REPORT FOR THE HEARING
delivered in Joined Cases 33, 44, 110, 226 and 285/86 *

I — Facts and written procedure

A — *Facts*

The applicants are steel undertakings. Stahlwerke Peine-Salzgitter manufactures *inter alia* products in Categories Ia, b and c and III. Hoogovens Groep BV manufactures *inter alia* products in Categories Ia and Ib. For those categories, the ratio between the production quota and the proportion of that quota which may be delivered within the common market (the 'I:P ratio') is, for historical reasons, exceptionally unfavourable in the applicants' case, both in absolute terms and in comparison with the Community average.

Viewed in detail, the applicants' situation compared with the Community average as regards the I:P ratio in the third quarter of 1986 is as follows (the applicants' figures differ slightly from the Commision's):

(%)

Product category	Ia	Ib	Ic	III
Peine-Salzgitter	63.2	48.5	48.1	51.9
Hoogovens	51.1	56.2	—	—
EEC average	75.6	67.7	75.2	72.8

For several years those unfavourable I:P ratios have posed exceptional economic difficulties for the applicants since they are based on an extremely high proportion of exports although the market situation has changed drastically in relation to the reference periods which take into consideration only the quantities produced and not the quantities delivered and since the proceeds from export sales are normally considerably lower than those from sales within the Community.

In Cases 226 and 285/86, Hoogovens produces evidence to show the total damage it suffers as a result of the non-adjustment of its I:P ratio by the Commission. The Commission, however, takes the view that Hoogovens' calculations in this regard should not be accepted because there are

* Languages of the Case: German and Dutch.

too many indeterminate factors for making a correct calculation at this stage.

The Commission has repeatedly stated that it is willing to examine the question of the I:P ratio.

In its communication to the Council concerning the 'Introduction of a production quota system pursuant to Article 58 of the ECSC Treaty after 31 December 1985' (Doc. COM(85) 509 final of 25 September 1985), the Commission indicated that it was essential to change the references whose basis had remained unchanged since the introduction of the quota system and which were based on production figures which were even older. The Commission acknowledged that trade in steel products between the Community and the rest of the world had changed profoundly since the introduction of the production system and that it was consequently necessary to review the position of undertakings whose I:P ratio was far below the Community average for all the products covered by the quota system. The Commission proposed that for the production of each undertaking the I:P ratio should be increased to a value no less than 10 percentage points below the Community average.

The Council examined that document on 29 October 1985.

On 27 November 1985 the Commission adopted Decision No 3485/85/ECSC extending the system of monitoring of production quotas for certain products of undertakings in the steel industry (Official Journal 1985, L 340, p. 5). That decision does not provide for any adjustment of the I:P ratios as proposed by the Commission.

The question whether the Council accepted the Commission's proposal regarding the adjustment of I:P ratios is a matter of dispute between the parties. The applicants maintain that the Council has not expressly rejected the adjustment: no assent has still been officially given but simply a report in which there is not even any question of regulating the adjustment in question.

The Commission states that, although the report of the Council's conclusions does not refer to any express prohibition on adjusting the I:P ratios, such a prohibition arises from the fact that the Council has given its approval to the system of production quotas submitted to the Council and amended by the Council as set out in the report. Since the amendments to the quota system set out in the report do not mention the adjustment of the I:P ratios, it follows that the Council did not approve such an adjustment.

B — *The claims*

On 7 February 1986 Stahlwerke Peine-Salzgitter brought the action in Case 33/86 for a declaration that Article 5 of Decision No 3485/85/ECSC is void in so far as it does not make provision for the equitable adjustment of delivery quotas in the case of the undertakings whose quotas are appreciably less than the Community average.

On 17 February 1986 Stahlwerke Peine-Salzgitter brought the action in Case 44/86 for a declaration that the Commission's individual decision of 30 December 1985 (SG (85) D/17043) is void in part in so far as it fixes for the first quarter of 1986 the

proportion of its quota which may be delivered on the common market. In its view, that quota is unfair. It explains that, irrespective of the question whether legislative rules ought to have been laid down in Decision No 3485/85/ECSC, which is the subject of Case 33/86, it considers itself compelled to challenge the individual decision as well because otherwise the Commission could object that it let that decision come into force without challenging it.

