3. The powers conferred on the Commission by the ECSC Treaty are limited by the specific provisions set out in Title III of the Treaty. Such powers would be diverted from their lawful purpose if it appeared that the Commission had made use of them with the exclusive, or at any rate the main, purpose of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances with which it is required to cope.

4. Since the quota system introduced by Decisions No 2794/80, No 1831/81 and No 1696/82 was based on the application to all undertakings of uniform abatement rates for each category of products subject to it — unless the individual situation of the undertaking in question justified an exception, the Commission may decide upon a general increase of the quotas for a whole group of undertakings characterized by their structure only after following the procedure laid down in Article 58 of the Treaty, that is to say after consulting the Consultative Committee and obtaining the assent of the Council.

In Joined Cases 140, 146, 221 and 226/82

140 and 221/82, WALZSTAHL-VEREINIGUNG, Düsseldorf, represented by its managing director, G. Remy, assisted by Messrs Deringer, Tessin, Herrmann and Sedemund, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of J. Loesch, 2 Rue Goethe,

and

146 and 226/82, THYSSEN AKTIENGESELLSCHAFT, Duisburg, represented by its board of directors composed of Messrs Spethmann, Bartels, Dehmer, Doese, Ewers, Glatzel, Hiltrop, Kriwet, Stein and Zimmermann, assisted by Messrs Deringer, Tessin, Herrmann and Sedemund, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of J. Loesch, 2 Rue Goethe,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, H. Matthies and R. Wägenbaur, assisted by Professor E. Grabitz of the Free University of Berlin, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATIONS for declarations that Commission Decisions No 533/82/ECSC of 3 March 1982 (Official Journal 1982, L 65, p. 6) and No 1698/82/ECSC of 30 June 1982 (Official Journal 1982, L 191, p. 43) are void and that the Commission's communications informing Thyssen Aktiengesellschaft of its reference production and production quotas for the second and third quarters of 1982 are void in so far as they concern the abatement rates for concrete reinforcing bars,

THE COURT,

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat,
Registrar: H. A. Rühl, Principal Administrator,

gives the following

JUDGMENT

SUMMARY

Facts and Issues

I — Legislation applicable 955
1. Decision No 2794/80/ECSC 955
2. Decision No 1831/81/ECSC 955
3. Decision No 533/82/ECSC 956
4. Decision No 1696/82/ECSC 957
5. Decision No 1698/82/ECSC 958
6. Decision No 2751/82/ECSC 959
7. The abatement rates 959

II — Facts and written procedure 960

III — Conclusions of the parties 960

IV — Submissions and arguments of the parties 961

A. Introduction 961
1. The applicants 961
2. The Commission 962

B. Admissibility 963
1. The Commission 963
2. Walzstahl-Vereinigung 964
3. Thyssen AG 964

C. Substance 964
(a) The nature of the interference with competition 964
1. The applicants 964
2. The Commission 965
(b) The basis of authority 965
1. The applicants 965
2. The Commission 968
(c) The alleged failure to take account of the fundamental aims of the ECSC Treaty 970
1. The applicants 970
2. The Commission 970
(d) The alleged breach of the prohibition of discrimination 971
1. The applicants 971
2. Thyssen AG 971
3. The Commission 972
(e) The submission that the Commission used unlawful means to achieve its aim 973
1. The applicants 973
2. The Commission 973

V — Question put to the Commission 974

VI — Oral procedure 976

Decision

Decision 976

Admissibility 982

Substance 984

Costs 986

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Legislation applicable

1. Faced with a manifest crisis on the steel market within the meaning of Article 58 of the ECSC Treaty, the Commission, by Decision No 2794/80/ECSC of 31 October 1980 (Official Journal 1980, L 291, p. 1), established for the first time a system of production quotas for the Community's steel undertakings. The decision entered into force on 31 October 1980 and remained in force until 30 June 1981.

Articles 2 to 4 of that decision provided that the Commission was to fix in respect of each undertaking concerned quarterly production quotas for crude steel and for each of the four groups into which rolled products were divided. The quotas were to be calculated on the basis of each undertaking's reference production figures. All light sections (coiled wire rod, concrete reinforcing bars and other merchant bars) fell within Group IV and were subject to the quota system.

The quota system was based upon the principle that uniform abatement rates for all undertakings were applied to actual production during the reference period.

In view of the rigidity of that principle, however, a numer of exceptions were provided for.

For example, under Article 4 (3), (4) and (5) of Decision No 2794/80 the Commission could increase the reference production figures for undertakings which were at a disadvantage because they had adopted measures conforming with the Community's steel policy, such as complying with the delivery programmes established by the Commission and modernizing plant or restructuring by means of investment on which the Commission had not given an unfavourable opinion.

Furthermore, under Article 14 of the decision the Commission could adapt its provisions to the specific situation where the production or delivery restrictions imposed by the decision or by measures for its implementation entailed "exceptional difficulties" for an undertaking.

2. At the end of the period of application of that system the Commission replaced it by Decision No 1831/81/ECSC of 14 June 1981 (Official Journal 1981, L 180, p. 1), which, with certain changes, continued the quota system from 1 July 1981 to 30 June 1982.

In that decision light sections were divided into three groups:

Category IV: wire rod

Category V: concrete reinforcing bars

Category VI: merchant bars

At the beginning of the period in question the Commission exempted Categories IV, V and VI from the quota system but by Decision No 1832/81/ECSC of 3 July 1981 (Official Journal 1981, L 184, p. 1), which entered into force on 4 July 1981, it included concrete reinforcing bars (Category V) and other merchant bars (Category VI) in the new system.

As in Decision No 2794/80, the rigidity of the system of uniform abatement rates

was mitigated in Decision No 1831/81 by various exceptions.

For example, Article 13 of Decision No 1831/81, as amended by Decision No 1832/81, provides for a notional increase in the reference production of certain undertakings which have brought into operation new plant in connection with restructuring measures financed by particular investments.

Under Article 14 of Decision No 1831/81, as amended by Decision No 1832/81, appropriate adjustments may be made to the reference production of undertakings which so request if, because of the scale of the abatement rates imposed, the quota system creates exceptional difficulties for them, provided that:

"The total reference production for Categories Ia to Id [certain types of hot-rolled wide and narrow strip] comes to less than 1 000 000 tonnes a year and at least 75% of the figures are based on products having an abatement rate of more than 20%, or

The total reference production for Categories V and VI comes to less than 60 000 tonnes and the abatement rate exceeds 20%."

In addition, Article 16 (1) of Decision No 1831/81 states that:

"If radical changes occur in the iron and steel market or if the application of this decision encounters any unforeseen difficulties, the Commission shall carry out the necessary adjustments by general decision."

3. By Decision No 533/82/ECSC of 3 March 1982, amending for the third time Decision No 1831/81/ECSC, establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1982, L 65, p. 6), the Commission created an additional exception to the uniform abatement rates fixed for the second quarter of 1982 in Commission Decision No 532/82/ECSC of 3 March 1982 (Official Journal 1982, L 65, p. 5). That exception is worded as follows:

"For producers whose total production of the products [subject to the production quotas] did not exceed 700 000 tonnes in 1981 and whose production of Categories IV, V and VI accounts for at least 90% of their total production, the abatement rates in respect of Category V for the purpose of establishing production quotas and the proportion of the production quotas that may be delivered to the common market laid down in Article 1 of Decision No 532/82/ECSC for the second quarter of 1982 shall be reduced by five percentage points if production of Category V represents at least 30% of production of Categories IV, V and VI in 1981."

The reasons given in the preamble to Decision No 533/82 for the adoption of that provision are as follows:

"...

2. In the case of concrete reinforcing bars, which belong to Category V of the new system of quotas, the downturn in demand, which has continued and become more marked

during the last two quarters as a result of the worsening of the slump in the construction sector, together with the high level of stocks, has required very high abatement rates to be granted. This reduction in demand has been reflected during the last few weeks by a slump in market prices, which in certain regions of the Community have fallen well below the level corresponding to the Commission's guidance prices; this reduction in demand is also affecting, although less severely, products in Categories IV (wire rod) and VI (merchant bars), which are marketed in the same sectors and often produced by the same undertakings.

3. There are in the Community a substantial number of small and medium-sized undertakings whose production depends almost exclusively on products in Categories IV, V and VI and to a considerable extent on the production of concrete reinforcing bars; such undertakings are clearly different both from undertakings that also produce several other categories of products and can consequently benefit from the more favourable market conditions for their other products and from undertakings that produce other categories of products only.

4. By Decision No 1831/81/ECSC, the Commission recognized that the system of quotas could create exceptional difficulties for certain undertakings 'both because of the size of their plants and because of their dependence on a limited range of products' and included Article 14 in that decision in order to be able to adjust the reference productions of such undertakings should the abatement rate exceed a certain level.

In view of the extremely high abatement rate in respect of concrete reinforcing bars for the second quarter of 1982, the system of quotas will clearly create exceptional difficulties for the undertakings referred to in point 3 above. Less stringent quotas should therefore now be established for these undertakings.

5. Since point 3 above concerns a large number of undertakings, it should be stipulated that for these producers a reduction in the abatement rates for the establishment of quotas will be made by general decision.

