JUDGMENT OF THE COURT (Sixth Chamber)
29 September 1987 *

In Joined Cases 351 and 360/85,

Fabrique de fer de Charleroi SA, having its registered office at 266 rue de Châtelet, Marchienne-au-Pont (6030), Belgium, represented by Michel Waelbroeck and Alexandre Vandencasteele, both of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 rue Philippe-II,

and

Dillinger Hüttenwerke AG, having its registered office in Dillingen-Saar (6638), Federal Republic of Germany, represented by Messrs Deringer, Tessin, Herrmann and Sedemund, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 8 rue Zithe,

applicants,

v

Commission of the European Communities, represented by its Legal Adviser, Rolf Wägenbaur, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

supported by

Kingdom of Denmark, represented by its Agents, L. Mikaelsen, Legal Adviser at the Ministry of Foreign Affairs, and H. Meldahl, Administrator at the Ministry of Foreign Affairs, with an address for service in Luxembourg at the Danish Embassy, 11b boulevard Joseph-II,

* Languages of the Cases: French and German.

APPLICATION for a declaration that Commission Decision No 2760/85/ECSC of 30 September 1985 amending Commission Decision No 234/84/ECSC on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1985, L 260, p. 7) is void,

THE COURT (Sixth Chamber)

composed of: C. Kakouris, President of Chamber, T. Koopmans, O. Due, K. Bahlmann and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 11 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 4 February 1987,

gives the following

Judgment

1 By applications lodged at the Court Registry on 18 and 22 November 1985 respectively, Fabrique de fer de Charleroi SA, having its registered office in Marchienne-au-Pont, Belgium, and Dillinger Hüttenwerke AG, having its registered office in Dillingen, Federal Republic of Germany, brought two actions against the Commission of the European Communities under the second paragraph of Article 33 of the ECSC Treaty for a declaration that Commission Decision No 2760/85/ECSC of 30 September 1985 amending Commission Decision No 234/84/ECSC on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry is void.

2 By order of 1 July 1986, the Court decided to join the two cases for the purposes of the oral procedure and the judgment. In addition, by order of 8 July 1986, the Danish Government was granted leave to intervene in the two cases in support of the Commission's conclusions.

3 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

4 The contested decision, No 2760/85/ECSC, inserted a new provision, Article 14 D, in the general decision, No 234/84/ECSC of 31 January 1984. That provision reads as follows:

'The Commission may grant additional supplementary quotas up to a maximum of 25 000 tonnes per quarter to an undertaking:

(i) which is the sole undertaking in the country in which it is situated;

(ii) which is confronted with exceptional difficulties, even after receiving a quota supplement under the provisions of Article 14;

(iii) which has not received aids under the provisions of Decision No 1018/85/ECSC.'

5 Decision No 2760/85/ECSC, by virtue of Article 2 thereof, entered into force on 1 July 1985, and remained in force until 31 December 1985, the date set by Decision No 234/84/ECSC for the expiry of the quota system.

6 However, the validity of the quota system was extended until 31 December 1987 by Commission Decision No 3485/85/ECSC of 27 November 1985 (Official Journal 1985, L 340, p. 5).

7 Article 14 C of Decision No 3485/85/ECSC is substantially identical to Article 14 D of Decision No 2760/85/ECSC — which is contested in these applications — except that the last indent, containing the third condition for the grant of the additional quota, namely that the undertaking concerned has not received aid, has been repealed.

Subject-matter of the dispute

8 In their replies, the applicants have also sought the annulment of the new provision, Article 14 C of Decision No 3485/85/ECSC. They contend, in substance, that Article 14 C merely confirms the provision referred to in their applications and that they are therefore entitled, for reasons of procedural economy, to extend the subject-matter of those applications so as to encompass the new provision.

9 The Commission objects to that extension. Decision No 3485/85/ECSC made substantial amendments to Decision No 234/84/ECSC as a whole; consequently, Article 14 C does more than merely extend the validity of Article 14 D and hence can be contested only by a new application.

10 It must be pointed out that a comparison of the wording of the two provisions in question supports the conclusion that they are substantially identical, except for the repeal of the third indent in the new provision. The repeal of that indent merely abolished one of the conditions for the grant of additional quotas, without affecting the principle of the grant which lies at the heart of the dispute; indeed the abolition of that condition merely had the effect of facilitating the grant of additional quotas during the new period from 1 January 1986 to 31 December 1987.

11 The fact that Article 14 C of Decision No 3485/85/ECSC extended the major part of the contested provision, Article 14 D, during the proceedings must be regarded as a fresh issue permitting the applicants to amend their conclusions accordingly. It would be contrary to the proper administration of justice and to the requirement of procedural economy to demand that the applicants bring fresh proceedings before the Court in order to challenge the new provision. The objection raised by the Commission in that respect cannot therefore be upheld.

Substance

12 With regard to the substance of the two cases, the applicants' submissions are essentially that the Commission is guilty of a misuse of powers inasmuch as it exercised the powers conferred upon it by Article 58 of the ECSC Treaty for unlawful purposes, and in particular for the purpose of ensuring the survival of a

given undertaking which is the sole steel producer of the Member State in which it is situated.

