Council Regulation (EC) No 1440/2005 of 12 July 2005 on administering certain restrictions on imports of certain steel products from Ukraine and repealing Regulation (EC) No 2266/2004

COUNCIL REGULATION (EC) No 1440/2005

of 12 July 2005

on administering certain restrictions on imports of certain steel products from Ukraine and repealing Regulation (EC) No 2266/2004

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine[(1)], hereinafter referred to as 'the PCA', entered into force on 1 March 1998.

(2) Article 22(1) of the PCA provides that trade in certain steel products shall be governed by Title III thereof, with the exception of Article 14 thereof, and by the provisions of an Agreement on quantitative arrangements.

(3) On 29 July 2005, the European Community and the Government of Ukraine concluded such an Agreement on trade in certain steel products[(2)], hereinafter referred to as 'the Agreement'.

(4) It is necessary to provide the means for administering the terms of the Agreement within the Community, taking into account the experience gained from previous Agreements concerning a similar regime.

(5) It is appropriate to classify the products in question on the basis of the combined nomenclature (CN) established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff[(3)].

(6) It is necessary to ensure that the origin of the products in question is checked and appropriate methods of administrative cooperation are set up to that end.

(7) The effective application of the Agreement requires the introduction of a requirement of a Community import authorisation for entry into free circulation in the Community of the products in question together with a system for administering the granting of such Community import authorisations.

(8) Products placed in a free zone or imported under the arrangements governing customs warehouses, temporary importation or inward processing (suspension system) should not be counted against the limits established for the products in question.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1440/2005. (See end of Document for details)*

(9) In order to ensure that these quantitative limits are not exceeded, it is necessary to establish a management procedure whereby the competent authorities of the Member States will not issue import authorisations before obtaining prior confirmation from the Commission that appropriate amounts remain available within the quantitative limit in question.

(10) The Agreement provides for a system of cooperation between Ukraine and the Community with the aim of preventing circumvention by means of transhipment, rerouting or other means. A consultation procedure should be established under which an agreement can be reached with the country concerned on an equivalent adjustment to the relevant quantitative limit when it appears that the Agreement has been circumvented. Ukraine has agreed to take the necessary measures to ensure that any adjustments could be rapidly applied. In the absence of agreement within the time limit provided, the Community should, where there is clear evidence of circumvention, have the possibility to apply the equivalent adjustment.

(11) From 1 January 2005 imports into the Community of products covered by this Regulation have been subjected to a licence pursuant to Council Regulation (EC) No 2266/2004 of 20 December 2004 on trade in certain steel products between the Community and Ukraine[(4)]. The Agreement provides that those imports are to be counted against the limits established for 2005 in this Regulation.

(12) For reasons of clarity it is therefore necessary to replace Regulation (EC) No 2266/2004 by this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

1 This Regulation applies to imports into the Community of steel products listed in Annex I, originating in Ukraine.

2 The steel products shall be classified in product groups as set out in Annex I.

3 The origin of the products referred to in paragraph 1 shall be determined in accordance with the rules in force in the Community.

4 The procedures for verification of the origin of the products referred to in paragraph 1 are laid down in Chapters II and III.

Article 2

1 The importation into the Community of the products listed in Annex I originating in Ukraine shall be subject to the annual quantitative limits laid down in Annex V. The release for free circulation in the Community of the products listed in Annex I originating in Ukraine shall be subject to the presentation of a certificate of origin, as set out in Annex II, and of an import authorisation issued by the Member States' authorities in accordance with the provisions of Article 4.

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 1440/2005. (See end of Document for details)*

The authorised imports shall be counted against the quantitative limits laid down for the year in which the products are shipped in the exporting country.

2 In order to ensure that quantities for which import authorisations are issued do not exceed at any moment the total quantitative limits for each product group, the competent authorities of the Member States shall issue import authorisations only upon confirmation by the Commission that there are still quantities available within the quantitative limits for the relevant product group of steel products in respect of the supplier country, for which an importer or importers have submitted applications to those authorities. The competent authorities of the Member States for the purposes of this Regulation are listed in Annex IV.

3 Imports of products as from 1 January 2005, for which a licence was required pursuant to Regulation (EC) No 2266/2004 shall be counted against the relevant limits for 2005 laid down in Annex V.

4 For the purposes of this Regulation and as from the date of its application, shipment of products shall be considered as having taken place on the date on which they were loaded on to the exporting means of transport.

Article 3

1 The quantitative limits referred to in Annex V shall not apply to products placed in a free zone or free warehouse or imported under the arrangements governing customs warehouses, temporary importation or inward processing (suspension system).

2 Where the products referred to in paragraph 1 are subsequently released for free circulation, either in the unaltered state or after working or processing, Article 2(2) shall apply and the products so released shall be counted against the relevant quantitative limit set out in Annex V.

