the quarterly period is an essential element in the quota system	established by General Decision No 2794/80.

In Case 179/82

LUCCHINI SIDERURGICA SPA, whose registered office is at 6 Via Oberdan, Brescia, in the person of the President of the Board, Luigi Lucchini, represented by Vito Landriscina, Advocate at the Italian Corte Suprema di Cassazione, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, 200 Rue de la Loi, Brussels, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the individual decision of the Commission of 11 June 1982 relating to a fine under Article 58 of the ECSC Treaty is void,

THE COURT (Fifth Chamber)

composed of: Y. Galmot, President of Chamber, Lord Mackenzie Stuart, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: G. Reischl
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. Confronted with a situation of manifest crisis in the market for steel within the meaning of Article 58 of the ECSC Treaty the Commission by Decision No 2974/80 of 31 October 1980 (Official Journal, L 291, p. 1) established a system of steel production quotas for undertakings in the iron and steel industry. By Articles 2 to 4 of the decision the Commission fixed for undertakings subject to the system quarterly production quotas for crude steel and four groups of rolled products. The calculation of those quotas is based on quarterly reference production figures for each undertaking adjusted by certain rates of abatement. The reference production figures and the production quotas resulting from applying the rates of abatement are notified by the Commission to each undertaking.

The first paragraph of Article 9 of the decision provides that firms exceeding their production quotas "shall be fined. This fine shall generally be 75 ECU [European currency units] per tonne of excess for ordinary steels and 150 ECU per tonne of excess for special steels".

2. In application of the above-mentioned rules the Commission by letter dated 19 December 1980 notified the company Lucchini Siderurgica SpA, Brescia, of the reference production figures and production quotas allocated to it for the first quarter of 1981.

By telex message of 7 April 1981 the applicant informed the Commission that it had produced a surplus, the reason for which lay basically in the bringing into operation of a modified rolling mill at Casto which during the commissioning stage had achieved an unexpected and technically unforeseeable output. In order to compensate for the excess it suggested to the Commission that it should reduce its production quota as from April.

By letter dated 19 January 1982 the Commission informed the applicant that it had exceeded its quota for the first quarter of 1981 by 5 488 tonnes and that the amount of the fine for which it was liable therefore had been fixed at 5 488 ECU × 75 = 411 600 ECU. The Commission also invited the applicant to submit its written observations and if necessary to seek a hearing.

By letter dated 1 February 1982 and then at the hearing on 18 March 1982 the applicant explained to the Commission in detail the facts which in its view were the cause of its exceeding its production quota. It expressed the opinion that the reason for the excess was that the modified mill at Casto had achieved an unexpected and technically unforeseeable

output and confirmed its willingness to compensate for that excess by reducing its production during the second to fourth quarters of 1981.

Since it took the view that the basic facts were not disputed and that the reasons given by Lucchini were not acceptable, the Commission on 11 June 1982 adopted the decision at issue and notified it to the applicant on 18 June 1982.

The decision states that the applicant has exceeded its production quota for Group IV for the first quarter of 1981 by 5 488 tonnes in breach of Decision No 2794/80 and impose on it a fine of 411 600 ECU, namely LIT 544 699 092. In the statement of the reasons on which the decision is based it is stated that the infringement committed by Lucchini makes it liable to a fine under Article 58 of the ECSC Treaty, the amount of which may be equal to the value of the unauthorized production and that Article 9 of Decision No 2794/80 provides in the event of such excess for a penalty of generally 75 ECU per tonne of excess for ordinary steels and that in view of the tonnage in excess of the production quota it was appropriate to impose a fine of 411 600 ECU, namely LIT 544 699 092.

3. The present action which is directed against the above-mentioned decision was lodged at the Court Registry on 16 July 1982.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court on 9 March 1983 decided to assign the case to the Fifth Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

Primarily: annul the individual decision of 11 June 1982 imposing on the applicant undertaking a fine of 411 600 ECU;

In the alternative, and in the event of the first head of claim being dismissed: reduce the fine to a purely symbolical amount, or at least a much smaller amount;

In any event, order the Commission of the European Communities to pay the costs;

By way of inquiry and in the event of the arguments in the pleadings being challenged: allow technical consultation with regard to the factual technical anomaly alleged in the pleadings which caused the production to be exceeded and with regard to the type of products produced by the new plant.