On 9 May 1986 Stahlwerke Peine-Salzgitter brought the action in Case 110/86 in which it seeks a declaration that the Commission's individual decision of 21 March 1986 (SG (86) D/3433) is void in so far as it fixes the delivery quota for products in Categories Ia, Ib, Ic and III for the second quarter of 1986 and in so far as it does not take account of the applicant's objective right to an equitable delivery quota.

On 20 August 1986 Hoogovens brought the action in Case 226/86 for a declaration that the Commission's decision of 14 July 1986 (SG (86) D/8396) (as amended by the Commission's decision of 5 August 1986 (SG (86) D/9551)) fixing the quotas for the third quarter of 1986 is void. In support of its application Hoogovens submits that Decision No 3485/85/ECSC is unlawful.

On 20 November 1986 Hoogovens brought the action in Case 285/86 for a declaration that the Commission's decision of 6 October 1986 (SG (86) D/11531) (as amended by the Commission's decision of 28 November 1986 (SG (86) D/14405)) fixing the quotas for the fourth quarter of 1986 is void. In that application, too, Hoogovens submits that Decision No 3485/85/ECSC is unlawful.

C — *Procedure*

On 21 July 1986 Hoogovens lodged an application to intervene in support of the conclusions of Stahlwerke Peine-Salzgitter in Case 33/86 and by order of 3 October 1986 the Court allowed that application. By an order of the same date it also joined Cases 44 and 110/86.

By a decision of 20 May 1987 the Court decided pursuant to Article 95 (1) and (2) of the Rules of Procedure to assign the cases to the Sixth Chamber.

By order of 30 June 1987 the Sixth Chamber of the Court joined Cases 33, 44 and 110/86, 226 and 285/86.

By a decision of 22 September 1987 the Sixth Chamber referred the cases to the Court pursuant to Article 95 (4) of the Rules of Procedure.

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. However, it decided pursuant to Article 24 of the Protocol on the Statute of the Court of Justice of the ECSC to ask the Council.

D — *Questions asked by the Court*

The Court asked the Council the following questions:

'Must the Council's silence on the proposals concerning an adjustment of the I:P ratios which the Commission made to it in its communication concerning "the introduction of a system of production quotas pursuant to Article 58 of the ECSC Treaty after 31 December 1985" (Doc. COM(85) 509 final of 25 September 1985) be interpreted as a lack of "assent" within the meaning of Article 58 (1) of the ECSC Treaty?

In the event of an affirmative reply, the Council is requested to state the reasons for which it rejected those proposals.'

On 6 July 1987 the Council answered the questions asked by the Court. It sent the Court an extract from the minutes of its 1 036th session held on 29 October 1985 (Document 10005/85, pages 3 and 4) concerning the introduction after 31 December 1985 of the system of production quotas set out in the Commission's communication to the Council.

The Council adds that it appears from the assent which it gave that it did not assent to an adjustment of the I:P ratios. The Council gave its assent to the proposals submitted to it in the Commission's communication of 25 September 1985, which, during the discussions in the Council, were modified by the Commission, in particular by omitting the principles regarding the I:P ratios.

II — Conclusions of the parties

Stahlwerke Peine-Salzgitter, the applicant in Cases 33, 44 and 110/86, claims that the Court should:

in Case 33/86:

declare void Article 5 of Commission Decision No 3485/85/ECSC of 27 November 1985 in so far as it does not make provision for undertakings whose delivery quotas are, as a result of the quota system, significantly below the Community average to obtain an equitable adjustment of those delivery quotas;

in Case 44/86:

declare void the Commission's decision of 30 December 1985 (SG (85) D/17043), notified on 10 January 1986, in so far as it determines that part of the production quota which may be delivered within the common market as regards products in Categories Ia, Ib, Ic and III;

in Case 110/86:

declare void the Commission's decision of 21 March 1986 (SG (86) D/3433), notified on 3 April 1986, in so far as it determines that part of the production quota which may be delivered within the common market in Categories Ia, Ib, Ic and III.

In its reply in Case 33/86 Stahlwerke Peine-Salzgitter abandoned an alternative claim for the annulment of a letter sent to the applicant by the Commission on 22 January 1986 in reply to a letter of 25 November

1985 from the applicant applying to the Commission pursuant to Article 35 of the ECSC Treaty after the Commission stated in its defence that its letter does not constitute an independent decision.

Hoogovens, the intervener in Case 33/86, endorses the applicant's conclusions.

