JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
6 April 1995 *

In Case T-143/89,

Ferriere Nord SpA, a company incorporated under Italian law, established in Osoppo (Italy), represented by Wilma Viscardini Dona, of the Padua Bar, and Giuseppe Campeis, of the Udine Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented by Enrico Traversa and Julian Currall, of its Legal Service, acting as Agents, and Alberto Dal Ferro, of the Vicenze Bar (Italy), with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Italian.

APPLICATION for the annulment of Commission Decision 89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.553 — Welded steel mesh, OJ 1989 L 260, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: H. Kirschner, President, C. W. Bellamy, B. Vesterdorf, R. García-Valdecasas and K. Lenaerts, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing from 14 to 18 June 1993

gives the following

Judgment

Facts

1 This case concerns Commission Decision 89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (OJ 1989 L 260, p. 1) (hereinafter 'the Decision'), in which the Commission imposed a fine on 14 producers of welded steel mesh for having infringed Article 85(1) of the EEC Treaty. The product with which the contested Decision is concerned is welded steel mesh. It is

a prefabricated reinforcement product made from smooth or ribbed cold-drawn reinforcing steel wires joined together by right-angle spot welding to form a network. It is used in almost all areas of reinforced concrete construction.

2 As from 1980 a number of agreements and practices, which gave rise to the Decision, came into being in that sector on the German, French and Benelux markets.

3 On 6 and 7 November 1985 Commission officials, acting under Article 14(3) of Regulation No 17 of the Council of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87, hereinafter 'Regulation No 17'), carried out simultaneous investigations without prior warning at the premises of seven undertakings and two associations, namely: Tréfilunion SA, Sotralentz SA, Tréfilarbed Luxembourg/Saarbrücken SARL, Ferriere Nord SpA (Pittini), Baustahlgewebe GmbH, Thibodraad en Bouwstaalprodukten BV, NV Bekaert, Syndicat National du Tréfilage d'Acier (STA) and Fachverband Betonstahlmatten eV; on 4 and 5 December 1985 they conducted other investigations at the premises of ILRO SpA, GB Martinelli, NV Usines Gustave Boël (Afdeling Trébos), Tréfileries de Fontaine-l'Evêque, Frère-Bourgeois Commerciale SA, Van Merksteijn Staalbouw SA and ZND Bouwstaal BV.

4 The evidence found in those investigations and the information obtained under Article 11 of Regulation No 17 led the Commission to conclude that between 1980 and 1985 the producers in question had infringed Article 85 of the Treaty through a series of agreements or concerted practices relating to delivery quotas for, and the prices of, welded steel mesh. The Commission initiated the procedure provided for in Article 3(1) of Regulation No 17 and, on 12 March 1987, a statement of objections was sent to the undertakings concerned, which replied to it. A hearing of their representatives took place on 23 and 24 November 1987.

5 At the end of that procedure the Commission adopted the Decision. According to the Decision (point 22), the restrictions of competition derived from a set of agreements or concerted practices fixing prices and delivery quotas and sharing markets for welded steel mesh. Those agreements, according to the Decision, concerned different parts of the common market (the French, German or Benelux markets), but affected trade between Member States because undertakings established in various Member States participated in them. The Decision states that 'there was no general agreement between all manufacturers in all the Member States concerned, but rather a complex of different agreements, the parties to which were not always the same. Nevertheless, as a result of the regulation of the individual sub-markets this complex of agreements had the effect of producing far-reaching regulation of a substantial part of the common market'.

6 The operative part of the Decision is as follows:

'*Article 1*

Tréfilunion SA, Société Métallurgique de Normandie (SMN), Chiers-Châtillon-Gorcy (Tecnor), Société de Treillis et Panneaux Soudés, Sotralentz SA, Tréfilarbed SA, or Tréfilarbed Luxembourg/Saarbrücken SARL, Tréfileries Fontaine l'Évêque, Frère-Bourgeois Commerciale SA (now Steelinter SA), NV Usines Gustave Boël, Afdeling Trébos, Thibo Draad-en Bouwstaalprodukten BV (now Thibo Bouwstaal BV), Van Merksteijn Staalbouw BV, ZND Bouwstaal BV, Baustahlgewebe GmbH, ILRO SpA, Ferriere Nord SpA (Pittini), and GB Martinelli fu GB Metallurgica SpA have infringed Article 85(1) of the EEC Treaty by participating from 27 May 1980 until 5 November 1985 on one or more occasions in one or more agreements or concerted practices (hereinafter referred to as "agreements") consisting in the fixing of selling prices, the restricting of sales, the sharing of markets and in measures to implement these agreements and to monitor their operation.

