Case C-381/87

Hoogovens Groep BV
v
Commission of the European Communities

(ECSC — Exceeding quotas — Fine)

Report for the Hearing 3833

Opinion of Mr Advocate General Tesauro delivered on 28 June 1989 3838

Judgment of the Court (Fourth Chamber), 23 November 1989 3844

Summary of the Judgment

ECSC — Production — System of production and delivery quotas for steel — Exceeding of quotas — Fine — Difficulties resulting from the quota allocated to the undertaking — Taking such difficulties into consideration — Reduction in the fine

(ECSC Treaty, Art. 36, second paragraph, and Art. 58; General Decision No 234/84, Art. 12)

REPORT FOR THE HEARING
delivered in Case C-381/87 *

I — Facts and written procedure

1. Hoogovens Groep BV (hereinafter referred as 'Hoogovens') is an undertaking within the meaning of Article 80 of the ECSC Treaty. It manufactures, *inter alia*, products of categories Ia, Ib and II.

2. Pursuant to Commission Decision No 234/84/ECSC of 31 January 1984 on the

* Language of the case: Dutch.

extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1984, L 29, p. 1), as amended, the Commission notified to Hoogovens the production quotas and the parts of such quotas which might be delivered in the common market for the second quarter of 1985 by letters dated 29 March 1985 and 21 May 1985 and for the third quarter of 1985 by letters dated 17 June 1985 and 13 August 1985.

3. Upon finding that those quotas had been exceeded, the Commission notified those infringements to Hoogovens by letters dated 24 October 1986 and 8 April 1987 and asked it to submit its comments pursuant to Article 36 of the ECSC Treaty.

4. Hoogovens submitted its comments concerning the second quarter of 1985 by a letter dated 6 November 1986 and at a hearing held on 16 January 1987 and concerning the third quarter of 1985 by a letter dated 22 April 1987.

5. By Decision No 2031 final/3 of 10 November 1987, received by Hoogovens on 17 November 1987, the Commission fined it ECU 767 850. A communication relating to the decision in question and to other decisions of the same date imposing fines on eight other steel undertakings was published in the Official Journal on 1 December 1987 (Official Journal 1987, C 321, p. 3).

6. According to the contested decision, the Commission found that Hoogovens had exceeded the quotas by the following amounts:

Quarter	*Category*	*Production (tonnes)*	*Delivery (tonnes)*
II/1985	Ib	—	4 070
	II	—	3 890
III/1985	Ia	1 142	—
	Ib	—	6 255

7. The contested decision also sets out submissions made by Hoogovens in its defence and the Commission's position with regard to them (second half of pages 3 and 4 of the French version). Those submissions include the following:

(i) the difficulties encountered by Hoogovens owing to the unfavourable ratio in its case between the part of the quota which may be delivered in the common market and the total production quota (known as the I/P ratio). The Commission considers that it effectually recognized those difficulties, which led it to adopt Decision No 1433/87/ECSC of 20 May 1987 (Official Journal 1987, L 136, p. 37);

(ii) the premature closure of a hot rolling mill for wide strip in the fourth quarter of 1985, as a result of which Hoogovens had to force up production of category Ia products in the third quarter of 1985 in order to be able to meet its contractual obligations. As far as the excess production of category Ia products is concerned, the contested decision refers to Hoogovens' request to the Commission that it be counted against the first quarter of 1985 when Hoogovens did not use up its quotas owing to renovation work on another hot rolling mill for wide strip.

8. Lastly, the part of the contested decision relating to the amount of the fine imposed on Hoogovens is worded as follows:

'Article 12(1) of Decision No 234/84/ECSC provides for a fine to be imposed in cases where quotas have been exceeded of ECU 100 for each tonne in excess.

In view of the details which emerged during the investigation carried out in the course of the infringement procedure, a fine of ECU 50 for each tonne in excess should be imposed.

In view of the quantities produced in excess, a fine of ECU 767 850 (seven hundred and sixty-seven thousand eight hundred and fifty) is justified.'

9. It is for the annulment of that decision that Hoogovens has brought this application.

10. Hoogovens' application was received at the Court Registry on 22 December 1987.

11. The written procedure followed its normal course. Upon hearing the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

12. Pursuant to Article 95(1) and (2) of the Rules of Procedure, the Court assigned the case to the Fourth Chamber by decision of 1 February 1989.

II — Conclusions of the parties

13. The applicant claims that the Court should:

(i) *principally*: declare void in its entirety, or at least in part, Commission Decision No 2031 final/3 of 10 November 1987 concerning a fine imposed on the applicant under Article 58 of the ECSC Treaty;

(ii) *in the alternative*: reduce the fine imposed on the applicant by such amount as the Court thinks appropriate;

(iii) order such further measures as the Court considers appropriate;

(iv) order the Commission to pay the costs.

14. The Commission considers that the Court should:

(i) dismiss the application as unfounded;

(ii) order the applicant to pay the costs.

III — Submissions and arguments of the parties

15. The applicant does not contest that it exceeded the quotas. It simply contests the part of the decision relating to the fine imposed upon it.

