JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
5 June 1992 *

In Case T-26/90,

Società Finanziaria Siderurgica Finsider SpA, a company incorporated under Italian law, established at Rome, represented by G. Greco, Avvocato with the right of audience at the Italian Corte di Cassazione (Court of Cassation), with an address for service in Luxembourg at the Chambers of N. Schaeffer, 21 Avenue de la Porte Neuve,

applicant,

v

Commission of the European Communities, represented by G. Campogrande, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 21 March 1990 imposing a fine on the applicant under Article 58 of the ECSC Treaty for exceeding quotas,

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

composed of: H. Kirschner, President, R. García-Valdecasas and K. Lenaerts, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 4 December 1991,

gives the following

* Language of the case: Italian.

Judgment

Facts

1 The system of monitoring and production quotas for certain products of undertakings in the steel industry was introduced on 1 October 1980 pursuant to Article 58 of the ECSC Treaty by Commission Decision No 2794/80/ECSC of 31 October 1980 (OJ 1980 L 291, p. 1). It was extended for 1986 and 1987 by Commission Decision No 3485/85/ECSC of 27 November 1985 (OJ 1985 L 340, p. 5) and for the first sixth months of 1988 by Commission Decision No 194/88/ECSC of 6 January 1988 (OJ 1988 L 25, p. 1). Both Article 5 of Decision No 3485/85 and Article 5 of Decision No 194/88 put the Commission under a duty to fix each quarter, for each undertaking, the production quotas and the part of such quotas which might be delivered in the common market. Article 11(3)(e) of both those decisions empowered the Commission to allow undertakings, under certain conditions, an advance on their quotas for the following quarter.

2 According to the preamble to Decision No 194/88, the Commission considered that it was necessary in the circumstances prevailing at the time to liberalize the market in products of categories Ia and Ib after 30 June 1988.

3 In addition, Commission Decision No 1433/87/ECSC of 20 May 1987 (OJ 1987 L 136, p. 37), adopted pursuant to Article 18 of Decision No 3485/85, authorized undertakings, subject to certain conditions, to adapt each quarter, for a specific category of products, the ratio I: P — that is to say, the ratio between the part of the production quotas for delivery in the common market ('delivery quota') and the production quotas — by converting at the rate of 1: 0.85 a portion of their production quotas into delivery quotas. That adaptation option was taken over in Article 17 of Decision No 194/88.

4 On 6 April 1988, the Eurofer association of steel producers — to which the applicant belongs — warned its members by telex that it had learned, as a result of a telephone conversion with a head of division in Commission DG III, that advances of quotas from the third quarter of 1988 would not be granted for the second quarter of that year on the ground that the quota system would come to an end on 30 June 1988.

5 By letter dated 31 May 1988, the Commission notified to the applicant its quotas for the second quarter of 1988, which had been fixed pursuant to Article 5 of Decision No 194/88.

6 By decisions notified on 30 May 1988 and 12 October 1988, the Commission successively corrected the quotas granted to the applicant in order to take account of the application of Articles 17 and 10(1) of Decision No 194/88. By letter dated 24 June 1988, the Commission further authorized an advance of quotas for the first quarter of 1988 from the second quarter of that year pursuant to Article 11(3)(e) of Decision No 194/88.

7 By letter dated 9 June 1988, the applicant asked the Commission for authorization, pursuant to Article 11(3)(e) of Decision No 194/88, to advance to the second quarter of 1988 a maximum of 20% of the quotas to which it was entitled for the third quarter.

8 On 24 June 1988, the Commission proposed to the Council that it should end the quota system pursuant to Article 58(3) of the ECSC Treaty. The Council was unable to reach the unanimous vote required by that provision in order to adopt a decision to the contrary.

9 Consequently, the quota system ended on 30 June 1988.

10 By judgment of 14 July 1988 in Joined Cases 33, 44, 110, 226 and 285/86 *Stahlwerke Peine-Salzgitter AG and Hoogovens Groep BV* v *Commission* [1988] ECR 4309 ('the judgment of 14 July 1988'), the Court of Justice declared void Article 5 of Decision No 3485/85 'in so far as it did not enable delivery quotas to be fixed on a basis which the Commission considers fair for undertakings having ratios between their delivery quotas and production quotas which are significantly lower than the Community average'. The Court held that the provision was vitiated by a misuse of power.

11 By letter dated 2 August 1988, a head of division in DG III stated as follows in answer to a letter from Finsider dated 9 June 1988:

'We wish to inform you that the said article [Article 11(3)(e) of Decision No 194/88] enables "an advance" of quotas to be made: it embodies an implicit condition to the effect that quotas should be granted for the following quarters. Since the quota system is no longer in force as from the end of June, Article 11(3)(e) is no longer applicable.'

12 By letter dated 20 September 1988, the applicant expressed serious reservations about the letter of 2 August 1988, emphasizing that the advance of quotas requested reflected the seasonal nature of the market in question, which the Commission had hitherto always recognized. It concluded that it seemed incomprehensible that that factor, which had characterized its deliveries in preceding years, should be disregarded — by making the quota system more rigid — precisely at the time when the market was liberalized.

13 By letter dated 23 February 1989, the Commission notified the applicant that it had initiated proceedings against it under Article 36 of the ECSC Treaty to impose sanctions for exceeding quotas, in breach of the quota system, in the second quarter of 1988.

14 At a meeting held with Commission representatives on 3 March 1989, the applicant's representatives were able to express their comments with regard to the alleged overshooting of quotas.

15 By letter dated 15 March 1989, the applicant complained to the Commission that it had failed to take account of the requested advances for the second quarter of 1988 and of the difficult situation in which Finsider found itself following the introduction of the system, provided for in Article 17 of Decision No 194/88, for the conversion of production quotas into delivery quotas.

16 At a meeting held on 24 May 1989 with Commission representatives, those arguments were resumed and enlarged upon. A representative of the applicant then formally asked the Commission to provide all the data and accounts on the basis of which the alleged excesses had been calculated.

17 By letter dated 5 June 1989, the Commission notified to the applicant its decision to grant it additional quotas pursuant to Article 7 of Decision No 194/88 for the first and second quarters of 1988.

18 By letter dated 12 June 1989, the applicant provided the Commission — at the latter's request — with data on 'Italsider's relative position' on the Community market. It appeared from those data that the applicant had sustained a substantial loss of relative market position between 1986 and the third quarter of 1988.