6. The worsening of the slump in the construction sector and the increased downturn in demand and prices for concrete reinforcing bars constitute a radical change in the iron and steel market within the meaning of Article 16 (1) of Decision No 1831/81/EEC."

4. At the end of the period of application of the quota system introduced by Decision No 1831/81 the Commission adopted Decision No 1696/82/ECSC of 30 June 1982 (Official Journal 1982, L 191, p. 1) which continued that system with a number of adjustments and additions for a third period, running from 1 July 1982 to 30 June 1983.

That decision brought all three categories of light sections, namely Categories IV, V and VI, into the quota system.

In Decision No 1696/82 the system of exceptions to the uniform abatement rates was retained.

For example, Article 15 provides for the adjustments to be made to the reference production of undertakings which have carried out restructuring.

Article 14 provides that reference production and reference quantities may be suitably adjusted for undertakings making an application to that effect if, by virtue of the scale of the abatement rates fixed, the quota system creates exceptional difficulties for them, provided that:

"The total reference production for Categories Ia to Id amounts to less than 1 000 000 tonnes a year and at least 75% relates to products where the abatement rates for one or more of these categories exceeds 20%, or

The total reference production for Categories IV, V and VI amounts to less than 100 000 tonnes and the abatement rates for one or more of these categories exceeds 20%."

Finally, Article 18 (1) contains a provision worded in the same way as Article 16 (1) of Decision No 1831/81.

5. By Decision No 1698/82/ECSC of 30 June 1982, adjusting the abatement rates for Category V products for the third quarter of 1982 in respect of certain undertakings (Official Journal 1982, L 191, p. 43), the Commission created an additional exception to the uniform abatement rates fixed for that quarter by Decision No 1697/82 of 30 June 1982 (Official Journal 1982, L 191, p. 42). The exception provided for by Decision No 1698/82 is worded in the same way as in Decision No 533/82. However, it is further provided that no undertaking in respect of which an adjustment pursuant to Article 14 of Decision No 1696/82 is made for that quarter is to be entitled to the reduction in the abatement rates provided for in the first sentence of Article 1 of Decision No 1698/82.

In the preamble to Decision No 1698/82 the Commission stresses the same considerations as those put forward in the preamble to Decision No 533/82. After stating that the situation concerning reinforcing bars has worsened, the Commission continues:

"...

2. The depressed state of the market continues, and the increased downturn in demand has been reflected in a further reduction in prices and the holding of a high level of stocks by steel stockholders and consumers.

   This situation has necessitated the setting of abatement rates for the third quarter of 1982 which are even higher than those for the second quarter.

3. In respect of the second quarter of 1982, the Commission had already had to conclude that the application of high abatement rates would create exceptional difficulties for certain small and medium-sized undertakings whose production depends almost exclusively on products in Categories IV, V and VI and to a considerable extent on the production of reinforcing bars. Consequently, in Decision No 533/82/ECSC of 3 March 1982, the Commission decided to reduce the abatement rates for such undertakings by five percentage points, as the undertakings in question did not meet all the criteria set out in Article 14 of Decision No 1831/81/ECSC, as amended by Decision No 1832/81/ECSC.

4. The present situation as described above calls for a further adjustment

to the abatement rates for the undertakings in question for the third quarter of 1982, even after allowing for a slight additional seasonal reduction in activities in that quarter. Although, in accordance with the principle of Community solidarity, such undertakings should participate in the reduction in production, this requirement should be eased to the extent necessary to ensure that the situation of these undertakings is not lastingly jeopardized.

5. The worsening of the situation on the market for reinforcing bars and the resulting need to set exceptionally high rates for this product constitutes a radical change on this market and has created difficulties in the application of the quota system which are only partially provided for in Article 14 of Decision No 1696/82/ECSC. Pursuant to Article 18 (1) of that decision, the decision should therefore be adjusted in respect of the third quarter of 1982."

6. Although the abatement rates for concrete reinforcing bars remained unchanged for the fourth quarter of 1982, the Commission did not maintain in force the exceptions contained in Decisions Nos 533 and 1698/82. In the preamble to Decision No 2751/82/ECSC of 6 October 1982, amending Decision No 1692/82/ECSC on the extension of the system of monitoring of production quotas for certain products of undertakings in the steel industry (Official Journal 1982, L 291, p. 8), the Commission stated that prices on the market in reinforcing bars had improved slightly and that it had been necessary to increase considerably the abatement rates for flat products.

7. The table below shows the changes in the abatement rates for steel products between 1 July 1981 and 31 December 1982:

Group	III/81		IV/81		I/82		II/82		III/82		IV/82	
	P	I	P	I	P	I	P	I	P	I	P	I
Ia	27	31	18	20	26	20	22	11	37	33	37	33
Ib	28	36	30	25	34	23	27	14	38	33	38	33
Ic	17	23	10	17	3	5	+ 9	+ 13	13	15	13	15
Id	0	0	+ 22	+ 18	+ 23	+ 26	+ 40	+ 45	+ 31	+ 35	+ 31	+ 35
IV	—	—	—	—	—	—	—	—	40	40	30	30
V	30	35	24	27	26	29	38	41	47	50	47	50
VI	30	35	20	24	24	26	28	30	38	40	38	40

P = Total production
I = Production that may be delivered on the Common Market.

II — Facts and written procedure

The beneficiaries of Decisions No 533 and No 1698/82 are, in the present cases, undertakings which produce almost exclusively concrete reinforcing bars, wire rod and other merchant bars. They make them from scrap which they convert directly into molten steel in electric furnaces.This involves modern and relatively simple technology but it does not enable other steel products to be manufactured. Such undertakings are hereinafter referred to as single-product undertakings.

The decisions at issue do not apply to "integrated" undertakings such as members of the Walzstahl-Vereingiung [Association of Producers of Rolled Steel], the applicant in Cases 140 and 221/82.

Those undertakings differ from the single-product undertakings in so far as they manufacture a wide range of products. In general, concrete reinforcing bars represent no more than 5 % of their production. They normally obtain the crude steel needed to manufacture reinforcing bars from iron ore which they melt down in blast furnaces. That process involves highly developed technology which, owing to the quality of the raw material used, also makes it possible to manufacture products of high quality.

In certain undertakings, such as Thyssen AG, the applicant in Cases 146 and 226/82, though the production process based on the use of iron ore clearly predominates, equipment similar to that of the single-product undertakings is used for the manufacture of concrete reinforcing bars.

The Walzstahl-Vereinigung made two appliations to the Court under the second paragraph of Article 33 of the ECSC Treaty for declarations that Commission Decisions No 533 and No 1698/82 are void. They were registered at the Court on 30 April and 23 August 1982.

Thyssen AG made two applications to the Court, again under the second paragraph of Article 33 of the ECSC Treaty, for declarations that the communications of 30 March and 20 July 1982 by which the Commission fixed its reference production and production quotas for the second and third quarters of 1982 are void in so far as they concern the abatement rates for concrete reinforcing bars. Its applications were registered at the Court on 11 May and 31 August 1982.

By order of 23 March 1983 the Court joined the four cases for the purposes of the oral procedure and judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court requested the Commission to provide certain information. That information was given to the Court in a letter from the Commission dated 26 April 1982 and is set out below.

III — Conclusions of the parties

The *applicant* in Cases 140 and 221/82, the *Walzstahl Vereinigung,* claims that the Court should:

(a) declare Commission Decisions No 533/82/ECSC of 3 March 1982 and No 1698/82/ECSC of 30 June 1982 void; and

(b) order the defendant to pay the costs.

The *applicant* in cases 146 and 226/82, *Thyssen AG*, claims that the Court should:

(a) declare void the Commission's communications, addressed to it on 30 March and 20 July 1982 and received by it on 5 April and 26 July 1982, informing it of its reference production and production quotas for the second and third quarters of 1982, in so far as they concern the abatement rates for Category V; and

(b) order the defendant to pay the costs.

The Commission contends that the Court should:

(a) dismiss the application; and

(b) order the applicants to pay the costs.

IV — Submissions and arguments of the parties

A — Introduction

1. The *applicants* point out that approximateley 50% of the concrete reinforcing bars produced in the Community come from Italy and almost entirely from the Brescia region in Northern Italy. Most of the steelworks of producers in that region are "mini-steelworks" in which, with small investment, scrap is converted directly into molten steel in electric furnaces. In gearing their plant entirely to the production of concrete reinforcing bars those steelworks deliberately took the commercial decision to concentrate solely on the manufacture of a single product. In so doing they accepted a high market risk in exchange for a smaller investment risk.

Concrete reinforcing bars are also manufactured in other Member States — and not only in small and medium-sized undertakings — in such mini-steelworks with a production capacity of up to 50 000 tonnes a month. Although many of those steelworks, including the applicants, have an industrial structure similar to that of the steelworks of Northern Italy, they differ from them in so far as, at the cost of high investment, they have made the necessary technical alterations to existing plant to produce other rolled steel products besides concrete reinforcing bars. In carrying out such modernization and re-structuring those undertakings deliberately assumed a higher investment risk in order to reduce the market risks.

