distinguish between integrated and non-integrated undertakings if it wishes to achieve its objective of reducing production.

9. By providing for intervention by means of coercive action in certain defined circumstances the ECSC Treaty derogates from the normal rules governing the working of the common market, which are based on the principle of the market economy.

Therefore it cannot be argued that the Commission should not include small and medium-scale steel undertakings, which are more efficient, in a system of production quotas for steel since that system would otherwise be rendered ineffective.

In Case 276/80

FERRIERA PADANA SPA, whose registered office is in Padua, Italy, acting through Professor Sergio Gambi, its chairman, and represented by Aldo Perissinotto, of the Padua Bar, and by Giuseppe Celona, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Georges Margue, 20 Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alberto Prozzillo, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, 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. Article 1 (4) of the decision 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 twelve 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 stipulate the information which the undertakings are required to supply, 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 official 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. The applicant company has its registered office in Padua where it has plant *exclusively devoted to the production of concrete reinforcing bars.* The production cycle consists in the purchase of crude steel, the rolling thereof and the sale of the rolled product. The company employs 90 persons.

8. By an individual decision of 1 November 1980, which was notified to the applicant on 6 November 1980, the Commission fixed the applicant's production quotas for the period from 1 October 1980 to 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	8 000	8 600	5 500	22 100	17·39	18 257
Total I-IV	8 000	8 600	5 500	22 100		18 257
Steel					17·39	

9. On 10 November 1980 the applicant requested, on the basis of Article 4 (4) of the general decision (new plant), an increase in its basic quota. That request was granted by decision of the Commission of 18 December 1980 and the applicant's quota for the fourth quarter of 1980 was increased to 25 656 tonnes. However, during that quarter the applicant produced only 22 827 tonnes, which nevertheless exceeds its original quota. On account of the late notifi-

cation of the increase the Commission agreed, at the request of the applicant, that the increase granted might be carried forward to the first quarter of 1981.

B — The course of the procedure

1. By an application dated 10 December 1980, which was lodged at the Court Registry on 12 December 1980, the applicant brought an action for a declaration that the individual decision of 1 November 1980 was void. It relied essentially on the unlawfulness of the general decision, Decision No 2794/80/ECSC, in implementation of which the individual decision was adopted.

2. The written procedure followed the normal course.

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

In its application the *applicant* claims that the Court should:

"Principally,

Declare void the individual decision notified to the applicant company by the Commission on 6 November 1980 and the general decision, Decision No 2794/ECSC of 31 October 1980 published in the Official Journal of the European Communities L 291 of the same date, in so far as the latter decision constitutes the legal basis for the individual decision;

In the alternative

Order the Commission to produce to the Court of Justice all the documentation relating to the studies carried out on the state of the concrete reinforcing bars industry and to the necessary opinion of the Consultative Committee;

Order expert evidence to be obtained on the state of that industry in order to ascertain whether the conditions laid down in Article 58 of the ECSC Treaty were satisfied;

Consequently

Remit the matter to the Commission, so that it may take the measures required in order to comply with the declaration that the provisions are void, and declare that the Commission is obliged to take appropriate measures to ensure fair compensation for the damage directly caused and to pay a reasonable sum by way of damages;

As regards costs

Make an order for the payment of costs in favour of the applicant."

In its statement of defence, the *Commission* contends that, if the Court considers the application admissible, it should:

Declare the application unfounded;

Order the applicant to pay the costs.

With regard to the inquiry requested by the applicant, the Commission relies upon the discretion of the Court and merely notes that any expert opinion obtained must cover the Community industry as a whole.

The arguments advanced by the Commission with regard to steel products as a whole are set out in the "request for the Council's assent" (Annex I to the defence).

The *applicant* does not put forward formal conclusions in its reply but submits that the Commission should be required to provide the following details *in order that the actual level of demand may be known:*

The number of undertakings which requested an increase in their quotas;

The extent to which unused quotas were transferred (prior authorization or merely notified after the event).

In its rejoinder the *Commission* repeats the conclusions formulated in its statement of defence.

With regard to the new requests for information, the Commission considers that they are irrelevant.

III — Submissions and arguments of the parties

A — Observations of the parties on the measures against the crisis within the framework of the Community's steel policy

In its application the *applicant* gives a summary of the Community's steel policy. It draws particular attention to the following points:

1. The adoption by the Commission of a plan for the *voluntary limitation of deliveries* which entered into force on 1 January 1977 and which lasted, after an extension, until 31 December 1977. That plan formed part of the guide-lines on steel policy laid down by the Commission on 1 March 1977 and presented by it to the Council, which approved them at its meeting in Rome on 25 and 26 March. "There are four main objectives — preserving the unity and openness of the market, stabilization and modernization of production capacities, measures to redress the market situation, and conversion and redeployment", (Eleventh General Report on the Activities of the European Communities, p. 86).

2. After the failure of that plan in certain sectors the Commission adopted Decision No 962/77/ECSC of 4 May 1977 (Official Journal 1977 L 114, p. 1) which imposed *minimum prices* under Article 61 of the ECSC Treaty. The imposition of minimum prices was *extended until 31 December 1978* by Commission Decision No 3000/77/ECSC of 28 December 1977 (Official Journal 1977 L 352, p. 1) on the ground, in particular, that "supply is still considerably in excess of demand" and that "the state of the market in concrete reinforcing bars is still jeopardizing the attainment of the objectives set out in Article 3 of the Treaty".

