and December to take account of their quotas for the quarter and thereby avoid any infringement.

3. Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

4. Although, pursuant to its obligation under Article 58 (2) of the ECSC Treaty to carry out studies jointly with undertakings and associations of undertakings in order to determine production quotas, the Commission is obliged to consult undertakings and associations of undertakings in conducting such studies, that obligation does not imply that it must consult each undertaking individually or that it must obtain the agreement of the steel producers to the measures proposed.

5. Under the terms of Article 58 (1) of the ECSC Treaty the Commission has power to take "to the necessary extent" the measures provided for in Article 74 at the same time as any measure taken on the basis of Article 58. The appraisal of the necessity of taking such measures is a matter for the Commission, subject to the Court's power to review the lawfulness of the Commission's exercise of its discretion.

In Case 258/80

SPA METALLURGICA RUMI, whose registered office is in Bergamo, Italy, in the person of its chairman, Carlo Rumi, represented by Giacomo Fustioni and Giuseppe Marchesini, Advocates at the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the Chambers of Jean Hoss, 84 Grand-Rue,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alberto Prozzillo, acting as Agent, with an address for service at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that an individual decision of the Commission concerning the fixing of production quotas for certain steel products is void (Article 33 of the ECSC Treaty),

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and Procedure

A — The background to the dispute

1. By Decision No 2794/80/ECSC of 31 October 1980 (Official Journal 1980, L 291, p. 1), the Commission, considering that by reason of the decline in demand for steel the Community was confronted with a period of manifest crisis within the meaning of Article 58 of the ECSC Treaty and that the means of action provided for in Article 57 were not sufficient to deal with that situation, established a system of production quotas for crude steel (Article 1) and for four groups of rolled products (Article 2).

Group IV covers light sections, which include coiled wire rod, concrete reinforcing bars and other merchant bars, coming under lines 132, 133 and 134 respectively of the Eurostat questionnaire 2-13.

2. Article 1 (4) of Decision No 2794/80 provides for the quota system, to be managed by the Commission. It also provides that the Commission may obtain assistance from independent agencies or from experts and that the business secrecy of the undertakings must be maintained.

3. By virtue of Articles 3, 4 and 5 of that general decision, the quotas for Group IV for the fourth quarter of 1980 were to be fixed by application of an abatement rate of 17.39 % on the basis of the *reference production figures* referred to in Article 4. By virtue of Article 5 (2) of the decision, the rate of abatement in the case of crude steel is to correspond to the average abatement rates of the four groups of rolled products weighted according to the *reference production* of each of those groups of products.

4. Article 4 provides that the quarterly reference production figures for each undertaking shall be calculated as follows:

"1. For each month of the relevant quarter, reference shall be made to the same month during the period from July 1977 to June 1980 during which the total production of the four groups of rolled products was the highest. The three months thus chosen, which will not necessarily be consecutive, shall constitute the reference period.

2. The reference production figures shall be the same, for crude steel and for each of the other groups of rolled products, as the production of the corresponding items during the reference period."

5. Article 7 (2) of the decision provides:

"With regard to the delivery of products subject to the quota system, undertakings may not exceed, by group of products, for deliveries within the common market, the ratio of Community deliveries to total deliveries in those 12 months of the period from July 1977 to June 1980 in which the total production of the four groups of rolled products was the highest."

6. Articles 10, 11 and 12 require undertakings to supply the information stipulated therein, whilst Article 13 provides:

"1. The Commission shall verify the accuracy of the reports and information provided by undertakings. Undertakings must allow such verification work, and no individual decision shall be required for this purpose. The instruction given to the verifying offical must refer to this provision and state what reports or information provided by the undertaking he has been asked to verify.

2. Any undertakings evading the obligations incumbent upon them under Articles 10, 11, 12 and 13 (1) or giving false information shall be liable to the fines and penalties provided for in Article 47 of the Treaty."

7. By an individual decision dated 1 November 1980 the Commission fixed the applicant's production quotas for the period between 1 October and 31 December 1980 as follows:

	Reference figures				Reduction	Quota 4th quarter 1980
	October 1978	November 1979	December 1977	Total		
	tonnes	tonnes	tonnes	tonnes	%	tonnes
Rolled products						
Group I					20·78	
Group II					18·93	
Group III					21·53	
Group IV	36 390	40 466	35 833	112 689	17·39	93 092
Total I-IV	36 390	40 466	35 833	112 689		93 092
Steel	46 500	47 392	42 010	135 902	17·39	112 269

8. By letter of 3 November 1980 the Commission informed the applicant that the information needed to check that its production quotas were being observed would be gathered by auditors assisted by engineers. It requested the applicant to supply the names of the persons whom it had made responsible for maintaining contact with the said agents for the Commission. On 10 November 1980 the applicant wrote to the Commission giving the name of its general manager, who was to be responsible for relations with the Commission's inspectors.