Consequently, the undertakings producing a single product, particularly the "Bresciani", were unable to offset the decline in demand for concrete reinforcing bars by switching to other products for which there was more demand. As a result, those undertakings continually increased their share of the market in concrete reinforcing bars, despite the decline in demand, which considerably disturbed the market.

In the applicant's view, the introduction of the quota system in the autumn of 1980 did not fundamentally change market structures in the reinforcing-bar sector. That was consistent with the purpose of Article 58 of the ECSC Treaty, which is to reduce supply uniformly in order to stabilize prices in the event of a decline in demand. Decision No 533/82 was the first to depart from the principle that a quota system must spread the burden of reduced production uniformly amongst all undertakings. That departure was incorporated in the following decision, No 1698/82, without any substantial alteration.

2. The *Commission* states that the dramatic slump in demand for concrete reinforcing bars since the summer of 1982 is reflected in the abatement rates for that product, which have had to be continually increased.

The large increase in the abatement rates in the second quarter of 1982 was necessary because the slump in demand for concrete reinforcing bars was greater than expected, owing to the continuing decline of activity in the building industry. As that trend continued, a further large increase in the abatement rates for the third quarter was unavoidable.

That market trend produced a severe slump in prices for concrete reinforcing bars. Between the beginning and end of the first quarter of 1982 prices fell by DM 80 to DM 100 per tonne.

Not all undertakings producing concrete reinforcing bars were affected to the same degree. According to the Commission, at the end of 1981 and the beginning of 1982 prices for concrete reinforcing bars were still at a level which, in view of the abatement rates applicable at that time, enabled the single-product undertakings to cover their costs. The slump in prices which has occured thereafter by DM 80 to DM 100 per tonne, and the accompanying increase in the abatement rates, which led to a reduction in the rate of utilization of capacity, not only eliminated the cost advantage of the single-product undertakings but caused them to operate at a loss. The manufacturing costs of those undertakings had risen to approximately DM 600 per tonne in the second quarter of 1982, whereas at the beginning of that quarter prices were approximately DM 550 per tonne ex works.

The integrated steelworks manufacturing concrete reinforcing bars from ore alone also had to absorb losses in this sector. However, at the same time the integrated undertakings profited from a sharp increase in the price of flat products after the introduction of the quota system. Prices for those products are now over DM 300 per tonne higher than they were when the quota system was introduced, whereas in the case of concrete reinforcing bars the slump referred to above has brought prices back to the same level as before its introduction. At the same time abatement rates for flat products were reduced, at least until the second quarter of 1982.

The losses incurred by the integrated undertakings on concrete reinforcing bars were therefore accompanied by an increase in earnings from other products which they made in much greater quantities. Those integrated undertakings possessing modern plant even managed to make a profit during that period. Integrated undertakings with electric furnaces for making concrete reinforcing bars had the additional advantage of the lower production costs of that manufacturing process.

That possibility was not open to the single-product undertakings: prices for their secondary product, wire rod for concrete reinforcing mesh, had also fallen appreciably.

This trend threatened to upset the process of the adaptation of supply to the decline in demand by causing sudden structural changes with all the harmful social consequences which these would entail.

Faced with that situation the Commission had two alternative courses of action: it could have excluded concrete reinforcing bars from the quota system entirely; however, that would have meant putting the integrated undertakings in a less favourable competitive position than the single-product under-

takings; if, on the other hand, the Commission wished to retain concrete reinforcing bars in the quota system, the abatement rates for the second and third quarters of 1982 had in general to be fixed at a very high level. Such a considerable increase in the abatement rates would, however, have caused the single-product undertakings the exceptional difficulties described above. To avoid that danger, the Commission, by Decisions No 533 and No 1698/82, introduced a system which led to an increase in the quotas of the single-product undertakings.

B — Admissibility

1. The *Commission* contends that the applications are inadmissible. However, it does not entirely deny the applicant's interest in bringing proceedings; it accepts that the integrated producers of concrete reinforcing bars, including Thyssen AG and some members of the Walzstahl-Vereinigung, might have obtained lower abatement rates if the single-product undertakings had not been granted the disputed reduction in their abatement rates.

However, it stresses that in reality all four applications are directed against Decisions No 533/82 and No 1698/82.

As far as the applications of the Walzstahl-Vereinigung are concerned, the Commission asserts that they are based solely on the second paragraph of Article 33 of the ECSC Treaty, which gives associations a right of action against general decisions which they consider to involve a misuse of powers affecting them. All the other submissions, namely lack of power, infringement of essential procedural requirements, breach of the Treaty or of a rule relating to its application, must be rejected as inadmissible. The Commission further points out that the quota system applies to 13 of the applicants' 25 members. Of those 13 undertakings only six manufacture concrete reinforcing bars, which represent only 3% of the total production of all 13 undertakings. Moreover, in Germany there are some undertakings which manufacture concrete reinforcing bars but which are not members of the Walzstahl-Vereinigung; their share of Germany's production of concrete reinforcing bars is approximately 40%. The Commission comes to the conclusion that the effect of the contested decisions on the total production of the association's members is very slight and doubts whether such a small interest can give a right of action.

As far as Thyssen AG is concerned, the Commission observes that it is requesting the Court to declare void the communications informing it of its reference production and production quotas for the second and third quarters of 1982 in so far as they relate to the abatement rates for concrete reinforcing bars. Since those rates are based on Decisions Nos 532/82 and 1697/82, the applicant's submissions directed solely against Decisions Nos 533/82 and 1698/82 are inadmissible. Even if the last two decisions do not contain an adequate statement of the reasons on which they are based or have no adequate legal basis, it by no means follows that the abatement rates provided for in Decisions Nos 532/82 and 1697/82 must automatically be reduced. On the contrary, it was in the Commission's discretion to leave them as they were.

2. The *Walzstahl-Vereinigung* contends that its interest in the quota system for concrete reinforcing bars is obvious. The decisive factor in this regard is that nearly two thirds of the concrete reinforcing bars made in Germany are produced by its members.

The Walzstahl-Vereinigung itself assumes that a general decision may be challenged only on the ground of a misuse of power; it considers such a complaint well founded, however, in the light of the arguments raised.

3. *Thyssen AG* contends that its applications are undoubtedly admissible; Decisions No 532/82 and No 533/82 (and 1697/82 and 1698/82) form a single piece of legislation, for it is only by considering those measures together that it is possible to ascertain the actual effects of the abatement rates fixed for concrete reinforcing bars. Consequently, the indissoluble link between Decisions No 532/82 and No 533/82 (and 1697/82 and 1698/82) must render Decisions No 532/82 and No 1697/82 unlawful if Decisions No 533/82 and No 1698/82 are found to be unlawful.

C — Substance

The *Walzstahl Vereinigung* claims that Decisions Nos 533/82 and 1698/82 should be declared void on the ground that in adopting those decisions the Commission misused its powers under Article 58 of the ECSC Treaty.

Thyssen AG challenges the communications informing it of its reference production for the second and third quarter of 1982 on the ground that they are unlawful: the application of the abatement rates fixed by the Commission is contrary to the prohibition of discrimination and constitutes a manifest breach of the ECSC Treaty and a misuse of power.

The *Commission* contends that in so far as the applications are not inadmissible they should still be dismissed as unfounded.

The parties' arguments may be summarized as follows.

(a) The nature of the interference with competition

1. The *applicants* infer form the decisions of the Court (Joined Cases 275/80 and 24/81, *Krupp* v *Commission,* [1981] ECR 2489; Joined Cases 154/78 etc., *Valsabbia* v *Commission,* [1980] ECR 907; Case 14/81, *Alpha Steel* v *Commission,* [1982] ECR 749; Joined Cases 39, 43, 85 and 88/81, *Halivourgiki* v *Commission,* [1982] ECR 593) that Article 58 of the ECSC Treaty must be applied in such a way that the effect on competition is neutral and in a way that does not favour particular classes of undertaking. However, the preference shown to the single-product undertakings by Decisions No 533 and No 1698/82 represents a serious interference in the mechanism of the market in concrete reinforcing bars and upsets the normal market equilibrium, which works in such a way as to increase the market risk for undertakings which, like the single-product undertakings have assumed a small investment risk by concentrating only on one product.

1.1. It makes no difference whether the defendant actually intended to distort competition.

Moroever, the interference with the integrated undertakings' position on the

market in concrete reinforcing bars is quite perceptible, since the competitive disadvantage it causes them in relation to the single-product undertakings amounts to a full five percentage point.

1.2. In the applicants' view, the preference shown to the single-product undertakings permanently alters market shares in concrete reinforcing bars, contrary to the normal rules of competition; given the size of that group of producers, the structure of the whole market in concrete reinforcing bars is affected. It is clear from the decisions of the Court on Article 58 of the ECSC Treaty that such a measure is not within the bounds of the discretion which the defendant has when devising the quota system on the basis of Article 58 of the ECSC Treaty.

1.3. Consequently, the interference with the general system of steel production quotas for the purpose of giving preference to undertakings which produce concrete reinforcing bars alone is incompatible with the fundamental principles of Article 58 of the ECSC Treaty and amounts to a misuse of power.