19 By judgment of 14 June 1989 in Joined Cases 218 and 223/87, 72 and 92/88 *Hoogovens Groep and Federacciai* v *Commission* [1989] ECR 1711 ('the judgment

of 14 June 1989'), the Court of Justice declared void, at the request of Hoogovens Groep alone, Article 5 of Decision No 194/88 and, at the request of Hoogovens Groep and Federacciai — an association of steel producers of which the applicant is a member — Decision No 1433/87, which had become Article 17 of Decision No 194/88, in so far as those provisions did not correspond to what, on the Commission's own admission, was necessary in order to ensure an equitable allocation of quotas.

20 By letter dated 19 June 1989, the Commission communicated to the applicant the minutes of the meetings of 3 March and 24 May 1989.

21 By letter dated 14 July 1989, the lawyers of Assider — an association of which the applicant is a member — asked if they might meet the Commission in order to establish by what method and to what extent it intended to compensate Finsider for the losses — assessed by the applicant at more than 25 000 tonnes a quarter — ensuing from the system for the conversion of quotas which had been declared void by the Court by the judgment of 14 June 1989.

22 By letter dated 1 August 1989, the applicant drew the Commission's attention to the consequences of the judgment of 14 June 1989 and asked it to 'reconsider the quotas "to which our company would have been entitled" in the absence of the decision which had been declared void'.

23 By letter dated 10 August 1989, the Commission stated in answer to the applicant's letter of 14 July 1989 that it did not understand how the loss sustained by Finsider as a result of the application of Article 17 of Decision No 194/88 could be evaluated at 25 000 tonnes. It drew the applicant's attention to the fact that, according to the judgment of 14 July 1988, to which the judgment of 14 June 1989 refers, it had had to undertake, for structural reasons, a correction of the I: P ratio as from 1 January 1986 and that that correction had resulted, in Finsider's case, in a much larger decrease in its deliveries in the common market.

24 In a letter dated 8 September 1989, Assider stated that the loss of more than 25 000 tonnes per quarter sustained by the Finsider group related to the period 1 January 1987 to 30 June 1988, the only period covered by the judgment of 14 June 1989. The correction of the I: P ratio as from 1 January 1986 as a result of the judgment of 14 July 1988 could not be relied on as against the applicant because it had not been a party to the proceedings which had culminated in that judgment declaring provisions void for infringing procedural requirements.

25 By letter dated 7 December 1989, the Commission informed the applicant that the questions raised in the letters of 14 July and 8 September 1989 were in fact related to Finsider's exceeding quotas in 1988, and that it was considering what action to take in the light of the Court's judgments. The Commission stated that it was prepared to meet Finsider's management in order to discuss the envisaged overall solution at a meeting to be scheduled for January 1990.

26 On 24 January 1990, a meeting, described by the parties as 'informal', was held in Brussels between representatives of the applicant and of the Commission.

27 By letter dated 7 February 1990, the applicant stated that it was, in its view, too restrictive to regard the question of the consequences of the judgment of 14 June 1989 as relating solely to its alleged overshooting of quotas in the second quarter of 1988. The applicant considered that the alleged overshooting of quotas in question — the existence of which it strongly denied — was capable of constituting at the very most an extension of the range of issues with a view to reaching an agreement with the Commission and hence avoiding further litigation. The question of compliance with that judgment was, in any event, much wider and related, not only to the first half of 1988, but also to the whole of 1987. It concluded by saying that, in that context, it adhered to the proposal for a meeting set out in the letter of 7 December 1989.

28 By letter dated 5 March 1990, the applicant repeated its request for a date to be fixed for a meeting between its representatives and those of the Commission.

29 By letter dated 7 March 1990, the Commission informed the applicant that it had consulted its Legal Service, and that the latter shared the opinion expressed in its letter of 10 August 1989. It further stated that the competent departments of the Commission had already had contacts with officers of the applicant concerning the issues raised, and that it was therefore neither necessary nor worthwhile to re-examine the same subject again.

30 By letter dated 20 March 1990, the applicant raised the possibility of bringing an action before the Court of Justice with a view to obtaining compensation for the damage which it had sustained.

31 By letter dated 28 March 1990, which was received by the applicant on 11 April 1990, the Commission notified to the applicant its decision of 21 March 1990 imposing a fine upon it pursuant to Article 58 of the ECSC Treaty for exceeding its quotas in the second half of 1988 as regards products of categories Ia and Ib. The fine was fixed at ECU 2 153 550, or 18.75 ecus per tonne in excess.

Procedure

32 In those circumstances, the applicant brought this action by application lodged at the Registry of the Court of First Instance on 18 May 1990.

33 By letter from the Registrar, dated 27 September 1991, the Commission was asked to answer questions put by the Court.

34 By letter lodged at the Court Registry on 21 October 1991, the Commission answered the questions put by the Court.

35 In the light of the answers given to the questions and having regard to the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry.

36 The parties were heard in oral argument and answered the Court's questions at the hearing of 4 December 1991 before the Court composed of D. A. O. Edward, President, R. García-Valdecasas, K. Lenaerts, H. Kirschner and R. Schintgen, Judges.

37 Judge D. A. O. Edward was prevented from taking part in the deliberations relating to this case as a result of his taking up office as a judge in the Court of Justice on 10 March 1992. Consequently, there was an even number of judges sitting.

38 Article 18 of the Statute of the Court of Justice of the ECSC, which is applicable to the Court of First Instance as a result of Article 44 of that Statute, provides that decisions of the Court of First Instance shall be valid only if an uneven number of judges are sitting and that decisions of Chambers shall be valid only if three judges are sitting. Consequently, Article 32(1) of the Rules of Procedure provides that where there is an even number of judges, the most junior judge within the meaning of Article 6 of the Rules of Procedure is to abstain from taking part in the deliberations.

39 Consequently, this judgment was decided by the three judges whose signatures it bears.

40 The applicant claims that the Court should:

— by way of measure of inquiry: order the production of (a) the accounts on the basis of which the contested fine was imposed and (b) the letter from Mr F. in Mr Narjes' Cabinet on the opinion on the applicability of the system of advances of quotas during the fourth quarter of 1987;

— with regard to the substance: annul the contested Commission decision of 21 March 1990, including any (implied) refusal to grant the requested advance in the second quarter of 1988;

— in the alternative: vary the contested decision by reducing in an appropriate and equitable manner the amount (in tonnes) by which the quotas were allegedly exceeded and by reducing the fine accordingly;

— order the defendant to pay the costs.

