means that the link established by Article 58 (1) between the introduction of production quotas and the imposition of restrictions on imports of competing products cannot be in any way automatic.

5. Article 58 (2) of the ECSC Treaty does not restrict the Commission's freedom to choose the basis upon which the quotas may be equitably determined in a given economic situation. There are no reasonable grounds for denying that the Commission's choice of the criterion based on undertakings' actual production may constitute an "equitable basis" within the meaning of Article 58 (2). Indeed that criterion, as adjusted by Article 4 of Decision No 2794/80, constitutes, in the first place, an objective basis of assessment which avoids the uncertainties inherent in determining a factor which is partly conjectural, such as production capacity; secondly, it enables total production to be reduced without altering the positions of the undertakings on the market as between each other.

6. Under the scheme of Decision No 2794/80 the aim of paragraphs (3) and (4) of Article 4 thereof is to help some undertakings by rectifying the results obtained by taking into account the reference production figures defined by Article 4 (1) and (2). The aim of those provisions is, more precisely, to adapt the reference production figures of some undertakings, having regard to their participation during the period under consideration in voluntary reduction programmes and to the restrictions placed upon them as a result of the control exercised by the Commission over new investment.

In Joined Cases 39, 43, 85 and 88/81

HALYVOURGIKI INC., a company incorporated under the laws of Greece having its registered office in Athens (Cases 39 and 85/81),

and

HELLENIKI HALYVOURGIA SA, a company incorporated under the laws of Greece having its registered office at Piraeus and its headquarters in Athens (Cases 43 and 88/81),

represented by André Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of André Elvinger, 15 Côte d'Eich,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Michel van Ackere, acting as Agent, assisted by Frank Benyon, a member of

its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATIONS for a declaration that individual decisions by which the Commission fixed the applicants' production quotas for crude steel and rolled products for the first quarter of 1981 are void,

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: P. VerLoren van Themaat
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

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

I — Summary of the facts and the course of the procedure

In the third quarter of 1980 demand for steel slumped both on the Community market and on the world market, total orders falling suddenly by 20% compared with the third quarter of 1979, a quarter in which orders were already at a low level. Orders from the Community market fell by 25%.

The utilization rate of Community steel undertakings, which was approximately 70% in the second quarter of 1980, fell to 58% in September, the lowest rate

ever recorded in the Community. The undertakings' forecasts indicated that the rate would fall again in the fourth quarter to below 55%. The large variation in the decline in production, from one undertaking or region to another, caused economic and social imbalance between undertakings and regions.

Between January and September 1980 the fall in demand resulted in a slump in steel prices in the Community. They fell by 13%, whilst production costs increased by 5% in the same period.

The Commission of the European Communities therefore considered that the European iron and steel industry was in a situation in which the attainment of the objectives set out in Article 3 of the ECSC Treaty, in particular the modernization and restructuring of production, the improvement of workers' conditions and the securing of orderly supplies to the common market, was seriously jeopardized and that the Community was confronted with a period of manifest crisis within the meaning of Article 58 of the ECSC Treaty.

The indirect courses of action available to the Commission proved to be ineffective or insufficient and the Commission considered it necessary to intervene directly, by means of binding measures relating to production, in order to restore the balance between supply and demand. By Decision No 2794/80 of 31 October 1980 (Official Journal L 291, p. 1) it established a system of production quotas for steel manufacturers in the Community.

Article 2 of that decision provides that the Commission is to fix quarterly production quotas for crude steel and for four groups of rolled products: hot-rolled wide and narrow strip; reversing mill plate and wide flats; heavy sections (sheet piling, wide flanged beams, other beams and other sections, permanent way material) and light sections (coiled wire rod, concrete reinforcing bars and other merchant bars).

According to Article 3 (1) of the decision, the quarterly production quotas are to be fixed by the Commission for each undertaking on the basis of the reference production figures of that undertaking and by application of abatement rates to those reference production figures.

Article 4 of the decision lays down the method of determining the quarterly reference production figures for each undertaking for both rolled products and crude steel.

(a) The general rules are fixed by paragraphs (1) and (2) as follows:

(1) For each month of the relevant quarter, reference is to 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, are to constitute the reference period.

(2) The reference production figures are to 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.

(b) Paragraphs (3), (4) and (5) of Article 4 describe the particular cases in which the reference production figures, and consequently the quotas, are to be increased.

According to Article 4 (3), the Commission must, while taking account of the criteria given, increase the reference production figures of undertakings which, during the period from July 1977 to June 1980, had an average rate of utilization of production facilities of 10 percentage points or more below the average rate of utilization of the same facilities of the other undertakings of the Community during the years 1977, 1978 and 1979.

Article 4 (4) provides that where, further to an investment programme duly reported and not the subject of an unfavourable opinion, the undertaking activates a new plant after 1 July 1980, the Commission shall, on certain conditions and within specific limits, adapt the reference production of that undertaking.

Article 4 (5) provides for an increase in an undertaking's reference production figures to take account of restructuring.

The rates of abatement for rolled products, having been fixed for the fourth quarter of 1980 by Article 5 (1) of Decision No 2794/80, were fixed for the first quarter of 1981 by Article 1 of Commission Decision No 3381/80/ECSC of 23 December 1980 (Official Journal L 355, p. 37) as follows:

Group I	Hot rolled wide and narrow strip	27.73 %
Group II	Reversing mill plate and wide flats	22.76 %
Group III	Heavy sections (sheet piling, wide flanged beams, other beams and other sections, permanent way material)	19.59 %
Group IV	Light sections (coiled wire rod, concrete reinforcing bars and other merchant bars)	27.64 %

Article 5 (2) of Decision No 2794/80 provides that the rate of abatement for crude steel which the Commission communicates to undertakings 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.