In its judgment of 18 March 1980 in the "concrete reinforcing bars" cases *(Valsabbia and Others* v *Commission* [1980] ECR 907) the court dismissed a number of applications challenging Decision No 962/77/ECSC. In the part of its judgment dealing with the lawfulness of that decision the Court in particular dismissed the complaint that

the Commission had failed to institute a *system of production quotas* at the same time as the system of minimum prices (paragraph 63 of the decision).

In a communication dated 8 November 1979 on the measures against the crisis in the Community steel industry in 1980 the Commission gave reason to think that, at least in the concrete reinforcing bars sector, the reintroduction of minimum prices might be expected during 1980. By the general decision, Decision No 2794/80/ECSC, the Commission introduced a system of production quotas applicable in quarters.

The *Commission* recalls in its statement of defence the evolution of the policy pursued in recent years by the Community institutions in order to assist the steel industry in overcoming its serious structural crisis. The Commission observes that the Court is entirely familiar with the policy pursued until 1978 since it was described in the "concrete reinforcing bars" case.

The Commisison's action involved three different aspects:

(i) With regard to the quantities to be produced, the undertakings were requested to give an undertaking not to exceed production quotas fixed by the Commission for each product or group of products on the basis of an allocation amongst them of total quantities arising from forward programmes for steel. The majority of companies accepted such undertakings and in general fulfilled them.

(ii) With regard to prices, the Commission published *guide prices* for each product or group of products and requested the undertakings to quote these prices in their lists, which was done in most cases. For certain products — such as concrete reinforcing bars — for which undertakings to limit production were not given to a sufficient degree the Commission fixed *binding minimum prices.* It is important to emphasize the relationship between the measures taken concerning quantities and those taken with regard to prices: a curtailment of the supply of steel products has always been considered a condition *sine qua non* for any measures taken to support prices;

(iii) The restriction of internal supplies of steel products required to be accompanied by measures *concerning imports* from non-member countries. The Commission first of all fixed *basic prices* for the various products: imports at prices below those basic prices could be treated as dumping; an *ad hoc* procedure might lead to the introduction of an anti-dumping duty on imports of the product in question from the country of origin. The Commission also concluded with many countries arrangements concerning both the quantities to be imported and selling prices on the Community market. Finally, steps were taken to ensure improved monitoring of imports.

The combined effects of the initial results of the restructuring and the recovery of the market made it possible at the end of

1979 to relax the measures by abolishing the binding minimum prices for two of the three products for which they had been imposed. Some months later the minimum prices for hot-rolled wide strip were also abolished (Commission Decision No 2091/80/ECSC of 4 August 1980, Official Journal L 203, p. 20).

Unfortunately, after the first months of 1980, the conditions on the market deteriorated appreciably. From the month of May the production forecasts in the principal steel-consuming sectors showed a clear tendency to fall; orders received by the undertakings were falling; the production of crude steel, which in June 1980 was still higher than in June 1979, began to fall in July; the production forecasts of the undertakings for the fourth quarter of 1980 were 20 % lower than production in the fourth quarter of 1979; the rate of utilization of plant, which for the second quarter of 1980 was around 70 %, fell to 58 % in September and the undertakings forecast that it might fall below 55 % during the fourth quarter of the year. Between January and September 1980 steel prices fell by 13 %, whilst production costs increased by 5 %. The Commission set out a full analysis of developments in 1980 in its document of 6 October 1980 entitled "Request for the Council's assent to the establishment of a system of production quotas for the steel industry" (COM/80/586 final), a copy of which is annexed to its statement of defence.

The Commission further claims that, confronted with the intensification of the crisis, the producers increasingly failed to comply with their delivery programmes and finally refused to give undertakings for the last quarter of 1980 either on quantities or prices.

In view of the failure of the non-compulsory means of action concerning both production and prices the Commission could not envisage any solution other than intervention with regard to production under Article 58 of the Treaty. The general decision, Decision No 2794/80/ECSC, which imposes production quotas, is based, like the whole of the policy against the crisis in the steel industry, on the fundamental principle of solidarity between the undertakings which is set out in the preamble to the Treaty and given specific form in a number of provisions, namely Article 49, the second paragraph of Article 53, Article 56 and, above all, Article 3 (the priority of the *common* interest, which presupposes the duty of solidarity).

The situation on the market in *concrete reinforcing bars* deteriorated early in 1980 and a crisis threatened from the month of May. From May to September the fall in orders amounted to 9.1 % for the Community as a whole, reaching peaks of 59 % in the Netherlands, 57.3 % in Belgium and 35.6 % in the United Kingdom. There was also a sharp fall in prices (DM 100 in relation to the guide prices which had been adopted in the great majority of lists).

The rate of utilization of plant was also very low. The applicant itself, with a production capacity of 230 400 tonnes per annum, produced only 81 000 tonnes in the period from January ot October 1980.

The Commission consequently considered that for that product too a system of quotas was indispensable.

According to the Commission, the decision concerning production quotas had an immediate effect on prices. In fact many undertakings, including certain "Bresciani", increased their list prices. An increase of DM 50 per tonne could already be recorded for concrete reinforcing bars.

B — Submissions relied on in the application

First submission: infringement of Article 58 (1) of the ECSC Treaty

With reference to the three conditions which that provision lays down for establishing a system of production quotas, the *applicant* sets out in particular the following arguments in its application:

With regard to the *decline in demand*, it disputes that concrete reinforcing bars are affected. Even if — and the applicant challenges this — recourse may be had to Article 58 (1) when there is a decline in demand *limited to certain products and sectors*, it is illogical when the sector in question is a sector of semi-finished products (crude steel) to impose a reduction in demand in the subsequent stages of processing (such as the concrete reinforcing bars industry).