Hoogovens, the applicant in Cases 226 and 285/86, claims that the Court should:

in Case 226/86:

declare void, in whole or at least in part, the decision of the Commission of the European Communities of 14 July 1986 (SG (86) D/8396), as amended and adapted by the decision of the Commission of 5 August 1986 (SG (86) D/9551), also addressed to the applicant, which decision was notified to the applicant on 25 July 1986 by letter of the Commission dated 14 July 1986;

declare illegal or unlawful, in whole or in part, Decision No 3485/85/ECSC of the Commission of the European Communities of 27 November 1985;

in Case 285/86:

declare void, in whole or at least in part, the decision of the Commission of the European Communities of 6 October 1986 (SG (86) D/11531) which is expressly addressed to the applicant and was notified to it on 20 October 1986 by the Commission's letter of 6 October 1986;

declare illegal or unlawful, in whole or in part, Decision No 3485/85/ECSC of the Commission of the European Communities of 27 November 1985.

In all five cases the applicants claim that the Commission should be ordered to pay the costs.

The *Commission* contends that the Court should:

in Case 33/86: dismiss the application as inadmissible or alternatively as unfounded;

in Cases 44, 110, 226 and 285/86: dismiss the application as unfounded.

In each of the five cases the *Commission* contends that the applicant should be ordered to pay the costs.

III — Admissibility (Case 33/86)

The Commission contests the admissibility of the application in Case 33/86 only. In substance it contends that the applicant has not proved that Decision No 3485/85/ECSC constitutes a misuse of power in its regard. The Commission also expresses doubts about the correctness of the application in so far as it is directed against the wording of Article 5 of Decision No 3485/85/ECSC. Since the applicant objects to the fact that Decision No 3485/85/ECSC does not make provision for improving the I:P ratio, the Commission wonders whether the provision claimed by the applicant ought to have been included in Article 5 or whether it would have been more logical to have a separate article.

Stahlwerke Peine-Salzgitter takes the view that the Commission's omission to make provision in Decision No 3485/85/ECSC for a general adjustment of the I:P ratio for undertakings whose proportion of deliveries in the common market is appreciably lower than the Community average constitutes an infringement of Article 58 (2) of the ECSC Treaty. That infringement constitutes a misuse of power with regard to the applicant in question first because the applicant is one of the Community undertakings most seriously affected by a very unfavourable I:P ratio and secondly because the Commission has repeatedly admitted that the applicant's difficulties arising from its I:P ratio required a solution.

As regards the fact that the application concerns Article 5 of Decision No 3485/85/ECSC, the applicant observes that Article 5 contains rules on delivery quotas whose direct consequence is that no general adjustment of the I:P ratios takes place. It is for that reason that the applicant seeks the partial annulment of the contested decision.

IV — Submissions and arguments of the parties

The submissions and arguments of the parties are broadly the same in all five cases except for certain differences which are explained below. In all five applications the legality of Decision No 3485/85/ECSC is directly or indirectly contested.

In Case 33/86 *Stahlwerke Peine-Salzgitter*, an applicant, and *Hoogovens*, the intervener, take the view that Decision No 3485/85/ECSC constitutes a misuse of power in their regard because, in failing to provide for a general adjustment of the I:P ratio for undertakings whose proportion of deliveries in the common market is appreciably lower than the Community average, the Commission failed to fulfil its obligation under Article 58 (2) of the ECSC Treaty to determine quotas on an equitable basis.

In Cases 44 and 110/86 *Stahlwerke Peine-Salzgitter* claims an individual right to an equitable adjustment of its I:P ratio, a right resting directly on the provisions of Article 58 of the Treaty which, as a primary source of Community law, ranks higher than Decision No 3485/85/ECSC, which is unlawful, at least in part. Since the Commission did not take account of that right when determining the individual quotas for the first quarter of 1986, its decision infringes Article 58 of the ECSC Treaty, irrespective of the question whether it was necessary to make an overall adjustment of the I:P ratios by enacting general legislation.

In Cases 226 and 285/86 *Hoogovens* states that, by not making provision in Decision No 3485/85/ECSC for equitable adjustments of delivery quotas, the Commission has infringed Article 4 in conjunction with Article 58 of the ECSC Treaty and the general principles of law regarding equal treatment and the careful preparation of legislation. Hoogovens also contends that, since Decision No 3485/85/ECSC is unlawful, the contested individual decisions adopted on the basis of that general decision can no longer be maintained in force.