Under Article 14 of Decision No 2794/80, where the production or delivery restrictions imposed by the decision or its implementing measures entail exceptional difficulties for an undertaking, it may refer the matter to the Commission. The Commission must examine the case without delay in the light of the objectives of the decision. After examining the case the Commission must, where appropriate, adapt the provisions of the decision.

Article 2 of the Act of 24 May 1979 concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties (Official Journal L 291, p. 17, hereinafter referred to as "the Act of Accession") provides that "from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions of the Communities shall be binding on the Hellenic Republic and shall apply in that State under the conditions laid down in those Treaties and in this Act".

On the basis of the Act of Accession, in particular Article 2 thereof, and Article 3

of Decision No 2794/80 and Decision No 3381/80, the Commission informed the Greek iron and steel undertakings in January and February 1981 of their reference production figures and production quotas resulting from the application of the abatement rates for the first quarter of 1981. Those quotas were based on reference production figures calculated in accordance with Article 4 (1) and (2) of Decision No 2794/80.

Thus, by telex messages of 19 January 1981, the Commission communicated to Halyvourgiki Inc., Metallurgiki Halyps SA and Helleniki Halyvourgia SA their reference production figures and production quotas for the first quarter of 1981 as fixed by individual decisions adopted respectively on 19 January, 3 February and 20 January 1981 and notified to those concerned on 3 February.

The figures thus fixed were as follows:

(a) Halyvourgiki Inc.

	Reference production				Reduction	Quota 1st Quarter 1981
	January 1980	February 1980	March 1979	Total		
	tonnes	tonnes	tonnes	tonnes	%	tonnes
Rolled products						
Category I	24 433	31 681	35 367	91 484	27.73	66 113
Category II	7 213	5 664	5 436	18 313	22.76	14 145
Category III	—	—	—	—	—	—
Category IV	30 713	32 250	30 567	93 530	27.64	67 678
Total I to IV	62 359	69 595	71 370	203 324		147 936
Crude steel	34 323	37 908	31 156	103 387	27.24	75 224

(b) Helleniki Halyvourgia SA

	Reference production				Reduction	Quota 1st Quarter 1981
	January 1980	February 1980	March 1979	Total		
	tonnes	tonnes	tonnes	tonnes	%	tonnes
Rolled products						
Category I	—	—	—	—	—	—
Category II	—	—	—	—	—	—
Category III	—	—	—	—	—	—
Category IV	11 196	10 476	10 625	32 297	27.64	23 370
Total I to IV	11 196	10 476	10 625	32 297		23 370
Crude steel	11 577	12 225	12 530	36 332	27.64	26 289

On 19 and 20 February 1981 five Greek steel undertakings, including Halyvourgiki Inc. (Case 39/81), Metallurgiki Halyps SA (Case 41/81) and Helleniki Halyvourgia SA (Case 43/81), brought actions under Article 33 of the ECSC Treaty for the annulment of the Commission decisions fixing the production quotas for the first quarter of 1981; they also applied under Article 39 of the ECSC Treaty and Article 83 of the Rules of Procedure for the operation of those decisions to be suspended.

By an order dated 13 May 1981 the Court decided to join the five applications registered under Nos 39/81, 40/81, 41/81, 42/81 and 43/81 for the purposes of the procedure and the judgment.

Following the withdrawal of their applications by the two undertakings in Cases 40/81 and 42/81, the Court, by an order dated 16 September 1981, removed those cases from the register and ordered each of the undertakings to bear one fifth of the costs incurred until the date of withdrawal, including the costs of the proceedings for the adoption of interim measures.

The written procedure followed a normal course in Cases 39/81 (Halyvourgiki Inc), 41/81 (Metallurgiki Halyps SA) and 43/81 (Halyvourgia SA).

On 20 March 1981, after four of the five applicant undertakings had withdrawn their applications for the adoption of interim measures, the President of the Court made an order ([1981] ECR 841) in Case 41/81 R (Metallurgiki Halyps SA).

As a result of the observations submitted by the Greek undertakings concerned and, in one case, information obtained *in situ* by its own inspectors, the Commission had adopted decisions on 13 March 1981 amending its original decisions on production quotas for the first quarter of 1981.

(a) In particular, pursuant *inter alia* to Article 14 and Article 5 (2) of Decision No 2794/80, the decision of 13 March 1981 made the following amendments to the production quotas of Halyvourgiki Inc. for the first quarter of 1981:

	Quotas fixed by decision of 19 January 1981 (in tonnes)	Quotas fixed by decision of 13 March 1981 (in tonnes)
Rolled Products		
Category I	66 113	91 481
Category II	14 145	—
Category III	—	—
Category IV	67 678	86 275
Crude steel	75 224	187 775

(b) In the case of Helleniki Halyvourgia SA, pursuant to Article 14 of Decision No 2794/80 the decision of 13 March 1981 made the following amendments to the original decision:

	Quotas fixed by decision of 20 January 1981 (in tonnes)	Quotas fixed by decision of 13 March 1981 (in tonnes)
Rolled Products		
Category IV	23 370	32 297
Crude steel	26 289	36 322

On 13 April 1981 Halyvourgiki Inc., Helleniki Halyvourgia SA and two other Greek steel undertakings, brought actions for the annulment of the Commission's amending decisions of 13 March.

By an order dated 13 May 1981 the Court decided to join the applications registered under Nos 85/81, 86/81, 87/81 and 88/81 for the purposes of the procedure and the judgment.

By an order dated 16 September 1981 the Court removed Cases 86/81 and 87/81 from the register following the withdrawal of the applications by two undertakings, each of which was ordered to bear one quarter of the costs incurred until the date of withdrawal.

The written procedure in Cases 85/81 (Halyvourgiki Inc.) and 88/81 (Helleniki Halyvourgia SA) followed a normal course. The applicants decided not to lodge a reply.

On 15 May 1981 an application was lodged under No 121/81 by Metallurgiki Halyps SA against a Commission decision of 14 April amending its production quotas as fixed by a decision of 3 February.