With regard to the condition that the *"means of action provided for in Article 57 are not sufficient"* to deal with the manifest crisis, the applicant complains that the Commission did not seek the cooperation of the governments with a view to increasing consumption in the public sector and did not have recourse to the imposition of *minimum prices*, a system which had *worked*, as the Court stated in the "concrete reinforcing bars" judgment (paragraph 119).

With regard to *the existence of a manifest crisis*, the applicant disputes that such a crisis existed in the steel industry as a whole, but it deals with this subject under the heading "misuse of powers" (third and fourth submissions).

The *Commission* contends that the conditions laid down in Article 58 (1) were satisfied.

Contrary to the applicant's argument, when the market is depressed it is the price of concrete reinforcing bars (a relatively simple finished product) which determines that of the raw material, scrap.

The Commission recalls the reasons for which it ruled out, within the framework of its wide margin of discretion in economic matters, recourse to the indirect means of action under Article 57.

It emphasizes, finally, the *Community* nature of the crisis facing the steel industry.

Second submission: infringement of Article 58 (2) of the Treaty

The *applicant* complains that the reference productions were fixed on an *unfair* basis inasmuch as they unjustly favoured undertakings which, unlike the applicant, did not participate in the programme of voluntary reductions in deliveries and disregarded the rules imposing minimum prices, thus maintaining their production at a higher level in the period which was then taken as a reference period.

It also objects to the *retroactive* nature of the general decision which applied the quotas as *from the month of October* and

so took into account the performance of *orders already received* with delivery dates which the undertakings were obliged to observe.

More generally it complains that the Commission failed to have regard to the principles laid down in Articles 2, 3 and 4 of the Treaty.

The *Commission* replies that the applicant's demands — the penalization of companies which failed to comply with their undertakings regarding voluntary restraint — imply retroactive criminal legislation contrary to the general principles of law. Furthermore, with regard to the facts, the applicant did not always comply with the delivery programmes.

The inclusion of October's production was necessary, according to the Commission, in order that the system to be established should be effective: Furthermore, since the applicant's production in October was 10 000 tonnes the Commission maintains that the amended quota permitted a monthly production of almost 8 000 tonnes in November and December which corresponds to the quantity which the applicant would have attained in any case by following its production programme.

Third submission: misuse of powers consisting in manifest unreasonableness and breach of the principle of proportionality

According to the *applicant*, the general decision contains a series of unreasonable features, omissions and incongruities which mean that it is unsuited to attaining the objectives which it apparently has in view, so that the aims pursued differ from those for which the Treaty conferred the powers in this field.

In fact, in an industry affected by a fall in prices, the curtailment of production without a means of countering imports from non-member countries does not constitute an appropriate remedy.

Furthermore, the decision fails to take account of the profound difference in the situation which exists between integrated undertakings, that is to say those which carry out the complete production cycle from scrap or iron ore to finished steel, and those which, like the applicant company, buy crude steel for processing.

It is impossible to see what benefit can accrue to producers of crude steel who must reduce their production and therefore their supplies, if at the same time a parallel reduction is imposed on the demand from non-integrated rolling mills and vice versa.

Furthermore, the general decision also includes in the quotas production exported to non-member countries in which competition exists to retain old markets which have been penetrated by new competitors and to seek new markets. The position of Community undertakings in that struggle will, according to the applicant, be seriously handicapped by the production quotas.

These factors, amongst others, render the contested measure *unsuited to attaining the objective pursued* and therefore excessively severe for the undertakings to which it applies.

According to the *Commission*, the applicant in fact fails to put forward under this heading anything other than the reasons based on the alleged breach of the principle of proportionality.

The Commission disputes, as a question of fact, that the failure to apply Article 74 of the ECSC Treaty makes the quota system ineffectivee 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 imports 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, an adequate measure (cf. Recommendation No 2797/80/ECSC, Official Journal 1980 L 291, p. 34).

Fourth submission: misuse of powers on account of the absence of a manifest crisis and irregular application of the principle of solidarity.

The *applicant* observes that the definition of the very concept of a crisis is neither easy nor clear and that that concept has been the subject of numerous arguments amongst economists.

Nevertheless, it cannot be contested that, in order to decide whether a state of crisis exists, it is necessary to consider not only the undertakings' decline in income but also the *essential reasons* which have caused the situation. Different states of "crisis" may be caused by different basic reasons.

In particular, it is impossible to apply the term "crisis" to the difficulties faced by a part of a sector of production by reason of the more modern nature of its technology or the better management of its resources and, consequently, its better productivity in relation to other undertakings in the same sector. The effects of the application of improved techniques are of benefit to all (cf. Selter, Productivity and Technical Change, London 1966).

Where doubts persist as to the construction of the term "crisis" within the meaning of the Treaty it is necessary to apply the general principles which have been applied in the Treaty itself. Consequently, the imposition of quotas may not lead to results contrary to the objectives of Articles 2, 3 and 4, and in particular it may not have the following effects:

To hinder the most rational distribution of production;

To endeavour directly or indirectly to apply prices other than the lowest possible prices that account is taken of necessary amortization and a normal return on capital;

To discourage undertakings from expanding and improving their production potential or to penalize undertaking which have improved that potential;

By means of quotas the Commission provides such protection and *thereby deprives consumers of the economic benefits which accrue through the optimum dimensions attained by the Italian producers of concrete reinforcing bars.*

To hinder the orderly expansion and modernization of production and the improvement of quality;

On the authority of the judgment of the Court in the "concrete reinforcing bars" case (paragraph 49 of the decision) the applicant submits that the Italian producers of concrete reinforcing bars may not be *subsequently* made to bear the costs of the lack of foresight and errors of others. In fact payment of the cost of modernizing its own plant and subsequent exclusion from the ensuing benefits because other undertakings have failed to do likewise would constitute a sacrifice which may not be imposed in the name of the principle of "solidarity" enunciated in the preamble to the ECSC Treaty. It is action that fosters solidarity, not paralysis imposed upon the initiative of others. Solidarity must be an *active* principle, not a brake on development.