The applicants and Hoogovens in its intervention in Case 33/86 point out that the first sentence of Article 58 (2) of the ECSC Treaty requires the Commission to determine quotas on an equitable basis, taking account of the principles set out in Articles 2, 3 and 4 of the ECSC Treaty. The Court itself has on several occasions ruled on the precise meaning of 'equitable' (judgment of 7 July 1982 in Case 119/81 *Klöckner-Werke* v *Commission* [1982] ECR 2627 and judgment of 11 May 1983 in Case 244/81 *Klöckner-Werke* v *Commission* [1983] ECR 1451). Decision No 3485/85/ECSC maintains the inequitable delivery quotas allocated to Stahlwerke Peine-Salzgitter and to Hoogovens.

As the Commission itself indicates in its communication to the Council on 25 September 1985, a difference greater than 10% is no longer in line with the aim of the Community steel policy; from this it necessarily follows that such a gap is also contrary to the aims of Articles 2 to 5 of the ECSC Treaty and therefore to the first sentence of Article 58 (2). Since the I:P ratios for the groups of products produced by Stahlwerke Peine-Salzgitter and Hoogovens are appreciably lower than the Community average, sometimes by nearly 25%, such differences inevitably lead to distortions of competition.

The inappropriateness of the I:P ratios is due entirely to the fact that the applicants' quota for export production is fixed rigidly by the quota system although market conditions have changed drastically, particularly on export markets. The fall in profitability and the decline in export sales due to overcapacity throughout the world naturally have a particularly severe effect on those undertakings allocated a particularly high proportion of exports under the quota system.

The Commission's statement that a general adjustment of the I:P ratio was 'essential' constitutes a finding of necessity which follows from Article 58 of the ECSC Treaty. It also means that, in the Commission's own opinion, any decision which does not provide for such an adjustment is defective and exceeds the limits imposed on the Commission's power by the first sentence of Article 58 (2) of the ECSC Treaty. In adopting Decision No 3485/85/ECSC the Commission therefore committed a misuse of power. That misuse of power particularly affects Stahlwerke Peine-Salzgitter and Hoogovens because their extremely unfavourable I:P ratios are a considerable handicap from the point of view of comepetition and profitability owing to prevailing market conditions.

The Commission cannot contend that the Council has not approved the proposal to make general adjustments to the I:P ratios which it submitted to it. The establishment

of quotas on an equitable basis is solely a matter for the Commission. This is clear from the text itself of the first sentence of Article 58 (2) of the ECSC Treaty, which states that the Commission is to establish quotas on an equitable basis. Secondly, that view has also been confirmed by the Court in its judgment of 11 May 1983 in Case 244/81 *Klöckner-Werke* v *Commission*, cited above. According to the division of powers between the Council and the Commission, as provided for in Article 58, the Council's assent is required only for the decision in principle to introduce a quota system, whilst the Commission alone has the power to determine quotas on an equitable basis.

If the Commission were able to rely on the absence of the Council's 'assent', it could in practice, by referring to politically motivated reservations of the Council against certain detailed measures, remove from judicial review any rules necessitated in Community law by virtue of Article 58 (2) of the ECSC Treaty requiring the determination of quotas 'on an equitable basis'.

If the Commission was in fact bound by the necessity to have the Council's 'assent', even for detailed adjustments of the quota system, the question whether the absence of the Council's assent to the rules at issue is contrary to Article 58 of the ECSC Treaty should at least be open to examination by the Court as a procedural issue in an action against the misuse of power in the adjustment of the quota rules.

The Commission observes that the Council did not accept its proposal to add to the general decision a provision which would have allowed the I:P ratio of undertakings to be improved within certain limits.

The Commission examines the question whether it is authorized, and possibly obliged, under the first sentence of Article 58 (2) of the ECSC Treaty, to make provision in a general decision for the adoption of quotas although the Council has refused to give its assent requested for that purpose.

The applicants' argument in this regard is sustainable only if paragraphs (1) and (2) of Article 58 could be considered separately. That would mean that the Council's assent would indeed be necessary in order to 'establish' a quota system (Article 58 (1)), but that the determination of quotas 'on an equitable basis' under that quota system (Article 58 (2)) would be solely the Commission's responsibility. The Commission considers that such an interpretation of Article 58 is wrong in law. It is also incompatible with the practice of the Commission and the Council and with the case-law of the Court.