The written procedure in that case followed a normal course. The applicant decided not to lodge a reply.

By an order of 30 September 1981 the Court decided to join Cases 39, 41, 43, 85, 88 and 121/81 for the purposes of the oral procedure and the judgment.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure in those cases without any preparatory inquiry.

At the hearing on 10 November 1981 counsel for Metallurgiki Halyps SA, Ernest Arendt, of the Luxembourg Bar, asked the Court to disjoin Cases 41 and 121/81 from the other joined cases and to postpone the oral procedure in those two cases; alternatively, he proposed to withdraw the applications. After hearing the Commission's observations and the views of the Advocate General and deliberating on the matter, the Court decided at the hearing that, although no reason had been adduced which might justify the postponement or disjoinder of Cases 41 and 121/81, Metallurgiki Halyps SA should be allowed to withdraw its applications.

That decision became effective by an order of the Court dated 10 February 1981 ordering Cases 41 and 121/81 to be removed from the register and reserving costs.

At the hearing on 10 November 1981 oral argument was presented by Mr Elvinger for Halyvourgiki Inc. and Helleniki Halyvourgia SA and by Mr van Ackere for the Commission.

By order of 25 November 1981 the Court ordered the applicant Metallurgiki Halyps SA to bear its own costs in Cases 41 and 121/81 and one-third of the costs incurred by the Commission, prior to the withdrawal of the applications, in Joined

Cases 39, 41, 43, 85, 88 and 121/81. By the same order the parties in Case 41/81 R were ordered to bear their own costs, the costs having previously been reserved by the order of the President of 20 March 1981.

The Advocate General delivered his opinion at the sitting on 12 January 1982.

II — Conclusions of the parties

The *applicants* claim that the Court should:

(a) *In Cases 39 and 43/81:*

Declare void the decisions of 19 and 20 January 1981 whereby the Commission fixed steel production quotas for each of the applicants pursuant to Decisions Nos 2794/80/ECSC and 3381/80/ECSC; and

Order the Commission to pay the costs.

(b) *In Cases 85 and 88/81:*

Formally take note that the applicants maintain the actions which they commenced against the Commission's decisions of 19 and 20 January 1981;

Declare void the amended terms of those decisions as set forth in the Commission's letters of 13 March 1981; and

Order the Commission to pay the costs.

In all the cases the *Commission* contends that the Court should:

Dismiss the applications as unfounded; and

Order the applicants to pay the costs.

III — Submissions and arguments of the parties

In support of their applications for a declaration that the individual decisions concerning them are void, the *applicants* contend that the general decisions on which they are based, Decisions Nos 2794/80 and 3381/80, are, in the first place, not applicable to Greek undertakings or at any rate void as far as they are concerned and, secondly, vitiated by illegality owing to the infringement of an essential procedural requirement, the failure to give an adequate statement of reasons and the infringement of the ECSC Treaty, in particular Articles 58 and 74 thereof.

The *Commission* considers that by virtue of the Act of Accession Decisions Nos 2794/80 and 3381/80 apply to Greek steel undertakings and are entirely valid as against them; moreover, they comply with the ECSC Treaty and are properly reasoned.

A — The applicability of Decisions Nos 2794/80 and 3381/80 to Greek steel undertakings

The *applicants* consider that Decisions Nos 2794/80 and 3381/80 are not applicable to them or in any event void as against them.

(a) Decisions Nos 2794/80 and 3381/80 are not measures enacted by the institutions of the Community as enlarged by the entry of Greece because they were adopted before 1 January 1981, the date on which accession took effect.

Nor were they signed or ratified under the documents concerning accession, since they were subsequent to those

documents; therefore they could not be the subject either of transitional measures pursuant to Article 9 of the Act of Accession, or of the adaptations provided for in Articles 21 and 22 thereof, as acts adopted by the institutions.

It is true that Article 2 of the Act of Accession provides that the acts adopted by the institutions of the Communities are to be binding on the Hellenic Republic "from the date of accession"; the principle of the applicability of Community legislation is in no way contested by the applicants. However, that principle does not apply to future legislation and, according to Article 2 of the Act of Accession, is to be put into effect only "under the conditions laid down ... in this Act". In the absence of any express provision to that effect, Greece cannot be deemed to have agreed by treaty to future acts which were unknown and wholly undetermined at the time when the Treaty was signed and which were to be adopted subsequently by institutions in which Greece was not represented and without any involvement on its part.

The surrender of sovereignty involved in accession to the Treaty is inconceivable without the participation of the new Member State in the Community institutions; in order for Greece to be bound and to agree to be bound by provisions which are not dealt with in the Treaty of Accession or in measures adopted by institutions truly "enlarged" through its participation, the Treaty of Accession would have had to contain an express and unequivocal provision establishing such an indeterminate and unlimited surrender of sovereignty.

Article 9 of the Act of Accession, which provides for transitional measures in relation to the application of acts adopted by the institutions, does not mention future acts any more than does Article 2.

The "Community patrimony" ["acquis communautaire"] consists of those treaties and acts of the institutions existing at the date of the Treaty of Accession, as adapted by that Treaty.

(b) It is true that Article 146 of the Act of Accession envisages the entry into force from the date of accession of certain "adaptations" to the acts of the Community institutions not included in that Act and made by the institutions before accession; however, that provision has in view adaptations to the acts and not the acts themselves, and the adaptations are intended only to "bring those acts into line" with the provisions of the Act of Accession. The "acts of the institutions" in question are clearly acts which are already known and in force and which could not be adapted under Articles 21 and 22 of the Act of Accession owing to the great number of regulations; although it was only a question of adaptations and not of new acts, those adaptations necessarily had to be effected without the involvement of the new Member State and without its being represented within the Community institutions.