Article 2

The undertakings named in Article 1 which are still involved in the welded steel mesh sector in the Community shall forthwith bring the said infringements to an end (if they have not already done so) and shall henceforth refrain in relation to their welded steel mesh operations from any agreement or concerted practice which may have the same or similar object or effect.

Article 3

The following fines are hereby imposed on the undertakings named below in respect of the infringements found in Article 1:

1. Tréfilunion SA (TU): a fine of ECU 1 375 000;

2. Société Métallurgique de Normandie (SMN): a fine of ECU 50 000;

3. Société des Treillis et Panneaux Soudés (STPS): a fine of ECU 150 000;

4. Sotralentz SA: a fine of ECU 228 000;

5. Tréfilarbed Luxembourg/Saarbrücken SARL: a fine of ECU 1 143 000;

6. Steelinter SA: a fine ECU 315 000;

7. NV Usines Gustave Boël, Afdeling Trébos: a fine of ECU 550 000;

8. Thibo Bouwstaal BV: a fine of ECU 420 000;

9. Van Merksteijn Staalbouw BV: a fine of ECU 375 000;

10. ZND Bouwstaal BV: a fine of ECU 42 000;

11. Baustahlgewebe GmbH (BStG): a fine of ECU 4 500 000;

12. ILRO SpA: a fine of ECU 13 000;

13. Ferriere Nord SpA (Pittini): a fine of ECU 320 000;

14. GB Martinelli fu GB Metallurgica SpA: a fine of ECU 20 000.

Articles 4 and 5 (omissis)'

Procedure

It was in those circumstances that, by application lodged at the Registry of the Court of Justice on 18 October 1989, the applicant brought the present action for

the annulment of the Decision. Ten of the thirteen other addressees of that Decision also brought an action.

8 By order of 15 November 1989 the Court of Justice assigned this case and the ten other cases to the Court of First Instance pursuant to Article 14 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1). Those actions were registered under numbers T-141/89 to T-145/89, and T-147/89 to T-152/89.

9 By order of 13 October 1992 the Court of First Instance ordered that, on account of the connection between the above cases, they should be joined for the purposes of the oral procedure, pursuant to Article 50 of the Rules of Procedure.

10 By letters lodged at the Registry of the Court of First Instance between 22 April 1993 and 7 May 1993 the parties replied to the questions put to them by the Court.

11 Having regard to the replies to those questions and upon hearing the Report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry.

12 The parties presented oral argument and answered questions put to them by the Court at the hearing which took place from 14 to 18 June 1993.

Forms of order sought

13 The applicant claims that the Court should:

(i) declare the Decision null and void, in so far as it concerns Ferriere Nord; in the alternative,

(ii) set aside the fine imposed on Ferriere Nord or reduce it to an equitable amount;

(iii) order the Commission to pay the costs.

14 The Commission contends that the Court should:

(i) dismiss Ferriere Nord's application as unfounded;

(ii) order the applicant to pay the costs.

Substance

15 The Court notes that the Decision (points 23, 51, 159 and 160) alleges that the applicant participated in two sets of agreements concerning the French market.

Those agreements are said to have involved the French producers (Tréfilunion, STPS, SMN, CCG and Sotralentz) and the foreign producers operating on the French market (ILRO, Ferriere Nord, Martinelli, Boël/Trebos, Tréfileries de Fontaine l'Évêque (TFE), Frère-Bourgeois Commerciale (FBC) and Tréfilarbed) and were intended to determine prices and quotas in order to limit imports of welded steel mesh into France, and to set up an exchange of information. The first set of agreements is said to have been implemented between April 1981 and March 1982. The second set of agreements is said to have been implemented between the beginning of 1983 and the end of 1984. That second set of agreements is alleged to have been formalized by the adoption of a 'protocole d'accord' in October 1983.

16 The applicant puts forward three pleas in law in support of its application. The first alleges infringement of Article 85(1) of the Treaty, the second infringement of Article 15(2) of Regulation No 17, and the third misuse of powers.