13 In order to determine whether that submission is well founded, it must be borne in mind that the system of production quotas was established on the basis of Article 58 of the ECSC Treaty, which authorizes the Commission, with the assent of the Council, to establish such a system in the event of a decline in demand, if it considers that the Community is confronted with a manifest crisis and that the means provided for in Article 57 with regard to production are not sufficient to deal with the crisis. Article 58 specifies that the quotas must be determined on an equitable basis, on the basis of studies made jointly with undertakings and associations of undertakings and taking account of the principles set out in Articles 2, 3 and 4.

14 The nature of the quota system has been defined by the Court in its case-law, in particular in its judgment of 7 July 1982 in Case 119/81 *Klöckner* [1982] ECR 2627, according to which the system is 'intended to spread equitably throughout the iron and steel industry of the Community the unavoidable consequences of the adjustment of production to the reduced number of possibilities of disposal'. According to the same judgment, the aim of the restrictive measures imposed is to improve market conditions so as to enable 'the profitability of undertakings to be maintained or restored in the long term'.

15 Articles 2 to 4 of the ECSC Treaty, which are referred to in Article 58 thereof, lay down the general objectives of the Community, which must, in their implementation, be constantly balanced in the light of economic circumstances. However, the implementation of those objectives can be understood only in relation to the common market in products covered by the ECSC Treaty, upon which, according to Article 1 thereof, the Community is founded.

16 Moreover, pursuant to Article 58 of the ECSC Treaty, which leaves the Commission to choose the basis for determining quotas in an equitable manner in a given economic situation, the Commission opted for the criterion based on the actual production of undertakings during a given reference period; that criterion was held by the Court to be capable of constituting an 'equitable basis' within the meaning of Article 58 (judgment of 3 March 1982 in Case 14/81 *Alpha Steel* [1982] ECR 749). The risk that such a system might prove to be inflexible was

mitigated by the incorporation, in the general decisions extending the quota system, of provisions which permit, in certain circumstances, account to be taken of the exceptional difficulties caused by the quota system to individual undertakings by the allocation to them of supplementary or additional production quotas.

17 The legality of the contested provisions must be assessed having regard to the objectives of the quota system, the requirements of the common market in iron and steel products, the Commission's choice of equitable basis for the purposes of Article 58 and the need to consider the exceptional situation of certain individual undertakings.

18 The aim of those provisions, as is clear from their wording and from the preamble to the general decision, No 2760/85/ECSC, is to permit the grant of additional supplementary quotas to an undertaking which is characterized not only by the fact that it has to contend with exceptional difficulties, but also by the fact that it is the only steel undertaking of the country in which it is situated, that country depending on it for its supplies. It is not disputed that, at the time of the adoption of Decision No 2760/85/ECSC which introduced the contested provision, there was only one undertaking which fulfilled the conditions laid down, namely the Danish undertaking Det Danske Staalvalsevaerk.

19 The fact that an undertaking is a Member State's sole steel producer constitutes a criterion which is unconnected with the abovementioned assessment criteria. In the first place, that criterion is concerned with the situation of a Member State rather than that of an undertaking, whereas the quota system is based on the specific circumstances of individual undertakings, both as regards allocation of reference quantities and production quotas and as regards the necessary adjustments and supplements. Secondly, that criterion serves to guarantee — as is expressly stated in the second recital in the preamble to Decision No 2760/85/ECSC — a Community country's supply of steel products, whereas the quota system is designed to ensure that the sacrifices demanded by a situation of structural overcapacity are shared out equitably amongst all steel undertakings, having regard to the situation prevailing in the common market as a whole.

20 It follows that the aim of the contested provisions cannot be pursued within the framework of the quota system established under Article 58 of the ECSC Treaty

and that, consequently, the incorporation of provisions of that kind in general decisions extending the quota system constitutes a misuse of powers.

21 In the light of that consideration, it is necessary to reject as inapposite the Commission's arguments to the effect that the contested provisions are based on considerations of fairness and on economic and social grounds, in addition to the Danish Government's contention that the principle of solidarity between Community undertakings justifies a further effort on the part of some of those undertakings to ensure the survival of undertakings that are in a special situation.

22 It follows from all the foregoing considerations that the submission alleging a misuse of powers is well founded and that Decision No 2760/85/ECSC, as well as Article 14 C of Decision No 3485/85/ECSC, must be declared void.

Costs

23 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the Commission has been unsuccessful in its submissions, it must be ordered to pay the costs, including those of the interim proceedings. The intervener must bear its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

(1) Declares void Commission Decision No 2760/85/ECSC of 30 September 1985 amending Commission Decision No 234/84/ECSC and Article 14 C of Commission Decision No 3485/85/ECSC of 27 November 1985 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry;

(2) Orders the Commission to pay the costs, including those of the interim proceedings;

(3) Orders the intervener to bear its own costs.

Kakouris Koopmans

Due Bahlmann Rodríguez Iglesias

Delivered in open court in Luxembourg on 29 September 1987.

P. Heim
Registrar

C. Kakouris
President of the Sixth Chamber