The Commission claims that the Court should:

— declare the application for the annulment of the decision imposing a fine inadmissible because it is based on Article 5 of Decision No 194/88;

— dismiss any admissible claim as being unfounded;

— order the applicant to pay the costs.

Substance

41 The applicant relies essentially on three pleas in support of its application for the annulment of the contested decision. In its *first plea*, the applicant states that there is no legal basis for the Commission's finding that quotas were exceeded. In the applicant's view, the Court of Justice in its judgment of 14 June 1989 annulled retroactively the system for fixing quotas for the period in question, yet the Commission did not replace the decision annulled in compliance with that judgment. In its *second plea*, the applicant contests the lawfulness of the Commission's implied decision refusing to grant it, pursuant to Article 11(3)(e) of Decision No 194/88, an advance of quotas from the third quarter of 1988, inasmuch as that decision does not contain a statement of reasons (first limb), inasmuch as it is based on an erroneous interpretation of the provision in question (second limb) and inasmuch as it infringes the principle of the protection of legitimate expectations (third limb). In its *third plea*, the applicant claims that Article 36 of the ECSC Treaty was infringed inasmuch as the Commission did not communicate to the applicant the accounts on the basis of which the fine was imposed. In the alternative, the applicant asks the Court to make an equitable reduction in the fine in order to take account of the difficulties of applying the quota system in this instance.

The main claim

The first plea

42 The applicant argues that, by annulling Articles 5 and 17 of Decision No 194/88, the judgment of 14 June 1989 caused the parameters in relation to which any exceeding of quotas had to be assessed to disappear retroactively. Consequently, it was quite impossible for quotas to be exceeded in any way unless the Commission reconstituted a new system for fixing quotas by way of implementation of the judgment of annulment. However, that was not the case here, as the Commission failed to take a formal decision in that respect in compliance with the procedure and safeguards laid down by Article 58(2) of the ECSC Treaty.

43 As regards the annulment of Article 5, the applicant argues that the Commission has based itself on an incomplete, unacceptable interpretation of the judgments of 14 July 1988 and of 14 June 1989. In the judgment of 14 July 1988, the Court of

Justice held that Article 5 of Decision No 3485/85 was unlawful on the ground that the Commission itself had considered that it did not authorize an equitable allocation of quotas for undertakings with a particularly unfavourable I: P ratio (ten points below the Community average). In so doing, the Court of Justice did not hold that the Commission's assessment was lawful vis-à-vis the other undertakings. In the second judgment, the Court confirmed the judgment of 14 July 1988 as regards Article 5 of Decision No 194/88, but added (in paragraph 21) that 'it is for the Commission, in compliance with that judgment, to adopt, on its responsibility, provisions designed to adapt the I: P ratio to the extent required by the situation on the export markets in order to secure an equitable distribution of quotas'. However, the Commission never undertook such an adaptation.

44 Whilst the applicant agrees with the Commission that any adaptation effected following the judgment of 14 June 1989 cannot be relied upon as against undertakings for which it would result in a reduction of quotas, it nevertheless considers that a formal decision was necessary in order to reestablish the basic rules contained in Article 5 of the annulled decision and to maintain vis-à-vis those undertakings the quotas which had initially been allocated to them.

45 It claims therefore that it has an interest in invoking the consequences of the annulment of that provision on the ground that it should entail the annulment of the contested decision imposing a fine upon it by reason of the alleged infringement of that unlawful provision.

46 The applicant adds as regards Article 17 of Decision No 194/88 that the Commission should have taken into account in calculating the alleged exceeding of quotas the decreases in quotas which it had sustained on account of that provision whose annulment it had sought, and obtained, from the Court of Justice. It quantifies the loss which it sustained at 150 000 tonnes. If that loss had been taken into account, it would have eliminated any alleged exceeding of quotas. By failing to take it into account, the Commission infringed the first paragraph of Article 34 of the ECSC Treaty.

47 It states that during the penalty proceedings it expressly asked the Commission to take account of all the consequences in terms of quotas ensuing for it from that judgment of annulment. It observes that the Commission itself assessed at 167 862 tonnes (Annex 6 to the defence, first table) the reduction in the applicant's delivery quotas for the period between the first quarter of 1986 and the second quarter of 1988. Consequently, it accuses the Commission, first, of having taken account of the effects of that annulment only as regards the second quarter of 1988 without having regard to the whole of the period considered and, secondly, of having confined itself to categories Ia and Ib alone, without having regard to category II, for which the loss amounted to 5 705 tonnes.

48 The applicant acknowledges that the penalty proceedings instituted against it related solely to the second quarter of 1988. But it argues that, since that was the last quarter in which the quota system was in operation and since the judgment of 14 June 1989 was delivered after that system had been abolished, the Commission was under a duty, under the first paragraph of Article 34 of the ECSC Treaty, to take account of all the favourable effects of that judgment. The only way in which the Commission could have granted the applicant compensation in kind for the loss which it had sustained as a result of the annulled provisions would have been to offset that loss and the amount by which the quotas were alleged to have been exceeded.

49 The Commission states in response that the applicant has not shown that it has an interest on which it can rely in order to seek the annulment of Article 5. It maintains that, if the Court should uphold the applicant's arguments, the applicant's initial quotas would have to be recalculated in accordance with the principles laid down by the Court of Justice in its judgment of 14 July 1988, to which the judgment of 14 June 1989 refers. However, those quotas are lower than the quotas fixed on the basis of the annulled decision. The Commission observes that, as the Court of Justice noted, Article 5 of Decision No 194/88 took over the wording of Article 5 of Decision No 3485/85 and the former article was annulled for the same reasons as the latter. Consequently, the scope of that annulment did not exceed that which was necessary in order to reestablish equitable delivery quotas for undertakings whose I: P ratios were manifestly below the Community average. Vis-à-vis other undertakings, such as the applicant, whose I: P ratios were above the Community

average, the initial determination of quotas remained valid in accordance with the principle of acquired rights, since a redistribution of quotas would have entailed an *ex post facto* reduction in the quotas which had been initially allocated to them.

50 As far as the annulment of Article 17 is concerned, the Commission maintains that it was in no way bound to grant increases in quotas relative to those which had been initially fixed and taken as the basis for fixing the fine. It was only to eliminate one aspect in dispute that it had, however, granted Finsider increases for the second quarter of 1988, as was explained to the applicant's representatives at the meeting on 24 January 1990.