Article 146 of the Act of Accession is obviously restrictive in nature: it is intended to enable the Community institutions not yet "enlarged by the entry of Greece" to adapt the measures adopted by the institutions; it does not allow the institutions not yet enlarged to adopt new measures.

If, for the sake of argument, it is assumed that Article 146 of the Act of Accession could be construed as applying to legislation subsequent to the Treaty

but prior to accession, it would have to be recognized that it requires such future legislation to be adopted; in the present case it would require the Commission, after adopting Decision No 2794/80, to comply with the mandatory requirement to adapt it to the case of Greece.

(c) The information and consultation procedure provided for by the Final Act of 28 May 1979 (Official Journal L 291, p. 191) for the adoption of certain decisions and other measures to be adopted during the period prior to accession should have been in operation already with a view to making the "adaptations" referred to in Article 146 of the Act of Accession. Taken together, Article 146 and the provisions on the information and consultation procedure make it impossible to accept that between the signing and the entry into force of the Act of Accession the new Member State, although informed and consulted where appropriate, had only to submit to and follow the legislative decisions of institutions in which it was not yet represented.

In any case, neither the statement of reasons in the preamble to Decision No 2794/80, although detailed, nor the statement that certain consultations had taken place mentions that information had been given to Greece. It is a principle of administrative law that decisions must show that they have been adopted in a proper manner. The failure to mention that an essential procedural requirement has been satisfied precludes evidence to the contrary and renders the decision null and void.

Such nullity is only relative: it affects Decision No 2794/80 only as regards Greece.

The decision is also void as regards Greece for failing to contain a sufficient statement of the reasons on which it is based: no reasons are given for the future entry into force of the decision in Greece and the situation of that country is not taken into consideration at all.

(d) Decision No 2794/80 is not applicable to Greece because of the very content of the decision and reasons on which it is based: the fall in demand and period of manifest crisis referred to in the preamble to the regulation are representative only of the situation in the Community without Greece; the statement that undertakings have failed to fulfil their individual voluntary commitments and refused to commit themselves for the future obviously cannot apply to Greek undertakings; the method of determining quotas provided for in Article 4 (3) and (4) clearly excludes adjustments for undertakings which were not part of the Common Market in the previous years. The fixing of quotas on the basis of actual production between 1977 and 1980 is entirely inappropriate in the case of Greek undertakings, which, not being part of the Common Market in those years, did not enjoy protection either against other Member States or against non-member countries and were not only denied the support machinery introduced by the Community but owing to

Community protection were also exposed to increased pressure both from the Member States and from non-member countries; in 1981, under the terms of Articles 25 and 29 of the Act of Accession, the customs barriers between the Community and Greece were still at 90 % of the old level.

(e) In reply to the Commission's assertion that if the applicants' views were accepted all Community legislation enacted over a period of 19 months would for ever remain inapplicable to Greece, the applicants state that a treaty may not be construed and applied solely on grounds of expediency and, moreover, that from 1 January 1981 the quite exceptional situation of Greece necessitated in practical terms a supplementary decision based on Article 58 of the ECSC Treaty, since Regulation No 2794/80 was clearly unsuitable for application to Greece.

The *Commission* disputes all the arguments denying that the general decisions at issue are applicable or valid as regards Greek steel undertakings.

(a) Article 2 of the Act of Accession contains a fundamental principle: the "acquis communautaire" on 31 December 1980, that is to say the original treaties and acts adopted before that date by the institutions of the Community, is applicable in Greece from its accession on 1 January 1981. Having become a full Member of the Communities, Greece had to accept all the obligations incumbent on the nine existing Member States on that date. Any other view is truly inconceivable: it cannot be the case that the entire body of Community legislation enacted between the signing of the documents concerning accession and the date on which accession took effect may never apply to Greece.

The measures adopted by the institutions of the Communities are most certainly applicable to Greece on the conditions laid down in the Act of Accession, that is to say subject, first, to the "adaptations" made necessary by the entry of a tenth Member into the Communities and the corresponding extension of their geographical scope and, secondly, to the temporary derogations and transitional measures provided for in the Act of Accession itself, in particular in Article 9 thereof.

In the steel sector, there are special provisions for the introduction of the ECSC unified tariff (Articles 32 to 34) and for the setting of prices by iron and steel undertakings (Article 129). However, there is no provision anywhere to the effect that measures adopted pursuant to Article 58 of the ECSC Treaty may not apply to Greece or may only apply to it on certain conditions in derogation from Community law.

"Adaptations" to the acts of the institutions not contained in the Act of Accession itself or the annexes thereto were made, where necessary, by the institutions before the accession of Greece under the procedure laid down in Article 146 (2) of the Act of Accession. They were intended to bring the measures adopted by the institutions into line with the Act of Accession; they concerned not only additional technical

adaptations but also adaptations to legislation enacted between the signing of the documents concerning accession and the date of accession and, more generally, all the amendments to acts of the institutions which may have appeared necessary owing to the new temporary rules provided for in the Act of Accession. Unless otherwise stated, all the acts adopted by the institutions of the Communities before accession apply to Greece, as they do to the other Member of the Communities, as first enacted or subject to any amendments found to be necessary.

(b) The adaptations provided for by Article 146 of the Act of Accession were required only where it was necessary to take account of any special provisions for Greece envisaged by that act; they were not necessary for the purposes of the application of Articles 47 and 58 of the ECSC Treaty.

(c) The agreement on the procedure for adopting certain decisions and other measures to be taken during the period leading up to accession, which is annexed to the Final Act, is evidence that the decisions to be taken by the Council during the interim period were meant to apply to Greece: otherwise, what reason would there be for involving Greece in the adoption of those decisions?

(d) The information procedure was in fact followed with regard to Greece, which did not request consultations within the Interim Committee: Therefore the statement of reasons given for Decision No 2794/80 did not have to refer to consultations which had not taken place. In any case, only measures contained in the acts of the institutions require a statement of the reasons on which they are based: measures not contained therein require no such statement.