2. The *Commission* challenges the applicants' argument that a quota system based upon Article 58 of the ECSC Treaty must be neutral as regards the effect on competition. That argument is based on a misinterpretation of Article 58 and of certain passages in the Court's judgments cited in support of their interpretation of that article. By definition a production quota system is not neutral, for it removes an element of undertakings' business freedom which is vitally important for competition between them, namely their freedom to determine the quantities they produce. Article 58 therefore authorizes the Commission to intervene in competition between undertakings and requires only that it should be done on an equitable basis, a requirement which the Commission has fulfilled.

2.1. Decisions No 533/82 and No 1698/82 were adopted merely in order to avoid temporary exceptional difficulties encountered by the single-product undertakings. They therefore have short-term economic aims, not structural aims. The Commission by no means sought to reduce a market risk deliberately assumed by single-product undertakings; the measures in question were intended instead to resolve problems created by the very existence of the quota system.

Besides, the specific effects complained of by the integrated undertakings are hardly perceptible. If there had been a uniform abatement rate for all manufacturers of concrete reinforcing bars, it would have had to be fixed at 35 % for the second quarter and 44 % for the third. The difference between those rates and the rates fixed for the integrated undertakings was only 3 %; for single-product undertakings the difference was only 2 %.

2.2. The Commission concludes that the arguments advanced by the applicants do not prove that the adoption of Decisions No 533/82 and No 1698/82 constituted a misuse of power.

(b) The basis of authority

1. The *applicants* maintain that the contested decisions have no basis either in Article 58 of the ECSC Treaty or in Articles 14 and 16 of Decision No 1831/81 (or in Articles 14 and 18 of Decision No 1696/82).

1.1. The criteria chosen by the Commission in the specific case not only favour undertakings which have a particular structure; they also favour a specific region of the Community. The criteria chosen are such that more than 85% of the products concerned are produced by Italian manufacturers of concrete reinforcing bars and, furthermore, all the "Bresciani" receive that special treatment. According to previous decisions of the Court of Justice, the Commission must prove that such considerations concerning structural and regional policy may be reasonably deduced from the objectives of Article 58 of the ECSC Treaty, which the applicants dispute.

1.2. The Commission may change the Community system of steel production quotas without following the procedure laid down by Article 58 (consulting the Consultative Committee and obtaining the assent of the Council) only in so far as this is expressly provided for by the basic provisions, namely Decisions No 1831/81 and No 1696/82. Only Articles 14 and 16 of Decision No 1831/81 and Articles 14 and 18 of Decision No 1696/82 might provide such authority. However, the conditions for the application of those exceptional provisions, which, according to the Court, must be construed restrictively, are not fulfilled.

1.3. It is obvious that Article 14 of Decision No 1831/81 and Article 14 of Decision No 1696/82 can provide no basis for the contested decision. To judge from its structure, that provision is a hardship clause which, provided specific conditions are fulfilled, enables individual undertakings to obtain an appropriate adjustment of their quota for a particular category in respect of which the abatement rates demonstrably cause them exceptional difficulties. However, it is inconceivable that all the undertakings eligible for the quota reductions provided for by Decisions No 533/82 and No 1698/82 were in a much more difficult economic and financial situation than the undertakings to which those decisions did not apply. Even if all the single-product undertakings receiving the special treatment were experiencing exceptional difficulties, it is impossible to ascertain the extent to which those difficulties were attributable to the quota system. The notion of exceptional difficulties necessarily requires an investigation into the economic position of each undertaking. Yet the defendant apparently did not examine the specific effects of market development on the individual undertakings receiving the special treatment.

1.4. The changes in the abatement rates for concrete reinforcing bars in the second, third and fourth quarters of 1982 and the conclusions that the defendant draws from them as regards the position of the single-product undertakings prove that its argument that the very existence of those undertakings was in jeopardy is spurious.

In the second quarter of 1982, when the "general" abatement rate was 38%, the uniform abatement rate for all producers of concrete reinforcing bars was 35%. Arguing that the burden of a 35% abatement rate constituted a threat to the very existence of all the single-product undertakings, the Commission fixed a special abatement rate of 33% for them. In its view, that was sufficient to avert the threat of ruin facing all the single-product undertakings.

In the third quarter of 1982, when the situation on the market in concrete reinforcing bars was tending to deteriorate with the result that the economic situation of the manufacturers of concrete reinforcing bars was on the whole worse than in the second quarter, the "general" abatement rate was 47% and the special rate applicable to the single-product undertakings was 42%. That special abatement rate was reintroduced on the ground that the burden of the "proper" uniform abatement rate of 44% was a hardship jeopardizing the very existence of the single-product undertakings which could be removed by increasing their quotas by two percentage points.

There thus arises, so far as "the threat to existence" or "exceptional economic difficulties" are concerned, the situation, which the defendant is hardly able to explain, that, whereas in the second quarter of 1982 an abatement rate of 35% was then a threat to the very existence of the single-product undertakings, the much higher abatement rate of 42% was sufficient to avert that threat in the third quarter, despite a deterioration in the general situation on the market in concrete reinforcing bars.

The defendant's argument is even more paradoxical when one also considers the fourth quarter of 1982, for, although the abatement rates remained unchanged in that quarter, the general, indiscriminate increase in the quotas accorded to the single-product undertakings was removed because the assumed difference in the additional burdens borne by the single-product undertakings and the integrated undertakings had become smaller. However, the question whether developments on the market in concrete reinforcing bars affect one group of producers more than another has no bearing at all on the question whether, and to what extent, the group most affected is experiencing exceptional difficulties.

1.5. The applicants further point out that, on the one hand, the defendant explains that Decisions No 533/82 and No 1698/82 are based solely on Article 16 (1) of Decision No 1831/81 and Article 18 (1) of Decision 1696/82, whereas, on the other hand, it gives as the sole reason for the application of those articles the existence of "exceptional difficulties" within the meaning of Article 14 of the decisions. However, at most only a few of the single-product undertakings accorded the special treatment meet the conditions for the application of Article 14. In fact the defendant invoked Articles 16 and 18 as the authority for its action in order to save investigating whether the conditions for the application of Article 14 were fulfilled. In so far as the defendant refers in this regard to "administrative simplification", it is sufficient to point out that, although the need for such simplification may provide justification for waiving certain formalities where established and investigated facts are concerned, it cannot justify a decision not to investigate whether intervention by a Community authority is legitimate under Community law.

1.6. However, the circumstances in which Article 16 (1) of Decision No 1831/81 and Article 18 (1) of Decision No 1696/82 allow the general quotas to be adjusted did not exist. The above-average slump in the demand for concrete reinforcing bars did not constitute a "radical change in the iron and steel market". There was simply a gradual deterioration in a sector which had been at risk from the very beginning

of the crisis and long before production quotas were fixed. Nor was there a question of "unforeseen difficulties" caused by the application of Decisions No 1831/81 and No 1696/82 if, owing to their structure and the normal operation of the market, the single-product undertakings had to pay a certain price.

1.7. The applicants hold the view that, since Articles 16 and 18 are exceptional provisions, they do not give the Commission any authority to make fundamental changes to the entire system set up by Decisions No 1831/81 and No 1696/82 and in that way jeopardize the main aims of the general decisions.

If, contrary to the applicant's view, Articles 16 and 18 could be construed as authorizing the Commission to make substantial changes to the quota system, such authority would be void under Article 58 of the ECSC Treaty for lack of assent of the Council.

The *Walzstahl Vereinigung* makes the additional point that, irrespective of the other factors, those circumstances constitute a misuse of power.

1.8. The applicants conclude that Decisions No 533/82 and No 1698/82, which constitute derogations from the principles laid down in Article 58 of the CSC Treaty, clearly have no legal basis capable of making the Commission's exercise of its discretion in thus modifying the quota system lawful. For those reasons they have no basis of authority and are unlawful on the ground of misuse of power.

2. The *Commission* points out that Decisions No 533/82 and No 1698/82 pursue no aim connected with regional or structural policy. Although they apply mainly to Italian undertakings, they also affect three French, two German and one British undertaking. In any case, the extent to which the contested decisions affect individual Member States is irrelevant as far as their legality is concerned because the criterion for their application is not whether an undertaking belongs to a Member State or a specific region.

2.1. The situation threatening the single-product undertakings due to the developments on the market in concrete reinforcing bars and the further sharp increases in the abatement rates for the second and third quarters of 1982 was an exceptional difficulty, within the meaning of Article 14 of Decisions No 1831/81 and No 1696/82, for undertakings affected by Decisions No 533/82 and No 1698/72. The Commission maintains that it examined all the relevant factors suggesting the existence of such exceptional difficulties. Those factors included the development of the market in concrete reinforcing bars and in flat products, and prices and the structure of undertakings.

2.2. The conclusions which the applicants draw from the changes in the abatement rates for concrete reinforcing bars in the second, third and fourth quarters of 1982 take no account of the fact that the holiday period falls in the third quarter. That means that a higher abatement rate can be applied in the third quarter than in the second. Furthermore, the situation in the fourth quarter of 1982 cannot be compared with the exceptional situation in the second and third quarters, for, by the

time of the fourth quarter, the financial situation had improved somewhat owing to a slight increase in prices for concrete reinforcing bars and to a slight fall in prices for scrap.