If the Council's assent was necessary under Article 58 (1) to establish a quota system, that does not mean that the details of the scheme could be worked out and the scheme extended or modified without the Council. The only exception is the possibility for rules to be adopted on the conditions laid down in Article 18 of the general decision in force. Article 18 is an enabling provision which allows a rapid response to be made, that is without the Council's assent and without consulting the Consultative Committee, to radical changes on the steel market or to unforeseen diffi-

culties in the application of the general decision.

In accordance with the provisions of the general decision in force the Commission determines quotas on an equitable basis: paragraphs 1 and 2 of Article 58 must therefore be read in close conjunction. It would be neither lawful for the Commission to allocate quotas, on equitable grounds for example, nor permissible for the Commission to amend the general decision without observing the existing procedure in order to be able to adjust quotas to make them more equitable. Those two measures may be adopted only in one of the two following procedures: either the general decision is amended in accordance with Article 58 (1), that is to say with the assent of the Council, or an amendment is made pursuant to Article 18 of the general decision, provided that the conditions laid down therein are fulfilled.

In the present case, when the Council did not follow the Commission's proposals regarding the need to change the I:P ratio, it was impossible for the Commission to ignore that vote when adopting Decision No 3485/85/ECSC. A decision based on Article 18 did not enter consideration so soon after the adoption of the general decision and in the absence of decisive grounds. Furthermore, such a decision would be difficult to reconcile with the judgment of the Court of 21 February 1984 in Joined Cases 140, 146, 221 and 226/82 *(Walzstahl-Vereinigung and Thyssen AG* v *Commission* [1984] ECR 951).

The Commission considers that the judgment of the Court of 11 May 1983 in Case 244/81 *Klöckner-Werke* v *Commission* relied upon by the applicants concerned a quite different case; it does not suggest that when drafting the general decision the Commission may ignore a negative vote on a specific question given in the procedure for obtaining assent.

As regards actions challenging individual decisions adopted on the basis of the general decision, the Commission states that once it establishes a quota system it is bound to it, by virtue of general principles, to the same extent as the other parties concerned by the provisions which it has adopted under that system. It would be incompatible with that situation additionally to give undertakings an individual right to the allocation of quotas directly based on Article 58. Such a right would undermine the quota system and deprive the Commission of all authority in the management of the system. Undertakings could challenge all the decisions adopted by the Commission in its management of the quota system on the ground that they were 'inequitable'.

V — Continuation of the procedure

By a letter registered at the Court on 27 August 1987 the Commission informed the Court that the legal situation had changed since the end of the written procedure by reason of the fact that the Commission had adopted 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).

In response to requests made by the parties, the President of the Sixth Chamber decided to allow each of them to submit a written

analysis of the effect of that decision. The analyses of the Commission, Stahlwerke Peine-Salzgitter (consisting in a written analysis dated 23 September 1987 and two annexes) and Hoogovens were lodged at the Court Registry on 1, 24 and 25 September 1987 respectively.

Stahlwerke Peine-Salzgitter observes that Decision No 1433/87/ECSC and No 1434/87/ECSC (Official Journal 1987, L 136, pages 37 and 39) constitute an indivisible whole the effects of which can only be assessed in their entirety. Owing to the latter decision and the individual decisions the reference figures subject to the quota system were inflated so much that Stahlwerke Peine-Salzgitter lost entitlement to quotas; that loss of entitlement cancels out the theoretical advantages it has under Decision No 1433/87/ECSC. In the present case, the fall in the applicant's proportion of production in the Community for products in Categories Ia to III and in the 'I' portion amount to a fall in production of approximately 7 000 tonnes per quarter.

Decision No 1433/87/ECSC offers all undertakings, including those whose 'I' portion is higher than the Community average, the possibility to improve their 'I' portion. As a result of the decision, its average 'I' portion has again risen from 76 to 78%.

On the other hand, the purpose of the proposals made by the Commission to the Council on 25 September 1985 was to enable undertakings whose 'I' portion is extremely low and over 10 percentage points below the Community average to align their figures with that average. Decision No 1433/87/ECSC is not suitable for achieving that aim since it allows even undertakings whose figures were already above the Community average to further increase their 'I' portion.

Moreover, Decision No 1433/87/ECSC allows an improvement of the 'I' portion only if accompanied by a reduction in the production quota. For Stahlwerke Peine-Salzgitter, that loss of production amounts to 3 000 tonnes per quarter. That defect would be objectively justified for undertakings whose 'I' portion is around the Community average, or even above it, but not for undertakings whose 'I' portion must first be aligned with the Community average.