Infringement of Article 85(1) of the Treaty

Arguments of the parties

17 The applicant acknowledges that it participated in the agreements in question, but considers that its participation 'did not actually constitute an infringement of Article 85(1) of the Treaty'.

18 It claims that it holds a very weak position on the French market because of the high cost of transporting welded steel mesh and of the fact that its factories are situated in eastern Italy. Having regard to its weak position on that market, its participation in the agreements could not have affected either competition or trade between Member States. It argues that this is shown by the fact that the agreements

have not altered the overall market share held by the Italian producers and that its exports to France remained well below the quota allocated to it.

19 The applicant adds that if, as the Commission alleges, the agreements led to an increase in prices on the French market, that gave rise to an increase in trade between Member States and in competition. Only the high prices in France enabled it to penetrate that market, having regard to the high transport costs with which it was confronted. The Court of Justice has held that it may be doubted whether there is an interference with competition if the agreement seems really necessary for the penetration of a new area by an undertaking or if it has had a beneficial effect on trade (judgment in Case 56/65 *Société Technique Minière* v *Machinenbau Ulm* [1966] ECR 235).

20 In its reply the applicant disputed the figures set out by the Commission at point 25 of the Decision regarding the size of the price increase which resulted from the agreements and claimed that the Commission may not circumvent the lack of effect of those agreements by referring to their object, since the Italian version of Article 85 of the Treaty implies that the agreements must have both an anti-competitive object and effect before they can be penalized under that article.

21 Furthermore, the applicant observes that the added value of welded steel mesh is relatively small (20 to 25%) when compared with the value of its intermediate material, wire rod, a product which falls under the ECSC Treaty. The price of welded steel mesh therefore depends to a large extent on the price of wire rod, as the Commission itself admitted at point 2 of the Decision. Consequently, the margin for competition was very small and impossible to impair. The applicant claims that although the effect of the agreements was to increase the prices of welded steel mesh, that result accorded with the desire demonstrated by the Commission, in the context of its policy of restructuring the iron and steel industry, to see increases in the price of wire rod, since the latter was able to rise thanks to the increase in the price of welded steel mesh. It adds that, as a producer of wire rod, it also shared the Commission's concern.

22 Referring to point 25 of the Decision, the Commission states that, by fixing prices and quotas, the agreements enabled prices to rise spectacularly on the French market and that this led to an alteration in the conditions of competition, with the market becoming remunerative even for the applicant. It observes that there is no documentary evidence to support the applicant's assertion that the increase in prices on the market differed from that set out in point 25 of the Decision.

23 It adds that the reduction in the applicant's exports to France only underlines the applicant's interest in a considerable increase in prices in France, above all in order to penetrate a market which had never really been profitable in normal competitive conditions (judgment of the Court of Justice in Case 123/83 *BNIC* v *Clair* [1985] ECR 391). The Commission repeats its contention that the unlawful agreement appreciably altered Franco-Italian trade, because it aimed at achieving a kind of 'insulation' of the French market so as to enable prices to rise appreciably. In any event, it is apparent from the case-law of the Court of Justice that 'proof [is not required] that such agreements have ... appreciably affected such trade ... but merely that such agreements are capable of having that effect' (judgment in Case 19/77 *Miller* v *Commission* [1978] ECR 131).

24 The Commission observes that the measures adopted by it with regard to certain products falling under the ECSC Treaty are irrelevant to the infringement committed by the applicant on the welded steel mesh market. The fact that the Commission regulates the market for those products does not entitle undertakings to fix prices and delivery quotas for a different product falling under the EEC Treaty. However, it states that it has duly taken into account the effects of the price of wire rod on the price of welded steel mesh when determining the amount of the fine (point 201 of the Decision).

Findings of the Court

25 The Court first of all notes that the applicant has admitted to being a party to the agreements between producers of welded steel mesh and that it does not dispute the object of those agreements, namely to fix prices and quotas.

26 Article 85(1) of the Treaty prohibits, as incompatible with the common market, all agreements between undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions or share markets or sources of supply.

27 It follows from the wording of that provision that the only relevant questions are whether the agreements to which the applicant was a party with other undertakings had as their object or effect the restriction of competition and whether they might have affected trade between Member States. Consequently, the question whether, having regard to the applicant's weak position on the French market, its own participation in those agreements could restrict competition or affect trade between Member States is irrelevant (judgment of the Court of First Instance in Case T-6/89 *Enichem Anic* v *Commission* [1991] ECR II-1623, paragraphs 216 and 224).