Under certain conditions, to provide protection against competing undertakings which is not justified by any unlawful conduct on their part ("... when the High Authority is called upon to exercise a power ... it must not lose sight of any of the objectives of the Treaty and, in seeking to attain the one or the ones at which the provision to be applied is more particularly directed, it must avoid sacrificing others, perhaps more important") (Opinion of Mr Advocate General Lagrange in Case 1/54 *France* v *High Authority* [1954 to 1956] ECR 27).

The *Commission* replies by observing that the applicant's argument to the effect that the difficulties faced by a part of a sector of production as a result of the advanced technology and higher productivity of other undertakings may not be regarded as a "crisis" within the meaning of the Treaty is clearly a question of economic philosophy and the opposite view may be taken, having regard to the fact that certain objectives laid down in Article 3 (a), (d) and (e) *in fine* may be compromised by excessive competition between undertakings. However, it is unnecessary to settle the question since the present crisis was caused by the decline in demand and not by competition between steel producers. In this connection it should be borne in mind that the *actual* production of light sections in the fourth quarter of 1980 —

In this context the applicant states that there are large steel works equipped for a very wide range of products which are more complex and more highly finished than *concrete reinforcing bars and which burden this kind of product with an entirely useless part of the general costs.*

Such undertakings continue to defend what for them can only be a lost cause and claim from the Commission protection which nullifies the smaller undertakings' achievements with regard to productivity.

like the applicant's own production — is lower than the production quotas fixed by the Commission.

Fifth submission: infringement of Article 58 (1) and (2) of the ECSC Treaty on the ground of failure to consult the Consultative Committee or to conduct preliminary studies concerning concrete reinforcing bars.

The *applicant* complains of the fact that Decision No 2794/80/ECSC does not state that the Consultative Committee was consulted as required by Article 58 (1). That omission constitutes, according to decisions of the Court of Justice of the European Coal and Steel Community, an infringement of an essential procedural requirement within the meaning of the first paragraph of Article 33 of the ECSC Treaty, which means that the decision must be declared void (cf. judgment of 11 February 1955 in Case 4/54 *LSA* v *High Authority* [1954 to 1956] ECR 91; judgment of 21 March 1955 in Case 6/54 *Netherlands* v *High Authority* [1954 to 1956] ECR 103).

The applicant also disputes that the quotas were determined "on the basis of studies made jointly with undertakings and associations of undertakings" as required by Article 58 (2). A "study" of the market in crude steel made in conjunction with the associations in that sector — if such a study was conducted — is not the same as a study of the market in concrete reinforcing bars.

The *Commission* contends that these two complaints are without any foundation in fact, the Consultative Committee having expressed its opinion on 16 October 1980. Furthermore, pursuant to the provisions of Articles 46 and 48 of the Treaty, the Commission is required to conduct a continuous study of market and price trends. Such studies were supplemented in accordance with Article 58 by meetings held with the associations of undertakings (two meetings were held with the ISA, an association which includes the "Bresciani"). Furthermore, all the undertakings wishing to put forward their individual points of view were given a chance to do so.

Supplement to the first, second and fifth submissions.

In its application the *applicant* maintains that the breaches of Community law alleged by it amount to an irregular use of legislative measures and an infringement of the rules concerning essential procedural requirements which are intended to ensure that such measures are properly used. Consequently those breaches of Community law show that the general decision and the individual decision were adopted in pursuit of objectives different from, and to a large extent contrary to, those for which the Treaty conferred the powers in this field. It follows that the defects vitiating the general decision and the individual decision are such as to constitute *inter alia* a *misuse of powers* to the detriment of the Italian producers of concrete reinforcing bars, and thus undoubtedly to the detriment of the applicant.

C — Arguments set out in the reply and rejoinder

In its reply the *applicant* claims that the Commission in its statement of defence merely throws into relief the *distortion of the facts* which constitutes an aspect of the *misuse of powers.*

It complains, first, that the Commission's behaviour is in complete contrast with its

statement that there exists "a relationship between the measures taken concerning quantities and those taken with regard to prices: a curtailment of the supply of steel products has always been considered a condition *sine qua non* for any measures taken to support prices". In fact the Commission treated the measures concerning prices and those concerning quantities not as complementary provisions but as steps in a process of escalation, in which a new and more drastic measure was adopted as soon as the previous measure was seen to have failed. That progression consisted first of all in the *voluntary reduction of deliveries,* then the imposition of *minimum prices* followed by the *quota system.* The conduct of the Commission is thus entirely irrational.

In any event, the applicant calls in question the argument to the effect that the relation between prices and production levels necessarily leads to the benefits claimed. In reality, in order to avoid the risk of reducing the total income of the producers, the measures concerning prices must be accompanied not by binding measures reducing supplies but on the contrary by steps intended to *increase demand* through a search for new commercial outlets. By adopting on the contrary the more stringent course of imposing quotas, the Commission made no attempt to encourage new outlets, merely relying on the policy against dumping which was not in fact adopted in the *steel* sector until 1980.

