportation from the United States, the allocation of that Member State for the period within which such proof is presented shall be increased by the same amount.

2. The Commission may lay down detailed rules for the implementation of this Article.

Article 7

Cooperation between the Commission and the Member States for the application of this Regulation shall be subject to Article 11 of Regulation (EEC) No 1023/70.

Article 8

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 Brussels, 6 November 1989.

For the Council

The President

R. DUMAS

[1] OJ No L 83, 30. 3. 1981, p. 40.

ANNEX I

List of products

Product	HTS	CN code
Other pipe and tube	7304.10 (1)	7304 10 (1)
	7304.31 (1)	7304 31 (1)
	7304.39 (1)	7304 39 (1)
	7304.41 (1)	7304 41 (1)
	7304.49 (1)	7304 49 (1)
	7304.51 (1)	7304 51 (1)
	7304.59 (1)	7304 59 (1)
	7304.90 (1)	7304 90 (1)
	7305.11	7305 11 00
	7305.12	7305 12 00
	7305.19	7305 19 00
	7305.31.40 (1)	7305 31 00 (1) (2)
	7305.31.60 (1)	7305 39 00 (1)
	7305.39 (1)	7305 90 00 (1)
	7305.90 (1)	
		7306 10
	7306.10 (1)	7306 30 (1) (2)
	7306.30.10 (1)	7306 40 (1)
	7306.30.50 (1)	7306 50 (1) (2)
	7306.40 (1)	7306 60 (1)
	7306.50.10 (1)	7306 90 00 (1)
	7306.50.50 (1)	
	7306.60 (1)	8547 90 00 (3)
	7306.90 (1)	
	8547.90.0020	
OCTG	7304.20	7304 20
	7305.20	7305 20
	7306.20	7306 20 00

The subheadings and item numbers referred to above are subject to revision when the Community or the United States adopt modifications to their respective import nomenclatures. When such modifications are adopted, prior notification shall be given to the other party.

(1) Excluded if drill pipe of a kind used in drilling for earth minerals or ores.
(2) Excluded if tapered pipes and tubes principally used as parts of illuminating articles.
(3) Covered if conduit tubing.

ANNEX II

United States customs territory and United States foreign trade zones

The United states customs territory shall comprise the States, the district of Columbia and Puerto Rico.

A United States foreign zone shall be defined as follows:

It is an isolated, enclosed and policed area, operated as a public utility, in or adjacent to a port of entry, furnished with facilities for loading, unloading, handling, storing, manipulating, manufacturing and exhibiting goods and for reshipping them by land, water or air. Any foreign and domestic merchandise, except such as is prohibited by laws or such as the Board may order to be excluded as detrimental to the public interest, health or safety, may be brought into a zone without being subject to the customs laws of the United States governing the entry of goods or the payment of duty thereon; and such merchandise permitted in a zone may be stored, exhibited, manufactured, mixed or manipulated in any manner, except as provided in the act and other applicable laws or regulations. The merchandise may be exported, destroyed or sent into customs territory from the zone, in the original package or otherwise. It is subject to customs duties if sent into customs territory, but not if reshipped to foreign points.

ANNEX III

Allocation among Member States

	Member States	Proportion of Community limits
Pipes and tubes	Germany	33,57 %
	France	11,07 %
	Italy	23,81 %
	Netherlands	3,33 %
	Belgium	5,72 %
	Luxembourg	2,03 %
	United Kingdom	4,76 %
	Greece	6,19 %
	Denmark	—
	Ireland	—
	Spain	9,52 %
	Portugal	—
OCTG	Germany	38,76 %
	France	4,69 %
	Italy	28,76 %
	Netherlands	0,18 %
	Belgium	4,42 %
	Luxembourg	0,09 %
	United Kingdom	4,87 %
	Greece	6,73 %
	Denmark	—
	Ireland	—
	Spain	11,50 %
	Portugal	—