The *Commission* contends that the Court should:

Dismiss the action;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

The action is based on the following submissions:

Failure to provide a sufficient statement of the reasons on which the decision is based;

Disregard of essential facts;

Wrong assessment of the facts.

1. Failure to provide a sufficient statement of the reasons on which the decision is based

(a) The *applicant* claims that the contested decision does not sufficiently state the reasons on which it is based, inasmuch as it does not show the reasons which led the Commission to impose a fine of 75 ECU per excess tonne.

Article 58 (4) of the ECSC Treaty allows the imposition of fines not exceeding the value of the tonnage produced in disregard thereof. It thus gives the Commission a discretion which it must exercise in determining the amount of the fine.

The Commission's discretion is not restricted by Article 9 of Decision No 2794/80 for on the one hand that provision is only a general rule and on the other hand it is not a rule of equivalent rank to the provisions of the Treaty.

It follows that the contested decision is vitiated because the Commission has exceeded its powers by its complete or partial failure to state reasons in relation to the exercise by the Commission of its discretion.

(b) The *Commission* objects that although Article 58 (4) of the ECSC Treaty does indeed give it a discretion to impose a penalty extending from a theoretical minimum to a maximum representing the value of the unauthorized production, that discretion has been considerably reduced by Article 9 of Decision No 2794/80, which establishes a fixed relationship between the fine and the infringement in the sense that the Commission no longer has in practice any discretion and there is in fact only a fixed penalty.

The reason for the automatic restriction is moreover explained in the recitals in the preamble to Decision No 2794/80 which state "in order to ensure the effectiveness of the quota system, it will be necessary for any excess to be fully sanctioned by means of a fine based on each excess tonne produced".

In those circumstances the Commission is of the opinion that the recitals to the general decision contain sufficient arguments to show the use which it intends to make of its powers in applying the decision. An additional statement of reasons in the individual decision imposing the fine are no longer necessary since that decision is only a measure implementing the general decision.

The Commission adds that Article 9 of Decision No 2794/80 keeps within the limits fixed by Article 58 (4) of the Treaty since the amount of 75 ECU per tonne is less than the value of a tonne of steel.

2. Disregard of essential facts

(a) The *applicant* points out that the Commission, in adopting the decision at issue, did not take account of certain special circumstances in relation to the case, namely that Lucchini itself gave notice of its excess; it had correctly programmed its production so as to keep within the limits of the quotas allocated; and it compensated for the excess production achieved in the first quarter of 1981 by voluntarily reducing its production during the following quarters.

More specifically the applicant alleges in this connection that the excess production achieved in the first quarter of 1981 was the result of an abnormal and unforeseeable technical fact, namely the commissioning in March 1981 of a modified rolling mill in Casto which during the commissioning stage achieved an unexpected output. It was not possible to stop production since on the one hand the commissioning of new plant requires the full use of its capacity in order to allow the necessary adjustments and tests and on the other hand the undertaking was bound by contracts entered into with the trade unions and the suppliers of the plant.

As regards production subsequent to the first quarter of 1981 Lucchini states that it programmed voluntary reductions in its production in relation to the quarters allocated for the second to fourth quarters of 1981 so as to keep within the limits allocated for the year. Such conduct ought to be regarded as correcting the irregularity committed or at least ought to have been taken into account so as to reduce the fine.

It follows that the decision in issue is vitiated because the defendant exceeded its powers by failing to take into account essential facts.

(b) The *Commission* denies that the facts alleged by the applicant are relevant. Those circumstances cannot absolve Lucchini from liability for infringing the quota system, for all that matters is the result and it is irrelevant whether or not there was intent or negligence on the part of Lucchini.

The Commission adds that a production increase in a trial mill is not an abnormal technical event but on the contrary a perfectly foreseeable one. The applicant thus took the risk of an excess production's occurring. The argument that it could not stop production for technical and legal reasons is irrelevant since what is at issue is the consequences of its previous negligence which it must face itself.