On 11 November 1980 an inspector belonging to a private firm of auditors and an engineer, acting as agents for the Commission, went to the applicant's premises in order to check that the production quotas which had been imposed on it by telex message on 1 November 1980 were being observed.

9. The applicant refused to agree to the checking of its production quotas on the ground that the engineer engaged by the Commission was an employee of a competing steel producer. By engaging that engineer as an expert for the purpose of executing the inspections which had to be carried out at the applicant's premises the Commission was failing to maintain the applicant's business secrecy and that was contrary to Article 1 (4) of the decision of 31 October 1980.

A report dealing with that refusal was drawn up and signed by the Commission's agents and by the representative of the applicant.

10. In a telex message sent to the applicant on 26 November 1980 the Commission confirmed that since it was responsible for carrying out inspections it must inevitably have recourse to the services of experts on the steel industry. The message further stated:

"In principle the team instructed to carry out the inspection is directed, under the responsibility of the Commission, by an employee of the firm of auditors. The experts are technical assistants to the Commission who act in accordance with the instructions given by the firm of auditors, which alone organizes and directs the inspection *in loco.*

If the undertaking which is being inspected finds that certain requests made by the technical consultant relate to a secret concerning the structure of the plant or the production and marketing cycle, it may request the Commission, through the head of the inspection team, to take the necessary measures to eliminate the difficulty created by the technical consultant's request."

Taking note of these explanations, the applicant informed the Commission by a telex message dated 28 November 1980 that:

"Having regard to the fact that the technical experts will not have any power of initiative and may be removed or excluded from the inspection in the event of the company's having reason to apprehend damage to its interests protected by the Treaty, we raise no further objections in view of those specific assurances."

B — The course of the procedure

1. By an application dated 20 November 1980, which was received at the Court Registry on 24 December 1980, the applicant brought an action in which it seeks a declaration that the Commission's decision of 1 November

1980 fixing the applicant's production quotas for the fourth quarter of 1980 pursuant to the general decision, Decision No 2794/80, is void.

2. On 28 November 1980 the applicant submitted an application for the adoption of interim measures pursuant to Article 39 of the ECSC Treaty and Article 83 of the Rules of Procedure of the Court. That application sought an order:

(a) Suspending the operation of the individual decision complained of, at least in so far as production (and sales) for the month of October 1980 were included in the quota system established by Decision No 2794/80/ECSC, replacing that system if appropriate by a two-month quota for November and December of the current year;

(b) Requiring the Commission to make immediate use of the remedies which Article 74 of the ECSC Treaty places at its disposal, all the conditions for the application thereof being satisfied in the present instance;

(c) Restraining the Commission from using, at least for the purpose of carrying out inspections and verifications in relation to the applicant, technical experts in the employ of competing or similar steel producers.

In its observations on the application for interim measures the *Commission* contended that the Court should dismiss the application.

By a reasoned order of the President of the Court of 16 December 1980 the application for the adoption of interim measures was dismissed and the costs were reserved.

3. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

Principally

1. Declare that, for the reasons set out in the application, the general decision, Decision No 2794/80/ECSC, is inapplicable;

2. Declare void the individual decision of 1 November 1980 whereby the Commission fixed the undertaking's production quotas for the fourth quarter of 1980;

3. Order the defendant to pay the costs.

By way of a preparatory inquiry

Order the Commission to lodge with the Court:

(i) the minutes of the meeting at which the Consultative Committee of the ECSC considered the measures proposed by the Commission under Article 58 of the ECSC Treaty;

(ii) the minutes of the meeting at which the Council of Ministers of the European Communities considered the aforesaid measures under Article 58 and the necessary assent;

(iii) the minutes of the meetings between the Commission's representatives and the representatives of the Association of Italian Steel Producers (the ISA) and the records of the consultations with individual undertakings held under Article 58 of the ECSC Treaty;

(iv) the standard-form contract between the Commission and the undertakings which made their own employees available to the Commission to carry out the inspections and verifications.

