JUDGMENT OF THE COURT (First Chamber)
24 September 1987 *

In Case 340/85

Acciaierie e Ferriere di Porto Nogaro SpA, a company incorporated under Italian law, having its registered office in San Giorgio di Nogaro (Udine), in the person of its legal representative and managing director, Francesco Marano, represented by Fabrizio Massoni, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of André Elvinger, 15 côte d'Eich,

applicant,

v

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

defendant,

APPLICATION primarily for the annulment of the Commission's decision of 9 October 1985 imposing a fine on the applicant for exceeding its production and delivery quotas for iron and steel products, and in the alternative for a reduction of that fine,

THE COURT (First Chamber)

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

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: Italian.

having regard to the Report for the Hearing and further to the hearing on 12 May 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 June 1987,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 November 1985, Acciaierie e Ferriere di Porto Nogaro SpA (hereinafter referred to as 'Porto Nogaro'), whose place of business is in San Giorgio di Nogaro (Udine), brought an action under the second paragraph of Article 36 of the ECSC Treaty primarily for the annulment of the Commission's decision of 9 October 1985 imposing on the applicant a fine of 217 650 ECU, calculated at the rate of 50 ECU per tonne of excess production or delivery, for exceeding during the second quarter of 1983 its production quota for reinforcing bars (Category V) by 1 765 tonnes, its production quota for merchant bars (Category VI) by 2 484 tonnes and its delivery quota for the latter category by 522 tonnes. In the alternative, the applicant seeks a reduction of the fine imposed.

2 Reference is made to the Report for the Hearing for an account of the facts, the submissions and arguments put forward by Porto Nogaro and the arguments relied upon by the Commission in its defence.

3 In support of its application for annulment, Porto Nogaro, which does not dispute the figures calculated by the Commission for the excess production and deliveries, has put forward two submissions.

4 In its application Porto Nogaro contended first of all that, by notifying it of a decision authorizing it to carry forward its quotas to the end of the first quarter of 1983 and by limiting such authorization to that quarter, the Commission deprived it of the possibility of deriving any benefit from such authorization. If the authorization to carry forward the quotas had not been so restricted, there would not have been any excess production or deliveries in the second quarter of 1983.

5 In its first submission the applicant is in fact calling in question the validity of the decision of 2 March 1983, which has become conclusive since it was not contested within the period prescribed by the Treaty. The Court has consistently held that an applicant may not, in proceedings for annulment directed against an individual decision, raise an objection of illegality against other individual decisions which were addressed to it and which have become conclusive. The first submission must therefore be rejected as unfounded.

6 Secondly, in its reply, Porto Nogaro argued that the Commission's failure to reply to its request to carry forward the quotas to the second quarter of 1983 was equivalent to tacit authorization which had the effect of nullifying the excess production and deliveries in respect of which penalties were imposed.

7 According to the first subparagraph of Article 42 (2) of the Court's Rules of Procedure, no fresh issue may be raised in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the written procedure. As Porto Nogaro has failed to establish that the second submission is based on such matters, that submission must be rejected as inadmissible.

8 It follows from the foregoing considerations that the application for the annulment of the decision of 9 October 1985 must be dismissed.

9 In support of its application for a reduction in the fine, Porto Nogaro puts forward several arguments.

10 In the first place, it maintains that the production in excess of its quota for reinforcing bars was attributable to the fact that it had misread its own production records.

11 That argument cannot be accepted, since Porto Nogaro may not rely on its own conduct in order to justify its failure to comply with its production quota.

12 Next, Porto Nogaro maintains that it was unfair to impose penalties on it for excess production and deliveries in the second quarter of 1983 since no such excess would have occurred if, in accordance with the applicant's request, the Commission had authorized it to carry forward to the second quarter of 1983 the unused portions of its quotas. Porto Nogaro argues that, in the absence of an express refusal, it could believe in good faith that its request had been accepted.

13 Those arguments are irrelevant in so far as the category of reinforcing bars is concerned. With regard to that category, the Commission imposed penalties only in regard to the excess production which would still have occurred if the Commission had authorized the applicant to carry forward its quotas to the second quarter of 1983. Moreover, the arguments are unfounded in so far as the category of merchant bars is concerned. The Commission reduced Porto Nogaro's quotas for that category by its decision of 2 March 1983.

14 Finally, Porto Nogaro argues that the fine should be reduced because this is the first time it has infringed the legislation in question.

15 The first paragraph of Article 12 of Commission 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) provides that the fine should generally be 75 ECU for each tonne in excess; the second paragraph provides that, in the event of a fresh infringement, the fine may be up to double that amount per tonne. It follows from that provision that the rate normally applicable in the event of a first infringement is 75 ECU. Moreover, it must be borne in mind that in this case the rate of the fine was fixed at only 50 ECU per tonne of excess, in view of the 'uncertainty prevailing in the second and third quarter of 1983 with regard to the extension of the quota system'. In those circumstances, Porto Nogaro's final argument must also be rejected.

16 Accordingly, the fine imposed on Porto Nogaro should not be reduced.

17 It follows from the foregoing considerations that the application must be dismissed in its entirety.

Costs

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

on those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application;

(2) Orders Porto Nogaro to pay the costs.

Schockweiler Bosco Joliet

Delivered in open court in Luxembourg on 24 September 1987.

P. Heim
Registrar

F. Schockweiler
President of the First Chamber.