OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 18 June 1987

My Lords,

By a decision dated 1 February 1983 addressed to the steel undertaking Acciaierie e Ferriere di Porto Nogaro SpA ('Porto Nogaro') the Commission fixed that undertaking's production quotas and quotas for delivery within the common market in the first quarter of 1983 at 1 360 tonnes and 904 tonnes respectively for Category V products (reinforcing bars) and 8 578 tonnes and 5 670 tonnes respectively for Category VI products (merchant bars). By a decision dated 2 March 1983 the Commission increased the quotas for the first quarter of 1983 in respect of Category V products to 8 901 tonnes and 5 920 tonnes respectively and reduced the quotas for Category VI products to 6 606 tonnes and 4 366 tonnes respectively, to take account of the installation of a second rolling mill. The latter decision also increased the Category V quotas and reduced the Category VI quotas for the second, third and fourth quarters of 1982. The last paragraph of the decision states: 'These provisions apply from the second quarter of 1982 to the first quarter of 1983; however, in view of the date of this decision, you are authorized to carry forward from the second to the following quarters until the first quarter of 1983, after notifying the Commission, the parts of the quotas assigned to you which have not been used up in the quarters in question'.

By a telex of 10 March 1983 Porto Nogaro stated that it had only received the decision of 2 March 1983 on 9 March 1983. It asked accordingly for (i) authorization to carry forward the unused parts of quotas from the second and following quarters of 1982 to the first quarter of 1983, (ii) authorization to carry forward the unused parts of quotas from the first to the second quarter of 1983 on the grounds that it had received the decision of 2 March 1983 too late to be able to use up the extra quotas within the first quarter of 1983 and (iii) a further adjustment of its delivery quotas. By a letter of 22 March 1983 the Commission rejected the third of these requests and replied that the second was being studied and would be answered as soon as possible. However, no answer was ever given.

By another decision dated 2 March 1983, the Commission fixed Porto Nogaro's production and delivery quotas for the second quarter of 1983 at 9 069 tonnes and 6 046 tonnes respectively for Category V products and 6 606 tonnes and 4 366 tonnes respectively for Category VI products.

The Commission later formed the view that Porto Nogaro had exceeded its quotas in both the first and the second quarters of 1983. It imposed no fine in respect of the first quarter of 1983; but it found that, during the second quarter of 1983, Porto Nogaro had exceeded the production quota for Category V products by 1 765 tonnes, the production quota for Category VI products by 2 484 tonnes and the delivery

quota for Category VI products by 522 tonnes. It imposed a fine of 217 650 ECU (LIT 324 838 200) on Porto Nogaro in respect thereof by a decision dated 9 October 1985.

By an application lodged at the Court on 14 November 1985, Porto Nogaro claimed that the Court should declare void the Commission's decision of 9 October 1985 imposing that fine or, in the alternative, reduce the fine *ex aequo et bono* in consideration of the applicant's having acted in good faith. Porto Nogaro argued, firstly, that the alleged overproduction and excessive deliveries for the second quarter of 1983 should not be regarded as breaches of the respective quotas, inasmuch as the company found it physically impossible, on account of their late assignment, to produce and deliver the quantities under the quotas which were not granted by the Commission until the end of the first quarter of 1983. Porto Nogaro, secondly, alleged that its request to have those quotas automatically carried forward to the following quarter (the second quarter of 1983) was not considered by the Commission in accordance with the logic of the previous decision to grant such quantities and therefore contrary to its previous indication of willingness to do so.

A number of new matters were raised by the applicant in its reply and were adverted to in oral argument — in particular an allegation that it had received oral assurances from Commission officials that it would be allowed to carry forward unused quotas, a contention that the quotas were only exceeded because of a clerical error on the part of the company and that the company in any event kept within the overall quotas. These contentions are, in my view, inadmissible under Article 42 (2) of the Rules of Procedure, and the case must proceed to judgment on the basis of the issues raised in the application.

As regards Category V products where the quotas were increased, there was something which could, if authorized, have been carried forward from the first to the second quarter of 1983: an unused part of the production quota of 2 686 tonnes. Porto Nogaro never received a substantive response to its request of 10 March 1983 to carry this amount forward. In my view, the Commission's silence cannot be interpreted as an authorization to carry forward, though since it promised an answer in its letter of 22 March 1983, it is unsatisfactory that the Commission subsequently did not provide one. However, it is plain from the recitals to the decision of 9 October 1985 that the Commission took into account that the matter had been left unclear; accordingly it gave Porto Nogaro the benefit of the doubt by deducting the entire Category V production quota remaining unused at the end of the first quarter of 1983 from the quantity in respect of which it imposed the fine. The figure of 1 765 tonnes, in respect of which the fine was imposed, was reached after that deduction.

The position as regards Category VI was different. Here the quotas were reduced. It is impossible to say that the company was prevented by late notification from using in the remaining days of the quarter what had been taken away from it and which, in any event, it had not produced.

It follows that the first ground advanced in the application provides no reason to annul the decision either in respect of Category V products or in respect of Category VI products.

The second ground advanced in the application is that by authorizing the carrying forward of unused quotas in previous quarters the Commission was bound to allow a carry-forward from the first to the second quarter of 1983 as well. I do not accept that argument. The authorization to carry forward granted in the Commission's decision of 2 March 1983 was expressly limited to the first quarter of 1983. In my view that cannot be construed as an expression of willingness to allow further carrying forward, nor does the fact of that decision imply that any further authorizations should be granted. The Commission's letter of 22 March 1983 cannot be construed as an implied authorization to carry forward. In my opinion there occurred nothing in this case to give rise to any legitimate expectation that a concession of the kind granted for the quarters up to and including the first quarter of 1983 would continue to be granted. The second submission in the application therefore in my view falls to be dismissed.

Since the contested decision of 9 October 1985 already gives the applicant the benefit of doubts which may have arisen and since the rate per tonne of excess is fixed at 50 ECU rather than 75 ECU, there is in my view no justification for interfering with the amount of the fine.

Accordingly, the claim should be rejected and the applicant ordered to pay the costs.