2.3. However, in order to meet the imminent danger the Commission could not use Article 14 of Decision No 1831/81 or Article 14 of Decision No 1696/82 because those provisions could be invoked only by the small single-product undertakings. The medium-sized single-product undertakings were, however, in the same exceptionally difficult situation.

2.4. However, under Article 16 of Decision No 1831/81 (and Article 18 of Decision No 1696/82) the Commission had the power to carry out the necessary adjustments by general decision. It therefore adopted Decisions No 533/82 and No 1698/82 on the basis of those articles, as is clear from the preambles to those decisions.

2.5. In the Commission's view, Article 16 of Decision No 1831/81 and Article 18 of Decision No 1696/82 grant it wide discretion when devising the measures needed to overcome exceptional difficulties. For example, it may make relief dependent on the submission of a request by the undertakings concerned or adopt a rule which eliminates the difficulties without any requirement of a special request. In the present case it was necessary to adopt the latter course because the exceptional difficulties faced by the single-product undertakings affected the group as a whole. The reason why any undertaking experienced exceptional difficulties if concrete reinforcing bars accounted for more than 30% of its production is that, unlike other steel products (including those in Categories IV and VI), concrete reinforcing bars are a homogeneous product. But the principle of equal treatment requires that all undertakings in that category should be given the relief envisaged, in which case a procedure making relief dependent on the submission of a request is unnecessary.

Furthermore, the enactment of legislation in Article 1 of Decisions No 533 and No 1698/82 to deal with hardship cases helps to simplify administration. If the Commission had made the application of those provisions dependent on the submission of a request, it would have had to define the conditions for their application in administrative guidelines. The result would have been the same as that achieved by the present legislative solution.

2.6. In the Commission's view, the conditions for the application of Article 16 of Decision No 1831/81 and Article 18 of Decision No 1696/82 were fulfilled. The developments on the market in concrete reinforcing bars described above constituted a radical change in the iron and steel market and, as a result, unforeseen difficulties were encountered in the application of those two decisions. The applicant's interpretation to the effect that there was no "radical change in the iron and steel market" but only a gradual deterioration, rather than the substantial deterioration required by Articles 16 and 18, is not supported by the terms used in those two provisions. Moreover, the dramatic slump in the price of concrete reinforcing bars in the first quarter of 1982 and the threat which it posed to the very existence of the single-product undertakings undoubtedly constituted a substantial deterioration in comparison with the previous situation. Furthermore,

that development was not foreseeable. In this regard, the Commission points out that, for the purpose of interpreting Article 16 of Decision No 1831/81, it does not matter whether or not a particular situation was foreseeable at the end of 1981. Article 16 merely empowers and requires the Commission to make the necessary adjustments to Decision No 1831/81 if its application encounters difficulties not foreseeable at the time of its adoption. Decision No 1698/82, however, was not adopted on the ground of unforeseeable difficulties. Its preamble merely stressed that a radical change had occurred on the market in concrete reinforcing bars and, according to Article 18 of Decision No 1696/82, that is all that is required.

2.7. Finally, the Commission points out that Article 58 of the ECSC Treaty required it to adopt the necessary measures, that is to say Decisions No 533/82 and No 1698/82, which did not substantially modify the quota system any further but, as their strictly exceptional character indicates, were intended to enable exceptional difficulties to be overcome.

2.8. The Commission concludes that Decisions No 533/82 and No 1698/82 were adopted on the basis of Article 16 of Decision No 1831/81 and Article 18 of Decision No 1696/82 and that the conditions for the application of those articles were fulfilled; so they neither lacked a basis of authority nor constituted a misuse of power.

(c) The alleged failure to take account of the fundamental aims of the ECSC Treaty

1. The *applicants* take the view that, in addressing Decisions No 533/82 and No 1698/82 exclusively to undertakings whose production is centred on concrete reinforcing bars, the Commission disregarded the fundamental aims of the ECSC Treaty enunciated in the second paragraph of Article 2 and in Article 3 (d) and (g), from which may be inferred the principle that any action taken by an undertaking which enables it to cope with the changing market situation and adapt its production to demand on the market in concrete reinforcing bars is desirable and positive. Decisions No 533/82 and No 1698/82 are contrary to that principle because they benefit those undertakings which, despite the general structural crisis which has affected the market in concrete reinforcing bars for many years, have concentrated on producing as much as they can of a single product, for which demand on the market is by far the weakest.

Therein lies a manifest breach of the ECSC Treaty and a misuse of power.

2. In reply the *Commission* maintains that it is not possible to pursue all the aims of the Treaty simultaneously, particularly in times of crisis.

It therefore considers the applicants' submission unfounded since the contested decisions have no structural aims.

The quota system unquestionably contributes to the attainment of the aims of the Treaty by enabling production to be adapted to demand and making it easier for undertakings to carry out the necessary restructuring. Decisions No 533/82 and No 1698/82 are an integral part of the quota system. They prevent the system from having disproportionate consequences for certain undertakings

defined on the basis of objective criteria. If the Commission had failed to act, it would have laid itself open to the charge of infringing undertakings' basic rights.

(d) The alleged breach of the prohibition of discrimination

1. The *applicants* accuse the defendant of a misuse of power in favouring the small and the medium-sized steel undertakings and putting the integrated undertakings at a disadvantage by applying distinguishing criteria which did not justify unequal treatment.

1.1. The Commission summarily concluded that all the undertakings denied the favourable treatment had the benefit of a better situation on the market in their other products and were therefore in a better economic and financial position. That assumption is wrong. It is wrong first of all because it is unfair to compel undertakings to subsidize heavy losses in a certain sector which is no longer viable with profits from other sectors of activity. If that were the case, a highly diversified undertaking would also have to draw upon profits from sectors unconnected with steel production in order to subsidize the production of concrete reinforcing bars, which would be contrary to commercial logic. Secondly, the argument that one sector of an undertaking's activities should subsidize another is clearly inapplicable when an undertaking is still making losses on steel products in other categories, despite increased turnover.

1.2. The Commission also failed to take into account the aim laid down in Article 58 (2) of the ECSC Treaty, i.e. the maintenance of employment. There is no obvious reason why jobs in the integrated undertakings should be less jeopardized than jobs in the single-product udertakings.

1.3. Amongst the undertakings accorded the special treatment there are undoubtedly many whose economic situation is better, or at any rate no worse, than that of the undertakings which were excluded from the relief provided by the provisions in question. In any case, it is inconceivable that every small and medium-sized single-product undertaking producing concrete reinforcing bars was, without exception and to the same degree, so affected by the quotas fixed for that product that an adjustment is "necessary".

2. Thyssen AG makes the additional point that in view of its production of concrete reinforcing bars it must also be considered a single-product undertaking in the same way as the undertakings accorded special treatment by the defendant. It points out that at high investment cost it has erected an electric steelworks at Oberhausen designed exclusively for the production of concrete reinforcing bars, merchant bars and wire-rod. The defendant's assumption that integrated undertakings offset losses in one sector with profits from another does not therefore apply to Thyssen AG because it is not technically possible to manufacture other products, particularly flat products with plant designed for the production of a single product. So if the Commission interfered with competition because the single-product undertakings were at a disadvantage, undertakings like Thyssen AG must in any case also be accorded the same preferential treatment.

2.1. Thyssen also points out that in previous decision (see its judgment of 7 July 1982 in Case 119/81, *Klöckner-Werke* v *Commission* [1982] ECR 2627) the Court held that in the implementation of Article 58 of the ECSC Treaty not every difference in the structure or economic situation of each

individual steel producer can be taken into account when the abatement rates are fixed. Departures from the principle of the uniform reduction of production are therefore admissible only in truly exceptional cases in order to avoid unfair hardship.

3. The *Commission* maintains that it exercised its discretion in a non-discriminatory manner. Although Decisions No 533/82 and No 1698/82 treat single-product undertakings differently from integrated undertakings, the unequal treatment is not discriminatory for the simple reason that their situations are not comparable. There are in fact considerable differences between single-product undertakings and integrated steel undertakings and these may be summarized as follows:

(1) The single-product undertakings are small and medium-sized undertakings, whereas the integrated steel manufacturers are large undertakings;

(2) Normally products in Categories IV, V and VI account for over 90% of the total production of the single-product undertakings; the same products normally account for only about 20% of the integrated steelworks;

(3) The fixing, at a time of crisis, of particularly high abatement rates for concrete reinforcing bars in the second and third quarters of 1982 threatened to ruin the single-product undertakings; integrated steel undertakings, on the other hand, were able, by virtue of the increase in prices for flat products, to offset the burdens of the high abatement rates for concrete reinforcing bars.

3.1. It is that last factor, the possibility of offsetting losses, which matters. That ability has saved the integrated undertakings from ruin, whereas the single-product undertakings have no such opportunity. Those two quite different situations also have quite different consequences as regards the security of employment in the steel industry. Whereas integrated undertakings may be forced to lay off workers temporarily, the danger with single-product undertakings is that jobs might be lost forever.

3.2. In answer to the applicants' argument that not all of the undertakings benefiting from Decisions No 533 and No 1698/82 were faced with the same financial difficulties, the Commission states that, after carefully comparing prices and costs and analyses of the situation on the market in concrete reinforcing bars, it reached the conclusion that all the undertakings fulfilling the conditions set out in Article 1 of Decision No 533/82 and Article 1 of No 1698/82 were in the same economic situation.