The *Commission* contends that the Court should:

Declare the application inadmissible and, in the alternative, unfounded as regards the submissions relating to Articles 1 (4) and 7 (2) of the general decision, Decision No 2794/80/ECSC;

Declare the remaining part of the application unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. *Retroactive nature of Decision No 2794/80/ECSC* (breach of the general rules of law governing the application of the Treaty)

The *applicant* complains that the general decision, Decision No 2794/80/ECSC, took into account, in determining the maximum production permitted during the year and the deliveries of related products within the ECSC, the production and sales effected from *1 October 1980.* In other words the decision is *retroactive* both as regards its actual text (Articles 5 and 11 (2)) and the express declaration contained in the preamble (last paragraph of section 4).

Such retroactive effect is contrary to the general principles recognized by the Member States and constitutes a *breach of a general principle of law.*

In support of that argument the applicant claims in particular that the production and deliveries within the ECSC, that is to say the commercial dealings and operations carried out in a system with no restraint, in October 1980 *subsequently* became significant legal factors in determining at the end of the quarter the lawfulness or unlawfulness of the subsequent behaviour of the undertaking. In fact, if production and deliveries in the month of October had exceeded the quota allocated for the quarter, the retroactive effect of the provisions in question would *ex post facto* render unlawful acts which were not so at the moment when they were performed.

The applicant recognizes that the Commission did not conceal its intentions and that it created in advance a defence against the undertakings (cf. the statement of reasons on which Decision No 2794/80/ECSC was based, last paragraph of section 4). However, the wording of the decision, which has been represented as fixed by the Commission since the beginning of October, underwent such vicissitudes that its abandonment appeared more probable than its adoption. In fact the press gave such prominence to the diverging views which prevailed within the Council of Ministers that even the least perceptive reader might reasonably have predicted that the plan would be dropped, that other solutions would be adopted or that negotiations for voluntary restrictions would be resumed. It was not until the first weekend of November that the specialist press announced that the Council had finally

assented to the establishment of a system of quotas on the basis of Article 58 of the ECSC Treaty (cf. "Europe" No 3012 of 1 November 1980).

For their part, the undertakings could not base their choices and programmes on uncertain political events. The applicant in particular, faced with the severe requirements of the market, had to produce and sell in the month of October at such prices as the market would bear.

The *Commission* maintains in its statement of defence that it is only in the field of criminal law that the prohibition of the enactment of retroactive legislation may be considered a general principle of law. It furthermore disputes the existence of any retroactive effect properly so-called. In fact the general decision lays down quarterly production quotas, one month of the first quarter having already expired when the decision was adopted; two other months nevertheless remained and the undertakings were entirely free to reduce their production in November and December, thus keeping within the limits of their quotas and avoiding any penalty. Article 15 of the decision consequently does not confer retroactive effect properly so called on that decision and merely takes account, with regard to the future, of a fact which arose in the past. The Court has recognized the lawfulness of that legislative technique, for example in Case 44/65 *Hessische Knappschaft* ([1965] ECR 965).

Furthermore, even if the provision in question is considered retroactive it does not follow that it is automatically unlawful. The Court has in fact held that retroactive measures are lawful when two conditions are fulfilled: the measures adopted must respect the legitimate expectations of those concerned and the retroactive effect itself must be necessary to attain the objectives pursued (cf. for example, Case 98/78 *Racke* [1979] ECR 69).

The Commission considers that the first of these two conditions was fulfilled, in particular through the communication of 11 October 1980 (Official Journal C 264, p. 2). With regard to the second, the inclusion of the month of October was necessary in order to make the system chosen effective. As the rate utilization of iron and steel plant scarcely exceeded 50 % at the beginning of summer the result was, in fact, that if there had been no "retroactive effect" many producers could have doubled their production in October in anticipation of the reductions to be applied in November and December, rendering the quota system totally ineffective until the end of 1980.

In its reply the *applicant* states that although retroactive effect concerns primarily criminal law it nevertheless remains that Decision No 2794/80/ ECSC prescribes heavy pecuniary penalties which may be applied to economic operations effected prior to the adoption of the provisions which introduced them. Administrative penalties are by their nature very closely related to penalties in criminal law.

It maintains its arguments concerning the protection of the legitimate expectations of the persons concerned.

Finally, it submits that no-one — least of all the institutions — is entitled to create in advance specified effects by means of unilateral declarations which the subsequent facts or legal measures related to an expression of intention or of opinion of other persons cannot confirm.

