OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 29 OCTOBER 1981 [1]

Mr President,
Members of the Court,

This application by Alpha Steel Ltd is directed against the system of quotas for the second quarter of 1981, which was based on 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 L 291 of 31 October 1980, p. 1) and on Decision No 664/81/ECSC.

By a decision of 6 April 1981, received by the applicant on 9 April 1981, the Commission, proceeding on the basis of a reference production of 80 803 tonnes for products in Group I (hot-rolled wide and narrow strips), fixed the quota for the period in question at 52 021 tonnes by applying a rate of abatement of 35·62 %. The quota for crude steel was fixed, on the basis of a reference production of 53 497 tonnes, at 34 441 tonnes, by application of the same rate of abatement. As was stated in the communication in question, the quotas were adjusted in accordance with Article 6 of the general decision, Decision No 2794/80.

On 8 May 1981 the applicant applied to the Court of Justice, claiming that the decision of 6 April 1981 should be annulled and the Commission ordered to pay the costs of the proceedings.

The Commission, on the other hand, contends that the application should be dismissed as unfounded and that the applicant should accordingly be ordered to pay the costs.

I — As in the application in Case 14/81, which was directed against the quotas fixed for the first quarter, the applicant submits in these proceedings also that Decision No 2794/80 is void for infringement of an essential procedural requirement, inasmuch as it does not contain a sufficient statement of the reasons on which it is based, and for infringement of Articles 14, 58 (1) and (2) and 74 of the ECSC Treaty. The applicant also argues that the contested decision is in particular contrary to Articles 4 (3) anad 14 of the general decision on which it is based.

Since with regard to these grounds the arguments of the parties are in essence identical with those submitted in Case 14/81 I can refer to my opinion in that case, in which I made a detailed appraisal of those arguments.

A supplementary statement of my views is necessary only in so far as the applicant further complains that the individual decision is incompatible with Article 14 of Decision No 2794/80. In fact on this occasion, when the Commission fixed the quotas for the second quarter of 1981, it did not employ Article 14 of the general decision, as is shown by the communication of 6 April 1981. In a letter of 21 April 1981 the applicant requested that the production quotas should be adjusted under Article 14 of the decision on the basis of the specific characteristics of its undertaking. But, in a letter dated 30

1 — Translated from the German.

June 1981, that is after the application was lodged, the Commission refused to apply Article 14 to the applicant since, having regard to the low rate of utilization of the quotas allocated in the previous quarters and in the current quarter, it appeared most improbable that the applicant would exhaust the general quota available to it.

The applicant now claims that, when the Commission employed Article 14 for the first quarter, it correctly assumed that the conditions required by that provision were fulfilled. Therefore, it argues, Article 14 should also be applied to the second quarter of 1981 in such a way that, under that provision, the quotas are raised above the reference production.

However, I agree with the Commission in considering that that submission, like the others, cannot succeed. In its application the applicant seeks the annulment of the individual decision of 6 April 1981, which was based on Decision No 2794/80, and which, since no such request had been made, contained no reference to Article 14. However, the applicant's request for Article 14 to be applied, which was submitted after the quotas fixed for the second quarter had been announced, was not refused until 30 June 1981. It follows that that refusal may no longer be considered as forming the subject-matter of the application.

The final point should be made that, even if, contrary to the views which I have set out here, it were held that it may be so considered, then, on the basis of my remarks in Case 14/81 the Commission could not be charged with misuse of powers for refusing to apply Article 14 in its appraisal of the particular circumstances. In this connection it is merely necessary to note that, after the expiry of two months of the second quarter the applicant had used only some 16 % of the quota allocated to it for the products in Group I and none of the quota available for crude steel and so was unable to point to any exceptional difficulties which had arisen *as a result of* the restriction on production.

II — Accordingly the only proposal which I can make is that the application should be dismissed as unfounded and that the applicant should be ordered to pay the costs.