Case 46/85

Manchester Steel Limited
v
Commission of the European Communities

(Steel — Production in excess of quotas)

Summary

ECSC — Production — Steel production quota system — Exceeding of quotas — Fixing of a fine — Administrative procedure — Regularity — Tolerance in excess — Conditions of application

(ECSC Treaty, Arts 36 and 58; General Decision No 1831/81, Art. 11)

OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 27 February 1986 *

Mr President,
Members of the Court,

1. The action

By a decision of 19 December 1984 the Commission imposed on Manchester Steel Ltd a fine of 172 987 ECU (UKL 105 466) for having exceeded its production quotas for the first, second and third quarters of 1982.

The applicant brought an action against that decision. In its application it claims that the Court should:

(a) Declare the contested decision void;

* Translated from the French.

(b) Alternatively, cancel or reduce the fine imposed;

(c) In either event, order the Commission to pay the costs.

In support of its action Manchester Steel put forward five submissions. However, in its reply it declared that it wished to withdraw the first and fifth submissions. By a letter of 15 July 1985 it stated that it also wished to withdraw its fourth submission.

2. The submission concerning the alleged breach of the principle of proper administration

Manchester Steel's second submission is based on the alleged breach of the 'general principles of proper administration'. The submission apparently relates to an alleged infringement of the requirement laid down in Article 36 of the ECSC Treaty according to which 'before imposing a pecuniary sanction . . . as provided for in this Treaty, the High Authority must give the party concerned the opportunity to submit its comments'.

For a better understanding of that submission it is necessary to recall the procedure followed by the Commission before imposing the fine.

(i) On 15 November 1983 the Commission sent a letter to Manchester Steel in which it drew attention to the fact that the company had exceeded its production quotas for the first three quarters of 1982. In that letter it also asked Manchester Steel to submit its comments.

(ii) Manchester Steel replied by a letter of 23 November 1983 in which it challenged some of the Commission's figures.

(iii) On 18 May 1984 a hearing took place at which it was agreed that the Commission would carry out a final inspection at the company's premises.

(iv) By a letter of 2 August 1984 Manchester Steel accepted the figures established by an independent firm of chartered accountants and the report drawn up on the basis of those figures. On the basis of those figures the Commission terminated the procedure for the fourth quarter of 1981 and reduced the figures for excess production in respect of the three quarters in 1982.

(v) By a letter of 18 April 1984 the Commission opened another procedure, in respect of production in excess of the quotas for the first and second quarters of 1983.

(vi) By a telex message of 26 November 1984 the Commission offered to hold a meeting in order to discuss that latest excess production. In that telex it also stated that it was prepared to discuss further the excess production for the three quarters of 1982.

(vii) At that meeting, which took place on 4 December 1984, the parties agreed that they would hold a separate, 'formal' meeting in order to discuss once again the figures concerning excess production in 1982. In the draft minutes of that meeting it is stated as follows:

'At this stage of the discussion the *Chairman* could only note that, even after so much discussion and so many inspections, the undertaking was still unable to accept the figures which it had itself declared in the first place, which had been confirmed by inspectors, which the undertaking had then denied and which had then been checked by methods accepted by the undertaking. The latter was still referring to its letter of 16 May 1984 contesting the level of excesses notified by the Commission and giving the

undertaking's own figures even though, since that date, a further inspection had taken place and had been followed up by a report whose conclusions the undertaking had accepted. In the face of such an unheard-of case the *Chairman could only propose one last gesture on the part of the Commission's departments, namely that in a separate meeting the undertaking and the relevant departments — administration and quotas — should agree once and for all on the calculation method and finally decide the figures, not just for the first half of 1983 but also for the second half and for the years 1981 and 1982 — i. e. for the whole of the period audited by Binder Hamlyn the conclusions of whose report the company had accepted.* The Chairman insisted that the meeting should be formal and should produce a piece of paper, signed by both parties, stating the figures that had been decided. *If no agreement could be reached the Commission would make its decision on the basis of the figures confirmed by the inspectors.*

The *Chairman* explained the procedure that would follow, namely that, in addition to the procedure suggested above, draft minutes would be sent to the undertaking for the latter's agreement. These would be followed by the final minutes which would incorporate any observations the undertaking had to make. The Chairman thanked those present and closed the meeting.'

A meeting between the Commission and Manchester Steel took place on the same day with a view to adopting the final figures. As far as we know, no agreement was reached at that meeting.

(viii) On 19 December 1984 the Commission adopted its decision imposing the fine.