In its rejoinder the *Commission* challenges the applicant's claim that the penalties prescribed by the decision "may be applied to economic operations effected prior to the adoption of the provisions which introduced them". In fact the quotas were fixed for periods of three months and the "retroactive effect" only applied to one month so that the undertakings were entirely free to reduce their production during the other two months and avoid any penalty.

For the rest, the Commission refers to its statement of defence.

2. *Determination of the production quotas* (infringement of the ECSC Treaty, in particular Article 58. In the alternative, infringement of essential procedural requirements)

Pointing out that Article 58 of the ECSC Treaty provides that the Commission *"shall, on the basis of studies made jointly with undertakings and associations of undertaking,* determine the quotas on an equitable basis", the *applicant* complains that the *consultation of the undertakings which took place was purely formal* and that in reality the quotas were fixed *unilaterally* by the Commission. Although the applicant concedes that the Association of Independent Italian Steel Producers was invited to three meetings on 4, 17 and 30 October, it claims that the Association had neither the time nor the means to put forward its counter-proposals to two aspects of the quota system, which was presented in the course of those meetings to the representatives of the Association as a "Diktat". The two aspects in question are the method of calculating the quotas and the percentage reductions by groups of products announced *within minimum and maximum limits* within which the Commission reserved the right to fix the coefficient.

The applicant further claims, in the alternative, that an *essential procedural requirement was infringed.* The Court has in fact in a number of decisions treated as equivalent to such an infringement the absence of the required assent and consultations (cf. Case 6/54 *Netherlands* v *High Authority* [1954 to 1956] ECR 103, pp. 111 to 112, and Joined Cases 154/78 etc. *Valsabbia and Others* v *Commission* [1980] ECR 907, paragraph 37, p. 999).

In this connection the *Commission* remarks that it had due regard for the opinions expressed both by the undertakings and by the Council, as is established by the numerous differences between the Commission's proposals contained in its communication to the Council (Annex I to the statement of defence) and the terms of the decision adopted.

The applicant was able to put forward its opinion through the association of which it is a member. In fact Mr Carlo Rumi was present in person at the meeting on 17 October 1980 and gave his views there.

The *applicant* replies by developing the arguments which it advanced in its application concerning the consultation of the Italian undertakings. It furthermore deplores the fact that the Commission failed to have regard for the views expressed.

In its rejoinder the *Commission* replies that it can only refer to what it has said on this subject in its statement of defence.

3. *Freezing the volume of sales within the ECSC* (lack of competence, infringement of Article 4 (b) and (d) of the ECSC Treaty; infringement of Article 3 (b); infringement of an essential procedural requirement through the failure to provide an adequate statement of reasons)

Under this head the *applicant* contests the lawfulness of Article 7 (2) of the general decision which restricts undertakings' sales within the Community. In fact, although Article 58 of the ECSC Treaty empowers the Commission to fix *production quotas* it does not also empower it to limit the volume of sales within the common market. The Commission thus acted *ultra vires*. It also infringed Article 3 (b) and (f) and Article 4 (b) and (d) of the ECSC Treaty which are referred to in Article 58 itself.

The applicant also criticizes section 6 of the statement of reasons on which Decision No 2794/80/ECSC was based. There it was stated that: "Article 58 must therefore be interpreted as conferring powers on the Commission to treat the exceeding of the ratio between Community deliveries and total deliveries on the same basis as the exceeding of the production quotas." The inadequacy of that statement of reasons, in addition to confirming the substantive defect complained of, also constitutes *an infringement of an essential procedural requirement.*

According to the *Commission*, this part of the application is *inadmissible* on the ground that it is *unrelated to the contested individual decision.* In fact an objection of illegality submitted in accordance with Articles 33 and 36 of the ECSC Treaty must, in accordance with a general principle of law, be strictly limited to that part of the legislative measure of a general nature on which the individual decision is based. It follows that, apart from defects which affect the validity of the general decision as a whole (for example, failure to provide an adequate statement of reasons) it is only possible to rely upon factors vitiating those parts of the measure pursuant to which the individual decision was adopted. The opposite view would permit an individual to contest legislation directly, which would be contrary to the general system of judicial remedies within the Community (cf. Case 9/56 Meroni [1957 and 1958] ECR 133).