(e) The statement of reasons contained in a general decision cannot take account of the specific situation of each steel undertaking considered State by State, old or new. Decision No 2794/80 is of general concern to all the steel undertakings in the Community, as it is composed at the time when the terms of the decision are applied.

Moreover, the interests of the Greek steel industry were taken into account by the transitional measures contained in the Act of Accession. The Act did not, however, exempt Greece from any application of Article 58 of the ECSC Treaty. Furthermore, when the decision on the quotas was taken, no need was felt to add specific new measures for the benefit of Greece. The fact that Greek undertakings had not participated in the previous anti-crisis measures was no reason for excluding them from the system of production quotas; that fact was by no means unfavourable to them.

B — The alleged failure to give adequate reasons

The *applicants* point out that under Article 58 (1) of the ECSC Treaty the Commission may establish a system of production quotas "accompanied to the necessary extent by the measures provided for in Article 74". Therefore, when it took the decision to apply Article 58 the Commission was under an absolute obligation to consider whether the system to be established should be

accompanied by the measures provided for in Article 74. But the provisions referred to in the preamble to Decision No 2794/80 do not include Article 74; in fact there is no mention of that provision either in the preamble or the articles of the decision.

Articles 58 and 74 are so closely linked that, at least as regards point (3) of the first paragraph of Article 74, no decision on either article may be taken without having regard to the possible application of the other. Therefore, whenever Article 58 is applied, the extent to which it is "necessary" to apply Article 74 must be considered; thereafter the decision must be taken to apply or not to apply Article 74, depending on whether it is "necessary" to do so.

The failure to state whether the possibility of applying Article 74 was considered and the failure to give reasons for the conclusion arrived at mean that the reasons which Decision No 2794/80 gives for the application of Article 58 are inadequate.

The *Commission* believes that the link between Articles 58 and 74 of the ECSC Treaty has a fundamentally different effect in the case of each article: the statement of reasons for the introduction of quantitative restrictions pursuant to point (3) of the first paragraph of Article 74 must state that the conditions laid down in Article 58 exist; however, Article 58 makes no mention of the conditions laid down in Article 74 and therefore Article 74 does not have to be mentioned in the statement of reasons on which a decision taken pursuant to Article 58 is based, unless it contains provisions based on that article, which is not the case with Decision No 2794/80.

In any case, the reasons on which acts of the institutions are stated to be based must justify the measures adopted and contained in those acts; they do not need to justify the failure to adopt measures which are not contained therein.

C — The alleged infringement of Articles 58 (1) and 74 of the ECSC Treaty

The *applicants* consider that, since recourse to Article 58 (1) of the ECSC Treaty is unquestionably justified in this case, the failure to take action under Article 74 at the same time constitutes an infringement of both those provisions.

The fact that the Commission has some discretion in the matter does not prevent the legality of the decision not to take action under Article 74 from being submitted to judicial review: the Court has the power to verify whether the decision is based on a correct application of the Treaty.

In this case, it is evident not only that merely to reduce production in the countries of the Common Market is insufficient to bring supply down to the level of demand, but also that the very act of reducing production in the countries of the Common Market must inevitably open a greater part of the market to producers in non-member countries after the first quarter of 1981 in view of the inadequate action taken on the basis of other provisions both unilaterally and through agreements.

According to the *Commission*, the assessment of the "necessary extent" to which measures adopted under Article 58 should be accompanied by measures adopted under Article 74 is a matter of

policy: it is a question of balancing, on the one hand, the usefulness of measures to curb imports, which are in fact quantitative restrictions, and on the other hand, the compatibility of such restrictions with the Communities' obligations towards non-member countries, particularly under GATT, as well as the repercussions which the introduction of import restrictions might have on Community exports in general and on exports of steel products in particular. After considering those various factors and taking into account the various measures which had already been implemented, including some on the basis of Article 74, as well as those to be taken at the same time as the decision introducing the quota system, the Commission decided that there was no need for the quota system to be accompanied by additional measures against imports on the basis of Article 74 or on any other basis; it was already sufficiently accompanied by other measures.

That view was not invalidated by subsequent experience.

D — The allegation of discrimination

The *applicants* point out that, according to the first subparagraph of Article 58 (2) of the ECSC Treaty, the production quotas are to be determined "on an equitable basis, taking account of the principles set out in Articles 2, 3 and 4" of the Treaty.

(a) Article 4 (3) of Decision No 2794/80 is not applicable to undertakings which could not participate in the delivery programmes drawn up by the Commission because they were not part of the Community and Article 4 (4) is not applicable to undertakings whose investment programme could not be the subject of a Commission opinion for the same reason. Therefore Decision No 2794/80 blatantly discriminates between the last category of undertakings and the others.

(b) As a result of the manner in which Article 14 of Decision No 2794/80 has been construed further discrimination is created between those undertakings which remain viable despite the restrictions and those which suffer "exceptional difficulties owing to those measures".

(c) Any provision which bases quotas on actual production during the reference period instead of on production capacity will inevitably result in discrimination contrary to the equitable basis required by the strict words of Article 58 of the ECSC Treaty.

(d) Discrimination does not consist solely of treating undertakings in similar circumstances differently; in the present case the discrimination is due to the fact that undertakings in different circumstances are treated in the same way.

(e) Account should be taken here of the principle of proportionality, which is recognized in the decisions of the Court: compared to the Community's crude steel production of 140 million tonnes a year in 1979 and 1980, the total production of the Greek undertakings, which barely exceeds one million tonnes, is insignificant.

The *Commission* contests all those submissions.

(a) The basic method of fixing production quotas described in Articles 3, 4 and 5 of Decision No 2794/80 takes into consideration, in order to determine reference production figures for each undertaking, a period sufficiently recent to reflect actual structures and sufficiently long to eliminate any fortuitous circumstances. It sets individual abatement rates for each category of products, so as to take account of the particular situation on the market for each category.

