ORDER OF THE PRESIDENT OF THE COURT
10 August 1987 *

In Case 209/87 R

Association des aciéries européennes indépendantes — European Independent Steelworks Association 'EISA', an association governed by Belgian law, based in Brussels, represented by Michel Waelbroeck and Alexandre Vandencasteele, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 rue Phillippe II,

applicant,

v

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

defendant,

APPLICATION for the suspension of the operation of Commission Decision No 1433/87/ECSC of 20 May 1987 on converting a proportion of the production quotas into quotas for delivery in the common market.

THE PRESIDENT OF THE FIRST CHAMBER,

replacing the President of the Court under the second paragraph of Article 85 and Article 11 of the Rules of Procedure,

having heard the views of the Advocate General, C. O. Lenz,

makes the following

* Language of the Case: French.

Order

1 By an application lodged at the Court Registry on 9 July 1987 the Association des aciéries européennes indépendantes — European Independent Steelworks Association brought an action under the second paragraph of Article 33 of the ECSC Treaty for a declaration that Commission Decision No 1433/87/ECSC of 20 May 1987 on converting a proportion of the production quotas into quotas for delivery in the common market (Official Journal 1987, L 136, p. 37) is void.

2 By an application lodged at the Court Registry on the same date, the applicant seeks, under Article 39 of the ECSC Treaty and Article 83 of the Rules of Procedure, the suspension of the operation of Decision No 1433/87/ECSC.

3 The Commission submitted written observations on 4 August 1987. The parties presented oral argument at the hearing on 6 August 1987.

4 The contested decision is based on Commission Decision No 3485/85/ECSC of 27 November 1985 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1985, L 340, p. 5), as amended by Commission Decision No 3746/86/ECSC of 5 December 1986 (Official Journal 1986, L 348, p. 1) and in particular Article 18 thereof. The reasons stated for the contested decision are as follows: exports to non-member countries by the Community's steel undertakings decreased very sharply in 1986; the ratio between costs and export prices has deteriorated significantly; this trend affects all undertakings and the higher the proportion of their production which is for export, the more they are affected; undertakings were allocated their reference figures several years ago and some of the figures must now be out of date in view of changes in the market.

5 Consequently, the decision authorizes undertakings to convert, each quarter for a category of products to be decided by them, a portion of the difference between their production quota derived from their reference production and the proportion of the quota which may be delivered in the common market derived from their reference quantity into quotas for delivery in the common market in the ratio of

1:0.85. That portion is not to exceed 30%, 15% or 5% respectively, depending on whether the ratio of reference quantities to reference production for all product categories is more than 15 percentage points below the relevant average for all undertakings, more than 5 percentage points below that average or better than that average.

6 According to Article 39 of the ECSC Treaty, actions brought before the Court do not have suspensory effect. However, the Court may if it considers that the circumstances so require, order that the application of the contested decision or recommendation be suspended.

7 In order for interim measures such as those requested to be granted, Article 83 (2) of the Rules of Procedure requires that applications for such measures should state the circumstances giving rise to urgency and the factual and legal grounds establishing a prima facie case for the interim measures applied for.

8 In order to establish a prima facie case for suspending the operation of the contested decision, the applicant claims that the decision is manifestly unlawful and constitutes a misuse of powers: the Commission granted aid to certain undertakings without complying with the procedural and substantive rules laid down by the ECSC Treaty; the decision is prejudicial to the essential objective of the quota system which is to maintain a balanced market, which was in jeopardy, particularly in the third quarter of 1987, in view of the retroactive effect of the decision; the Commission is using the powers conferred upon it by Decision No 3485/85/ECSC to transfer the exercise thereof to the undertakings and to alter the very foundations of the quota system without consulting the Consultative Committee and obtaining the assent of the Council and without respecting the limits to which its action is subject under the general principles of Community law, in order to attain an objective other than the one for which those powers were conferred upon it.

9 The Commission first expresses doubts about the admissibility of the application, pointing out that the complaints raised are more like submissions alleging infringement of the Treaty or of essential procedural requirements than the submission alleging a misuse of powers, which, according to the second paragraph of Article 33 of the ECSC Treaty, is the only ground on the basis of which indi-

vidual undertakings may challenge a general decision. The Commission also claims that the applicant's complaints are unfounded and that the factual and legal grounds invoked in support of the application for interim measures do not justify their being granted under the procedure for the grant of interim relief.

10 As regards the doubts raised by the Commission with regard to admissibility, it must be borne in mind that, in principle, the question of the admissibility of the main application must not be examined in proceedings for interim measures but must be reserved for the examination of the main application, in order not to prejudge the decision on the substance of the case. If a serious ground of inadmissibility is raised, it is sufficient to establish the existence of certain facts establishing a prima facie case for the admissibility of the application.

11 In that connection it must be held that the Commission has merely expressed reservations, in very general terms, about the admissibility of the main application and that at the present stage it cannot be ruled out that when the main application is considered the Court will regard all or some of the applicant's complaints as constituting a submission alleging a misuse of powers. That determination is sufficient for concluding that the main application is prima facie admissible and therefore that the application for the suspension of the operation of the contested decision is admissible.

12 Prima facie, the applicant's complaints that the Commission failed to comply with the procedural and substantive rules of the ECSC Treaty, disregarded the essential objective of the quota system, and unlawfully used the powers conferred on it by Article 18 of Decision No 3485/85/ECSC constitute relevant factual and legal grounds capable of justifying the suspension of the operation of the contested decision.