3.3. As regards Thyssen AG, the Commission maintains that it was right to treat it as an integrated undertaking. Although it possesses production plant in which it also manufactures concrete reinforcing bars in electric furnaces, that circumstance does not determine its structure in the same way as happens in the case of the single-product undertakings, for Thyssen AG produces mainly flat products. The decisive factor is not the structure of a production plant but the structure of the whole undertaking and concrete reinforcing bars represent only about 1% of Thyssen's total production.

3.4. In the Commission's view, the differences between the single-product undertakings and the integrated undertakings are so considerable that the principle of equality not only justifies but requires the adoption of different measures.

(e) The submission that the Commission used unlawful means to achieve its aim

1. The *applicants* contend that another aspect of the Commission's misuse of power is that the means it used to achieve its aims of improving the economic situation of the single-product undertakings were improper inasmuch as they were arbitrary, unjustified, disproportionate and inappropriate.

1.1. For instance, there is no real justification for the selection of the specific criteria for defining the group of undertakings entitled to the special treatment. Nor were reasons given for that choice.

1.2. Moreover, the increase in the quotas allocated to the single-product undertakings is disproportionate because, compared with a uniform reduction of quotas for all producers of concrete reinforcing bars, it allows the single-product undertakings to increase production by at most only two percentage points whereas there is a loss of 5% in the integrated undertakings' share of the market in concrete reinforcing bars.

1.3 Finally, the decisions at issue are inappropriate for achieving the declared aim of rescuing the single-product undertakings since, given the price situation on the market in concrete reinforcing bars, they are compelled to sell their products at prices which do not meet the cost of production.

2. In the *Commission*'s view, the preambles to Decisions No 533/82 and No 1698/82 state all the essential facts which justify the special treatment of the undertakings concerned. Consequently, the criteria chosen for the application of the two decisions are not arbitrary or inadequately reasoned.

2.1 As regards the applicant's arguments that Decisions No 533/82 and No 1698/82 contravene the principle of proportionality, the Commission points out that that argument is based on the assumption that the decisions have caused a 5% shift in market shares. That assumption is incorrect

First, because the abatement rate of the single-product undertakings is lower by 5% only when compared with the higher abatement rates of the other undertakings; and

Secondly, because, in their calculation of the extent to which market shares have been altered, the applicants wrongly included undertakings which admittedly fulfilled the conditions of Article 1 of Decisions No 533/82 and No 1698/82 but which benefited under Article 14 of Decision No 1831/81 or Article 14 of Decision No 1696/82. If the appropriate corrections are made, the shift in market shares turns out to be only 1.5% so that it cannot be said that an unduly large burden was imposed on the integrated undertakings.

2.2. Lastly, the Commission observes that, whilst it is true that the difference between the abatement rate which would have been applied if a uniform rate had been introduced and the rate accorded to the single-product undertakings is only 2%, it has none the less helped them because the possibility of producing larger quantities reduces the fixed costs per unit.

V — Question put to the Commission

The Court requested the Commission to provide it with the comparisons of the costs and prices of the various groups of producers of concrete reinforcing bars and the results of its investigations into the state of the market in concrete reinforcing bars and the financial situation of those groups of producers from which the Commission reached the conclusion that all the undertakings meeting the criteria laid down in Decisions No 533/82 and No 1698/82 were, as regards the factors crucial to the introduction of the reduced abatement rates, in the same exceptional and difficult economic situation.

The Commission replied as follows:

"A. The situation on the market in concrete reinforcing bars

In the second quarter of 1982 there was a marked decline in demand for concrete reinforcing bars in comparison with the two previous quarters. The abatement rates (24% in the fourth quarter of 1981, 26% in the first quarter of 1982, 38% in the second quarter of 1982 and 47% in the third quarter of 1982) clearly illustrated the decline in quantitative terms. The reason for the sudden slump in demand for concrete reinforcing bars was the recession in the building industry at that time and the running down of surplus stocks by dealers and consumers. There was also a marked decline in exports.

After a brief rise at the end of 1981 and the beginning of 1982 prices for concrete reinforcing bars fell sharply: at the beginning of the second quarter of 1982 they fell from slightly more than DM 600 to approximately DM 550. Prices for concrete reinforcing bars are not determined by the producers alone but also by dealers, who sell approximately 80% of all concrete reinforcing bars produced. By increasing their stocks in times of rising demand and reducing them when demand falls, dealers accentuate the fluctuations in prices for concrete reinforcing bars.

In the third quarter of 1982 the fall in prices for concrete reinforcing bars was checked and they began to increase slightly. This trend continued in the fourth quarter of 1982 and has slowly strengthened since then. The Commission contributed to this development by reducing quotas and thereby establishing a better market equilibrium.

B. Comparison of costs and prices of the various groups of producers of concrete reinforcing bars in the second and third quarters of 1982

The following manufacturing processes are distinguished in the costs analysis:

(a) re-rolling of rails

(b) rolling of bought billets

(c) electric steel production by the continuous casting method

(d) electric steel production in semi-finished product mills

(e) production from pig-iron (in integrated undertakings)

In the second and third quarters the costs of undertakings which re-roll rails were lower than those of the other groups of undertakings. In the second quarter of 1982 they were approximately DM 560.

The costs of undertakings which roll billets were approximately DM 615. These undertakings buy billets for rolling, either in the Community or in

non-member countries. They buy them because they do not produce crude steel or do not produce it in sufficient quantities.

As regards the electrical steelworks with continuous casting plant, costs were calculated for modern, relatively large undertakings. They were approximately DM 600. The costs of less modern and smaller undertakings were slightly higher.

A few electrical steelworks have mills for semi-finished products. However, as far as we know, they were not used in the second and third quarters of 1982. If they had been used to make semi-finished products, the costs for concrete reinforcing bars would have been approximately DM 670.

The costs of integrated undertakings which manufacture concrete reinforcing bars from pig-iron exceeded DM 700.

The average price of concrete reinforcing bars during the period considered was about DM 550 ex works. Prices of bars produced by undertakings which roll rails were about DM 500. Those undertakings give no guarantee as to the quality of their bars and can therefore charge lower prices than the other undertakings.

Only single-product undertakings which mainly use processes (b) and (c) qualified for the 5% reduction in the abatement rate. Single-product undertakings which roll rails were accorded adjustments under Article 14. This last group of undertakings falls in the category of undertakings whose reference production is less than 100 000 tonnes.

C. The financial situation of the various groups

The financial situation of the single-product undertaking, that is to say undertakings using processes (a) to (d), is characterized by the fact that they have no significant reserves. Any profits they make are used for plant modernization, which is also in progress in the reinforcing bars sector. The losses sustained in the second and third quarters of 1982 therefore represented a serious threat. Since the costs/price ratio for the other products manufactured by these undertakings (Categories IV and VI) was also unsatisfactory, the losses on concrete reinforcing bars could not be made good.

In the first half of 1982 the integrated undertakings benefited from a sharp rise in prices and a slight increase in quantities for nearly all flat products. The price increase was more than DM 100. The production of concrete reinforcing bars has only a marginal effect on the financial situation of the integrated undertakings because that product accounts for only about 5% of their total production.

During the third quarter the price of concrete reinforcing bars began to increase slightly, whilst the price of scrap, which largely determines the costs of the single-product undertakings, fell slightly. The difference between prices and costs, which had been approximately DM 50 or more, therefore diminished. This slightly improved the financial situation of the single-product undertakings. The Commission acted accordingly and from the fourth quarter it adopted the practice of only reducing abatement rates by 5% after examining the individual cases."

VI — Oral procedure

At the sitting on 28 September 1983 oral argument was presented by J. Sedemund, assisted by P. Killing, on behalf of the Walzstahl-Vereinigung and Thyssen AG, and by R. Wägenbaur, acting as Agent, assisted by E. Grabitz and H. Kutscher, on behalf of the Commission.

The Advocate General delivered his opinion at the sitting on 22 November 1983.

Decision

1 By applications lodged at the Court Registry on 30 April and 23 August 1982 the Walzstahl-Vereinigung, Düsseldorf, brought two actions under the second paragraph of Article 33 of the ECSC Treaty, requesting the Court to declare void Commission Decision No 533/82/ECSC of 3 March 1982 amending for the third time Decision No 1831/81/ECSC establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1982, L 65, p. 6) and Commission Decision No 1698/82/ECSC of 30 June 1982 adjusting the abatement rates for Category V products for the third quarter of 1982 in respect of certain undertakings (Official Journal 1982, L 191, p. 43).

2 By applications lodged on 11 May and 31 August 1982 Thyssen Aktiengesellschaft, Duisburg, brought two actions under the same provision for a declaration that the Commission's individual decisions addressed to it on 30 March and 20 July 1982, concerning the reference-production figures and production quotas for the second and third quarters of 1982, are void in so far as they concern the abatement rates for Category V. These two actions are based essentially on the alleged illegality of Decisions No 533/82 and No 1698/82.

3 By order of 23 March 1983 the Court decided, in view of the related nature of the four cases, to join them for the purposes of the oral procedure and judgment.