51 Lastly, the Commission adds that the judgment of 14 June 1989 does not entail the revision of the quotas allocated to the applicant, and that the individual decisions relating thereto — which were not contested within the time-limit laid down by the last paragraph of Article 33 of the ECSC Treaty — were not nullified by that judgment. The Commission would have had formally to adopt different decisions only if the judgment of 14 June 1989 had obliged it to revise Finsider's quotas and not, as the applicant maintains, 'in order to reestablish and maintain' the definitive decisions taken pursuant to the annulled article.

52 The Court observes that, by the judgment of 14 June 1989, the Court of Justice annulled Articles 5 and 17 of Decision No 194/88 in the following terms: 'Articles 5 and 17 of Commission Decision No 194/88/ECSC of 6 January 1988 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry are void'. It is necessary to determine the scope of that judgment of annulment vis-à-vis the applicant as regards each of those provisions.

53 As far as Article 5 is concerned, it must be considered whether that provision was annulled as the legal basis for the individual decisions fixing the applicants' quotas. To that end, reference should be made to the grounds of the judgment of 14 June

1989 (judgment of the Court of Justice in Joined Cases 97, 193, 99 and 215/86 *Asteris and Others and Hellenic Republic* v *Commission* [1988] ECR 2181, paragraph 27). In paragraph 26 of the judgment of 14 June 1989, which is the sole ground for the annulment of Decision No 194/88, the Court stated that 'Article 5 of Decision No 194/88/ECSC takes over the wording of Article 5 of Decision No 3485/85/ECSC. Consequently, it must be annulled for the same reasons which led to the annulment of that provision in the judgment of 14 July 1988'. It appears from that ground that, in order to determine the scope of the judgment of 14 June 1989, reference must be made to the grounds of the judgment of 14 July 1988.

54 It is stated in the grounds of the judgment of 14 July 1988 (paragraphs 27 and 28) that 'By failing to alter the I: P ratio which it considered necessary in order to determine the quotas on an equitable basis pursuant to Article 58(2), the Commission pursued a purpose different from that laid down by that provision and thus committed a misuse of power. Since the Commission had established that it was necessary to eliminate the imbalance in the I: P ratio which characterized the particular situation of undertakings such as the applicants, it must be considered that it committed an abuse of power affecting the applicants. It must therefore be held that Article 5 of Decision No 3485/85 represents a misuse of powers affecting the applicants and that it must therefore be declared void.' On those grounds, the Court '(1) Declare [d] void Article 5 of Commission Decision No 3485/85/ECSC of 27 November 1985 in so far as it does not enable delivery quotas to be fixed on a basis which the Commission considers fair for undertakings having ratios between their delivery quotas and production quotas which are significantly lower than the Community average'.

55 The Court of First Instance observes that the fact that the operative part of the judgment of 14 June 1989 does not reiterate all the operative part of the judgment of 14 July 1988 does not enable it to be considered that the judgment of 14 June 1989 annulled Article 5 of Decision No 194/85 more extensively than the judgment of 14 July 1988 annulled Article 5 of Decision No 3485/85. The only ground for the annulment of Article 5 contained in the judgment of 14 June 1989 refers to the grounds of the judgment of 14 July 1988. Consequently, in so far as the judgment of 14 June 1989 contains no ground additional to those contained in the judgment of 14 July 1988 such as to warrant a more extensive annulment of Article 5, it can only have annulled Article 5 of Decision No 194/88 in the same manner as the judgment of 14 July 1988 annulled Article 5 of Decision No 3485/85.

56 In that connection, it is important to observe that, by annulling Article 17 and refusing to annul Article 6 of Decision No 194/8, which are provisions which have no content independent of Article 5 of that decision, since they define the parameters for calculating the quotas which are to be fixed by the Commission on the basis of Article 5, the Court of Justice necessarily took the view that the said Article 5 continued to exist as the legal basis authorizing the Commission to fix quotas.

57 It follows from the foregoing that the Court of Justice has not annulled Article 5 in so far as it constitutes the legal basis for the Commission's power to fix the quotas of steel undertakings quarterly, but solely in so far as the reference levels which it employs in order to fix those quotas do not enable delivery quotas to be determined on a basis which the Commission regards as equitable for undertakings whose I: P ratios are significantly lower than the Community average.

58 In this case, the Court of First Instance observes that it is common ground as between the parties that the applicant is not among those producers whose I: P ratios were lower than the Community average. Moreover, the applicant has adduced no evidence capable of contradicting the Commission's assertion that Article 5 of Decision No 194/88 could not have caused it loss in terms of quotas.

59 It follows that, in order to adopt, under Article 34 of the ECSC Treaty, the measures necessary to comply with the judgment annulling Article 5, the Commission was not under a duty vis-à-vis the applicant either to redefine in a general decision the parameters for fixing quotas or to adopt new individual decisions. The applicant was in fact in the opposite situation to that of the undertakings which obtained the annulment of Article 5 by the judgment of 14 June 1989. This is why, whatever avenue the Commission might have chosen, it could have led only to quota levels which were less favourable to the applicant. However, the parties rightly agree that due respect for acquired rights precludes such an outcome, which, moreover, was in no way sought by the Court of Justice in its judgment of 14 June 1989. That judgment — in so far as it annuls Article 5 — could therefore not have had a material effect on the content of the individual decisions fixing the applicant's quotas for the second quarter of 1988.

60 What is more, since the individual decisions fixing the applicant's quotas for the second quarter of 1988 were not the subject of an action for annulment brought within the time-limit laid down by Article 33, they must be regarded as definitive.

61 It follows from the consistent case-law of the Court of Justice (see, in the first place, the judgment in Case 3/59 *Germany* v *High Authority* [1960] ECR 53, at 61, and, most recently, the judgment in Case 41/85 *Sideradria* v *Commission* [1986] ECR 3917, paragraph 5) that an applicant cannot, in proceedings for a declaration that an individual decision is void, raise an objection of illegality (under the third paragraph of Article 36 of the ECSC Treaty) against other individual decisions addressed to it which have become definitive because the time-limit for annulment laid down in Article 33 of the ECSC Treaty has expired.

62 Consequently, those decisions may be used as a reference for the calculations of the amounts by which the Commission has charged the applicant with exceeding its quotas.

63 Furthermore, the Court observes that the applicant's arguments with regard to the consequences of the annulment of Article 17 of Decision No 194/88 amount, essentially, to complaining that the Commission did not offset, pursuant to the first paragraph of Article 34 of the ECSC Treaty, on the one hand the loss sustained by the applicant on account of Article 17 in respect of quarters or products other than those for which it was found that quotas had been exceeded — a loss which is recognized by the Commission and the calculation of which the applicant has not contested — and on the other hand the amount by which quotas were found to have been exceeded.