28 By fixing prices and quotas, the agreements to which the applicant was a party had as their object or effect the restriction of competition and might have affected trade between Member States. It is sufficient to point out that, with respect to the period 1981/1982, the applicant was present at a meeting which took place in Paris on 1 April 1981, in which French, Italian and Belgian producers took part and during which, with regard to the twelve-month period following April 1981, a quota of 32 000/33 000 tonnes was fixed for the Italian producers, including 4 000 tonnes

for the applicant. At that meeting the prices for various types of welded steel mesh, discounts, penetration rebates and various arrangements for the exchange of information were also determined. That is apparent from the telex of 9 April 1981 from Italmet to Martinelli (point 33 of the Decision), the memorandum of 9 April 1981 (point 34 of the Decision) from Mr Marie (Director of Tréfilunion's welded mesh division and President of the Association Technique pour le Développement de l'Emploi du Treillis Soudé since 1983), the Tréfilunion table headed 'Imports of welded mesh from Italy' (point 35 of the Decision) and the letter of 4 May 1981 from Mr Cattapan (representing Ferriere Nord) to Mr François (Italmet) (point 36 of the Decision) which refers to the acceptance of the terms of that agreement. Furthermore, with regard to the period 1983/1984, the applicant took part with other Italian and French producers in a meeting held on 23 February 1983 during which an allocation of quotas (61% for integrated French producers, 19% for non-integrated French producers, 3% for Belgium, 7% for Germany and 10% for Italy) and an increase of prices (FF 200 to 300 with effect from April 1983, FF 300 for the month of July) were decided. That is apparent from the notes of Mr Cattapan regarding that meeting (point 53 of the Decision) and a note by Mr Haller (representing CCG) (point 54 of the Decision).

29 With regard to the effect on competition, it is true, as the applicant observes, that the price of welded steel mesh depends largely on that of wire rod, but it does not follow from this that any possibility of effective competition in that sector was precluded. The producers still had a sufficient margin to allow effective competition in the market. The agreements could therefore have had an appreciable effect on competition (judgment of the Court of Justice in Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and Others* v *Commission* [1980] ECR 3125, paragraphs 133 and 153).

30 Moreover, for the purpose of the application of Article 85(1) there is no need to take account of the concrete effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market (judgment of the Court of Justice in Case C-277/87 *Sandoz Prodotti Farmaceutici* v *Commission* [1990] ECR I-45).

31 The applicant may not rely on the Italian version of Article 85 of the Treaty in order to require the Commission to demonstrate that the agreement had both an anti-competitive object and effect. That version cannot prevail by itself against all the other language versions, which, by using the term 'or', clearly show that the condition in question is not cumulative but alternative, as the Court of Justice has consistently held since its judgment in *Société Technique Minière* (cited above, p. 249). The uniform interpretation of rules of Community law requires that they be interpreted and applied in the light of the versions existing in the other Community languages (judgments of the Court of Justice in Case 19/67 *Van der Vecht* [1967] ECR 345 at p. 354, and in Case 283/81 *CILFIT* v *Ministry of Health* [1982] ECR 3415, paragraph 18).

32 With regard to the effect on trade between Member States, Article 85(1) of the Treaty does not require that the restrictions on competition which have been established have actually affected trade between Member States, but only requires that it be established that such agreements are capable of having that effect (judgment in *Miller*, cited above, paragraph 15).

33 In the present case, the fact that the applicant's units of production of welded steel mesh are far away from the French market is not in itself of such a nature as to hinder its exports to that market. Moreover, the applicant's arguments themselves show that the agreements were, in so far as they tended to increase prices, likely to increase its exports to France and thereby to affect trade between Member States.

34 Furthermore, assuming, as the applicant claims, that the agreements did not alter the total market share held by the Italian producers and that its exports remained far below its allocated quota, it is nevertheless the case that the restrictions on competition which have been established were likely to divert patterns of trade from the course which they would otherwise have followed (judgment in

Van Landewyck, cited above, paragraph 172). The object of the agreements was to allocate quotas for imports into the French market in order to bring about an artificial increase in prices on that market.

35 It follows that, as is found in the Decision, by being a party to agreements which had as their object the restriction of competition within the common market and which might have affected trade between Member States, the applicant infringed Article 85(1) of the Treaty.

