JUDGMENT OF THE COURT
9 April 1987 *

In Joined Cases 167 and 212/85

Associazione industrie siderurgiche italiane (Assider), having its registered office at 8 Piazza Valasca, Milan, represented and assisted by Cesare Grassetti and Guido Greco, Advocates, with an address for service in Luxembourg at the Chambers of Nico Schaeffer, 12 avenue de la Porte-Neuve,

and

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Diplomatic Service, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adelaïde,

applicants,

v

Commission of the European Communities, represented by its legal advisers, Rolf Wägenbaur and Gianluigi Campogrande, acting as Agents, with an address for service in Luxembourg at the office of George Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION requesting the Court to declare void, pursuant to Article 35 of the ECSC Treaty, the Commission's decision refusing to adopt the measures provided for by Article 15B of Commission Decision No 234/84/ECSC of 31 January 1984 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1984, L 29, p. 1),

* Language of the Case: Italian.

THE COURT

composed of:

Lord Mackenzie Stuart, President, Y. Galmot and C. Kakouris, Presidents of Chambers, G. Bosco, T. Koopmans, U. Everling, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. Mischo
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 16 December 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 February 1987,

gives the following

Judgment

1 By applications lodged at the Court Registry on 31 May and 12 July 1985 Assider and the Government of the Italian Republic brought actions under the third paragraph of Article 35 of the ECSC Treaty requesting the Court to declare void the Commission's implied decision refusing to apply Article 15B of Commission Decision No 234/84/ECSC of 31 January 1984 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry.

2 In the alternative, Assider claims that the Court should declare void the express decision refusing to apply Article 15B, which is allegedly contained in a letter from the Commission dated 22 March 1985.

3 In letters which it sent to the Commission between 30 November 1984 and 25 February 1985, the Italian Government pointed out that the volume of deliveries in Italy of iron and steel products covered by Decision No 234/84/ECSC had been

altered for the whole of 1984 to a significant extent compared with traditional deliveries and requested the Commission to apply the remedial measures provided for in Article 15B of Decision No 234/84/ECSC. Assider made the same request by letter of 18 February 1985.

4 By letter of 22 March 1985, the Commission informed the Italian Government that, after examining whether the complaints lodged by Italy since 5 June 1984 were justified and organizing bilateral meetings with the competent authorities of the Member States concerned, it had initiated procedures in relation to certain pricing infringements which had been found to have been committed, and that it would decide on a case-by-case basis whether it was advisable to put into effect the procedure provided for in Article 15B of Decision No 234/84/ECSC.

5 By letter of 24 April 1985 the Commission sent to Assider a copy of its letter of 22 March 1985 which it had sent to the Italian Government, merely adding that it would keep Assider informed should the detailed investigations in progress justify further action by the Commission under the procedure provided for in Article 15B of Decision No 234/84/ECSC.

6 Reference is made to the Report for the Hearing for the relevant legislation and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility of Assider's alternative claim

7 The Commission contends that neither the letter of 22 March 1985 nor that of 24 April 1985 contains an express refusal of the request made by the applicants pursuant to Article 35 of the ECSC Treaty and that Assider's alternative claim that the Court should declare void the express decision of refusal allegedly contained in the letter of 22 March 1985 is therefore inadmissible.

8 It is clear from the terms of the letter of 22 March 1985 sent to Assider on 24 April 1985, which are set out above, that it does not constitute an express decision refusing to initiate the procedure laid down in Article 15B but a report on the work undertaken for the purpose of adopting a decision in that regard. As such,

that letter cannot therefore be treated as an express decision capable of interrupting the period prescribed by the third paragraph of Article 35 of the ECSC Treaty and of being the subject of an action for annulment.

9 It follows from the foregoing considerations that Assider's alternative claim for the annulment of the decision contained in the letter of 22 March 1985 is inadmissible. However, it is necessary to consider the substance of the applicants' claim for the annulment of the implied decision of refusal which is to be inferred from the Commission's silence with regard to their requests.

