JUDGMENT OF THE COURT (Sixth Chamber)
24 February 1987 *

In Case 350/85

Cockerill-Sambre SA, whose registered office is at Seraing (Belgium), represented by M. Waelbroeck and A. Vandencasteele, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 34B rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, M. van Ackere, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision No S(85)1603/8 of 9 October 1985 imposing a fine on the applicant for exceeding its production quota for certain steel products in the fourth quarter of 1983 is void,

THE COURT (Sixth Chamber)

composed of: C. Kakouris, President of the Chamber, T. Koopmans, O. Due, K. Bahlmann and J. C. Rodríguez Iglesias, Judges,

Advocate General: M. Darmon
Registrar: S. Hackspiel, Administrator

having regard to the Report for the Hearing and further to the hearing on 22 October 1986,

upon hearing the Opinion of the Advocate General delivered at the sitting on 10 December 1986,

* Language of the Case: French.

gives the following

Judgment

1 By application lodged at the Court Registry on 18 November 1985 the iron and steel undertaking Cockerill-Sambre SA, whose registered office is in Seraing (Belgium), brought an action under Article 36 of the ECSC Treaty for annulment of Commission Decision No S(85) 1603/8 of 9 October 1985 imposing a fine of 22 750 ECU on it for having, during the fourth quarter of 1983, exceeded its production quota fixed under Commission Decision No 2177/83 of 28 July 1983 (Official Journal L 208, p. 1).

2 By letter dated 14 June 1985 the Commission complained that for the fourth quarter of 1983 the applicant had exceeded its production quota for Category IV by 910 tonnes (an actual excess of 4 432 tonnes less the tolerance margin allowed by Article 11 (1) of Decision No 2177/83 of 3 522 tonnes).

3 On being requested to submit its observations thereon the applicant stated, in a letter dated 25 June 1985, that part of its plant in Valfil had been damaged by a fire in January 1983 and consequently, in order to fulfil its order book, it had been forced to assign part of its quota for Group IV products to other manufacturers prepared to carry out processing for it. Thus, during the fourth quarter of 1983, 28 000 tonnes of orders and quotas were transferred to the German company Thyssen, of which 4 892 tonnes, that is to say 460 tonnes more than the nominal excess, were transferred back to the applicant during the first quarter of 1984. If the quota appears to have been exceeded, it is, in the applicant's view, merely a book entry.

4 On 9 October 1985 the Commission adopted the contested decision finding *inter alia* that the applicant had not challenged the amount of the excess with which it was charged but that the uncertainty during the fourth quarter of 1983 with regard to the extension of the quota system and the particular circumstance of the fire at

the Valfil plant justified a reduction in the normal rate of 100 ECU to 25 ECU per tonne of excess.

5 Reference is made to the Report for the Hearing for a more detailed account of the facts, the course of the proceedings and 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.

6 In support of its application the applicant makes a single submission, namely that there is no actual excess.

7 The applicant states that in order to determine whether an iron and steel undertaking has exceeded its quotas it is necessary to add together the production in all its various production centres. Where an undertaking carries out processing for another iron and steel undertaking, its activity is to be treated as the activity of a production centre of the second undertaking. It is only on that basis that it is possible to obtain a precise calculation of the total production carried out on behalf of the transferor undertaking during a particular quarter; such a calculation is in conformity with the quarterly basis on which the quota system operates. The applicant claims that if that rule were applied to it for the fourth quarter of 1983 it would mean that its total production was less than the quotas which were allocated to it. During that quarter Thyssen produced 4 892 tonnes less than the quota which the applicant had transferred to it and accordingly returned during the first quarter of 1984, thereby eliminating not only the excess of 910 tonnes which was subject to the fine but also the 3 522 tonnes not so subject.

8 It must be remembered that since it was set up in 1980 the quota system has been based on the allocation to every undertaking of a quarterly production quota calculated on the basis of its production or reference quantity during a particular period. As is stated in point 4 of the preamble to Commission Decision No 2794/80 of 31 October 1980 establishing the quota system (Official Journal L 291, p. 1) the object of fixing quotas on a quarterly basis is not only to enable undertakings to draw up their production programmes but also to enable the Commission, when setting new quotas for the following quarter, to take account

of fluctuations in supply and demand and of experience gained. To ensure that the system is effective it is indispensable that the Commission should check carefully at the end of each quarter whether the undertakings have satisfied their obligations towards the Community and should impose effective penalties if the quotas have been exceeded.

9 Although under the system undertakings may, after giving prior notice to the Commission, make transfers of quotas so as to adjust their production to demand, it is necessary, in order to enable the Commission to perform its supervisory function, that it should treat such transfers objectively and independently of individual conditions agreed between undertakings. Consequently the quota which is transferred must always, irrespective of whether the transfer is by way of sale or under a contract for processing, be credited to the transferee and deducted from the transferor's available quota.

10 In accordance with that requirement neither the rule allowing transfers, namely Article 11 (4) of Decision No 2177/83, nor the form provided for the prior declaration make any distinction according to the reasons for the transfer. In the present case the applicant did not in any event inform the Commission at the time that a contract for processing was involved.

11 As in the case of the original transfer, the return of part of the quota transferred can only be effected in conformity with the aforesaid provision relating to exchanges of quotas between undertakings. That provision allows only transfers of quotas relating to the current quarter. The return of quotas by Thyssen during the first quarter of 1984 cannot therefore affect the quotas available to the two undertakings for the fourth quarter of 1983.

12 That restriction is also justified by the need for monitoring. The purpose of giving undertakings the right to exchange quotas is to allow them to adjust their production to the demands of the market during the relevant quarter and not to allow them to re-distribute among themselves after the event unused quotas in order to escape the consequences of exceeding the quotas.

13 The Commission thus rightly found that the applicant had unlawfully exceeded its quota for the fourth quarter of 1983. In consequence the application must be dismissed.

Costs

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

On those grounds,

THE COURT (Sixth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

Kakouris Koopmans

Due Bahlmann Rodríguez Iglesias

Delivered in open court in Luxembourg on 24 February 1987.

P. Heim
Registrar

C. Kakouris
President of the Sixth Chamber