Article 4

1 For the purpose of applying Article 2(2), before issuing import authorisations, the competent authorities of the Member States shall notify the Commission of the amounts of the requests for import authorisations, supported by original export licences, which they have received. By return, the Commission shall notify its confirmation that the requested amount(s) of quantities are available for importation in the chronological order in which the notifications of the Member States have been received.

2 The requests included in the notifications to the Commission shall be valid if they establish clearly in each case the exporting country, the product group concerned, the amounts to be imported, the number of the export licence, the quota year and the Member State in which the products are intended to be put into free circulation.

3 As far as possible, the Commission shall confirm to the authorities of the Member States the full amount indicated in the requests notified for each product group. Moreover, the Commission shall contact the competent authorities of Ukraine immediately in cases where requests notified exceed the limits in order to seek clarification and a rapid solution.

4 The competent authorities of the Member States shall notify the Commission immediately after being informed of any quantity that is not used during the duration of validity of the import authorisation. Such unused quantities shall automatically be transferred into the remaining quantities of the total Community quantitative limit for each product group.

5 The notifications referred to in paragraphs 1, 2, 3 and 4 shall be communicated electronically within the integrated network set up for this purpose, unless for imperative technical reasons it is necessary to use other means of communication temporarily.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1440/2005. (See end of Document for details)*

6 The import authorisations or equivalent documents shall be issued in accordance with Chapter II.

7 The competent authorities of the Member States shall notify the Commission of any cancellation of import authorisations or equivalent documents already issued in cases where the corresponding export licences have been withdrawn or cancelled by the competent authorities of Ukraine. However, if the Commission or the competent authorities of a Member State have been informed by the competent authorities of Ukraine of the withdrawal or cancellation of an export licence after the related products have been imported into the Community, the quantities in question shall be counted against the quantitative limit for the year during which shipment of products took place.

Article 5

For the purposes of applying Article 3(3) and 3(4) of the Agreement, the Commission is hereby authorised to make the necessary adjustments.

Article 6

1 Where, following the enquiries carried out in accordance with the procedures set out in Chapter III, the Commission notes that the information in its possession constitutes proof that products listed in Annex I originating in Ukraine have been transhipped, rerouted or otherwise imported into the Community through circumvention of the quantitative limits referred to in Article 2 and that there is a need for the necessary adjustments to be made, it shall request that consultations be opened so that agreement may be reached on an equivalent adjustment of the corresponding quantitative limits.

2 Pending the outcome of the consultations referred to in paragraph 1, the Commission may ask Ukraine to take the necessary precautionary steps to ensure that adjustments to the quantitative limits agreed following such consultations may be carried out for the year in which the request for consultations was lodged or for the following year, if the quantitative limits for the current year are exhausted, where there is clear evidence of circumvention.

3 If the Community and Ukraine fail to arrive at a satisfactory solution and if the Commission notes that there is clear evidence of circumvention, the Commission shall deduct from the quantitative limits an equivalent volume of products originating in Ukraine.

Article 7

This Regulation shall not constitute in any way a derogation from the provisions of the Agreement which, in all cases of conflict, shall prevail.

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 1440/2005. (See end of Document for details)*

CHAPTER II

MODALITIES APPLICABLE TO THE MANAGEMENT OF THE QUANTITATIVE LIMITS

SECTION 1

Classification

Article 8

The classification of the products covered by this Regulation is based on the combined nomenclature established by Regulation (EEC) No 2658/87.

Article 9

On the initiative of the Commission or of a Member State, the Tariff and Statistical Nomenclature Section of the Customs Code Committee, established by Regulation (EEC) No 2658/87 will examine urgently, in accordance with the provisions of that Regulation, all questions concerning the classification of products covered by this Regulation within the combined nomenclature in order to classify them in the appropriate product groups.

Article 10

The Commission shall inform Ukraine of any changes in the CN and TARIC codes affecting products covered by this Regulation at least one month before the date of their entry into force in the Community.

Article 11

The Commission shall inform the competent authorities of Ukraine of any decisions adopted in accordance with the procedures in force in the Community relating to classification of products covered by this Regulation, within one month at the latest of their adoption. Such communication shall include:

(a) a description of the products concerned;

(b) the relevant product group, the CN and TARIC code;

(c) the reasons which have led to the decision.

Article 12

1 Where a classification decision adopted in accordance with Community procedures in force results in a change of classification practice or a change in the product group of any product covered by this Regulation, the competent authorities of the Member States shall provide 30 days' notice, from the date of the Commission's notification, before the decision is put into effect.

2 Products shipped before the date of application of the decision shall remain subject to earlier classification practice, provided that the goods in question are entered to importation within 60 days of that date.

Article 13

Where a classification decision adopted in accordance with the Community procedures in force referred to in Article 12 involves a product group subject to a quantitative