Substance

10 It must be pointed out that, although in their requests to the Commission the applicants sought to obtain the implementation of Article 15B of the aforesaid ECSC decision without giving further details, it is clear both from the applications themselves and from the proceedings before the Court that Assider, like the Italian Government, seeks only the annulment of the Commission's implied decision refusing to apply paragraph 4 of the article in question.

11 The applicants rely on two submissions in support of their claim. The first alleges disregard of Article 15B (4) of the aforesaid ECSC decision and of various provisions of the ECSC Treaty. The second alleges misuse of powers in so far as the Commission pursued an objective different from that which led to the adoption of Article 15B.

12 The applicants argue, in the first place, that since, as in this case, the Italian Government's complaint was considered justified, the Commission was required to take action without delay and to request the undertakings in question to give a commitment in writing that they would correct the imbalance found in their traditional deliveries. An infringement of Article 15B (4) implies an infringement of Article 58 of the ECSC Treaty, on the basis of which Decision No 234/84/ECSC was adopted, and of Article 5 of the ECSC Treaty, which requires the Community to ensure, in particular, the maintenance of normal competitive conditions.

13 It must be pointed out that, under Article 15B (4), the Commission takes action only if it considers that a complaint submitted by a Member State on the basis of paragraph 1 of that provision is justified.

14 It is clear from the actual wording of Article 15B (3) that, in examining whether a complaint submitted by a Member State is justified, the Commission must not merely evaluate the statistics sent to it but must also take account 'of all the circumstances pertaining to the case in question'. It therefore has a discretion in determining whether a Member State's complaint must be considered justified.

15 However, it is clear from the wording of Article 15B (4) that where, on completion of its investigation, the Commission considers that the complaint is justified, it must then request the undertakings in question to give the commitment specified in that provision. It should be noted that, conversely, Article 15B (5) gives the Commission a wide discretion in deciding whether to reduce the quotas of an undertaking which has either refused to give or has not honoured such a commitment.

16 In the present case, it is clear from the documents before the Court that the Commission acknowledged that the statistics produced by the Italian authorities were correct and that traditional deliveries had been altered to a significant extent within the meaning of Article 15B (1); that it established that those alterations, which were to the detriment of Italian producers, had not been offset by other alterations in their favour; that it attempted to trace the origin of that situation and ascribed it not to normal market fluctuations but to the infringement by certain producers of the Community rules on the prices of iron and steel products; and, finally, that in October 1984, it consulted the Member States concerned as Article 15B (4) requires it to do when 'it considers that the complaint is justified'.

17 In those circumstances, it must be found that the Italian Government's complaint was considered justified by the Commission as from the fourth quarter of 1984 and that, accordingly, the Commission was required by Article 15B (4) to request the undertakings concerned to give a commitment in writing that they would correct the imbalance in their traditional deliveries.

18 In order to justify its inaction, the Commission maintains that it was not required to act within a specific period and that it considered it necessary, before applying Article 15B (4), to await the outcome of the procedures which it had initiated against certain producers for infringing the rules on the prices of iron and steel products. The investigation of those infringements was still in progress in December 1986.

19 That argument cannot be accepted. The measure provided for in Article 15B (4) is not in the nature of a penalty and, consequently, is not conditional on a finding that the undertakings in question have committed an infringement. Furthermore, it is clear from the wording of Article 15B that the procedure established by that article must be pursued with diligence, and Article 15B (4) specifically requires the commitment sought from the undertakings in question to be honoured during the quarter following that in which the Commission considered the complaint to be justified. The Commission was therefore under an obligation in this case to request the undertakings in question to give a commitment that as from the first quarter of 1985 they would correct the imbalance established in their traditional deliveries.

20 It follows from the foregoing considerations, without there being any need to consider the applicants' second submission, that the Commission's implied decision refusing to adopt the measures provided for in Article 15B (4) of Decision No 234/84/ECSC was contrary to the provisions thereof and must consequently be declared void.

Costs

21 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares void the Commission's implied decision refusing to adopt the measures provided for in Article 15B (4) of Decision No 234/84/ECSC;

(2) Orders the Commission to pay the costs.

Mackenzie Stuart Galmot Kakouris Bosco

Koopmans Everling Joliet Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 9 April 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President