With regard to the substance of the case, and in the alternative, the Commission considers that the power conferred by Article 58 to fix production quotas necessarily implies the power to adopt the provision in question. In fact the objective of the system of production quotas is to reduce the supply of steel products within the common market so as to improve the relationship between supply and demand, thereby raising prices. That is the reason why the Commission tries to keep imports within limits corresponding to the reduction in demand. It is clear that the same principle must be applied to that part of Community production which is exported to non-member countries: if, when prices began to rise again on the Community market, Community pro-

ducers were able to sell on that market the quantity which they would otherwise have exported, that would cause the re-emergence of an excess of supply over demand and the collapse of prices. It would be quite impossible to operate the system without freezing the ratio between sales on the Community market and exports.

The statement of reasons (section 6 of the preamble to the general decision) sets out the objectives of the decision and its legal basis and accordingly is not inadequate.

In its reply the *applicant* challenges the objection of inadmissibility raised by the Commission against this part of the application.

In this connection the applicant observes *inter alia* that the system of production quotas established by the Commission was intended to limit the quantities of steel products placed on the markets (in particular on the Community market) in the hope of causing an increase in prices as a result of a reduction in supply. Accordingly, the restriction on deliveries imposed upon Community undertakings pursuant to Article 7 (2) of Decision No 2794/80/ECSC constitutes a factor which cannot be dissociated from the production quotas. This is shown in particular by the fact that the exceeding of delivery quotas within the common market is treated as equivalent, for the purposes of penalties, to the exceeding of production quotas.

In its rejoinder the *Commission* maintains that, with regard to the admissibility of the part of the application concerning Article 7 (2), the order of 16 December 1980 of the President of the Court upheld the Commission's argument, which was subsequently set out in the statement of defence, and rejected the conclusions of the applicant concerning that provision on the ground that applications for interim measures must be directly connected with the subject-matter of the main action (cf. paragraph 16 of the decision). The inadmissibility of the application for interim measures concerning the ratio between imports and exports entails the inadmissibility of that part of the main application which has the same subject-matter.

4. *Absence of protection against imports from non-member countries* (manifest infringement of the Treaty and of the rules of law governing its application)

The *applicant* complains that the Commission failed to employ the provisions of Article 74 of the Treaty. That article, to which Article 58 expressly refers, envisages, according to the applicant, conditions which are precisely those obtaining in this case (cf. Article 74 (3): "if one of the products referred to in Article 81 ... is imported into the territory of one or more Member States *in relatively increased quantities* and under such conditions that these imports cause or threaten to cause serious injury to production within the common market of like or directly competing products").

The Commission *expressly declared to the Council on 30 October 1980* that it would not have recourse to measures reducing

imports under Article 74 (cf. "Europe", No 3012, p. 6).

In those circumstances the general decision is in breach of the combined provisions of Articles 58 and 74 of the ECSC Treaty; the conditions for the "necessary" application of Article 74 are satisfied. That "deliberate omission" also constitutes a breach of the *principle of proportionality* as it has been understood by the Court (cf. the judgment of 18 March 1980, *Valsabbia*, cited above, paragraph 117).

The *Commission* disputes, as a question of fact, that the failure to apply Article 74 makes the quota system ineffective and renders the burden which that system imposes on the undertakings excessive.

It is in any case impossible to make the lawfulness of legislation dependent on the existence or otherwise of measures of a completely different nature.

Returning to the specific circumstances of the case in question, the Commission recalls that, pursuant to Article 58 (1), the system of production quotas may be accompanied "to the necessary extent" by the measures provided for in Article 74. A decision on the necessity of such measures constitutes a *choice of policy* to be effected by assessing, on the one hand, the usefulness of measures concerning import and, on the other, the compatibility of such measures with the Community's obligations towards non-member countries, in particular within the framework of GATT, and the repercussions which the introduction of quantitative restrictions (which is in fact what they would be) might have on exports of Community products in general and on steel products in particular. After appraising these various factors the Commission came to the view that the existing system was, with certain improvements, adequate (cf. Recommendation No 2797/80/ECSC, Official Journal 1980 L 291, p. 34).

In its reply the *applicant* complains more particularly of the fact that the Commission permitted the importation into the Community of steel products from non-member countries at abnormally low prices whilst Community manufacturers were subject to the system of production quotas. In doing so the Commission is said to have been in breach of the principle of proportionality.

Furthermore, the Community institutions tolerated the granting by certain Member States of aids to large-scale steel producers, including *specific aids to the steel industry*, which are certainly contrary to Article 4 (c) of the ECSC Treaty. By means of such State intervention tolerated by the Commission the parasitic large-scale steel producers are not only able to survive despite their uneconomic policies but in addition, through their presence on the market, they deprive the private undertakings of a large proportion of the demand for steel. They are also able to charge prices which the private undertakings, which must bear their production costs through their own efforts, are unable to attain.