In any event, even assuming that the excess production caused by the commissioning of the new mill in Casto was unforeseeable, it may be inquired why the applicant did not reduce or suspend production in its two other establishments where the plant was functioning normally. It would have been perfectly possible to make a proportionate reduction in the production in the two other mills (production figures: 32 732 and 16 508 tonnes).

As regards the applicant's reduction of its production for the second to fourth quarters of 1981 the Commission points out that quotas as established by

Decision No 2794/80 are quarterly and therefore excess in one quarter cannot be made good by a reduction of production in following quarters.

3. Wrong assessment of the facts

(a) The *applicant* claims that the contested decision is vitiated because the Commission exceeded its powers owing to a wrong assessment of the facts. In that respect it points out that the contested decision records an excess of 5 488 tonnes for Group IV products alone whereas in fact that figure is made up of an excess of 1 157 tonnes of Group II products and 4 331 tonnes of Group IV products. Moreover the finding in the recitals to the decision to the effect that the production from the mill at Casto consists only of Group II products is incorrect since that plant supplied both Group II and Group IV products.

The applicant states that the mill at Casto produced during the period in question 4 092 tonnes for Group II (against 2 935 tonnes allowed by the quota, namely an excess of 1 157 tonnes) and 29 563 tonnes for Group IV. The total Group IV production of all the establishments of the Lucchini group was 78 486 tonnes (against 74 155 tonnes allowed by the quota, namely an excess of 4 331 tonnes).

In the event of the above-mentioned production figures' being challenged Lucchini suggests that the Court ask for evidence by an auditor.

(b) The *Commission's* reply is that according to calculations made by its officers the excess recorded was solely in Group IV products as stated in the decision. The production of the Lucchini group for the first quarter of 1981 was 1 613 tonnes for Group II and 80 965 tonnes for Group IV. Since the production for Group II was 1 322 tonnes less than the quota allocated (2 935 tonnes) the quota allocated to Group IV (74 155 tonnes) was increased by that difference within a margin of 3%, that is to say to 75 477 tonnes. The excess thus amounted to 5 488 tonnes (80 965 — 75 477) in respect of Group IV products only.

The Commission adds that in any event the total excess recorded in the contested decision is identical to the total claimed by the applicant.

As regards the rolling mill at Casto the Commission states that production was originally confined to Group IV products but since the technical alterations which are at the origin of this case it includes both Group II and Group IV products. Its view is however that the facts recited in the descriptive part of the decision have no relevance to the decision itself which contains all the decisive factors.

IV — Oral procedure

The parties presented oral argument at the sitting on 8 June 1983.

The Advocate General delivered his opinion at the sitting on 14 July 1983.

Decision

1 By application lodged at the Court Registry on 16 July 1982 the company Lucchini Siderurgica SpA, Brescia, brought an action under Articles 33 and 36 of the ECSC Treaty for a declaration that the individual decision of the Commission of 11 June 1982 imposing on it a fine under Article 58 of the ECSC Treaty and under the General Decision No 2794/80 of 31 October 1980 establishing a system of steel production quotas for undertakings in the iron and steel industry (Official Journal, L 291, p. 1) was void.

2 The contested decision states that the applicant exceeded its production quota for rolled products of Group IV by 5 488 tonnes in the first quarter of 1981 in breach of the aforesaid Decision No 2794/80. For that reason it imposes on the applicant a fine of 5 488 × 75 ECU = 411 600 ECU (LIT 544 699 092).

3 It should be borne in mind that the aforesaid Decision No 2794/80 established a system of steel production quotas for undertakings in the iron and steel industry. The system is so arranged that the Commission on the basis of certain reference production figures fixes for the undertakings concerned quarterly production quotas for crude steel and for four groups of rolled products. The first paragraph of Article 9 provides that firms exceeding their production quotas are to be fined a sum amounting generally to 75 ECU per tonne of excess for ordinary steels.

4 In this action the applicant claims a declaration that the contested decision imposing the fine is void or alternatively a reduction of the fine. For that purpose it submits that there has been a failure to provide a sufficient statement of the reasons on which the decision is based, a wrong assessment of the facts and special circumstances.