64 It is important to emphasize that the Commission was under no duty to effect such a set-off. The question of the consequences of the judgment of annulment of 14 June 1989 is governed by the first paragraph of Article 34 of the ECSC Treaty. Under that provision, the Commission is under a duty, first, to take the necessary steps to comply with decisions of annulment taken by the Court of Justice and, secondly, where direct and special harm is suffered by an undertaking by reason of a decision held by the Court of Justice to involve a fault of such a nature as to render the Community liable, to take, using the powers conferred by the ECSC

Treaty, steps to ensure equitable redress for the harm resulting directly from the decision declared void and, where necessary, to pay appropriate damages. If the Commission fails to take within a reasonable period the necessary measures to comply with a judgment of annulment, an action for damages will lie before the Court of Justice. In contrast, the question of imposing penalties for infringing decisions taken pursuant to the quota system is governed by Article 58(4) and Article 36 of the ECSC Treaty, which provide that the Commission may impose on undertakings which infringe decisions taken by it under the quota system fines not exceeding the value of the tonnages produced in disregard of that system, after giving the party concerned the opportunity to submit its comments. An appeal may be brought against such penalties before the Court, which has unlimited jurisdiction in the matter.

65 It follows from the separate nature of those two procedures and from the independence which the first of them leaves to the Commission as regards the manner in which it is to take the necessary measures to comply with a judgment of annulment that it is not for the Court to impose upon the Commission, in the second procedure, the manner in which it ought to take the necessary measures in order to comply with a judgment of annulment delivered by the Court of Justice, a question which falls within the scope of the first procedure. Consequently, the Commission was not under a duty to take account of the favourable consequences for the applicant stemming from the annulment of Article 17 of Decision No 194/88 for quarters other than the second quarter of 1988 and for categories of products other than categories Ia and Ib. However, as regards the latter quarter and the latter categories, it is common ground between the parties that the Commission acted on that annulment in favour of the applicant by decreasing the excesses initially calculated for the two categories of product concerned. In that regard, it must be observed that the contested measure refers expressly to the 'case-law of the Court of Justice' in mentioning that part of the calculation.

66 It follows that, vis-à-vis the applicant and as regards the only quarter and the only categories of products at issue in these proceedings, the Commission took the necessary measures to comply with the judgment of 14 June 1989, as regards the annulment of both Article 5 and Article 17 of Decision No 194/88, and that the plea must therefore be dismissed.

The second plea

First limb: insufficient statement of reasons

67 The applicant submits that, in its letter dated 15 March 1989, it asserted that the Commission had not taken into account, in order to calculate the amount by which Finsider was charged with exceeding quotas, of the increases in quotas which had to ensue as a result of the advances for which it had applied. However, in the contested decision, the Commission did not respond to that point, merely observing that 'the quota system is quarterly and mandatory and does not confer any automatic entitlement to advances'. Given the absence of any other statement of reasons, the applicant considers that the decision is unlawful, since it was not able to ascertain whether the question remained open or whether the Commission intended, by that statement, to reject its request for an advance. In the latter event, the decision rejecting its request is devoid of any statement of reasons.

68 The Commission submits that, by adopting the decision of 21 March 1990, it adhered to its decision not to grant advances for the second quarter of 1988. In its statement of reasons, it strictly confined itself to reminding Finsider that, since there was no automatic entitlement to an advance, it could not claim to reckon in its favour advances which had not been granted to it.

69 The Commission submits that the reasons for which it refused the advances were clearly stated to Finsider during the administrative procedure, in particular in its letter of 2 August 1988 and during the meeting held on 24 May 1989. It argues that it follows from the consistent case-law of the Court of Justice (see the judgment in Case 32/86 *Sisma* v *Commission* [1987] ECR 1645) that the extent of the obligation to state reasons depends on the nature of the measure in question and on the context in which it was adopted. Accordingly, an individual decision could be regarded as being sufficiently reasoned if, by participating in the process of drawing up the measures, the addressee had obtained all the information necessary to ascertain whether the decision was well founded and if, on the basis of all the documents sent to the applicant, the Community Court was able to review fully the legality of the decision.

70 The Court observes that, as the Court of Justice has consistently held (see, *inter alia*, the judgment in Case 32/86 *Sisma* v *Commission*, cited above, at paragraphs 8, 9 and 10), the purpose of the obligation to state reasons for an individual decision is to enable the Court to review the legality of the decision and to provide the person concerned with sufficient information to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested. The extent of that obligation depends on the nature of the measure in question and on the context in which it was adopted.

71 In this case, in so far as the decision at issue indicated the magnitude of the excess found and the rate of the fine imposed in the context of the procedure in question, it constitutes an implicit, yet certain, decision rejecting the advances requested by the applicant. The Commission provided the applicant with the reasons for that refusal in the preamble to the contested decision. The preamble refers in the first place to the meeting held on 24 May 1989 between the parties' representatives at which a Commission representative stated that 'the content of Article 11(3)(e) provides for the possibility of granting an advance of quotas and not of receiving supplementary quotas. In this case, supplementary quotas would have been created, since it was the last quarter in which the quota system was in operation'. Next, after taking note of the applicant's claim that 'the figures take account neither of the adaptations referred to in Articles 7 and 11(3)(e) of Decision No 194/88/ECSC nor ...', the preamble to the decision at issue states that 'the quota system is quarterly and mandatory and does not confer any automatic entitlement to advances'.

72 Furthermore, that statement of reasons must be placed in the context in which the contested decision was taken. In that regard, it is important to observe in particular that, in its letter of 2 August 1988, the Commission explained the reasons for which it did not intend to grant advances of quotas for the second quarter of 1988. In addition, the substance of that decision had been made known to the applicant in the telex which Eurofer sent to its members on 6 April 1988 following a telephone conversation between a staff member of that association and a head of division in DG III of the Commission.