The aim of Article 4 (3) is to avoid any unfairness which certain undertakings which had participated in the voluntary delivery programmes might have suffered. The Greek undertakings did not participate in those programmes, so there was no need to make adjustments for their benefit. However, no discrimination is caused thereby: it is not an instance of treating undertakings in similar circumstances differently.

Article 4 (4) allows account to be taken of the production capacity of new plant put into operation after 1 July 1980 because the output of such plant could not have been reflected in the reference production figures. Since the Greek undertakings were not bound before 1 January 1981 by Decision No 22/66 of the High Authority of 16 November 1966 on information to be furnished by undertakings about their investments (Official Journal, English Special Edition 1965-1966, p. 280), an application from them was considered necessary in order to obtain an adjustment under Article 4 (4). Having regard to such applications and having determined that the investments in question would not have received an unfavourable opinion if they had been notified in the form of investment programmes, the Commission adapted the quotas for two Greek undertakings pursuant to Article 4 (4). That provision clearly does not discriminate between Greek companies and other companies in the Community or in fact between any undertakings operating in similar circumstances.

Article 4 (5) seeks to prevent the quota system from jeopardizing efforts at reorganization which some undertakings have successfully made since 1974, when the crisis began.

The last subparagraph of Article 5 (2) makes provision for undertakings to apply for an adjustment of their crude steel quotas to enable them to produce the quantities of rolled products fixed by their production quotas. Such an adjustment has already been made in the case of one Greek undertaking.

(b) Article 14 makes it possible to reduce the disproportionate sacrifices which the application of the general rules of Decision No 2794/80 might have required of some undertakings. The quotas of any undertaking experiencing exceptional difficulties may be adapted on that account. Non-application of that provision is not discriminatory at all: it does not entail different treatment of similar cases but different treatment of different cases.

(c) The fixing of quotas according to actual production during the reference period, which consists of each undertaking's best months of production, enables every undertaking to be treated in the same way.

The criterion based on an undertaking's actual production is objective, accurate and quantifiable; the concept of "production capacity", on the other hand, is less precise and more difficult to define. Moreover, the fixing of quotas by reference to the maximum production capacity of undertakings would inevitably penalize those which, owing to rational management, utilize their capacity to a very high degree and would unjustifiably benefit those operating at a low rate of utilization; it would also be contrary to the aims of Article 3 of the ECSC Treaty, particularly those set out in paragraphs (a) and (e).

(d) The claim that the principle of proportionality has been breached is a new submission which Article 42 (2) of the Rules of Procedure prevents from being adduced.

In fact, the Commission is by no means ignorant of the situation of the Greek steel industry, whose production, moreover, exceeds that of Denmark and is nearly fifteen times greater than that of Ireland.

Moreover, production calculated on a national basis does not provide the relevant figures. Decision No 2794/80 introduced a system of quotas concerning undertakings and the production of each of the five Greek undertakings is not negligible; it exceeds by far the threshold of 3 000 tonnes under which small undertakings are exempt from quotas. By virtue of the principle of solidarity the sacrifices demanded of the Greek undertakings should be, and are, the same as those demanded of other undertakings in the Community.

The system of quotas introduced by Decision No 2794/80 does not impose on the undertakings concerned burdens which are out of proportion to the aim pursued, namely the adaptation of supply to the reduced demand for steel. It has been held by the Court that the obligation of the Community institutions to ensure that in exercising their powers the burdens imposed on undertakings are no greater than is required to achieve the aims to be accomplished is not to be measured in relation to the individual situation of any particular group of undertakings.

Decision

1 By applications lodged at the Court Registry on 19 and 20 February 1981 and registered under Nos 39/81 and 43/81 the Greek steel undertakings Halyvourgiki Inc. and Helleniki Halyvourgia SA, both incorporated under the laws of Greece and having their respective registered offices at Athens and Piraeus, brought actions under Article 33 of the ECSC Treaty for a declaration that decisions fixing their production quotas for crude steel and rolled products for the first quarter of 1981 are void. Those decisions were adopted on 19 and 20 January 1981 respectively pursuant to Commission

Decision No 2794/80/ECSC of 31 October 1980 establishing a system of steel production quotas for undertakings in the iron and steel industry (Official Journal 1980, L 291, p. 1) and Commission Decision No 3381/80/ECSC of 23 December 1980 fixing the rates of abatement for the first quarter of 1981 (Official Journal 1980, L 355, p. 37).

2 The applicants' main contention is that Decisions No 2794/80 and No 3381/80, the general decisions on which the contested individual decisions are based, are not applicable to Greek undertakings, or at any rate are void as against them, because they were adopted unilaterally by the Community without the collaboration of the Greek authorities during the interim period between the signing of the documents concerning the accession of the Hellenic Republic to the Communities — to be precise, 24 May 1979, the date of the decision adopted by the Council of the European Communities on the accession of the Hellenic Republic to the European Coal and Steel Community and of the Act annexed to that decision concerning the conditions of accession (Official Journal 1979, L 291, pp. 5 and 17) — and accession itself, which took effect on 1 January 1981.

3 In the alternative, the applicants argue that Decision No 2794/80 is illegal because it fails to state properly the reasons on which it is based and because it infringes Articles 14, 58 and 74 of the ECSC Treaty; furthermore, the application of certain criteria laid down in that decision is said to entail discriminatory treatment against Greek undertakings in relation to other undertakings in the Community.

4 After the Commission had, by letters dated 13 March 1981, amended its original decisions pursuant, in particular, to Article 14 of Decision No 2794/80, the two companies, by applications registered on 13 April 1981 under Nos 85 and 88/81, extended the actions to those amending decisions. They consider that, although those amendments are in general favourable to them, they do not dispose of any of the objections made against Decisions No 2794/80 and No 3381/80 and the application thereof to Greek undertakings.

