JUDGMENT OF THE COURT (First Chamber)
10 December 1986 *

In Case 41/85

Sideradria SpA — Industria Metallurgica, whose registered office is at Adria (Rovigo, Italy), in the person of its sole director Vincenzo Carrino, represented by Giuseppe Marchesini, advocate with the right of audience before the Supreme Court of Cassation of the Italian Republic, with an address for service in Luxembourg at the chambers of Ernest Arendt, 34 B IV, rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, also a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION requesting the Court to declare void the decision of 19 December 1984 of the Commission of the European Communities imposing a fine on the applicant for exceeding production and delivery quotas of steel products or, in the alternative, to reduce that fine,

THE COURT (First Chamber)

composed of: F. Schockweiler, President of the Chamber, G. Bosco and R. Joliet, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

having regard to the Report for the Hearing and further to the hearing on 26 June 1986,

* Language of the Case: Italian.

after hearing the Opinion of the Advocate General delivered at the sitting on 23 September 1986,

gives the following

JUDGMENT

1 By application lodged at the Court Registry on 12 February 1985, Sideradria SpA, whose registered office is at Adria (Italy), brought an action under the second paragraph of Article 36 of the ECSC Treaty requesting the Court to declare void the Commission's decision of 19 December 1984 imposing a fine on the applicant under Article 58 (4) of the ECSC Treaty, Article 12 of General Decision No 1831/81/ECSC of 24 June 1981 establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1981, L 180, p. 1) and Article 12 of General Decision No 1696/82/ECSC of 30 June 1982 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1982, L 191, p. 1), or, in the alternative, to reduce the fine imposed.

2 Reference is made to the Report for the Hearing for the facts and for the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 Since Sideradria exceeded its production quota for the fourth quarter of 1982 by 3 371 tonnes and its delivery quotas for the fourth quarter of 1981 and all four quarters of 1982 by 7 832 tonnes, 6 051 tonnes, 7 692 tonnes, 7 159 tonnes and 9 012 tonnes respectively, the fine, calculated at the rate of 20 European currency units (ECU) per tonne of excess, amounted to 768 404 ECU.

4 As regards the infringement of the production quota for the fourth quarter of 1982, Sideradria argues that the Commission adopted a contradictory attitude in so far as on 19 August 1982 it granted Sideradria additional production quotas in respect of the four preceding quarters without actually giving it the possibility of using them, since it was not authorized to carry quotas forward beyond the third

quarter of 1982. In addition, Sideradria complains that on 29 October 1982 the Commission refused to apply to it Article 11 (3) (d) of aforementioned Decision No 1696/82, which provides that in the event of *force majeure* unused quotas may be carried forward in their entirety. If the Commission had authorized Sideradria to carry forward to the fourth quarter of 1982 the additional quotas which had been granted to it, that would have covered the excess at issue. Accordingly, it is unjust to penalize Sideradria for having exceeded its production quotas.

5 It must be observed that that submission is tantamount to calling into question the validity of the decisions of 19 August and 29 October 1982, which have become definitive since they were not contested within the periods prescribed by the Treaty. According to a consistent line of decisions of the Court, an applicant cannot, in proceedings for a declaration that an individual decision is void, raise an objection of illegality against other individual decisions addressed to it which have become definitive. That submission must therefore be dismissed.

6 With regard to its having exceeded the delivery quotas for the fourth quarter of 1981 and all four quarters of 1982, Sideradria relies on four submissions.

7 First, Sideradria maintains that it is unjust to have allocated it delivery quotas of between one-third and one-half of its authorized production when there were no economic outlets for its production other than the common market.

8 Secondly, Sideradria contests the way in which the Commission applied Article 8 (2) of Decision No 1696/82, under which the Commission may make appropriate adjustments to the annual reference quantities for the undertaking concerned if the latter can prove, in particular, that the reference quantities fixed have caused it grave difficulty. In this case, the increase in the delivery quota granted on 3 December 1982 pursuant to that provision was insufficient and, in addition, non-retroactive, and hence did not enable Sideradria to overcome its difficulties. Accordingly, the measure was not appropriate within the meaning of Article 8 (2) of Decision No 1696/82. Moreover, the Commission did not apply Article 14 of

Decision No 1696/82, under which the Commission is to make suitable adjustments to reference quantities in the event that the quota system creates exceptional difficulties for an undertaking.

9 Thirdly, Sideradria claims that the Commission calculated its delivery quotas on the basis of erroneous data, in so far as some of the sales which were declared to be sales to non-member countries were in reality deliveries to Italian undertakings as is shown by the fact that value-added tax was paid on those sales.

10 As regards those three submissions it should be observed that Sideradria failed to contest within the prescribed periods the decisions fixing its delivery quotas and the decisions on its requests for Article 8 (2) and Article 14 of Decision No 1696/82 to be applied. As pointed out above, the Court has consistently held that an applicant cannot, in proceedings for a declaration that an individual decision is void, raise an objection of illegality against other individual decisions addressed to it which have become definitive. Those three submissions must therefore be dismissed.

11 Sideradria bases its claim for the abolition or, in the alternative, the reduction of the fine on the argument that it was unfair to grant it additional production quotas for the four preceding quarters and for the current quarter without giving it the actual possibility of using those quotas. It stresses that the undertaking was closed during August 1982 for annual holidays and that it therefore had only September 1982 in which to use the additional quotas granted. In those circumstances, it was entitled to expect that the Commission would not penalize it for exceeding its production quota for the fourth quarter of 1982. As for its infringement of its delivery quotas, Sideradria considers that, in order to be 'appropriate' within the meaning of Article 8 (2) of Decision No 1696/82, the decision of 3 December 1982 adjusting its delivery quota should have increased it more substantially and, above all, with retroactive effect, in which case there would have been no infringement.

12 As regards Sideradria's having exceeded the production quota, it must be borne in mind that the decision of 19 August 1982 was taken at a time when the under-

taking was closed for the whole of August for annual holidays and that it therefore had only one month in which to use its additional quotas. In those circumstances, the undertaking is right to consider that it was entitled to expect that sanctions would not be imposed in respect of its quota infringement. Accordingly, by virtue of the unlimited jurisdiction conferred upon it by the second paragraph of Article 36 of the ECSC Treaty, the Court considers it equitable to quash the fine imposed on Sideradria for exceeding the production quota for the fourth quarter of 1982.

13 However, it is not appropriate to reduce the fine imposed on the undertaking for exceeding the delivery quotas, since the arguments raised in that connection by Sideradria relate to the legality of the decision of 3 December 1982, which may no longer be challenged.

14 According to the contested decision, the fine was calculated on the basis of the total tonnage by which the delivery quotas were exceeded, that is to say 37 746 tonnes, and on the basis of 20% of the tonnage by which the production quota was exceeded, that is to say 674 tonnes. The fine, calculated at the rate of 20 ECU per tonne of excess taken into account, is therefore 754 920 ECU for exceeding the delivery quotas and 13 484 ECU for exceeding the production quota.

15 It follows from the foregoing that the fine must be reduced by 13 484 ECU from 768 404 ECU to 754 920 ECU, or LIT 1 036 142 798.

Costs

16 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the applicant has been unsuccessful in its main submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Reduces the amount of the fine imposed on the applicant from 768 404 ECU to 754 920 ECU, or LIT 1 036 142 798;

(2) Dismisses the remainder of the application;

(3) Orders the applicant to pay the costs.

Schockweiler Bosco Joliet

Delivered in open court in Luxembourg on 10 December 1986.

P. Heim
Registrar

F. Schockweiler
President of the First Chamber