73 It follows from the foregoing that the first limb of the plea must be rejected.

Second limb: misinterpretation of Article 11(3)(e) of Decision No 194/88

74 The applicant argues that the refusal to grant the advance requested is contrary to Article 11(3)(e) of Decision No 194/88. That provision reads as follows: 'Where an undertaking does not expect to attain its quotas during the quarter in question, the Commission may, under the conditions set out in (d), allow the undertaking an advance on the quotas for the following quarter not exceeding 20% of the quotas for the current quarter'. The applicant points out that the conditions set out in (d) consist in the fact that the undertaking must show that the fall in production during the subsequent quarter is the result of 'circumstances of *force majeure*' or of a 'shutdown for repairs lasting at least four consecutive weeks'. It should first be considered that Decision No 194/88 was applicable 'for the period 1 January to 30 June 1988' (Article 18(2) of the decision). However, the interpretation put forward by the Commission would mean that Article 11(3)(e) of Decision No 194/88 would have been inapplicable during one of the two quarters for which the decision was in force. Consequently, that interpretation would amount to abrogating advances for half of the period for which they were in force. That interpretation is contrary to the principle of 'effectiveness' and to the second paragraph of Article 14 of the ECSC Treaty, which provides that 'Decisions shall be binding in their entirety'.

75 The applicant further argues that the rationale for the advances mechanism is to prevent the application of the quota system from causing particular damage to undertakings which anticipate a fall in their production and deliveries in a subsequent quarter for reasons of *force majeure* or plant shutdown. If, during the next quarter, those adverse circumstances materialize and cause a fall in the quantities produced and delivered, the advances requested must be granted. It claims that this rule applies even if the obstacles occur during the first quarter in which production was liberalized, since the advance, which may be as much as 20%, is calculated on the basis of the quotas 'for the current quarter' and not on the basis of the quotas for the next quarter. Accordingly, the advances mechanism was completely applicable, even during the last quarter during which the quota system was in force. The applicant adds that it would have been illogical if, at the time when the market was liberalized, the last application of the quota system had become more rigid than it had been when the quota system was in force. If the system had been maintained for one more quarter assuming the same (reduced) production and deliveries

during the third quarter of 1988, Finsider's 'advances' for the second quarter would not have been contested.

76 In this instance, the applicant had requested advances of quotas on account of the seasonal fall in consumption forecast — as in previous years — for the third quarter. That fall actually occurred in the third quarter of 1988. Finsider's production and deliveries on the market showed — even after the start of product liberalization — a decline of some 20% in relative terms, in relation both to the first half of 1988 and to the two previous years, 1986 and 1987. Finsider had informed the Commission on time, as the latter had requested it to do.

77 For its part, the Commission argues that it appears from the actual wording of Article 11(3)(e) of Decision No 194/88 that, in order to obtain an advance during a given quarter, quotas must exist for the subsequent quarter. In the absence of such quotas, the rule could not apply. Since the quota system expired on 1 July 1988, there were no more quotas for the third quarter. Consequently, the necessary condition for allowing an advance during the second quarter of 1988 was not fulfilled.

78 The Commission argues, moreover, that that interpretation is the only one which guarantees an equitable allocation of the burden of the crisis among undertakings. This requires total production over the whole period of application of the quota system to be distributed amongst the undertakings by means of a system for the allocation of quarterly quotas based on each undertaking's reference levels. If an undertaking had been authorized to increase the total quotas successively granted it by an advance of production not subject to the quota system from the first quarter following the end of the system, it would have ended up by exceeding, for the whole period of the crisis, the total quotas to which its reference levels entitled it. Moreover, the Commission had no power to check or impose sanctions with regard to the alleged fall in production during that quarter, since the offsetting of advances was left, *de facto* and *de jure*, to the discretion of the undertakings which benefited from it.

79 The Court takes the view that the interpretation of Article 11(3)(e) of Decision No 194/88 has to be considered in the context of the whole of that provision and, in particular, in the light of the rationale for Article 11, of which it forms a part. The quota system which may be introduced under Article 58 of the ECSC Treaty is intended to deal with the consequences of a decline in demand for coal and steel where that decline gives rise to a period of manifest crisis and the means of action provided for in Article 57 of the ECSC Treaty are not sufficient to deal with this. In that context, the Commission is empowered to determine quotas on an equitable basis. Consequently, the aim of the introduction of a quota system is to spread the burden of the crisis equitably over the various producers, by sharing on an equitable basis the production cuts which are needed in order to reestablish balance between supply and demand.

80 Accordingly, Article 5 of Decision No 194/88 empowered the Commission to fix each quarter, for the first half of 1988, the quotas of the various undertakings having regard to various parameters. Article 11 of that decision aims at introducing a measure of flexibility into the quota system by authorizing overshooting of quotas on a individual basis for specific categories of products or for specific periods, provided that that overshooting is offset by not using up a quota for a specific category of products or during a specific period of time. Thus, Article 11(1) permits limited overshooting in respect of certain categories of products, provided that it is offset in respect of other categories of products. Likewise, Article 11(3)(a), (b), (c) and (d) provides for quotas to be carried forward to a subsequent period where undertakings have not used up their production or delivery quotas in a given period. Article 11(4) provides, subject to certain conditions, that undertakings may exchange quotas or parts of quotas with other undertakings or sell them to other undertakings.

81 It follows from the foregoing that the main characteristic of the various provisions set out in Article 11 of Decision No 194/88 is that it makes authorization of limited overshooting of quotas subject to offsetting that overshooting by not using up quotas for another specific category of products or for another specific period.

82 That is the context of Article 11(3)(e) of Decision No 194/88, which provides as follows:

'Where an undertaking does not expect to attain its quotas during the quarter in question, the Commission may, under the conditions set out in (d), allow the undertaking an advance on the quotas for the following quarter not exceeding 20% of the quotas for the current quarter'.

That provision occurs after subparagraphs (a) to (d) of Article 11(3), which provide for the opposite case to advances, namely carryovers.

83 The Court therefore considers that the application of that provision presupposes that the overshooting of the quota during a quarter may be offset by not using up the quota during the next quarter. Failing that, there would be an infringement of the principle that producers are equal in the face of the crisis, which ensues from the general scheme of Article 58 of the ECSC Treaty, in particular in so far as Article 58(2) refers to the principles set out in Articles 2, 3 and 4 of that Treaty and in particular to Article 4(b), which prohibits measures discriminating between producers.

84 It follows that the contested decision is not based on a misinterpretation of Article 11(3)(e) of Decision No 194/88.

85 Moreover, it should be noted that the following is stated in the preamble to Decision No 194/88:

'Despite the fact that the Commission can still see overcapacity in wide strip mills, the situation on hot-rolled coil (category Ia) and cold-rolled sheet (category Ib) is

generally thought to be satisfactory under current trading conditions. Nevertheless, an immediate return to market rules could result in prices falling too sharply. It therefore seems appropriate to keep them in the quota system for a further two quarters, but with a relaxation in quotas in the second quarter, in preparation for liberalization after 30 June 1988, which the Commission considers necessary under current market conditions.'