Those considerations confirm the irrational and ineffective nature of the contested provision, which requires sacrifices which are unnecessary and inappropriate in relation to the stated objectives. They demonstrate a breach of the *principle of proportionality* and constitute one of the aspects of the *misuse of powers* which has already been complained of.

Another aspect (considered in the fourth submission of the application) is the fact that the objective requirement of a manifest crisis was not satisfied. Here again the Commission arrived at its conclusions through a *distortion of the facts,* attributing to all products situations which exist, at most, only for some of them.

The "request for the Council's assent" contains the evidence which, according to the Commission, provides the strongest indication of the crisis. This is the *drop in the rates of utilization of plant.* Such a drop is established solely with reference to crude steel (page 4). Page 7 of the request for the Council's assent includes a table of the quantities by which production exceeded the delivery programmes. This shows that in the case of long products (which include concrete reinforcing bars) all the countries in the Community (with the exception of the United Kingdom, which was affected by a long strike) recorded in the first two quarters of 1980 considerable overstepping of the programmes of voluntary reductions in deliveries. It is thus clear that the production of long products was increasing in order to meet a demand or forecast demand which was also increasing.

In order to justify that contradiction, the existence of which is beyond dispute, the Commission puts forward its theory of the "steel industry as a whole".

That theory is not well founded either in *law or in logic.* It is also entirely contrary to *common sense.*

With regard to law, Annex I to the ECSC Treaty distinguishes under the heading "Iron and Steel" five sectors, each containing individual products or categories of products (20 in all). Each of these products has a market of its own, with its own developments, which are not only not necessarily the same as those on the market for other products but may indeed be opposite since certain of these sectors are in mutual *competition:* for example it is well known that the supply of housing is in competition with that of motor cars because of the fact that families must usually choose one or the other. That is why a strong demand for cars benefits producers of flat, rolled products at the expense of producers of concrete reinforcing bars and vice versa.

It cannot be disputed that a cut in production in the concrete reinforcing bars sector does not have any effect on the rolled products sector and has *negative effects* as regards a crisis consisting of over-production of crude steel in so far as it causes a decline in the outlets for the latter product.

The distortion of the facts is even more serious when instead of the general framework, the particular situation of the applicant is considered. The Commission refers to a possible ground of *inadmissibility* of the application because of the fact that the applicant's production was lower than the quota allotted to it so that it has no legal interest in challenging the provision. In order to meet its contractual undertakings entered into *before October 1980* the applicant had to submit to the Commission a request for an increase in its quota under Article 14 of Decision No 2794/80/ECSC. The Commission only decided on *18 December 1980* to accede to its request, so that the increase could not be used before the end of the last quarter of 1980. The applicant had to resort to special operations (purchases from other firms; purchases on the market in concrete reinforcing bars) in order to meet the above-mentioned undertakings.

With regard to the *second submission,* the applicant claims that Article 58 (2) of the ECSC Treaty in fact gives priority to the requirement of *fairness* over the principles laid down in Articles 2, 3 and 4 by requiring the High Authority to determine the quotas *on an equitable basis.*

The production of an undertaking which, like the applicant, accepted a voluntary reduction in deliveries and complied with the minimum prices *cannot be compared* with the production of an undertaking which on the contrary made unrestricted deliveries and perhaps infringed the prices laid down. The quantities produced in the first case clearly do not provide any evidence of a normal situation but represent on the contrary production which is *reduced* for legal, rather than economic, reasons. To take such quantities and treat them in the same way as those of undertakings which did not adhere to the programme of

voluntary restrictions and which were perhaps fined for infringements of the minimum prices is *not an equitable procedure.*

In order to prove that it complied with the voluntary reduction of deliveries the applicant sets out on page 14 of its reply a table compiled by reference to quarters.

The applicant then challenges the Commission's statement that it is impossible to make the lawfulness of legislation dependent on the existence or otherwise of measures of a completely different nature, prior or subsequent, or even on factual circumstances completely unconnected with the measures taken by the Community.

By that statement the Commission denies the very existence of the principle of *proportionality.* According to that principle only intervention by the authorities limiting the rights of undertakings or States which is appropriate to the importance of the desired result is lawful. If that result cannot be attained because the binding measure is ineffective in relation to the objective pursued the measure is likewise improper. That is why consideration of the suitability of the measure for the attainment of its objective constitutes an indispensable condition in determining whether the limitation imposed on the rights of the undertaking is in proportion to the benefit which the measure seeks to achieve.

Another reason why the contested measures are unsuited to the attainment of their objective, and therefore disproportionate to the restriction imposed and the damage caused, consists in the fact that quotas are also granted to undertakings which no longer fulfil the technical and legal conditions for production. To this is added the fact that those who are no longer able to use the quotas are able to transfer them.

That constitutes another distortion which is of benefit to firms which acquire such quotas and thereby increase their own opportunities on the market, which gives rise to an unjustified alteration in free competition.

Finally, the applicant claims that the *fifth submission* in its application is to a large extent confirmed by the facts set out by the Commission and in the request for the Council's assent.

In fact the Commission has declared in its statement of defence that it initiated the "studies" within the meaning of Article 58 (2) of the Treaty *a few days before* the measure was officially announced, when all parts of it were complete. According to the Commission, these studies are merely the "continuous studies" which it conducts in accordance with Articles 46 and 48 of the Treaty, supplemented by meetings with an association.

It is for the Court to rule whether the studies provided for in Article 58 may be absorbed by those referred to in Articles 46 and 48. The question is not only one of the utmost relevance but also concerns important matters of a *constitutional* nature. In fact the authors of the ECSC Treaty intended that binding or restrictive measures should arise from a study, carried out in conjunction with

the persons concerned, of the situation which the measure contemplated was intended to rectify.