36 The plea must therefore be rejected.

Infringement of Article 15(2) of Regulation No 17

37 This plea is in four parts. The first alleges lack of intent or negligence on the part of the applicant; the second concerns the limited role which the applicant is said to have played; the third alleges infringement of the principle of equal treatment; finally, the fourth alleges that the legal and economic context has not been sufficiently taken into account.

I — *Lack of intent or negligence on the part of the applicant*

Arguments of the parties

38 The applicant claims that it did not intend to infringe Article 85 of the Treaty and that, by participating in the agreements, its sole aim was to be able to penetrate the French market, which could not be done without an increase in prices.

39 The applicant claims that, as a producer of steel whose activities are governed by the ECSC Treaty, which permits the regulation of prices and the drawing up of quotas, it did not realize that the agreements to which it was a party were illegal under the EEC Treaty.

40 The Commission replies that, for a fine to be imposed, Article 15(2) of Regulation No 17 in no way requires any intention; in any event, there was such intention in this case. It points out that Ferriere Nord actively participated in the preparation, conclusion, interpretation and implementation of the unlawful agreements.

Findings of the Court

41 The Court points out that it is not necessary for an undertaking to have been aware that it was infringing the competition rules laid down in the Treaty for an infringement to be regarded as having been committed intentionally, but it is sufficient that it could not have been unaware that the object of its conduct was the restriction of competition (judgments of the Court of Justice in Case 246/86 *Belasco* v *Commission* [1989] ECR 2117, paragraph 41, and Case 279/87 *Tipp-Ex* v *Commission* [1990] ECR I-261; judgment of the Court of First Instance in Case T-15/89 *Chemie Linz* v *Commission* [1992] ECR II-1389, paragraph 350).

42 In the present case, having regard to the intrinsic seriousness and obvious nature of the infringement of Article 85(1) of the Treaty, and in particular subparagraphs (a) and (c) thereof, the Court considers that the applicant cannot claim that it did not act deliberately. For the same reasons, the applicant can also not argue that, as a producer of steel whose activities are usually governed by the ECSC Treaty, it was unaware that those agreements were contrary to the EEC Treaty.

43 The complaint can therefore not be upheld.

II — *Limited role played by the applicant*

Arguments of the parties

44 The applicant claims that it played a limited role, since it merely took note of the agreements made without ever taking the initiative. It claims that it took part in neither the agreements concerning the Benelux market nor the agreements concerning the German market and it did not make any agreement concerning the Italian market.

45 It states that, contrary to the Commission's contentions, Italmet, which conducted all the operations, is not its agent, but an independent business intermediary.

46 The Commission replies that the fine is fully justified, in particular because of the applicant's size and the impetus which it gave to the whole of the unlawful agreements, in particular by acting as an interpreter for the Italian producers and, as it were, acting as a guarantor to the French producers that the agreements would be 'correctly' performed by the Italian producers.

Findings of the Court

47 The Court finds that, contrary to the applicant's assertions, it did not merely take note of the agreements made, but that it sometimes took the initiative for them, as

is shown by the documents referred to at points 36 to 45 of the Decision, which include a telex of 19 April 1982 from Mr Cattapan addressed to Mr Marie setting out a proposal for the continuation of the agreements for 1982 (point 42 of the Decision). According to that telex, 'given the common determination to try to improve a sector already under pressure owing to weakness of demand, the Italian producers agree to the proposal that a reduction of FF 325 on the list price plus a small so-called penetration rebate be applied. The maximum quantities which the Italian producers undertake to export to France during the months of April, May and June amount to a total of 7 200 tonnes, i. e. 3 x 1 800 +300 +300, on the express condition that the above estimates prove correct and that the situation evolves normally. I think it is true to say that our common purpose and common ambitions have been achieved. Consequently, as they are in keeping with our agreements, the decisions reached will be applied as from today.'

48 The Decision took into account the fact that the applicant did not participate in the infringements on the Benelux and German markets, since it does not indicate that the applicant participated in them. Similarly, the Decision does not find that agreements were concluded in respect of the Italian market. For the purpose of claiming that the fine imposed on it should be reduced, it does not avail the applicant to argue that the infringement committed by it was less serious than it was.