The application of Decisions No 2794/80 and No 3381/80 to Greek undertakings

5 In the decisions fixing the applicants' production quotas the Commission stated that the decisions were adopted "on the basis of the Act concerning the accession of Greece, in particular Article 2 thereof, and pursuant to Article 3 of Decision No 2794/80/ECSC and to Decision No 3381/80/ECSC".

6 The applicants consider that the individual decisions adopted with respect to them are void on the ground that the general decisions on which they are based are not applicable to Greek undertakings: on the one hand, those general decisions, which were adopted before Greece's accession on 1 January 1981, are not acts of the Community institutions as enlarged by the entry of Greece; on the other hand, since those decisions were adopted after the documents concerning the accession of Greece were signed, they have not been the subject of any undertaking or ratification on the part of Greece. In this regard they submit that it is not possible to accept that the reference to the acts of the institutions in Article 2 of the Act of Accession could include future acts, which, because their terms were not yet settled, were not known to the parties on the date on which the international agreement was concluded.

7 It is argued that, even on the supposition that the general decisions in question may be extended to Greek undertakings, those undertakings are still justified in contesting their applicability.

Those decisions were not dealt with under the adaptation procedure provided for in Articles 22 and 146 of the Act of Accession or under the information and consultation procedure provided for in the agreement annexed to the Final Act signed in Athens on 28 May 1979 (Official Journal 1979, L 291, pp. 179 and 191).

8 Finally, the applicants contend that, in so far as Decision No 2794/80 is based on the finding that there exists a state of manifest crisis within the meaning of Article 58, as stated in the preamble to that decision, it is representative only "of the situation in the Community without Greece". They therefore submit that the decision is by its very nature inapplicable to Greek undertakings.

The effect of Decisions No 2794/80 and No 3381/80

9 Article 2 of the Act of Accession provides that "from the date of accession, the provisions of the original Treaties and the Acts adopted by the institutions of the Communities shall be binding on the Hellenic Republic and shall apply in that State under the conditions laid down in those Treaties and in this Act". In accordance with Article 2 of the Decision of the Council of 24 May 1979, Greece's accession to the European Coal and Steel Community took effect on 1 January 1981 with the deposit on that date of its instrument of accession. Read together, those two provisions show that it is with reference to 1 January 1981, rather than the date of the Council's decision or of the signing of the documents concerning accession, that it must be determined which acts of the institutions are binding on the Hellenic Republic and applicable in that State.

10 Articles 22 and 146 of the Act of Accession are not relevant to the issue raised. Those provisions apply only to acts of the institutions the adaptation of which, recognized to be necessary when the documents concerning accession were signed, had to be carried out during the interim period. As regards new measures to be adopted in that period, the institutions were aware of the imminent accession of Greece, which was given an opportunity to assert its interests where necessary, in particular through the information and consultation procedure described in an agreement annexed to the Final Act (Official Journal 1979, L 291, p. 191).

11 It is therefore incontestable that Decision No 2794/80 adopted on 31 October 1980, and Decision No 3381/80, adopted on 23 December 1980, are amongst the acts of the institutions which entered into force, unadapted, with respect to Greece and in its territory when accession became effective on 1 January 1981 pursuant to Article 2 of the Act of Accession.

12 It should be added that only in this way is it possible to avoid discontinuity in the Community legal system in its application to Greece. The scheme of the Act of Accession shows that the acceding State accepts all the measures adopted by the institutions prior to the time when its accession takes effect, whereas the applicants' argument would lead to the creation of a legislative

vacuum in regard to that State extending over the interim period between the time when the documents concerning accession were signed and the time when accession took effect.

The information and consultation procedure

13 It is stated in the Final Act signed in Athens on 28 May 1979 that "the Plenipotentiaries and the Council have also taken note of the arrangement regarding the procedure for adopting certain decisions and other measures to be taken during the period preceding accession which has been reached within the Conference between the European Communities and the Hellenic Republic and which is annexed to this Final Act".

14 By virtue of the agreement annexed to the Final Act, entitled "Information and consultation procedure for the adoption of certain decisions", provisions were made in order to ensure that the Government of Greece was kept informed of any proposal or communication from the Commission which might lead to decisions by the Council other than administrative decisions.

15 Even if it is assumed that that obligation may be taken to extend to the draft of the decisions under Article 58 of the ECSC Treaty, which were to be adopted by the Commission itself, subject to the assent of the Council, the explanations given by the Commission show in any case that the information procedure was duly followed in the interim period. The applicants have not adduced any evidence to suggest that the Greek Government was not able to assert its interests with regard to the draft decisions of the Commission in accordance with the provisions of the agreement annexed to the Final Act.

The finding of a state of crisis

16 The applicants' argument that the finding of a state of crisis was not representative of the situation in the Community after the accession of Greece ignores the fact that the existence of such a crisis must be ascertained in the light of the situation in the Community as a whole. Therefore the introduction of measures under Article 58 may not be ruled out even if undertakings in some Member States or some regions of the Community are less

affected than others by a widespread state of crisis. In any case, it has not been proved that the effect of Greece's entry into the Community was substantially to alter the general situation of the market for steel products in the Community as a whole. The argument must therefore be rejected.

17 It follows from all the foregoing considerations that the application of Decisions No 2794/80 and No 3381/80 to Greek undertakings from 1 January 1981 cannot be contested.

The objections based on Articles 58, 74 and 14 of the ECSC Treaty

18 Under this head the applicants put forward a number of arguments whereby they submit that the Commission has infringed Articles 58 and 74 of the Treaty, that the reasons on which Decision No 2794/80 is stated to be based are insufficient and that Greek undertakings have been discriminated against. They do not specify wherein the infringement of Article 14 lies, so that this objection need not be examined in the absence of any clarification.