Manchester Steel's submission is directed against the Commission's failure to send to it a letter containing the draft minutes of the meeting of 4 December until 28 January 1985, and its abrupt termination of the joint assessment of the 1982 figures by its adoption of the decision of 19 December. In Manchester Steel's view the Commission's action infringed essential procedural requirements, and accordingly must render the decision void.

There is no doubt that by its decision of 19 December the Commission in fact closed the procedure of consultation between itself and Manchester Steel with regard to the excess production of 1982.

However, in my view, the submission must be rejected.

In the first place, it appears from the above summary that the applicant had the opportunity to submit its comments four times, twice by letter and twice orally. Whilst it may be conceded that the way in which the Commission closed the procedure showed a certain lack of finesse with regard to Manchester Steel, it is clear that the Commission more than satisfied the requirement laid down in Article 36 of the ECSC Treaty. I would stress that Article 36 does not require the Commission to continue such consultations until an agreement is reached between it and the undertaking concerned regarding the extent of the infringement. That follows *inter alia* from the judgment of the Court in Case 9/83 (*Eisen und Metall Aktiengesellschaft* v *Commission* [1984] ECR 2071, paragraph 36 of the decision).

Secondly, even if a procedural irregularity had occurred, it is clear that the result, had

the procedure been continued, would have been no different from the contested decision. Indeed in paragraph 11 of its application, Manchester Steel stated that it accepted the Commission's figures. As the Court held in its judgments in Case 30/78 (*Distillers* [1980] ECR 2229, paragraph 26 of the decision) and in Joined Cases 96 to 102, 104, 105, 108 and 110/82 (*IAZ and Others* [1983] ECR 3369, paragraph 15 of the decision), in such circumstances the procedural irregularities which may occur cannot render the decision in question void.

3. The submission concerning the failure to apply the tolerance

In its application, Manchester Steel does not challenge the figure on which the decision of 19 December 1984 is based, but raises against that decision a legal consideration, namely the Commission's refusal to apply to it Article 11 (2) of Decision No 1831/81/ECSC (Official Journal 1981, L 180, p. 1).

At the hearing the Commission drew attention to the fact that Manchester Steel did not seek to rely on that provision until after the Commission had adopted its decision concerning the undertaking.

Article 11 provides for a tolerance where production in excess of the quotas is minimal. According to Article 11 (1) a tolerance of 3% in excess is allowed in each production quota for Categories 1a, b, c and d. However, the total production of those categories cannot exceed the sum of the quotas for each of those categories. It is therefore at this point that the limitation for the total production of each undertaking first emerges as the fundamental principle on which this ECSC decision is based.

Article 11 (1) does not apply to undertakings which, like Manchester Steel in the first and second quarters of 1982, produce only one category of products. For such cases Article 11 (2) provides that:

'In the case of undertakings which produce only one category, a tolerance of 3% in excess of the part of their production quota which may be delivered on the common market shall be allowed within the limit of the production quota.'

The wording of that provision is unequivocal. Since Manchester Steel was in the unusual position of having delivery quotas which exceeded its production quotas it could not qualify for that tolerance.

In Manchester Steel's view, however, the fact that Article 11 (2) is not applicable means that the provision is unlawful because it infringes the principle of equal treatment.

In my opinion that argument cannot be accepted.

In the first place, the applicant has not been treated differently to other undertakings which fall within the scope of Article 11 (1) and (2). Neither in the case of Manchester Steel, nor in the other cases referred to in the two provisions, may the production quotas (or the total of the production quotas) be exceeded (except by means of the purchase or exchange of quotas).

The reason for that is that, faced with a crisis in the steel industry, the Community wished to place an absolute limit on steel production throughout its territory. It was therefore not prepared under any circumstances to accept a tolerance in respect of production quotas.

Only within the limit of those production quotas was provision made for a certain tolerance in respect of delivery quotas.

I therefore consider that the non-applicability of Article 11 (2) does not constitute discrimination against the applicant. No other undertaking in the Community benefited from a tolerance in respect of its production quotas.

Secondly, it should be noted that the applicant was not entirely unprovided for since it could benefit from Article 11 (4) of the decision which authorizes the exchange or sale of quotas or portions of quotas. As the applicant stated in its letter of 23 November 1983, it in fact made the maximum use of that possibility by exchanging delivery quotas in return for production quotas.

4. Conclusions

In view of the fact that the two submissions relied on by the applicant are accordingly, in my view unfounded, I propose that the Court should:

(a) Dismiss the application; and

(b) Order the applicant to pay the costs.