49 With regard to the fact that Italmet was not the applicant's agent, the exchanges of notes and telex messages between the applicant and Italmet leave room for no doubt as to the nature of the agreements in which the applicant participated *inter alia* through the intermediary of Italmet (see *inter alia* the documents referred to in points 36, 41, 42 and 43 of the Decision), but also and above all independently of Italmet.

50 It follows that the applicant's complaint must be rejected.

III — *Breach of the principle of equal treatment*

Arguments of the parties

51 The applicant claims that the Commission determined the amount of the fine imposed on it purely on the basis of its turnover in welded steel mesh and thereby infringed Article 15(2) of Regulation No 17, as interpreted by the Court of Justice in its judgment in Joined Cases 100 to 103/80 *Musique Diffusion Française and Others* v *Commission* [1983] ECR 1825. It argues that, according to that judgment, the economic advantage which the participating undertakings could have derived from the unlawful agreements ought also have to be taken into account. In the present case, the applicant did not derive any benefit from its participation in the agreements. That error in law led the Commission to impose on it a fine whose amount is discriminatory when compared with the amount of the fines imposed on the other Italian producers.

52 The Commission states that, in the present case, it applied the criteria laid down by the Court of Justice in its judgment in *Musique Diffusion Française*, cited above. It observes that although the fine imposed on the applicant is certainly higher than that imposed on the two other Italian undertakings, that is due in particular to the size of the applicant and to the impetus which it gave to the unlawful agreements as a whole, in which respect its situation is different from those of the other Italian undertakings.

Findings of the Court

53 The Court finds that the fact that the applicant did not benefit from the infringement was taken into consideration in the calculation of the fine imposed on it. The Commission took account of the fact that profitability is generally unsatisfactory in the welded steel mesh sector (point 201 of the Decision) and the financial

situation of the undertakings (point 203 of the Decision). Furthermore, the failure to derive profit from the infringement cannot preclude the imposition of substantial fines, since otherwise they will cease to have a deterrent effect.

54 The Court considers that it follows from this that the Commission did not fix the amount of the fine imposed on the applicant solely on the basis of its turnover in welded steel mesh. While it is true that that turnover is one of a number of factors taken into account by the Commission, and that it contributed to the fact that the applicant had a total fine imposed on it which was greater than that imposed on the other Italian producers, that approach is nevertheless in conformity with the guidelines provided by the Court of Justice in *Musique Diffusion Française* (cited above, paragraphs 120 and 121), which allow the Commission to take account of the influence which the undertaking was able to exert on the market, in particular on the basis of its size and power, for which the turnover for the product concerned provides indications. The fact that, in relative terms, the fine imposed on the applicant (1%) was less than that imposed on Martinelli (1.5%) shows that it was not the only criterion taken into account by the Commission.

55 With regard to the allegation that the applicant was treated less favourably than ILRO, the Court observes that the Court of Justice and itself have consistently held that, for there to be an infringement of the principle of equal treatment, comparable situations must have been treated differently. According to the Commission, the difference between the fine imposed on the applicant and that imposed on ILRO is attributable to the following factors: ILRO's failure to comply with the agreements made, which contributed to the breakdown of the arrangements, the fact that it was not able to establish that ILRO advocated the extension of the 1981/1982 arrangements, the fact that ILRO assisted the Commission in its investigations by cooperating in them in a decisive manner, as was made clear at the hearing (point 204 of the Decision), the fact that it had been the subject of countermeasures by the French authorities and, finally, the fact that it had ceased to participate in the arrangements in May 1984 (see points 44, 64, 65 and 66 of the Decision).

56 In the present case, the differences between the situation of ILRO and that of the applicant, as set out by the Commission, are sufficient to justify the difference in treatment between those two undertakings.

57 The applicant's complaint must therefore be rejected.

IV — *Failure to take the legal and economic context sufficiently into account*

Arguments of the parties

58 The applicant claims that the Commission ought to have taken into account the legal and economic context of the sector upstream of the production of welded steel mesh, namely the wire rod sector. It refers to the close link existing between welded steel mesh and wire rod, which was subject to a system of quotas and to price regulation. It observes that that link does not differ *mutatis mutandis* from that existing between sugar and sugar beet which was considered by the Court of Justice in its judgment in *Suiker Unie and Others* v *Commission* (Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 [1975] ECR 1663). In those cases there was a common organization of the markets for sugar which was intended to guarantee, by a system of prices and quotas, fair remuneration for the base product, sugar beet. Here, there is 'a common organization of the markets' at the level of the basic product, wire rod, the aim of which is to protect that product directly, although there is no provision made for the processed product. Without any rules governing deliveries and prices of the processed product, welded steel mesh, there was risk that the protection given to wire rod would have been ineffective. That is why the producers filled that gap in the system with their own rules on their own initiative. The Court ought therefore to make a considerable reduction in the fine, as the Court of Justice did in its judgment in the *Suiker Unie* case on the ground that the scope for applying the competition rules was greatly reduced.