Accordingly Article 8(2) of the decision provided as follows:

'For the second quarter of 1988 the part of the quotas which may be delivered in the Common Market shall be fixed at a level 2% above the estimated level of demand.'

Consequently, the applicant may not isolate the last application of the advances mechanism, which was admittedly more rigid than previous applications, from the last application of the quota system as a whole, which was coupled with an overall 'relaxation', in order to claim that the Commission acted inconsistently in making the last application of the quota system stricter than previous applications.

86 The second limb of the plea cannot, therefore, be upheld.

Third limb: infringement of legitimate expectations

87 The applicant maintains that the refusal to grant the advance requested constitutes an infringement of its legitimate expectation that the Commission would act consistently, since it conflicts with decisions taken by the Commission in similar cases in previous years. The applicant refers in particular to the precedent constituted, in

its view, by the grant of advances in the fourth quarter of 1987 for 'long' products, despite their withdrawal from the quota system as from 1 January 1988. It maintains that that precedent is all the more significant in that it was created following a specific position taken by DG III in regard to the whole issue (memorandum from Mr F. to the Cabinet of Mr Narjes, Vice-President of the Commission, approved by the Legal Service, which the applicant requests the Court to order the Commission to produce).

88 The applicant further observes that it submitted its request for an advance on 9 June 1988, when the fate of the quota system was not yet known as it was not decided to terminate it until 24 June 1988.

89 The applicant concludes that, by impliedly refusing to grant it the advances requested for the second quarter of 1988, the Commission failed to fulfil the applicant's legitimate expectation that it would act consistently.

90 The Commission argues *in limine* that the Court of Justice has stated on many occasions (judgment in Case C-350/88 *Société Française des Biscuits Delacre and Others* v *Commission* [1990] ECR I-395) that traders cannot count on the fact that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained.

91 The Commission further contests Finsider's claim that it obtained on 21 April 1988 an advance on the fourth quarter of 1987 for long products, which had no longer been covered by the quota system since 1 January 1988. According to the very terms of Finsider's request for advances of 16 December 1987, it was made only 'in case the quota system under Article 58 is extended after 31 December 1987'. In its

reply, the Commission noted the applicant's request for advances of production quotas 'against quotas due to you for the first quarter of 1988' and agreed to the advance, provided that the quantities advanced were 'deducted from your quotas for the first quarter of 1988'. Consequently, on 21 April 1988 the Commission considered that the request was confined to the quotas allocated to the applicant for the first quarter of 1988, which did not cover long products, now excluded from the quota system. The decision on the advances was adopted on the basis of a request which had been limited in that way and was the only decision which was capable of allowing advances of quotas to be deducted from the first quarter of 1988. The eventuality of granting advances for products not covered by quotas as from 1 January 1988 was therefore never taken into consideration either in Finsider's request or in the Commission's decision.

92 The Commission goes on to argue that the decision to terminate the quota system was not just one of a number of possibilities, but a deliberate policy choice announced by the Commission *inter alia* in the penultimate paragraph of section 1 of the preamble to Decision No 194/88.

93 In that context, any prudent trader should have taken seriously the possibility that the system would come to an end and that the Commission would adopt an attitude consistent with that new *de jure* situation.

94 Furthermore, in the case at issue the Commission clearly warned all undertakings, through Eurofer, at the beginning of the second quarter of 1988 that, with the end of the system in prospect, it would grant no advance in the second quarter. According to the Commission, Finsider had therefore known as a certainty, since the beginning of the second quarter of 1988, that if the Council did not unanimously reject the proposal for liberalization, the Commission would not grant it any advances.

95 Lastly, the Commission states that not only did Finsider know — thanks to Eurofer's communication — that the Commission would not be granting any advance for the last quarter in which the quota system was in force, but it also agreed with that interpretation since it had itself accepted the application thereof since December 1987.

96 Moreover, the Commission considers that the application for the production in the proceedings of an opinion emanating from one of its departments — which constitutes a confidential preparatory document — is inadmissible.

97 The Court observes in the first place that the applicant cannot claim to have been taken by surprise by the end of the quota system, since the Commission clearly indicated in the preamble to Decision No 194/88 that it would maintain the quota system for a further two quarters for certain products but would couple this with 'a relaxation in quotas in the second quarter in preparation for liberalization [of the market] after 30 June 1988'.

98 As far as the legal consequences of the end of the quota system are concerned, it should be observed that the Commission's decision to refuse to grant the applicant the advances on quotas which it requested for the second quarter of 1988 does not constitute a break with its previous policy. Contrary to the applicant's assertions, it was not granted advances for the fourth quarter of 1987 in respect of products for which quotas were withdrawn as from the first quarter of 1988. It appears from reading the Commission decision of 21 April 1988 in the light of the request for advances made at that time by the applicant that, whilst the request also related to products of categories IV and VI for which Article 4 of general Decision No 194/88 of 6 January 1988 did not extend the quota system, that request was preceded by the words: 'in case the quota system under Article 58 is extended after 31 December 1987'.

99 Consequently, it should be considered that the applicant's request was confined to categories of products for which the quota system was extended. It follows that the Commission's reply granting the quotas requested could relate only to products still covered by the quota system. That interpretation is borne out, moreover, by paragraph 2 of that reply, where it is stated that 'the quantities advanced must be deducted from your quotas for the first quarter of 1988', since such a deduction could make sense only for products which were still covered by the quota system.

100 Furthermore, by making its request for advances for the fourth quarter of 1987 subject to the extension of the quota system after 31 December 1987, the applicant recognized at the time that the end of the quota system precluded the grant of advances.

101 Finally, by stating in its application (p. 3) that the memorandum of 2 August 1988 'repeated the interpretation to the effect that Article 11(3)(e) of Decision No 194/88 presupposed that the quota system would be maintained', the applicant showed that it was already aware of that interpretation of the provision in question before 2 August 1988 and therefore that that interpretation was not a new one.

102 It follows from the foregoing that, in refusing to grant the applicant the advances which it requested, the Commission neither changed its previous decision-taking policy nor took the applicant by surprise, and therefore did not infringe the principle of protection of legitimate expectations. Consequently, the third limb of this plea cannot be upheld.

103 In this context, the applicant's application for the production in the proceedings of Mr F.'s memorandum on the interpretation of Article 11(3)(e) of Decision No 194/88 is completely irrelevant and must be rejected.