In its rejoinder the *Commission*, before considering the arguments advanced by the applicant in its reply, provides a summary of the present situation of the steel market and the effects of the quota system.

It states in particular that with regard to finished products the introduction of the quota system brought about, with a few exceptions, an *increase* in prices of between DM 50 to 100 per tonne. It is interesting to note that the output of products in Group IV — the only products manufactured by the applicant — was 11.8% less than the production quota in the Community of the Nine and 7.5% less in Italy (fourth quarter of 1980 compared with the fourth quarter of 1979).

The introduction of the quota system also had a positive effect on the prices of concrete reinforcing bars at first. Subsequently, owing to the winter season and the crisis in the construction industry, demand become so weak that prices again fell.

The Commission was thus compelled to reduce the production quotas for the first quarter of 1981.

With regard to the case in question, the Commission considers first of all the arguments concerning the *alleged breach of the principle of proportionality.*

The Commission refers to the applicant's analysis of the measures adopted by the Commission to counter the crisis and remarks that the applicant forgets, on the one hand, that the voluntary undertakings to reduce production were accompanied by undertakings as to prices (guide prices), and on the other, that the undertakings to reduce production remained in force when the binding minimum prices were introduced.

With regard to the applicant's suggestion that the Commission should have followed an entirely different policy and endeavoured to stimulate an increase in the demand for steel products by searching for new commercial outlets, the Commission observes that such an undertaking was beyond its power and perhaps beyong the power of any public authority as the development of the world market is extremely difficult to influence.

The Commission also challenges the applicant's argument to the effect that the decision to introduce quotas is further vitiated by the fact that quotas were allocated "to undertakings which no longer fulfil the necessary technical and legal conditions for production" and the fact that those quotas might be transferred. In fact Decision No 2794/80/ECSC was addressed exclusively to "undertakings in the steel industry", that is to say undertakings which are in production. Furthermore, for the purposes of the quotas system only the total volume of production counts and any transfers between undertakings, which do not affect that volume, are irrelevant and may even contribute to the attainment of the optimum balance of production.

Observing that these arguments are relied upon by the applicant in order to prove a breach of the principle of proportionality, the Commission repeats its fundamental reservations on this point and submits that the alleged defect in the general decision has not been proved. It challenges the applicant's assertion that those fundamental reservations lead to a denial of the principle of proportionality itself. Compliance with the principle of

proportionality can only be tested in relation to a single legal measure or, at most, a number of interdependent legal measures concerning the same subject-matter (for example, a common organization of the market in a given product). Any other view would have the effect of paralysing the legislative organs of the Communities since the validity of any measure might then be challenged in very diverse fields (external relations, aid, social policy, customs duties, processing arrangements, monetary policy and conjunctural policy) and even on the basis of facts which occurred after the measure in question. That argument is paradoxical: the Commission hopes that the Court of Justice will clarify its case-law in this field and define the limits to its jurisdiction regarding the principle of proportionality. Those limits may furthermore be discerned through an analysis of the previous decisions on this point. In this connection the Commission cites the 21 judgments in which the Court has mentioned the principle of proportionality. It concludes that in all of those cases — and in particular in the rare cases in which the Court has declared a Community measure invalid — the review carried out by the Court was much more restricted than that claimed by the applicant in relation to the quota system. Applying that case-law, which has hitherto remained constant, to the present proceedings, the Court merely requires to give a ruling on the point whether the system of production quotas as such, in the form established by Decision No 2794/80/ECSC, imposes upon the undertakings burdens which are excessive and unjustified in relation to the objectives pursued.

The Commission then proceeds to consider the question of *misuse of powers,* first of all with regard to the *general decision.*

In this connection the Commission disputes that it has distorted the facts. It points out that in section I (b) on page 4 of the request for the Council's assent it reproduced the results of an inquiry concerning the production programmes for crude steel: those results are preceded (pages 1 to 3) by a series of data concerning the decline in demand and the situation with regard to orders, and are followed by an analysis of price trends and production costs (page 5) and the consequences for the financial situation of the undertakings. The Commission points out that in its statement of defence it supplemented the general information given in the request for the Council's assent by adding to it data concerning the situation of producers of concrete reinforcing bars. The applicant says nothing of all this.

With regard to the applicant's claim to have proved the increase in demand and the inexistence of the crisis, the Commission replies that the present situation on the market in concrete reinforcing bars, which has already been described, shows the accuracy of the Commission's analysis.

The Commission adds that it has never adhered to the argument relating to the "steel industry as a whole" and is not obliged to defend it.

With regard to the *individual decision,* considered in relation to the complaint of *misuse of powers,* the Commission admits that the decision to increase the quotas for the fourth quarter of 1980 was notified to the applicant on 18 December 1980, that is to say too late for the latter to take advantage of it. At

the applicant's request the Commission then allowed the increase granted to be carried forward to the first quarter of 1981. The Commission's suggestion that the application might be inadmissible is therefore unfounded.

The Commission then disputes that it committed a breach of the *principle of fairness* laid down in Article 58 (2) of the Treaty. It adheres to the argument set out in its statement of defence to the effect that it would be contrary to general principles of law to penalize firms which did not give or failed to respect voluntary undertakings to reduce production. On the other hand, despite the figures quoted in the reply the Commission contends that the applicant frequently exceeded the delivery programmes (cf. Annex I to the rejoinder), in particular in the months which were used as the reference period for the quotas for the fourth quarter of 1980 (cf. page 11 of the defence).