4 Before the applications are examined the general decisions at issue should be put into their context.

5 By Decision No 2794/80/ECSC of 31 October 1980 (Official Journal 1980, L 291, p. 1) the Commission, faced with a manifest crisis on the steel market, introduced a system of quarterly production quotas for steel undertakings in the Community, pursuant to Article 58 of the ECSC Treaty. Under that system an abatement rate, which is the same for all undertakings, is applied to each undertaking's actual production during a reference period in respect of each product category covered by the system. Abatement rates are also applied to the proportion of production which may be delivered within the Common Market. However, the decision made provision for certain exceptions to the system of uniform abatement rates. Thus, reference production was increased for undertakings which, owing in particular to measures which they had adopted in conformity with the Community's steel policy found themselves in particular situations. Furthermore, Article 14 of the decision empowered the Commission to adapt the provisions at the request of an undertaking for which the production or delivery restrictions imposed by the decision or by measures implementing it entailed exceptional difficulties.

6 When the period of application of the system introduced by Decision No 2794/80 expired on 30 June 1981 the Commission adopted Decision No 1831/81/ECSC of 24 June 1981 establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1981, L 180, p. 1). Whereas in Decision No 2794/80 all light sections (wire rod, concrete reinforcing bars and merchant bars) were classified in Group IV, which was subject to the quota system, in Decision No 1831/81 they were divided into three groups — namely Group IV (wire rod), Group V (concrete reinforcing bars) and Group VI (merchant bars) — which were not subject to the new quota system but to a monitoring system. However, a few days later, on 3 July 1981, the Commission, by Decision No 1832/81/ECSC (Official Journal 1981, L 184, p. 1) re-included concrete reinforcing bars and merchant bars in the quota system.

7 Like Decision No 2794/80, Decision No 1831/81 tempered the rigidity of the system of uniform abatement rates by providing for an increase in the reference production of undertakings in specific situations and by empowering the Commission, in Article 14, to make adjustments at the request of an undertaking for which the scale of the abatement rates imposed in respect of a quarter created exceptional difficulties. However, Decision No 1832/81, which re-included concrete reinforcing bars and merchant bars

in the quota system, limited the right to invoke Article 14 with regard to those products to cases in which the total reference production for Categories V and VI was less than 60 000 tonnes a year.

8 On the other hand, Article 16 (1) of Decision No 1831/81 conferred a new power on the Commission by providing that:

"If radical changes occur in the iron and steel market or if the application of this decision encounters any unforeseen difficulties, the Commission shall carry out the necessary adjustments by general decision."

9 In the first of the contested general decisions, Decision No 533/82 of 3 March 1982, the Commission, acting pursuant to Article 16 (1) of Decision No 1831/81, made provision for an exception to the uniform abatement rates for the second quarter of 1982, as fixed by Decision No 532/82 of the same date (Official Journal 1982, L 65, p. 5). This exceptional provision is worded as follows:

"For producers whose total production of the products [subject to the quotas] did not exceed 700 000 tonnes in 1981 and whose production of Categories IV, V and VI accounts for at least 90% of their total production, the abatement rates in respect of Category V for the purpose of establishing production quotas and the proportion of the production quotas that may be delivered to the common market laid down in Decision No 532/82/ECSC for the second quarter of 1982 shall be reduced by five percentage points if production of Category V represents at least 30% of production of Categories IV, V and VI in 1981."

10 In the preamble to Decision No 533/82 the reasons for that provision are stated as follows:

"...

2. In the case of concrete reinforcing bars, which belong to Category V of the new system of quotas, the downturn in demand, which has continued and become more marked during the last two quarters as a result of the worsening of the slump in the construction sector, together with the high level of stocks, has required very high abatement rates to be granted. This

reduction in demand has been reflected during the last few weeks by a slump in market prices, which in certain regions of the Community have fallen well below the level corresponding to the Commission's guidance prices; this reduction in demand is also affecting, although less severely, products in Categories IV (wire rod) and VI (merchant bars), which are marketed in the same sectors and often produced by the same undertakings.

3. There are in the Community a substantial number of small and medium-sized undertakings whose production depends almost exclusively on products in Categories IV, V and VI and to a considerable extent on the production of concrete reinforcing bars; such undertakings are clearly different both from undertakings that also produce several other categories of products and can consequently benefit from the more favourable market conditions for their other products and from undertakings that produce other categories of products only.

4. By Decision No 1831/81/ECSC, the Commission recognized that the system of quotas could create exceptional difficulties for certain undertakings 'both because of the size of their plants and because of their dependence on a limited range of products' and included Article 14 in that decision in order to be able to adjust the reference productions of such undertakings should the abatement rate exceed a certain level.

   In view of the extremely high abatement rate in respect of concrete reinforcing bars for the second quarter of 1982, the system of quotas will clearly create exceptional difficulties for the undertakings referred to in point 3 above. Less stringent quotas should therefore now be established for these undertakings.

5. Since point 3 above concerns a large number of undertakings, it should be stipulated that for these producers a reduction in the abatement rates for the establishment of quotas will be made by general decision.

6. The worsening of the slump in the construction sector and the increased downturn in demand and prices for concrete reinforcing bars constitute a radical change in the iron and steel market within the meaning of Article 16 (1) of Decision No 1831/81/ECSC."

11 When the period of application of the quota system provided for in Decision No 1831/81 expired, the Commission adopted Decision No 1696/82 of 30 June 1982 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official

Journal 1982, L 191, p. 1). That decision, which made the three categories of light sections (wire rod, concrete reinforcing bars and merchant bars) subject to the quota system, maintained the exceptions to the system of uniform abatement rates and the conditions governing the Commission's exercise of its power to make adjustments under Article 14; however, the level of production above which special relief may not be granted was raised from 60 000 to 100 000 tonnes. Finally, Article 18 (1) of Decision No 1696/82 contains an enabling provision worded in the same way as Article 16 (1) of Decision No 1831/81.

12 Pursuant to that provision the Commission adopted, at the same date as Decision No 1696/82, the second general decision at issue, namely Decision No 1698/82. That decision provides for an exception to the uniform abatement rates fixed for the third quarter of 1982 by Decision No 1697/82 of the same date (Official Journal 1982, L 191, p. 42). The exception is framed is the same terms as in Decision No 533/82. However, it is further provided that no undertaking in respect of which an adjustment pursuant to Article 14 of Decision No 1698/82 is made for that quarter is to be entitled to the reduction of abatement rates provided for in Decision No 1698/82. In the preamble to the decision it was stressed that the situation concerning reinforcing bars had worsened, necessitating the setting of abatement rates for the third quarter which were even higher than those for the second quarter. The preamble then goes on to state that:

"...

3. In respect of the second quarter of 1982, the Commission had already had to conclude that the application of high abatement rates would create exceptional difficulties for certain small and medium-sized undertakings whose production depends almost exclusively on products in categories IV, V and VI and to a considerable extent on the production of reinforcing bars. Consequently, in Decision No 533/82/ECSC of 3 March 1982, the Commission decided to reduce the abatement rates for such undertakings by five percentage points, as the undertakings in question did not meet all the criteria set out in Article 14 of Decision No 1831/81/ECSC, as amended by Decision No 1832/81/ECSC.

...

5. The worsening of the situation on the market for reinforcing bars and the resulting need to set exceptionally high rates for this product constitutes a radical change on this market and has created difficulties in the application of the quota system which are only partially provided for in Article 14 of Decision No 1696/82/ECSC. Pursuant to Article 18 (1) of that decision, the decision should therefore be adjusted in respect of the third quarter of 1982."

13 For the fourth quarter of 1982, in which the abatement rate for concrete reinforcing bars remained the same as in the third quarter, the Commission ceased to provide for a general exception for the undertakings affected by the two decisions at issue. However, it altered the limits laid down in Article 14 of Decision No 1696/82 so that it could make adjustments for those undertakings, upon request and after consideration of each individual case.

14 In view of the specific criteria laid down in Decisions No 533/82 and No 1698/82, it is not disputed that they were meant to apply only to "single-product" undertakings. The production of those undertakings consists almost entirely of products in Categories IV, V and VI, which they usually manufacture from scrap using a technique with which it is not possible to manufacture other steel products. Decisions No 533/82 and No 1698/82 do not apply to "integrated" undertakings, such as Thyssen AG and the undertakings affiliated to the Walzstahl-Vereinigung. The integrated undertakings differ from the single-product undertakings mainly in so far as they produce a wide range of products and concrete reinforcing bars form only a very limited proportion of their production. They normally use a different, more costly production technique. However, for the manufacture of concrete reinforcing bars, some of them, such as Thyssen AG, use a technique similar to that used by the single-product undertakings.

15 The applicants contend *inter alia* that neither Article 58 of the ECSC Treaty nor Articles 14 and 16 of Decision No 1831/81 nor Articles 14 and 18 of Decision No 1696/82 provide a legal basis for the general decisions at issue. They contend that on the ground of the alleged exceptional difficulties of the single-product undertakings the Commission abused its power under Article 16 of Decision No 1831/81 and Article 18 of Decision No 1696/82 in order

to give a competitive advantage to a whole group of undertakings holding 70% of the Community market in concrete reinforcing bars without examining each individual case, as required by Article 14 of those decisions; moreover, it did so without even consulting the Consultative Committee or obtaining the assent of the Council, as required by Article 58 of the ECSC Treaty. The applicants submit that in so doing the Commission not only acted in breach of the prohibition of discrimination and the basic principle that the quota system should have a neutral effect on competition, but also disregarded fundamental aims of the Treaty and committed a misuse of powers as against the applicants.

