OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 23 September 1986 *

Mr President,
Members of the Court,

1. By application submitted on 12 February 1985 Sideradria SpA, an Italian undertaking engaged in the production of reinforcing bars for concrete, asks the Court to annul or reduce a fine of 768 404 European currency units (ECU) imposed on it by the Commission of the European Communities. In the decision of 19 December 1984 imposing the fine, the Commission held that the applicant had exceeded its production quota for the fourth quarter of 1982 and the quantity of steel which it was entitled to deliver on the common market during the last quarter of 1981 and all four quarters of 1982.

This is the second fine imposed on Sideradria in the space of a few months. As I recall, the company also contested the first fine, which was imposed on it for exceeding the delivery quota for the third quarter of 1981. However, by judgment of 12 December 1985 in Case 67/84 [1985] ECR 3983, the Court dismissed the application to have the fine quashed, but did reduce the amount slightly. The present dispute has much in common with the previous case and I shall therefore frequently refer to the Court's judgment in that case and to my Opinion of 21 May 1985.

2. On 19 August 1982 the Commission granted Sideradria production quotas retroactively for the last two quarters of 1981 and the first three quarters of 1982. Those additional quotas, whose purpose was to enable the company to regularize previous excess production (see my Opinion, paragraph 2), could not be carried over beyond the third quarter of 1982, that is to say beyond the period in which they were granted. However, the Commission discovered that in the fourth quarter of 1982 Sideradria not only failed to comply with the production quota prescribed for it but continued to exceed the delivery quotas for the fourth quarter of 1981 and all four quarters of 1982. The Commission therefore adopted the decision of 19 December 1984 imposing a fine on Sideradria against which this action is brought.

3. With regard to the first charge the applicant claims that it would not have committed the infringement with which it is charged if the Commission had authorized it to carry over unused quotas 'also to quarters subsequent to the third quarter of 1982'. Since its request to that effect was not allowed, Sideradria contends that it could not be penalized solely for having produced after the prescribed period quantities of bars which the supervisory body itself had granted it retroactively. In any event, Sideradria considers that its conduct must be considered to be lawful pursuant to Article 11 (3) (d) of Commission Decision No 1696/82/ECSC of 30 June 1982 (Official Journal 1982, L 191, p. 1) which provides that 'where an undertaking has not attained its production quotas during the quarter in question and can prove that this is the result of circumstances of *force majeure*, the Commission may authorize the undertaking concerned to carry over the unused quotas in their entirety'.

* Translated from the Italian.

Those arguments must be rejected. To claim that the period prescribed was inadequate and that the supplementary quotas should therefore be carried over is tantamount to contesting the legality of the measure which laid down that period. But it is clear from the case-law of the Court (see most recently paragraph 15 of the aforementioned judgment of 12 December 1985) that the decision of 19 August 1982 became definitive some time ago and the undertaking concerned is therefore not entitled to raise an objection of illegality in proceedings for the annulment of the fine. Nor can the applicant plead *force majeure*: it does not indicate the reasons which prevented it from using up the additional quotas within the prescribed period and it also did not refer to them in the request which it made to the Commission for an extension.

As regards the second allegation that the applicant exceeded the quotas for deliveries in the fourth quarter of 1981 and all four quarters of 1982, I would observe that Sideradria's arguments are the same as it put forward in Case 67/84, that is to say

(a) manifest disproportion between production quotas and delivery quotas;

(b) failure to apply, or misapplication of, the corrective measures provided for by the Community legislature for steel undertakings experiencing difficulties as a result of the previous system for calculating quotas (Article 8 (2) of Commission Decision No 1831/81/ECSC of 24 June 1981, Official Journal 1981, L 180, p. 1, as amended by Decision No 2804/81/ECSC of 23 September 1981, Official Journal 1981, L 278, p. 1, and Article 14 of Decision No 234/84/ECSC of 31 January 1984, Official Journal 1984, L 29, p. 1);

(c) failure to take into account certain accounting errors made by the undertaking which altered to its detriment the reference data used to determine the quotas.

In its judgment of 12 December 1985 the Court declared the first two arguments to be inadmissible and the third to be without foundation. The position must be the same, *mutatis mutandis*, in this case too; it is therefore unnecessary for me to repeat the reasons underlying them (see my Opinion in Case 67/84).

4. All that remains is to establish whether the penalty imposed is commensurate with the seriousness of the infringement. It appears from the decision of 19 December 1984 that, in view of the very serious financial situation of the undertaking, Vicomte Davignon, Vice-President of the Commission, considered that it was fair to reduce the normal rate of the fine from 75 to 20 ECU per tonne. Accordingly, even though this was Sideradria's second infringement in a short time, it was treated leniently. I cannot see why the Court should go beyond the clemency which has already been shown by the supervisory body.

5. On the basis of the foregoing considerations, I propose that the Court should dismiss the application lodged on 12 February 1985 by Sideradria SpA and order it to pay the costs under Article 69 (2) of the Rules of Procedure.