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Press and Information Division

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Judgment of the Court of First Instance in Cases T-44/00, T-48/00, T-50/00 and Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00

*Mannesmannröhren-Werke AG, Corus UK Ltd, Dalmine SpA, JFE Engineering Corp. (formerly NKK Corp.), Nippon Steel Corp., JFE Steel Corp. (formerly Kawasaki Steel Corp.) and Sumitomo Metal Industries* v *Commission of the European Communities*

# THE COURT OF FIRST INSTANCE REDUCES THE FINES IMPOSED BY THE EUROPEAN COMMISSION ON STEEL TUBE PRODUCERS BY 13 MILLION EUROS

*The Commission was unable to produce evidence covering the entire duration of the infringement*

By a decision of 8 December 1999, [1] the European Commission ordered eight undertakings (four European and four Japanese companies) producing certain types of seamless carbon-steel pipes and tubes used in the oil industry, to pay fines totalling EUR 99 million for infringing Community competition law.

The Commission considered that the companies had entered into an agreement under which each of them undertook not to sell standard-thread pipes and tubes (known as OCTG – Oil Country Tubular Goods) or "Project Linepipe" tubes on the domestic market of any other company that was party to the agreement. The agreement was concluded at meetings of the companies known as the "Europe-Japan Club". In determining the duration of the infringement, the Commission took the view that, although the Europe-Japan Club had first met in 1977, the beginning of 1990 should be taken as the starting date of the infringement since, between 1977 and 1990, voluntary agreements on restraint of imports concluded between the European Community and Japan had been in force. According to the Commission, the infringement ceased at the beginning of 1995.

[1] Commission Decision 2003/382/EC relating to a proceeding under Article 81 of the EC Treaty (Case IV/E-1/35.860-B seamless steel tubes)

RUE DU FORT NIEDERGRÜNEWALD
L-2925 LUXEMBOURG
TELEPHONE(+352) 4303-1
TELEFAX:(+352) 4303-2100
CFI.REGISTRY@CURIA.EU.INT

The Commission also took the view that the European producers had concluded anti-competitive contracts relating to the sale of plain-end OCTG – that is to say, pipes and tubes which have not yet been threaded – on the United Kingdom market. However, it imposed no additional fines on those companies because it considered that the contracts were merely a means of ensuring the application of the Europe-Japan Club agreement.

Seven of the eight companies, namely Mannesmannröhren-Werke, Corus UK, Dalmine, JFE Engineering (formerly NKK), Nippon Steel, JFE Steel (formerly Kawasaki Steel.) and Sumitomo Metal Industries, brought actions for annulment of that decision.

The Court of First Instance noted that none of parties had called into question the concession made by the Commission whereby, because of the existence of the voluntary restraint agreements, it did not take 1977 as the starting date of the infringement. It therefore held that it could not examine the lawfulness or appropriateness of that concession but could only assess whether the Commission had applied it correctly.

The Court of First Instance found that, in the specific circumstances of the case, it was the Commission's responsibility to produce evidence of the date on which the voluntary restraint agreements came to an end. Since the Commission did not produce such evidence and since the Japanese companies adduced evidence showing that those international agreements had been renewed until 31 December 1990, at least as far as the Japanese were concerned, the Court took the view that those agreements had remained in force **until the end of 1990**.

The Japanese companies also contested the date on which the infringement imputed to them had come to an end. The Court held, on the basis of the evidence produced by the Commission, that it had not been established, in the case of the Japanese undertakings, that the infringement had continued beyond 1 July 1994 and that it was therefore necessary to reduce the duration of the infringement by a further six months, in addition to the reduction of one year referred to above.

Consequently, the Court of First Instance **annulled** the contested decision to the extent to which it found that **the infringement predated 1 January 1991** and, in the case of the Japanese companies, had continued after 30 June 1994, and it **reduced the fines** imposed on the companies in order to take that fact into account (see table below).

The Court also held that, by omitting to take account of the European producers' second infringement (the contracts relating to the United Kingdom market) in determining the amount of the fine, the Commission had treated different situations in the same way. Such unequal treatment should logically have led to an **increase**, by the Court, of **the amount of the fines imposed on the European producers**. However, in view of the fact that the Commission had not pleaded in its arguments that the amount of the fine should be revised upwards in this case, the Court held that the **most suitable way of remedying the unequal treatment** as between the European and Japanese producers was to **reduce the amount of the fine imposed on each of the Japanese producers by 10%**.

The Court of First Instance rejected all the other arguments put forward by the applicants.

| Company | Fine imposed by the Commission (EUR) | Fine as reduced by the Court (EUR) |
|---|---|---|
| Mannesmannröhren-Werke AG | 13 500 000 | 12 600 000 |
| Corus UK Ltd | 12 600 000 | 11 700 000 |
| Dalmine SpA | 10 800 000 | 10 080 000 |
| JFE Steel Corp. | 13 500 000 | 10 935 000 |
| Nippon Steel Corp. | 13 500 000 | 10 935 000 |
| JFE Engineering Corp. | 13 500 000 | 10 935 000 |
| Sumitomo Metal Industries Ltd | 13 500 000 | 10 935 000 |
| Vallourec [2] | 8 100 000 | 8 100 000 |
| **Total** | **99 000 000** | **86 220 000** |

**Note: An appeal, limited to points of law, may be brought before the Court of Justice of the EC against the judgment of the Court of First Instance within two months of its notification to the parties.**



*For further information please contact Christopher Fretwell*
*Tel: (00352) 4303 3355; fax: (00352) 4303 2731*

[2] Vallourec did not bring proceedings against the decision before the Court.