It is obvious that any reduction in the 'P' quota will theoretically improve the I:P ratio, even if the 'I' portion does not increase in real terms.

Stahlwerke Peine-Salzgitter points out that Decision No 1433/87/ECSC is irrelevant in so far as it is incapable in any circumstances of improving retroactively its insufficient I:P ratio for 1986 which is the subject of the actions.

Hoogovens also points out that Decision No 1433/87/ECSC has no effect in the present case. It challenges the figures provided by the Commission in its analysis of 1 September 1987. It states that Decision No 1433/87/ECSC makes such a negligible improvement to its I:P ratio that it cannot be said to have any substantial effect on its position in 1987, let alone any improvement, and produces evidence to support its claim. The financial effect of the application of

that decision is negligible as far as it is concerned.

Hoogovens also submits that Decision No 1433/87/ECSC can only be interpreted in conjunction with Decision No 1434/87/ECSC. As a result of the liberalization of product category Ic, Hoogovens' I:P ratio for product category Ia in 1987 was made worse by 11.5% in relation to 1986. By using to the full the limited possibilities of changing to product category Ia created in Decision No 1433/87/ECSC, Hoogovens would probably have improved its I:P ratio by about 4.5%, a percentage still far below the percentage for the fourth quarter of 1986.

The Commission explains that the purpose of Decision No 1433/87/ECSC, which is based on Article 18 of Decision No 3485/85/ECSC, is to take account, at any rate to some extent, of the obsolescence of the quota system and bring up to date the reference figures of undertakings which date back to Commission Decision No 1831/81/ECSC of 24 June 1981 establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1981, L 180, p. 1).

In conjunction with the obsolescence of the reference figures, the Commission considered that it was faced with 'radical changes in the iron and steel market' within the meaning of Article 18 (1) of Decision No 3485/85/ECSC firstly because exports of steel undertakings to non-member countries were falling sharply in 1986, as is clear from, for example, the Forward Programme for Steel for the First Quarter of 1987 (Official Journal 1987, C 47, p. 4).

The essential points of Decision No 1433/87/ECSC may be summarized as follows. For each quarter, for a category of products of their choice, undertakings have the possibility of converting into quotas for delivery in the common market a proportion of the difference between their production quotas and their quotas for delivery within the common market. The more the I:P ratio is below the average for all undertakings, namely 76%, the higher that proportion will be. The undertakings must notify the Commission of their preference before the end of the quarter in question (Article 1 (2)).

For the purposes of applying the decision the Commission divided the undertakings into three classes:

Class 1

I:P ratio lower than 61%:
the maximum adjustment is 30% of the difference between production quotas and delivery quotas;

Class 2

I:P ratio lower than 71%:
maximum adjustment 15%;

Class 3

I:P ratio higher than 71%:
maximum adjustment 5%.

Since the conversions decided on by the undertakings receiving the greatest advantage under that decision are made to the detriment of all those undertakings benefiting less from the measure in question, the decision provides for a conversion rate of 1: 0.85. That means that two adjustments need to be made:

the quantity determined as explained above is multiplied by 0.85: the result is added to the basic delivery quota for the chosen category;

the quota determined as explained above is multiplied by 0.15: the result is subtracted from the basic production quota for the chosen category.

The I:P ratio in the first quarter of 1987 was 57.9% in the case of Stahlwerke Peine-Salzgitter and 53.6% in the case of Hoogovens. The two undertakings therefore belong to Class 1 as defined above. The Commission provides information regarding the additional maximum delivery quotas of the two undertakings and the choices made by those undertakings concerning the conversion of quotas for the first and second quotas of 1987.

The Commission adds that it is aware that Stahlwerke Peine-Salzgitter and Hoogovens would be in a better position if the Council had given its assent to the Commission's proposal of 25 September 1985. After the Council refused to give its assent, the Commission, for both legal and political reasons, did not consider that it was able on its own initiative to adopt on the basis of Article 18 of Decision No 3485/85/ECSC the solution which the Council had just rejected. It considered it appropriate to wait until the deterioration in the situation with regard to exports had provided it with a sufficiently sound argument for meeting at least some of the wishes of the steel undertakings for an improvement of their I:P ratios.

VI — Oral procedure

At the hearing on 22 October 1987 the parties took note of the Council's reply to the questions asked by the Court, namely that the Council refused to give its assent to the Commission's proposal to alter the I:P ratios of the undertakings with very unfavourable delivery quotas.

T. F. O'Higgins
Judge-Rapporteur