In its rejoinder the *Commission* recalls the objections set out in its statement of defence against the applicant's arguments concerning the lack of protection for the common market against imports from non-member countries which is said to render the measures adopted ineffective and thereby contrary to the principle of proportionality. It adds that the essential

features of the arrangements now in force have not been modified since the end of 1977 and, as the applicant itself has said, are effective in maintaining a parallel between the prices of imports and those of Community products subject to reductions.

Further, the Commission disputes that there is, in legal terms, a link between the aid granted to a State undertaking and the production quotas and queries whether, if there were no aids, the applicant would consider the quotas justified.

In any case the Commission recalls that, on its proposal, the Council has adopted a decision in this field (Decision No 257/80/ECSC establishing Community rules for specific aids to the steel industry, Official Journal 1980 L 29) and that it follows carefully the measures adopted by the Member States and endeavours to ensure that they are compatible with the general pattern of Community policy. It has recently submitted to the Council a report on developments in this field.

5. *Insufficient protection of the business secrecy of the undertakings with regard to the persons authorized to carry out inspections and verifications* (infringement of Article 47 of the Treaty)

The *applicant* complains in substance that the presence of employees of competing or similar undertakings amongst the technical experts instructed to carry out inspections and verifications on the undertakings fails to protect the business secrecy which was referred to in the general decision, (cf. section 10 of the preamble). Furthermore, such employees cannot be considered as "third parties" or "independent agencies" within the meaning of Article 1 (4) of the decision.

According to the *Commission*, that part of the application is *inadmissible* for the same reasons as those which it invoked in its contention that the submission concerning the restrictions on deliveries was inadmissible.

With regard to the substance of the argument, and in the alternative, the Commission states that, as it had only 15 inspectors, it was obliged to have recourse in exceptional circumstances to external staff. For accounting matters it resorted to firms of auditors, whilst for *technical* problems it was obliged to conclude contracts with steel undertakings which made available to it their production engineers (76 in all) to carry out the inspections in question. The Commission lists the steps which it took in order to ensure in those circumstances that business secrecy was maintained; in particular it invited the applicant to notify it of every request submitted by the technical experts which related to its industrial or commercial secrets.

In its reply the *applicant* contests the objection of inadmissibility raised by the Commission against this part of the application.

For the applicant the part of the decision based on Article 58 and the part based on Article 47 are interdependent. Furthermore, it claims that the Commission's argument results in the elimination of any possibility of taking legal action in relation to the inspections.

Finally, the applicant relies upon the judgment of the Court in Case 18/62 *Barge* v *High Authority* ([1963] ECR 259), in which the Court departed from the principle that only the parts of a general decision which are put into effect in the individual measure implementing that decision may be challenged.

With regard to the substance, the applicant adheres in essence to the arguments advanced in its application.

In its rejoinder the *Commission* maintains that the order made by the President of the Court on 16 December 1980 upheld the Commission's argument that Article 1 (4) of the general decision, Decision No 2794/80/ECSC, did not form the basis of the contested individual decision and rejected the applicant's submissions with regard to that provision on the ground that "claim for interim relief must have a direct link with the subject-matter of the main action" (paragraph 21 of the decision). The inadmissibility of the application for interim measures concerning the inspections entails the inadmissibility of that part of the main application which has the same subject-matter.

The arguments to the contrary presented by the applicant in its reply are, according to the Commission, entirely invalid. In fact:

The fact that the part of the general decision based on Article 58 of the ECSC Treaty and the part based on Article 47 of that Treaty are interdependent is irrelevant since the individual decision, which forms the subject-matter of the application, merely applies certain articles of the part of the general decision based on Article 58.

The Commission's argument does not remove all possibility of taking legal action in relation to the inspections. In fact an undertaking which believes that it has just cause may refuse an inspection and contest any decision imposing a fine on it; in the ensuing proceedings it may rely on the illegality of the general decision with regard to the inspections.

Contrary to the claims of the applicant, the judgment of the Court in the *Barge* case is entirely in accordance with the argument of the Commission. In fact the objection of illegality may refer either to the general decision as a whole or to the parts of it on which the individual decision is based. The part of the application concerning the inspections does not come within either of those categories.