16. The applicant maintains that the Commission 'infringed certain essential procedural requirements in setting the amount of the fine in so far as the contested decision is insufficiently reasoned' (infringement of Articles 15 and 33 of the ECSC Treaty). As the Court has consistently held, a decision adversely affecting a person does not have a sufficient statement

of reasons unless it enables both the parties concerned and the Court to discover the essential elements of the Commission's reasoning (judgment of 12 July 1962 in Case 14/61 *Hoogovens* v *High Authority* [1962] ECR 253). The contested decision, however, does not enable the applicant to do this, since it sets out neither the circumstances nor the criteria which the Commission used as its basis in determining the amount of the fine imposed. The only indication given in this regard is the last recital in the preamble to the decision, which refers to the 'quantities produced in excess'. However, that criterion could not have been the only one used and could not have been the determining factor.

17. The applicant lists the factors which, in its view, ought to play a role in the fixing of fines (absolute amount of the excess; amount of the excess in relation to the overall quota; value of the unlawful production; number of times quotas have been exceeded in the past and the total volume of the resultant excess production; seriousness of the consequences for the market in products of the category in question; price at which the undertaking could have purchased other undertakings' quotas; amount of profit or loss of the undertaking; degree of culpability of the excess production). It goes on to state that the Commission should apply those factors in a like manner in like cases. Appraisal of these factors in this case shows that, in comparison with two other steel undertakings which the Commission fined on the same day (British Steel Corporation and Usinor), Hoogovens should have been fined lesser amounts, yet it had the highest fine imposed on it.

18. The Commission considers that most of the factors cited by the applicant are irrelevant. Those that were material were taken into account.

19. In its view, the statement of reasons of the contested decision casts all the necessary light on: (a) the arguments put forward by Hoogovens with a view to obtaining a reduction in the fine; (b) the evaluation of those arguments by the Commission; and (c) the effect of that evaluation with regard to the determination of the fine. In particular, the Commission recognized Hoogovens' difficulties as a result of its unfavourable I/P ratio which it could not remedy until Decision No 1433/87/ECSC of 20 May 1987 (Official Journal 1987, L 136, p. 37); it was in view essentially of that consideration that the Commission decided to reduce the standard rate of the fine from ECU 100 to 50 for each tonne in excess.

20. The Commission also points out that in principle any excess with respect to the quarterly quotas results in the imposition of a fine. The standard rate of the fine is fixed by Article 12 of Decision No 234/84/ECSC at ECU 100 for each tonne in excess. The Commission applies certain criteria in order to reduce that standard rate. One such criterion is where the excess is due to an exceptional situation for which the undertaking is not responsible, or responsible only to a partial extent. As a general rule, the factors which may cause the amount of fine to be reduced are specific to each case in which quotas are exceeded. The Commission evaluates them in the same way irrespective as to the undertaking involved. The Commission followed these principles in Hoogovens' case and in the case of the eight other undertakings which were fined at the same time.

21. In its reply, the applicant states that it is still unable to identify the criteria used by the Commission to determine the fine imposed on it. It can see two possibilities.

22. If the Commission started out from a standard rate of ECU 100 for each tonne in excess (first possibility), as laid down in Article 12 of Decision No 234/84/ECSC, but considered that it was appropriate to deviate from that rule, it should have given a specific statement of reasons (judgment of 19 October 1983 in Case 179/83 *Lucchini Siderurgica SpA* v *Commission* [1983] ECR 3083), enabling Hoogovens and the Court to ascertain whether the principle of equality had been complied with.

23. In addition, the applicant considers that there is no way in which the Commission's statement that Hoogovens unfavourable I/P ratio induced it to reduce the rate of the fine can be inferred from the wording of the contested decision.

24. If, on the other hand, the Commission started from a standard rate of ECU 50 for each tonne in excess (second possibility) — as is shown by most of the fines generally imposed by the Commission —, the particular circumstances invoked by Hoogovens should have led to a reduction in that rate.

25. Lastly, the applicant maintains that it appears from the Commission's defence that criteria other than the amounts by which the quotas were exceeded were in fact used in order to fix the fine. Accordingly, the Commission is belatedly communicating absolutely new criteria which were not notified to the applicant.

26. The Commission states in response that the applicant is perfectly well aware of the criterion used to determine the fine. Moreover, if most fines imposed by the Commission amount to ECU 50 for each tonne in excess, this does not necessarily mean that the standard rate of the fine is ECU 50.

27. Furthermore, the Commission considers that the obligation to state reasons for decisions does not go as far as to mean that a comparison has to be carried out with other past, present and future cases where a fine was, or might be, imposed. Simply because several decisions imposing fines were, by chance, taken on the same day, this did not mean that the Commission had to establish a link with the other cases in each decision.

28. Lastly, the Commission states that it did not set out in its defence new criteria for determining the fine, but merely set out again, but in more detail, the succinct statement of reasons of the decision.

C. N. Kakouris
Judge-Rapporteur