Finally, the Commission disputes the soundness of the applicant's argument to the effect that the Commission has "admitted" that, instead of carrying out the studies provided for in Article 58 (2), it confined itself to the continuous studies carried out under Articles 46 and 48 of the ECSC Treaty. In fact amongst the duties assigned to the Commission is that of obtaining the information it requires to carry out its tasks. The results of that continuous activity constitute the background against which Community policy is determined; that activity is progressively supplemented by *ad hoc* studies in accordance with the needs of the occasion and the requirements laid down in regulations. In this case such *ad hoc* studies necessitated meetings in which *all* the trade organizations concerned participated. Of those meetings only those held with the ISA, to which the producers in Brescia belong, were mentioned in the statement of defence.

The applicant is not a member of that association and accordingly was unable to express its views through it. It could have requested an individual meeting, but did not do so.

Therefore the problem of the inclusion of the studies provided for in Article 58 (2) in those provided for in Articles 46 and 48 does not arise.

IV — Oral procedure

At the sitting on 15 September 1981 oral argument was presented by Giuseppe Celona, for the applicant, and Alberto Prozzillo, for the Commission.

The Commission produced a table showing the applicant's production in relation to its quotas during the period from October 1980 to June 1981 and the Court laid down a time-limit for the applicant to reply in writing on this matter. The applicant submitted its reply on 28 September 1981. The Commission sent its comments on 20 October 1981.

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

Decision

1 By an application lodged at the Court Registry on 12 December 1980 Ferriera Padana SpA, a manufacturer of concrete reinforcing bars, 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, as amended on 18 November 1980, fixing the applicant's production quotas for the fourth quarter of 1980 pursuant to Decision No 2794/80/ECSC of the Commission 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 contends that the contested decision is unlawful because it is in application of the general decision, Decision No 2794/80/ECSC, which it considers unlawful on the ground that it is in breach of the general rules of Community law and infringes Articles 58 (1) and (2) of the ECSC Treaty.

The infringement of essential procedural requirements

3 The applicant invokes, on the one hand, the failure to consult the Consultative Committee as required by Article 58 (1) of the ECSC Treaty and, on the other hand, the failure to comply with the requirement laid down by Article 58 (2) that studies be conducted in conjunction with undertakings and associations. It argues in this connection that the preamble to Decision No 2794/80/ECSC does not mention that the consultation of the Consultative Committee took place, and that studies were conducted solely in conjunction with the association of producers of crude steel, to the exclusion of manufacturers of concrete reinforcing bars. Furthermore, the time within which those studies were conducted shows that they in fact related to a *fait accompli.*

4 Those submissions cannot be upheld. In the first place, the assertion that the consultation of the Consultative Committee did not take place is incorrect since the contested decision expressly states that that consultation took place

and the Commission has explained, without being contradicted, that the Consultative Committee delivered its opinion on 16 October 1980.

5 Secondly, 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 undertaking, 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.

6 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 intended 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. Although the applicant is not a member of that association it could have put forward its point of view individually if it had so requested. The Commission thus discharged its duty to conduct studies jointly with undertakings and associations of undertakings.

The infringement of Article 58 (1) of the ECSC Treaty

7 The applicant considers that the conditions required by Article 58 (1) of the ECSC Treaty, namely the existence of a decline in demand constituting a manifest crisis and the insufficiency of the means of action provided for in Article 57 to deal with it, were not fulfilled as regards concrete reinforcing bars and accordingly the quota system established in that sector was in no way justified.

8 With regard to the decline in demand, the applicant disputes that concrete reinforcing bars were affected. Referring to a document of July 1980 in which the Commission described the decline in demand from the United States and Iranian markets, the applicant contends that concrete reinforcing bars are not concerned with the first market by reason of the cost of transport, whilst the fall recorded on the second required a search for alternative markets rather than a cut in production. The fall in the prices of concrete reinforcing bars mentioned by the Commission was caused by a reduction in the price of the raw material and an increase in competition. The Commission's argument that the price of ferrous scrap, the raw material for concrete reinforcing bars, is determined by the price of the finished product is not decisive since scrap constitutes the raw material for a whole range of finished or semi-finished products. Furthermore, in its request for the Council's assent, the Commission stated that production of long products (which include concrete reinforcing bars) was appreciably exceeding the voluntary delivery programmes. According to the applicant, it is clear that that was to meet an increase in demand or forecasts of demand.

9 Those submissions cannot be upheld. It is clear from the documents before the Court that when the quota system was introduced there was, owing to the flagging economy, a sharp decline in demand in all sectors using steel, including the construction sector which constitutes the outlet for the products in question. That decline in demand, coupled with the existence of considerable stocks built up through over-production in the past, led to a fall in production and in prices. That circumstance is confirmed by the fact that the applicant's production for the first ten months of 1980 amounted to 81 000 tonnes whilst its production capacity is 230 400 tonnes. Furthermore, the Commission is not bound by the terms of Article 58 to establish in its decision a finding that there was a manifest crisis in every sector of the steel industry if there is manifestly a general crisis, as there was in this case.

10 The applicant also complains that the Commission failed to have recourse to the means of action provided for in Article 57 of the ECSC Treaty which would have been sufficient to deal with the crisis. It should have requested the governments to increase the consumption of concrete reinforcing bars by the public services. It should also have had recourse to the fixing of minimum prices, which constitutes the specific remedy against the fall in prices.