IV — Oral procedure

At the sitting on 15 September 1981 oral argument was presented by the following: Giacomo Fustinoni and Giuseppe Marchesini, Advocates, for the applicant; and Alberto Prozzillo, for the Commission.

The Commission put in evidence a table concerning the applicant's production in relation to its quotas for the period from October 1980 to June 1981 and the Court fixed a time-limit within which the applicant was to reply in writing on this point. The applicant provided that reply on 24 September 1981. The Commission sent its comments on 30 September 1981.

The Advocate General delivered his opinion at the sitting on 29 October 1981.

Decision

1 By application lodged at the Court Registry on 24 November 1980 Metallurgica Rumi SpA brought an action under the second paragraph of Article 33 of the ECSC Treaty for a declaration that the Commission's individual decision of 1 November 1980 fixing the applicant's production quotas for the fourth quarter of 1980 pursuant to Commission Decision No 2794/80/ECSC of 31 October 1980 establishing a system of steel production quotas (Official Journal 1980 L 291, p. 1) is void.

2 The application is not based on an erroneous fixing of the applicant's individual quotas. The applicant considers the contested decision unlawful, on the one hand, because it is in application of various allegedly unlawful provisions of the general decision, Decision No 2794/80/ECSC, and, on the other hand, because, in applying Articles 1 (4) and 13 of that general decision, the Commission failed to ensure that the inspectors or experts whom it engaged provided the guarantees of independence indispensable to the protection of the business secrets of the undertakings.

The first submission

3 This submission concerns the fact that the Commission engaged employees of competing undertakings to carry out the checks and verifications prescribed in Articles 1 (4) and 13 of Decision No 2794/80/ECSC, with the alleged result that business secrets were not protected. According to the applicant, such experts may not be considered "third parties" or "independent agencies" within the meaning of Article 1 (4) of the decision; the Commission therefore misapplied those provisions.

4 The applicant, however, has not claimed that there was any breach of its business secrecy during the inspections carried out by the Commission. This submission must accordingly be rejected.

The second submission

5 The second submission concerns the provisions of Article 7 (2) of Decision No 2794/80/ECSC, according to which undertakings may not exceed, for deliveries within the common market, the ratio which existed, before the entry into force of the quota system, between Community deliveries and total deliveries.

6 It should be pointed out that although, in an action for a declaration that an individual decision is void, the applicant may submit that certain provisions of the general decisions which the contested decision implements are illegal, he may do so only if the individual decision is based on the rules alleged to be illegal.

7 In this case the individual decision does not concern the implementation of Article 7 (2) of the general decision and its lawfulness does not depend on the lawfulness of that provision. The applicability of that article flows directly from the general decision without the need for the Commission to issue individual decisions to the undertakings. The ECSC Treaty does not permit undertakings to challenge by means of a direct action such provisions unless a misuse of powers has occurred. On the other hand, it provides for judicial review of any decision of the Commission imposing a fine on an undertaking which has infringed the general decision. This submission is therefore inadmissible.

The third submission

8 In this submission the applicant argues as follows: Decision No 2794/80/ ECSC, which did not enter into force until its publication in the Official Journal of the European Communities on 31 October 1980, prescribed production quotas for the steel industry from 1 October 1980. The decision was retroactive and thus in breach of one of the general principles of law governing the application of the Treaty. Its effect was that commercial operations carried out in October 1980 were *ex post facto* given legal significance in determining whether an undertaking's subsequent behaviour was lawful or not. If production and deliveries in the month of October exceeded the quota allocated for the quarter the retroactive effect of the

provisions in question would *ex post facto* render unlawful acts which were not unlawful at the time when they were performed. Whilst it is true that the Commission had announced its intentions, it is no less true that the press reported differences within the Council so that the adoption of the Commission's proposal appeared improbable and the undertakings may not have reckoned with it.

9 It should be pointed out that the applicant has not indicated whether certain undertakings in fact exhausted their production quotas for the fourth quarter of 1980 before the entry into force of Decision No 2794/80/ECSC. That hypothesis, which appears improbable, does not in any event apply to the applicant and may accordingly be disregarded.

10 In these circumstances Decision No 2794/80/ECSC did not have genuine retroactive effect since the undertakings were able to adjust their production in November and December to take account of their quotas for the quarter and thereby avoid any infringement.