13 The Court has consistently held that the urgency of an application for interim measures, as referred to in Article 83 (2) of the Rules of Procedure, must be assessed in the light of the extent to which an interim order is necessary in order to avoid serious and irreparable damage to the party requesting the interim measures.

14 As justification for the urgency of the interim measure applied for, the applicant maintains that the contested decision causes it serious and irreparable damage. The flow of products onto the internal market of the ECSC is adversely affecting prices and is seriously upsetting the balance of the market. However, the essential objective of the quota system is to maintain that balance. The decision adversely affects the relative position of the undertakings affiliated to it; in their case the ratios between quotas for delivery in the common market and production quotas are higher than the Community average so that they benefit much less from the decision than undertakings which are strongly biased towards exporting. That damage is irreparable because the contested decision disturbs the market irremediably and permanently impairs the relative position of its member undertakings and if the decision is declared void it will not be possible to restore its members' economic situation and relative market position.

15 When asked at the hearing to explain its position, the applicant no longer maintained that its members' market position would suffer permanent deterioration even if the contested decision were to be declared void, or that the application of the decision had led to a fall in prices. It emphasized especially that the abatement rates used for establishing production quotas and the part of such quotas which might be delivered in the common market had already increased between the second and third quarters of 1987 following the adoption of the contested decision, and that its members' relative position on the market was under threat since the increase in the quantities which might be delivered on the Community market would, given steady demand, inevitably cause the Commission to continue to increase the abatement rates.

16 The Commission argues that the balance of the market cannot be disturbed, since it has it under complete control through the use of abatement rates. Moreover, owing to its nature and the way in which it has been applied so far, the decision has had only a slight impact on the market. The fact that the modified abatement rates for the third quarter of 1987 were more favourable than the original rates shows that the implementation of the decision has not given rise to a significant increase in supply on the Community market or disturbed that market. Likewise, the increase in prices within the common market from the first to the second

quarter shows that the decision has not had an adverse effect on prices. The deterioration in relative position is minimal and, moreover, simply an inevitable consequence of the quota system. In view of the contested decision's modest impact on the relative position on the common market of the applicant's member undertakings, the applicant cannot claim that the alleged damage is irreparable.

17 It appears from the arguments presented by the parties at the hearing that the applicant has so far not succeeded in establishing actual and specific damage; it merely refers to future damage which, in its view, is bound to occur in the coming months as a result of increases in the abatement rates which the Commission will certainly have to introduce.

18 In that regard, it must be pointed out that the contested decision will not have an effect until 31 December 1987. The applicant's fears that it will give rise in the third quarter of 1987 to an increase in the quantities on offer in the common market as a result of the cumulative effect of the conversion of production quotas for the first and second quarters into quotas for delivery in the common market have not as yet proved well founded. In the absence of any indication as to the market trend, which depends both on demand and on the position ultimately taken by the undertakings receiving higher conversion rates, the detrimental consequences which the applicant fears will take place in the coming months are at present purely hypothetical.

19 The increase in abatement rates, in particular for the proportion of the production quotas which may be delivered in the common market, which, it is claimed, will affect the applicant's member undertakings more severely since their delivery quotas cannot be increased to the same extent as those of undertakings which are large exporters to non-member countries, depends on the future development of the market and is at present purely hypothetical.

20 Even if, in the case of certain categories of products, reduction in production quotas and in the proportion of those quotas which may be delivered in the common market were to be introduced by the Commission in order to balance the

market, the impact on the sales of the applicant association's member undertakings would be limited, having regard both to the data submitted by the applicant with respect to the theoretically possible conversions and, *a fortiori*, to the conversions actually effected by undertakings in the first and second quarters of 1987, which remained significantly below those expected by the applicant.

21 As regards the impairment of the relative position on the common market of the applicant's member undertakings, it must be pointed out that the measures adopted under Article 58 must enable the Community's steel industry as a whole to defend itself, on a collective basis and by a cooperative effort, against the consequences of crises occurring when demand declines, and that the article in no way places the Commission under a duty to guarantee to any given undertaking, to the detriment of others within the Community, minimum production or maintenance of its relative position on the market (see the judgment of 7 July 1982 in Case 119/81 *Klöckner-Werke* v *Commission* [1982] ECR 2627, and the judgment of 11 May 1983 in Case 244/81 *Klöckner-Werke* v *Commission* [1983] ECR 1451).

22 The future damage alleged by the applicant — even assuming it to have been proven — would be limited to a short period and would not have the seriousness required for justifying the suspension of the operation of the decision. If in the main proceedings the Court declares the contested decision void, the status quo ante will be restored. That temporary damage will not therefore satisfy the condition of irreparability which, according to the case-law, is required to be fulfilled in order to justify the suspension of the operation of a contested decision.

23 In those circumstances it must be held that the applicant has failed to show the existence of damage, even future damage, which is certain, serious and irreparable and thus not demonstrated the existence of circumstances establishing urgency, which would justify the suspension of the operation of the contested decision.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER,

replacing the President of the Court pursuant to the second paragraph of Article 85 and Article 11 of the Rules of Procedure,

by way of interim decision,

hereby orders as follows:

(1) The application for the suspension of the operation of the contested decision is dismissed;

(2) The costs are reserved.

Luxembourg, 10 August 1987.

P. Heim
Registrar

Acting as President
F. Schockweiler
President of the First Chamber