Admissibility

16 The Commission has expressed doubts about the admissibility of the actions, which are all based on the second paragraph of Article 33 of the EEC Treaty. That provision states that undertakings or the associations referred to in Article 48 may institute proceedings against decisions concerning them which are individual in character or against general decisions which they consider to involve a misuse of powers affecting them.

17 As regards the actions brought by the Walzstahl-Vereinigung, which are directed against Decisions No 533/82 and No 1698/82, the Commission calls in question that association's interest in bringing proceedings. It points out that only six of the thirteen member undertakings subject to the quota system manufacture concrete reinforcing bars, which account for no more than 3% of the total production of all 13 members. Furthermore, 40% of all concrete reinforcing bars produced in the Federal Republic of Germany are made by undertakings which are not affiliated to the applicant association. From those facts the Commission concludes that the effects of the contested general decisions on the Walzstahl-Vereinigung are extremely slight.

18 In this regard it should be recalled that the Court has consistently held that in order to establish an applicant's interest in bringing proceedings it need only be shown that it is an association of undertakings meeting the conditions laid down by the second paragraph of Article 33 and Article 48 of the ECSC Treaty and that it alleges a misuse of powers affecting one or more of its members and adduces relevant arguments to substantiate the

alleged misuse of powers. The Commission has not disputed that those conditions are fulfilled in the present cases. On the other hand, as the Commission has rightly pointed out, the actions brought by the Walzstahl-Vereinigung cannot lead to the annulment of the two decisions at issue unless the existence of such a misuse of powers is actually proved. That question, however, goes to the substance of the cases.

19 As regards the actions brought by Thyssen AG, the Commission points out that that undertaking has requested the Court to declare the individual decisions relating to its production quotas for the second and third quarters of 1982 void in so far as they concern the abatement rates for concrete reinforcing bars. As those rates are based on Decisions No 532/81 and No 1697/82 and the applicant's submissions are essentially directed against Decisions No 533/82 and No 1698/82, it is argued that those actions are, at least partly, inadmissible.

20 The Court held in its judgment of 28 October 1981 in Joined Cases 275/80 and 24/81 *(Krupp Stahl AG* v *Commission* [1981] ECR 2489) that, although in an action for a declaration that an individual decision is void the applicant undertaking may allege that certain provisions of the general decisions which the contested decision implements are illegal, it may do so only if the individual decision is based on the rules alleged to be illegal. In this case it cannot be disputed that there is a close relationship between the decisions fixing the abatement rates for concrete reinforcing bars *inter alia* and the decisions reducing those rates for certain producers of concrete reinforcing bars. The latter decisions expressly refer to the former decisions and were adopted on the same dates. Moreover, since the purpose of the abatement rates is to establish a balance between production and expected demand, it seems that the general abatement rate for the products concerned would have been lower if there had been no reduction in the abatement rate for producers holding 70% of the relevant market. The individual decisions which the applicant seeks to have declared void are therefore partly based on the general decisions at issue.

21 Consequently, the four actions are admissible.

Substance

22 As explained in paragraph 15, the applicants charge the Commission with having committed a misuse of powers as against them by giving all single-product undertakings a competitive advantage on the market in concrete reinforcing bars without examining the individual situation of each of those undertakings, as required by Article 14 of the basic decisions then in force, and without amending those decisions in accordance with the procedure laid down in Article 58 of the ECSC Traty.

23 In its defence the Commission maintains that it had no choice but to adopt the contested general decisions. It refers to the dramatic decline in demand for concrete reinforcing bars since the summer of 1981 due to the continuing slump in the building industry. That market development produced a sharp fall in the price of concrete reinforcing bars and made it necessary to apply high abatement rates to that product, expecially in the second and third quarters of 1982.

24 According to the Commission, this development affected manufacturers of concrete reinforcing bars in different ways. As far as the single-product undertakings were concerned, the fall in prices not only eroded their cost advantage but also led them to operate at a loss. The integrated undertakings' losses on reinforcing bars were even greater than those of the single-product undertakings; however, the benefit which the integrated undertakings derived, during the same period, from the rise in prices for flat products after the introduction of the quota system was maintained. Moreover, the abatement rates for flat products were reduced, at any rate until the second quarter of 1982. Therefore, contrary to what had happened in the case of the single-product undertakings, the losses incurred by the integrated undertakings on concrete reinforcing bars were accompanied by an increase in earnings from other, even more important sectors.

25 In the Commission's view, the developments described above threatened the very existence of the single-product undertakings, which were in exceptional difficulties within the meaning of Article 14 of Decisions No 1831/81 and No 1696/82. However, in order to meet that imminent danger the Commission could not apply those provisions because they could be invoked

only by small single-product undertakings, whereas medium-sized single-product undertakings were in the same critical situation. Furthermore, the examination of individual cases required by those provisions was unnecessary since all the single-product undertakings faced the same market situation. However, the Commission claims that in Article 16 of Decision No 1831/81 and Article 18 of Decision No 1696/82 it had the legal means to carry out the necessary adjustments by general decisions. In its submission, the conditions for the application of those articles were fulfilled since the developments on the market in concrete reinforcing bars constituted a radical change in the steel market within the meaning of those articles.

26 Since, the Commission continues, the situation had improved to some extent by the fourth quarter of 1982 as a result of a slight rise in prices for concrete reinforcing bars and a slight reduction in the price of scrap, the Commission reverted, as from that quarter, to the system of examining each individual case as provided for in Article 14 of Decisions No 1831/81 and No 1696/82.

27 In order to resolve this issue it is useful to recall that in its judgment of 21 June 1958 in Case 8/57 *(Groupement des Hauts Fourneaux et Aciéries Belges* v *High Authority* [1958] ECR 245) the Court held that the powers conferred on the Commission by the ECSC Treaty are limited by the specific provisions set out in Title III of the Treaty and that, in particular, such powers would be diverted from their lawful purpose if it appeared that the Commission had made use of them with the exclusive, or at any rate the main, purpose of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances with which it is required to cope.

28 In this regard it is clear from the preambles to the contested decisions and from the explanations of the Commission summarized above that the Commission was in fact pursuing the aims of Article 14 of the basic decisions and that in founding its action on Articles 16 and 18 of those decisions it not only avoided the restrictions laid down in Article 14 but also sought to avoid the examination of each individual case prescribed by that article.

29 Since the quota system introduced by Decisions No 2794/80, No 1831/81 and No 1696/82 was based on the application to all undertakings of uniform abatement rates for each category of products subject to it — unless the

individual situation of the undertaking in question justified an exception, the Commission could decide upon a general increase of the quotas for a whole group of undertakings characterized by their structure only after following the procedure laid down in Article 58 of the Treaty, that is to say after consulting the Consultative Committee and obtaining the assent of the Council. Consequently, in acting pursuant to Articles 16 and 18 of the basic decisions, the Commission also evaded the procedure specifically laid down by the Treaty for that purpose.

30 In those circumstances the applicants' submission that Decisions No 533/82 and No 1698/82 were vitiated by a misuse of powers affecting them must be upheld, without its being necessary to investigate whether the considerations advanced by the Commission were capable of justifying the application of different abatement rates to the single-product undertakings and the integrated undertakings. Consequently, those two decisions must be declared void.

31 Since the individual decisions addressed to Thyssen AG on 30 March and 20 July 1982 concerning the reference-production figures and production quotas for the second and third quarters of 1982 were based on Decisions No 533/82 and No 1698/82, in so far as they concern the abatement rates for concrete reinforcement bars, those individual decisions must also be declared void in accordance with that applicant's pleadings.

Costs

32 Under the terms of Article 69 of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares void Commission Decision No 533/82/ECSC of 3 March 1982 amending for the third time Decision No 1831/81/ECSC

establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products and Commission Decision No 1698/82/ECSC of 30 June 1982 adjusting the abatement rates for Category V products for the third quarter of 1982 in respect of certain undertakings;

2. Declares that the individual decisions addressed by the Commission on 30 March and 20 July 1982 to Thyssen Aktiengesellschaft concerning its reference-production figures and production quotas for the second and third quarters of 1982 are void in so far as they concern the abatement rates for Category V;

3. Orders the Commission to pay the costs.

Mertens de Wilmars Koopmans Bahlmann

Galmot Pescatore Mackenzie Stuart O'Keeffe

Bosco Due Everling Kakouris

Delivered in open court in Luxembourg on 21 February 1984.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 22 NOVEMBER 1983 [1]

Mr President,
Members of the Court,

1. Introduction

At the hearing Counsel for the applicants in Joined Cases 140 and 221/82 Walzstahl-Vereinigung) and 146 and 226/82 (Thyssen AG) began his address to the Court by stating that these actions are directed principally against Commission Decisions No 533/82/ECSC and No 1698/82/ECSC. Those decisions granted single-product undertakings producing

1 — Translated from the Dutch.