11 Moreover, although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

12 Those two conditions are fulfilled in the circumstances of this case. It was necessary to include the month of October in the system in order to prevent undertakings from increasing their production in October in anticipation of the reductions subsequently to be applied. Furthermore, the Commission respected the legitimate expectations of the persons concerned by means of the communication of 11 October 1980 (Official Journal C 264, p. 2), whereby it gave notice of its intention to include the month of October in the system of quotas, and by means of the decision published on the same date (Official Journal L 268, p. 25) requiring the undertakings to supply information on their production for October 1980. Although in its communication of 11 October 1980 the Commission did not in fact indicate what the level of the quotas would be, which might have prevented the undertakings from establishing the precise consequences of the Commission's recommendation and ensuring that their production was not excessive in relation to the quotas which were to be allocated for the quarter as a whole, it nevertheless remains that the undertakings received notice of the Commission's intentions.

The fourth submission

13 According to the applicant, the Commission failed to satisfy the requirement of consulting the undertakings concerned laid down by Article 58 of the ECSC Treaty which provides that the Commission must determine the quotas on the basis of studies made jointly with undertakings and associations of undertakings. The Commission imposed its own proposals and the association of Italian steel producers had neither the time nor the means to put forward counterproposals regarding the method of calculating the quotas and the rate at which production was to be reduced.

14 The Commission's obligation to carry out studies jointly with undertakings and associations of undertakings must receive a wider interpretation than that placed upon it by the applicant. In fact the Commission obtains information on the general situation in the steel industry and its various sectors by conducting continuous studies. In this connection it should be recalled that, according to Article 46 of the ECSC Treaty, undertakings and their associations are entitled to present any suggestions or comments to the High Authority on questions affecting them. Furthermore, the applicant, like any other steel producer, is bound regularly to furnish the Commission with its production figures and prices. In addition the Commission carried out specific studies concerning the requirements of the quota system. These various factors constitute the studies within the meaning of Article 58 (2) of the ECSC Treaty which the Commission was able to take into account.

15 Although the Commission is obliged to consult undertakings and associations of undertakings in conducting such studies, that obligation does not imply that it must consult each undertaking individually or that it must obtain the agreement of the steel producers to the measures proposed under Article 58. In this case the Commission informed the steel producers of the measures which it itended to take and it held meetings with the associations of undertakings concerned, including the association of Italian producers of concrete reinforcing bars, allowing them to bring their proposals to the Commission's attention. The applicant was represented at one at least of these meetings, namely the meeting on 17 October 1980. The Commission thus discharged its duty to conduct studies jointly with undertakings and associations of undertakings.

The fifth submission

16 The applicant complains that the Commission failed to take the measures against import provided for by Article 74 of the ECSC Treaty if such imports cause or threaten to cause serious injury to production within the common market of like or directly competing products.

17 Under the terms of Article 58 the Commission has power to take "to the necessary extent" the measures provided for in Article 74 at the same time as any measure taken on the basis of Article 58. The appraisal of the necessity of taking such measures is a matter for the Commission, subject to the Court's power to review the lawfulness of the Commission's exercise of its discretion.

18 In this connection it must be emphasized that the applicant has not adduced any evidence in support of its submission that the Commission misused its discretion. On the contrary, even before the introduction of the quota system, the Commission took steps to control the level of prices and the quantity of imports of steel products from non-member countries. In particular, it fixed basic prices, concluded arrangements with non-member countries and took supervisory action. At the time of the adoption of Decision No 2794/80/ECSC it further intensified that supervision and reviewed the basic prices. Moreover, according to the figures supplied by the Commission, the level of imports fell between 1977 and 1979 and that tendency continued before and after the introduction of the quota system. Therefore the Commission cannot be accused of not having tried to combat imports from non-member countries.

19 It is important to point out also that in its negotiations with non-member countries the Commission faces considerable difficulties as a result of the fact that the ECSC is a net exporter of steel; in such circumstances it is compelled to ensure the continuance of Community exports at the same time as it must attempt to limit imports into the Community, and it had reason to fear that by taking non-negotiated restrictive decisions with regard to non-member countries it might provoke retaliatory measures on their part which would be detrimental to the general interest.

20 In view of the foregoing the application must be dismissed as unfounded.

Costs

21 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs.

22 Since the applicant has failed in its submissions it must be ordered to pay the costs, including the costs of the application for the adoption of interim measures.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs, including the costs of the application for the adoption of interim measures.**

	Mertens de Wilmars	Bosco	Touffait
Due	Pescatore	Mackenzie Stuart	O'Keeffe
Koopmans	Everling	Chloros	Grévisse

Delivered in open court in Luxembourg on 16 February 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President