11 In the event of a manifest crisis Article 58 of the ECSC Treaty confers upon the Commission a wide power of appraisal which it exercised in adopting Decision No 2794/80/ECSC. The Commission has set out the reasons for which it considered that the means of action provided for in Article 57 were not sufficient to deal with the crisis. It considered that it could not take steps to influence general consumption in the present economic situation. The steel undertakings, which had increasingly failed to fulfil their individual delivery commitments, refused to commit themselves for the last quarter of 1980. The Commission accordingly concluded that the indirect means of action at its disposal had proved insufficient and that it was necessary to intervene directly in order to restore the balance between supply and demand. In arriving at that conclusion the Commission did not exceed the limits to its power of appraisal and the submission must therefore be rejected.

Infringement of Article 58 (2) of the ECSC Treaty

12 The applicant alleges that the Commission failed to determine the quotas on an equitable basis, taking account of the principles set out in Articles 2, 3 and 4 of the ECSC Treaty.

13 It claims in the first place, that undertakings which had complied with the voluntary restrictions on deliveries and observed the minimum prices were placed at a disadvantage.

14 But the applicant is amongst the undertakings which failed to observe their commitments regarding the limitation of deliveries. It cannot therefore complain of the excessively favourable treatment accorded such undertakings. In fact its quota for the period in dispute was calculated on the basis of two months, October 1978 and November 1979, situated in quarters when the applicant exceeded its voluntary delivery programme by 13% and 37% respectively, and on the basis of a third month, December 1977, situated in a quarter when the applicant's production was 7% below the voluntary delivery programme.

15 Secondly, the applicant complains of the fact that Decision No 2794/80/ECSC, which entered into force on the date of its publication in the Official

Journal of the European Communities, namely 31 October 1980, provides for production quotas as from 1 October 1980; the applicant also criticizes the justification advanced by the Commission for the retroactive nature of that decision.

16 With regard to the first point, it should be pointed out, first, that 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, and secondly, that, 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.

17 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.

18 The applicant claims, with regard to that justification for the retroactive nature of the decision, that it kept its production at the level of the preceding months and that it is unfair that it should have to bear the consequences of the conduct of others.

19 This complaint cannot be upheld. Although certain undertakings did not increase their production in October in anticipation of the introduction of quotas for the months to follow, that fact cannot entitle them to claim special treatment.

20 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.

21 Thirdly, the applicant complains that the Commission failed to take account of the principles set out in Articles 2, 3 and 4 of the ECSC Treaty. That submission has not been argued with sufficient specification to enable the Court to give a ruling on it. Furthermore it should be recalled that the Court has already stated that it is not certain that all the objectives of the Treaty can be simultaneously pursued in their entirety and in all circumstances; it is the task of the Commission to effect a permanent compromise between those different objectives.

Breach of the principle of proportionality

22 The applicant complains that the Commission failed to take the measures against imports 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.

23 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.

24 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.

25 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.

26 The applicant further maintains that the producers of crude steel, who were obliged to reduce their production, derived no benefit from a simultaneous reduction in demand from non-integrated steel works. The Commission, which failed to take account of the different position of the latter undertakings, should not have accorded them the same treatment as integrated undertakings.

27 It must be pointed out that even though undertakings like the applicant have not all undergone a crisis on the same scale as integrated undertakings, they also have been obliged to reduce their production because of the fall in demand. Once the Commission had decided to establish a general system of quotas it could not distinguish between integrated and non-integrated undertakings if it wished to achieve its objective of reducing production.

28 The applicant also criticizes the fact that production destined for export to non-member countries was included in the quotas, which weakened the Community undertakings in the face of the fierce competition which prevails on such markets.

29 The applicant has not, however, adduced any evidence of loss of markets or shown that it had to refuse orders for exports to non-member countries. Furthermore, the Commission has emphasized that it was prepared to grant an increase in the quotas in accordance with Article 14 of Decision No 2794/80/ECSC if a producer was prevented from increasing the volume of its exports to non-member countries. This complaint accordingly cannot be upheld.

The absence of a manifest crisis and the irregular application of the principle of solidarity

30 The applicant maintains that the difficulties faced by a part of the sector of production as a result of the advanced technology and higher productivity of other undertakings may not be regarded as a manifest crisis within the meaning of the Treaty. It says that if there was a low rate of utilization of plant it was due to an unreasonable expansion related to public aids; moreover, a crisis is by its very nature temporary, whilst the Commission has been preoccupied for five years in dealing with the difficulties faced by the European steel industry. Finally, the applicant submits that undertakings which have modernized may not be required to sacrifice the benefit of such modernization because other undertakings have failed to do likewise.

31 The complaints submitted by the applicant amount to a claim that the small and more efficient undertakings should have been exempted from the quota system. But if the Commission had not included the small and medium-scale undertakings, which, according to the applicant, meet 33% of the requirements of the common market, any quota system would have been ineffective.

32 In this connection it must be recalled that in its judgment of 18 March 1980 in the "concrete reinforcing bars" case *(Valsabbia)* [1980] ECR 907, at paragraph 80) the Court held that:

"... by providing for intervention by means of coercive action in certain defined circumstances the Treaty derogates from the normal rules governing the working of the common market, which are based on the principle of the market economy."

Such considerations apply equally in this case.

33 With regard to the possible duration of a manifest crisis within the meaning of Article 58, it may be said that, even though the steel sector has experienced obvious difficulties, the applicant's observations are irrelevant since it was only by its decision of 19 October 1980, not five years earlier, that the Commission established the existence of a manifest crisis.

34 Having regard to all the foregoing considerations the application must be dismissed.

Costs

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

36 Since the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

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