Failure to state sufficient reasons

5 In the first place the applicant claims that there is no sufficient statement of reasons in the contested decision inasmuch as the decision does not show the

reasons which led the Commission to impose a fine of 75 ECU per tonne of excess production. In that respect it states that both Article 58 (4) of the ECSC Treaty and Article 9 of Decision No 2794/80 give the Commission a discretion, which it must exercise, in fixing the fine.

6 On the other hand, the Commission is of the opinion that Article 9 of Decision No 2794/80 leaves it no discretion. It stated during the proceedings that it applied the latter provision in such a way as to fix the fine at 75 ECU per tonne of excess production, save in certain exceptional cases. As a result, no special statement of reasons in relation to the determination of the amount of the fine is necessary, save in exceptional cases.

7 It should be borne in mind that according to Article 58 (4) of the ECSC Treaty the Commission may impose upon undertakings which do not comply with decisions taken by it fines not exceeding the value of the tonnages produced in disregard thereof. That provision, which is of a general nature, has been implemented by the first paragraph of Article 9 of Decision No 2794/80 according to which the fine to be imposed in the event of the production quota's being exceeded is generally to be 75 ECU per tonne of excess production. The decision thus specifies the conditions for using the power conferred by Article 58 (4) of the Treaty so that the Commission fixes in all cases in which quotas are exceeded a fine equal to 75 ECU per tonne, save in exceptional cases justifying the application of a rate other than the normal rate. The Commission was validly entitled to exercise its discretion by fixing such a rule which meets the requirements of equality whilst leaving the possibility open to take account of exceptional situations.

8 As a result the view must be taken that no specific statement of reasons in relation to the rate of the fine is necessary save in exceptional cases in which the Commission applies a rate other than the normal rate. In fixing the fine in this case at the rate of 75 ECU per tonne of excess production the Commission's view was that the seriousness of the infringement corresponded to the general rule, that is to say there were no circumstances justifying a departure from the normal rate. The Commission has thus given

all the information necessary for the applicant to know its rights and the Court to exercise its power of review.

9 That submission must therefore be rejected.

Wrong assessment of the facts

10 The applicant claims further that the contested decision is based on a wrong assessment of the facts. The operative part of the decision records an excess of 5 488 tonnes in Group IV products alone whereas in fact that figure is made up of 1 157 tonnes of Group II products and 4 331 tonnes of Group IV products.

11 The Commission disputes the figures put forward by the applicant and confirms the statements in its decision which are based on the findings of its inspectors. Moreover it challenges the relevance for these proceedings of the alleged difference in figures.

12 It must be observed that even if the applicant's allegations were established, that fact would not be likely to affect the fine in any way since the total excess recorded in the decision is not challenged and the rate of the fine which the Commission must impose by reason of the excess is independent of the question whether the excess production has occurred in respect of one group rather than another.

13 That submission also must therefore be rejected.

The existence of special circumstances

14 The applicant further maintains that because of special circumstances applicable in its case no fine should have been imposed or at least its amount ought to be reduced. In that respect it points out that it gave notice itself of the excess immediately after the end of the first quarter of 1981, namely on 7 April, when it found that the quota had not been observed. In its telex message it explained the abnormal technical circumstances which had caused

the excess production and offered to offset it during the following quarters. However, the Commission did not answer that telex message and without any other reaction commenced its inquiry at the beginning of 1982.

15 To show the unintentional and unforeseeable nature of the excess production the applicant states that it had brought into operation in March 1981 a modified rolling mill in its establishment at Casto which in the commissioning stage had produced a greater output than expected. It was not possible to stop or slow down production since the commissioning of new plant requires the full use of its capacity in order to allow the necessary tests and adjustments and moreover undertakings entered into with the trade unions and the suppliers prevented production from being stopped. For the latter reason also it was not possible to stop production in the two other plants.

16 The applicant adds that immediately following its telex message it programmed a reduction in its production in order during the second stage to keep within the limits fixed, which it in fact did. During the second quarter of 1981 it had kept 11 028 tonnes below the quota allocated to it for Group IV products. Since the contested decision records an excess of 5 488 tonnes of Group IV products for the previous quarter the view must be taken that the whole excess for the first quarter of 1981 was offset during the following quarter.