59 The applicant observes that, if the effect of the agreements was to increase the prices of welded steel mesh, they also led to an increase in the prices of wire rod, in accordance with the Commission's express wish.

60 Finally, the applicant considers that the Commission has not, or has not sufficiently, taken account of the mitigating circumstances such as the significant cooperation which it provided in the Commission's investigation and the substantial efforts which it made in the context of the restructuring of the steel market.

61 The Commission states in reply that, as it expressly stated in the Decision (point 201), when determining the amount of the fine, it took account of the situation in the wire rod sector. It adds that the situation in the sugar market described in the *Suiker Unie* judgment, cited above, is different from that of the market for welded steel mesh in so far as in the latter case there was no common organization of the market for welded steel mesh. In that judgment the Court of Justice expressly stated that 'whatever criticisms may be made of a system which is designed to consolidate a partitioning of national markets by means of national quotas ... the fact remains that if it leaves in practice a residual field of competition, that field comes within the provisions of the rules of competition'.

62 The Commission adds that the cooperation provided by the applicant with respect to its investigation and the restructuring of the steel market did not exceed what was legally required.

Findings of the Court

63 It must first of all be noted that the Commission took account of the link existing between the market for welded steel mesh and that for wire rod (point 201 of the Decision). For the rest, the applicant cannot rely on the judgment in *Suiker Unie*,

since that judgment relates to a situation which is fundamentally different in two respects from that in the present case. First, the *Suiker Unie* case concerned a common organization of an agricultural market falling within the EEC Treaty, whereas the present case concerns a system of pricing and production quotas falling under the ECSC Treaty. Secondly, in the *Suiker Unie* case, it was the derived product which was the subject of a common organization of the market, whereas in the present case it is the basic product which is the subject of the pricing and production quota system. It follows that, at an economic level, the situation with which the *Suiker Unie* judgment was concerned and that in the present case are fundamentally different, and the applicant can therefore not rely on that judgment in support of its claims.

64 Moreover, assuming that the implementation of the agreements in question led indirectly to an increase in the prices of wire rod, an increase which the Commission wished to see, the applicant cannot rely on that fact as a mitigating factor. Undertakings may not rely on the fact that their pricing and quota agreements for a product have had an indirectly positive effect on the prices of another product which is covered by a system of production quotas introduced by the Commission, otherwise the impact of that quota system would be excessively great. The quota system for wire rod established by the Commission under the ECSC Treaty was restricted to that product. The undertakings were not authorized to extend that system to a product governed by the EEC Treaty, such as welded steel mesh.

65 Finally, the Court considers that the cooperation provided by the applicant in the Commission's investigation and in the restructuring of the iron and steel industry did not go beyond what was legally required and that it was therefore not necessary to take account of it as a mitigating factor.

66 The complaint cannot therefore be upheld.

Misuse of powers

67 The applicant claims that the Decision is vitiated by misuse of powers which consists in the fact that the Commission found an infringement which did not exist and imposed a fine on the applicant when the conditions for doing so were not satisfied. In support of that claim it repeats the arguments set out under the first two pleas.

68 Even assuming that such an imprecise allegation could be considered as a plea in law, the Court considers that it must be rejected. A measure may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (judgment of the Court of Justice in Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24).

69 The arguments submitted by the applicant in support of its first two pleas cannot in any way substantiate the existence of a misuse of powers, since the applicant in no way specifies for what purpose, other than that mentioned in the Decision, the Commission used the powers conferred on it by the Treaty.

70 It follows from all the foregoing that the application must be dismissed.

Costs

71 Under Article 87 of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the Commission has applied for an order for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1) Dismisses the application;

2) Orders the applicant to pay the costs.

Kirschner Bellamy Vesterdorf

García-Valdecasas Lenaerts

Delivered in open court in Luxembourg on 6 April 1995.

H. Jung H. Kirschner

Registrar President

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