Case 41/85

Sideradria SpA — Industria Metallurgica
v
Commission of the European Communities

(Steel production and delivery quotas — Fine)

Report for the Hearing 3917
Opinion of Mr Advocate General Mancini delivered on 23 September 1986 3921
Judgment of the Court (First Chamber), 10 December 1986 3923

Summary of the Judgment

1. *Objection of illegality — Measures against which an objection of illegality may be raised — Individual decisions — Exclusion*
   (ECSC Treaty, Art. 36, third paragraph)

2. *ECSC — Production — System of production and delivery quotas for steel — Exceeding of quotas — Fine — Circumstances justifying the annulment or reduction of the fine*
   (ECSC Treaty, Art. 58; General Decisions Nos 1831/81 and 1696/82)

REPORT FOR THE HEARING
delivered in Case 41/85 *

I — The facts

Sideradria SpA is an Italian undertaking engaged essentially in the production of reinforcing bars for concrete. As a result, it is subject to the rules laid down for the steel sector on the basis of Articles 58 and 60 of the ECSC Treaty.

The Commission notified Sideradria in various letters of its production and delivery quotas for the fourth quarter of 1981 and all four quarters of 1982.

* Language of the Case: Italian.

In Sideradria's view those quotas were particularly unfavourable to it because they were calculated by reference to years in which the company had had to stop manufacturing and then resume it at a lower rate.

By decision of 19 August 1982 the Commission granted Sideradria a retroactive increase in production quotas in respect of the third and fourth quarters of 1981 and in respect of the first, second and third quarters of 1982. However, under that decision the possibility of carrying over excess production was restricted to the third quarter of 1982.

Subsequently, it appeared from checks carried out by the Commission that the production quota for the fourth quarter of 1982 and the delivery quotas for the fourth quarter of 1981 and the first, second, third and fourth quarters of 1982 had been exceeded.

Having called on Sideradria to submit its observations pursuant to Article 36 of the ECSC Treaty, on 19 December 1984 the Commission issued a decision fining the undertaking 768 404 ECU on account of the quota infringements described above.

On 12 February 1985 Sideradria brought an action for a declaration that that decision was void.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

Sideradria claims that the Court should:

1. Declare void the Commission's decision of 19 December 1984;

2. In the alternative, amend the contested decision by reducing the fine imposed;

3. In any event, order the Commission to pay the costs.

The Commission claims that the Court should:

1. Dismiss Sideradria's application;

2. Order Sideradria to pay the costs.

III — Submissions and arguments of the parties

A — *Infringement of the production quota for the fourth quarter of 1982*

(a) In the first place, *Sideradria* maintains that it is absurd, unjust and contradictory to penalize it for exceeding its production quota for the fourth quarter of 1982. It points out that by decision of 19 August 1982 the Commission granted it retroactively supplementary production quotas, but 4 234 tonnes of those quotas remained unused because excess production could not be carried over beyond the third quarter of 1982, two-thirds of which had already elapsed. However, in the fourth quarter of 1982 Sideradria exceeded its production quota by 3 371 tonnes. Sideradria argues that if it had been authorized to carry over to the fourth quarter of 1982 the retroactive increase in production quotas which the Commission had granted in respect of the five previous quarters, the excess production in the fourth quarter of 1982 would have been covered by the unused quotas carried over. Sideradria considers that it should not be penalized for production which had been acknowledged to be lawful but which it had been unable to achieve in the prescribed period.

The *Commission*, for its part, states that it granted additional production quotas to

Sideradria by decision of 19 August 1982 because it had become apparent that Sideradria had underdeclared its production in the reference years with a view to paying less tax. The additional quotas had been granted in order to enable Sideradria to regularize its situation as regards the past but not to enable it to cover new irregularities by carrying over the supplementary quotas granted by that decision.

(b) Secondly, *Sideradria* states that, under Article 11 (3) (d) of Decision No 1696/82/ECSC (Official Journal 1982, L 191, p. 1), production quotas which are unused as a result of *force majeure* may be carried over in their entirety. Sideradria appears to consider as *force majeure* the fact that it was in practice impossible for it to use up the supplementary quotas granted to it by the decision of 19 August 1982 before the period laid down by that decision expired.

The *Commission* argues that Sideradria may not rely on *force majeure*. The quotas had had to be corrected because of Sideradria's own conduct, in so far as it had underdeclared its production. Moreover, the facts relied on by Sideradria correspond to none of the circumstances set out in the list of cases of *force majeure* in the fourth recital in the preamble to Commission Decision No 2804/81/ECSC (Official Journal 1981, L 278, p. 1) amending Decision No 1831/81/ECSC (Official Journal 1981, L 180, p. 1): technical accident, fire or strike seriously disrupting production for at least four weeks.

B — *Infringement of the delivery quotas for the fourth quarter of 1981 and all four quarters of 1982*

(a) *Sideradria* considers that its delivery quotas for the fourth quarter of 1981 and all four quarters of 1982 were unfair since they limited to one-third or one-half of authorized production the quantities which could be delivered within the common market. Such a restriction was unfair, in particular because there was no economically viable way of disposing of that part of authorized production which was not covered by delivery quotas. Conceivable alternatives, that is to say exports to non-member countries, sale of the unused part of the production quota to other undertakings or even storage of production, afforded no satisfactory solution.

The *Commission* considers that that argument calls into question the criteria adopted for calculating the reference quantities underlying the contested quotas, and refers to its defence in Case 67/84 in which Sideradria was also the applicant. In any event, since Sideradria failed to challenge the decision fixing the delivery quotas in time, it is not entitled to contest the delivery quotas in these proceedings.

(b) *Sideradria* maintains that it did its utmost to obtain the adjustment of its delivery quotas for the quarters at issue. It requested the Commission to apply Article 8 of Decision No 1831/81/ECSC, as amended by Decision No 2804/81/ECSC, and Article 14 of Decision No 1831/81/ECSC, both of which provide for the possible amendment of delivery quotas in the event that an undertaking is in difficulties whithin the meaning of those two articles. The Commission did in fact apply Article 8 and subsequently granted an increase of 306 tonnes per quarter in the delivery quotas as from the fourth quarter of 1982 but that increase fell substantially short of enabling Sideradria to resolve its

problems. Furthermore, the Commission failed to respond to its request that Article 14 should be applied.

The *Commission* states in reply that it applied Article 8 in accordance with the criteria which have been applied uniformly in that connection and that the decision on the matter was not contested within the prescribed time-limit. As for the request to apply Article 14, it should have been submitted during the quarters in which the quotas were exceeded, which was not done.

(c) Lastly, *Sideradria* argues that the delivery quotas were calculated on the basis of erroneous data, since according to its accounts it declared as sales to non-member countries deliveries which were in fact intended for Italian undertakings.

The *Commission* expresses surprise that that argument was never put forward before the action was brought. In any event, it maintains that that argument is not well founded in so far as Sideradria must bear the consequences of quotas which were established on the basis of erroneous data which it itself provided.

R. Joliet
Judge-Rapporteur