The third plea

104 The applicant argues — in the alternative and in the event that the Court should consider that, for the purposes of the application of the penalty, the internal accounts drawn up by the Commission are sufficient in order to act on the judgment of 14 June 1988 — that those accounts, of whose existence it has no certain knowledge, have in any event never been brought to its notice despite its repeated requests, promises by the Commission and repeated requests for a meeting in order to clarify the consequences — in terms of quotas — of the judgment of 14 June 1989.

105 Thus, the applicant maintains that it was never placed in a position to have cognizance of any accounts updated following the aforementioned judgment on the basis of which a fine was imposed on it by the contested decision. It argues that this constitutes a manifest infringement of the first paragraph of Article 36 of the ECSC Treaty, which requires the Commission to 'give the party concerned the opportunity to submit its comments' before imposing a sanction.

106 The Commission submits that it was not under a duty to discuss those calculations with the applicant, since, on the one hand, it had explained to the applicant why it was not taking into consideration the advances and the consequences of any infringement of Article 15B of Decision No 3485/85 and, on the other hand, it had agreed to grant the applicant all the further quotas which it had requested for other reasons. In so far as the first paragraph of Article 36 of the ECSC Treaty requires the Commission to give the party concerned the opportunity to submit its comments before imposing a pecuniary sanction, it does not entail an obligation to submit to the party concerned the results of the calculations carried out before adopting the decision, as the Commission had obtained all the applicant's comments which were liable to influence that result.

107 As regards more specifically the statement of reasons for the decision, it adds that the applicant itself produced the letter of 10 August 1989 by which the Director-General, Mr Braun, had explained to Finsider that the alteration requested 'would have given rise to a much larger decrease for your undertaking in deliveries in the common market'. Moreover, the economic data on which the assessment of the overshooting in question was based were well known to the applicant, since they

had already been analysed and discussed in depth in connection with the cases which resulted in the judgment of 14 June 1989. Furthermore, the whole of that question was re-examined at the meeting held on 24 January 1990, in which representatives of the applicant and the Commission took part.

108 The Court considers that, by its letter of 23 February 1989, the Commission gave the applicant an opportunity to submit its comments on the alleged overshooting. In it, the Commission set out the calculations which caused it to find that the applicant had exceeded its quotas for the second quarter of 1988. Following that letter, the applicant was able to put over its comments at the meetings held on 3 March 1989, 24 May 1989 and 24 January 1990 and in its letters of 15 March, 12 June, 14 July, 1 August and 8 September 1989 and of 7 February 1990. Subsequently, the Commission took account in the contested measure of the applicant's comments with regard to the application of Article 7 of Decision No 194/88, as it informed it by letter dated 5 June 1989. In contrast, it rightly refused to take account of the advances requested under Article 11(3)(e) of Decision No 194/88, as appears from the minutes of the meeting held on 24 May 1989. Likewise, it rightly refused to take account in the present procedure of the effects of the judgment of annulment of 14 June 1989 in so far as they did not relate to the second quarter of 1988 and to the categories of products in question (Ia and Ib). Moreover, at the hearing the parties agreed that the Commission showed the applicant, at the informal meeting held on 24 January 1990, the calculations which it had carried out in order to determine the magnitude of the quotas of which the applicant had been deprived as a result of the application of Article 17 of Decision No 194/88, which was subsequently declared void by the Court, in particular as regards the categories of products and the quarter at issue (defence, Annex 6, first table).

109 In that context, there can be no question of an infringement of the first paragraph of Article 36 of the ECSC Treaty, even if it would have been preferable to communicate the latter calculations to the applicant formally, in so far as they would be taken into account in assessing the overshooting of quotas which was found to have taken place.

110 Lastly, it should be added that the applicant has adduced no reason for doubting the accuracy of the calculations carried out by the Commission with a view to establishing the amount by which the quotas were found to have been exceeded and that, at the hearing, it acknowledged in particular the accuracy of the calculations carried out by the Commission in order to determine the magnitude of the quotas of which the applicant was deprived as a result of Article 17.

111 It follows that the plea must be rejected and that the application to order, by way of measure of inquiry, the production of the accounts on the basis of which the contested fine was imposed is to no purpose.

The alternative claim

112 The applicant claims, wholly in the alternative, that the Court should effect an equitable reduction in the fine imposed in order to take account of the difficulties in applying the quota system during the last quarter in which it was in force. It argues that the maintenance of the system caused Finsider to suffer a substantial reduction in relative terms and, consequently, a considerable reduction in its delivery quotas. This situation should have been taken into account when fixing the fine, of which the amount — linked to the alleged overshooting — appears entirely unjustified and excessive.

113 The Commission submits that it treated Finsider as favourably as possible having regard to the applicable legal provisions. Thus it points out that, whilst it took all the action entailed for the applicant by the annulment of Article 5 of Decision No 3485/85 and Decision No 194/88, the quotas ultimately granted to Finsider for ten quarters (from the first quarter of 1986 to the second quarter of 1988) should have been reduced significantly, as is shown by the second table in Annex 6 to the defence. The Commission concludes that the applicant has already obtained significant advantages in the matter of quotas, as a result of which a reduction of the fine as sought would be completely unjust.

114 The Court considers, in the exercise of its unlimited jurisdiction, that it is not appropriate to reduce the fine imposed on the applicant. It should be emphasized that the applicant was unable to refute the Commission's statements to the effect that the applicant obtained from the unlawfulness of Article 5 of Decision No 194/88 a benefit — which constitutes an acquired right — in excess of the harm which it suffered as a result of the unlawfulness of Article 17 of Decision No 194/88. That benefit — which all undertakings with an I: P ratio greater than the Community average enjoyed — in itself runs counter to a fair sharing amongst the undertakings of the burden of the crisis. It is not for the Court to make that situation worse through the exercise of its unlimited jurisdiction in the way sought by the applicant.

115 Moreover, it should be borne in mind that the fine imposed on the applicant amounts to 18.75 ecus per tonne in excess. That amount is substantially lower than the amount fixed by Article 12 of Decision No 194/88, which provides that 'A fine, generally of 75 ecu for each tonne in excess, shall be imposed on any undertaking exceeding its production quotas or that part of such quotas which may be delivered in the common market'.

116 It follows that the claim for a reduction in the fine cannot be granted.

117 It follows from the whole of the foregoing that the application as a whole must be dismissed.

Costs

118 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 costs, the Commission 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 García-Valdecasas Lenaerts

Delivered in open court in Luxembourg on 5 June 1992.

H. Jung H. Kirschner

Registrar President