The relationship between Articles 58 and 74

19 In the first place, the applicants contest the validity of Decision No 2794/80 on the ground that, contrary to the provisions of Article 58 (1) of the Treaty, that decision imposed production quotas on undertakings without accompanying the quota system with restrictions on imports of steel products pursuant to Article 74 of the Treaty.

20 Article 58 (1) states that in the event of a manifest crisis and if the means of action provided for in Article 57 prove to be insufficient the Commission must "establish a system of production quotas, accompanied to the necessary extent by the measures provided for in Article 74". In such a situation Article 74 empowers the Commission to make recommendations to the Member States with a view to introducing appropriate restrictions on imports.

21 It follows from the provisions cited that if production quotas are imposed they do not necessarily have to be accompanied by import restrictions. The introduction of such restrictions depends on the Commission's assessment of the state of the steel market and of the need to afford that market protection. That need depends in turn both on the possibility of disposing of existing production on the internal market and on external trade. But in this regard it is necessary to take into account obligations entered into by the Community towards non-member countries and the repercussions which the introduction of import restrictions might have on Community exports in general and on steel products in particular.

22 As the Court has already stressed in its judgment of 18 March 1980 in Joined Case 154, 205, 206, 226 to 228, 263 and 264/78, 39, 31, 83 and 85/79 *SpA. Ferriera Valsabbia and Others* [1980] ECR 907 and in its judgment of 16 February 1982 in Case 258/80 *Rumi* [1982] ECR 487, the taking into consideration of those factors requires the assessment of a complex economic situation, which means that the link established by Article 58 (1) between the introduction of production quotas and the imposition of restrictions on imports of competing products cannot be in any way automatic. The applicants have not been able to specify circumstances which might give reason to believe that the Commission exceeded the discretion which Articles 58 and 74 of the Treaty accord to it in this matter.

The "equitable basis" referred to in Article 58 (2)

23 In the second place, the applicants contend that the production quotas provided for by Decision No 2794/80 were not established on an "equitable basis" within the meaning of Article 58 (2) of the Treaty. More precisely, they believe that instead of being established with reference to actual production they should have been fixed on the basis of the production capacity of undertakings.

24 In reply to that argument it should be pointed out first of all that it appears from the uncontested figures provided by the Commission that in the period under consideration the applicants did not even manage to exhaust the production quotas allocated to them, so that the question whether the quotas were determined on one basis rather than another appears to be immaterial in this case.

25 Moreover, it should be observed that Article 58 (2) of the Treaty does not restrict the Commission's freedom to choose the basis upon which the quotas may be equitably determined in a given economic situation. It follows from the explanations given during these proceedings that there are no reasonable grounds for denying that the Commission's choice of the criterion based on undertakings' actual production may constitute an "equitable basis" within the meaning of Article 58 (2). Indeed that criterion, as adjusted by Article 4 of Decision No 2794/80, constitutes, in the first place an objective basis of assessment which avoids the uncertainties inherent in determining a factor which is partly conjectural, such as production capacity; secondly, it enables total production to be reduced without altering the positions of the undertakings on the market as between each other.

26 It follows from the foregoing that the complaints of an infringement of Articles 58 and 74 must be rejected.

The complaint of discrimination

27 The applicants contend finally that the application of Decision No 2794/80 led to discrimination against Greek undertakings because that decision was based, for the purpose of fixing the production quotas, on criteria to which Greek undertakings cannot be subjected. It is argued that those criteria relate to a period in which those undertakings were not yet subject to the rules of Community law. More precisely, the applicants refer in this regard, first, to the criterion adopted by Article 4 (3), concerning the average rate of utilization of production facilities, subject to the condition that the undertaking "undertook to comply from July 1977 to June 1980 with the delivery programmes established by the Commission", and, secondly, to the investment programmes duly reported and not the subject of an unfavourable opinion of the Commission which are referred to in Article 4 (4).

28 On this point it need only be observed that, under the scheme of Decision No 2794/80, the aim of both the provisions cited — which, moreover, did not apparently play any part in determining the applicants' quotas — is to help some undertakings by rectifying the results obtained by taking into account the reference production figures defined by Article 4 (1) and (2).

More precisely, the aim of the provisions cited by the applicants is to adapt the reference production figures of some undertakings, having regard to their participation during the period under consideration in voluntary reduction programmes and to the restrictions placed upon them as a result of the control exercised by the Commission over new investment. As those factors could not have affected Greek undertakings precisely because they were not yet subject to the rules of the Community, the measures taken to enable the reference production of undertakings belonging to the old Community to be assessed on an equitable basis cannot be regarded as discrimination against the Greek undertakings.

29 Therefore these complaints must also be rejected.

30 It follows from the foregoing that the applications must be dismissed.

Costs

31 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

32 As the applicants have failed in their submissions they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the applications;**

2. **Orders the applicants to pay the costs, including the costs incurred as a result of their applications for the adoption of interim measures, less**

the costs which other parties were ordered to pay by orders of 16 September and 25 November 1981.

	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

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 12 JANUARY 1982 [1]

Mr President,
Members of the Court,

1. Introduction

My opinion today concerns Joined Cases 39, 43, 85 and 88/81, which still remain to be dealt with following the withdrawal of the action brought be Metallurgiki Halyps SA. In these four cases two Greek steel producers seek to have declared void, under Article 33 of the ECSC Treaty, the individual decisions by thich the Commission imposed production quotas on them for crude steel and rolled products for the first quarter of 1981.

Those individual decisions were based on the general decisions of the Commission No 2794/80/ECSC of 31 October 1980 (Official Journal 1980, L 291) establishing a system of steel production quotas for undertakings in the iron and steel industry and No 3381/80/ECSC of 23 December 1980 (Official Journal 1980, L 355). According to the preamble to Decision No 2794/80, the main reason for these crisis measures was the abrupt fall in demand for steel in the third quarter of 1980, both on the Community market and on the world

1 — Translated from the Dutch.