17 The Commission emphasizes the strictly quarterly nature of the quotas on which the Community rules are based. The mere fact of exceeding the quota thus leads to a fine quite apart from the reason for the excess. Therefore if the quota is exceeded it cannot be made good by a subsequent reduction.

18 In particular the Commission denies that the increase in production of a trial mill is an abnormal and unforeseeble event. The applicant thus knowingly took the risk of producing excess output. In any event it could have reduced or suspended production in its other establishments.

19 The Commission further states that the telex message in which the applicant gave notice that it had exceeded its quota is irrelevant since the Commission already had knowledge of the facts by reason of the regular inspections made by its agents. As regards the alleged compensation, the Commission observes that the reduction in production during the second quarter of 1981, which is not disputed, might also be due to other causes such as reduction in demand on the market.

20 It should be emphasized in that respect that the quarterly nature of the quota system established by Decision No 2794/80 is an essential element of the scheme. The Commission thus rightly insists on the fact that all forecasts and the fixing of quotas are based on quarterly production and that undertakings are responsible for ensuring that production does not exceed the quotas fixed for that period.

21 That is the reason why the producer normally bears the risk of not observing the quotas. The irregular production of a rolling mill and the problems caused by relations with trade unions, on which the applicant relies, fall within the sphere of normal business risks and are not capable of exonerating the applicant from its responsibility for observing the quotas.

22 In the same way a reduction in the production for a subsequent quarter is not capable of correcting a previous irregularity since the decisive period in applying the system is quarterly.

23 Thus the Commission rightly found in the contested decision that the applicant had disregarded its obligations under Community law and imposed a fine on it. Thus the application for a declaration that the contested decision imposing the fine is void must be dismissed.

24 However, the applicant claims in the alternative a reduction in the fine in view of the special circumstances of the case.

25 As has been stated above, the fine must be fixed according to Article 9 of Decision No 2794/80 at an amount of 75 ECU per tonne of excess

production, save in exceptional cases justifying a departure from the normal rate. In this case exceptional circumstances justify such a departure.

26 It is not disputed that during the quarter in question the applicant encountered exceptional difficulties in observing the quota allocated and that it made a reduction in its subsequent production. Although there may be many reasons for such a reduction it must nevertheless be borne in mind in the present case that in its telex message of 7 April 1981 the applicant offered in advance to offset the excess, which indicates that it voluntarily reduced its production in order to compensate for exceeding the quota and to regularize the situation.

27 Since the Commission did not answer that telex message and thus regrettably neglected the rules of good administration, it left the applicant in doubt as to whether the Commission was accepting the applicant's offer. Since in those circumstances the applicant in fact reduced its production to a considerable extent to compensate for having exceeded the quota, it is necessary to recognize in its favour that there was an exceptional situation justifying the fixing of a rate lower than the normal rate.

28 In those circumstances the fine must be reduced. In view of the amount of the reduction in production made during the second quarter of 1981 a fine of an amount equal to half that imposed, namely 205 800 ECU (LIT 272 349 546) appears appropriate.

Costs

29 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Nevertheless Article 69 (3) provides that where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order the parties to bear their own costs in whole or in part.

30 Since both the applicant and the Commission have failed in some of their submissions they must be ordered to pay their own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Reduces the amount of the fine imposed on the applicant to 205 800 ECU (LIT 272 349 546);**

2. **Dismisses the remainder of the application;**

3. **Orders the parties to bear their own costs.**

Galmot Mackenzie Stuart

Due Everling Kakouris

Delivered in open court in Luxembourg on 19 October 1983.

J. A. Pompe
Deputy Registrar

Y. Galmot
President of the Fifth Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 JULY 1983 [1]

Mr President,
Members of the Court,

The applicant in the proceedings to be dealt with today, an undertaking manufacturing steel products in three plants (Casto, Sarezzo and Settimo), was informed in a letter from the Commission dated 19 December 1980 of its production quotas for the first quarter of 1981 for crude steel and products of Categories II and IV on the basis of Decision No 2794/80 (Official Journal,

1 — Translated from the German.