ORDER OF THE PRESIDENT OF THE COURT
OF 20 MARCH 1981 [1]

Metallurgiki Halyps SA
v Commission of the European Communities

"System of production quotas for steel — Greek producers"

Case 41/81 R

In Case 41/81 R

METALLURGIKI HALYPS SA, Athens, represented by A. Elvinger, of the Luxembourg Bar, and A. Lykourezos, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Messrs Elvinger & Hoss, 15 Côte d'Eich,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, M. Van Ackere, assisted by F. Benyon, a member of its Legal Department, with an address for service in Luxembourg at the office of O. Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

THE PRESIDENT OF THE COURT OF THE EUROPEAN COMMUNITIES

makes the following

1 — Language of the Case: French.

ORDER

Facts and Issues

I — History of the dispute

1. By general Decision 2794/80/ECSC of 31 October 1980 (Official Journal L 291, p. 1), the Commission, considering that the Community was confronted with a period of manifest crisis within the meaning of Article 58 of the ECSC Treaty, established a system of steel production quotas for undertakings in the iron and steel industry, ending on 30 June 1981. Since the accession of the Hellenic Republic it has applied that system to the Greek iron and steel undertakings.

2. The Act concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties (Official Journal 1979, L 291, p. 17) provides in Article 2 thereof 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". Article 9 (1) of the Act lays down that "the application of the original Treaties and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in this Act".

3. Part Four of the Act of Accession concerns transitional measures. Although that part contains various special provisions concerning iron and steel, especially Articles 32 to 34, it contains no transitional measure as far as Article 58 of the ECSC Treaty is concerned.

4. The Final Act in the documents concerning the accession lays down an information and consultation procedure for the adoption of certain decisions. Under that procedure any proposal or communication from the Commission which might lead to decisions by the Council is to be brought to the knowledge of the Hellenic Republic after being transmitted to the Council. Consultations are to take place if they are requested by the Hellenic Republic.

5. Under Article 42 of general Decision 2794/80/ECSC the Commission is to fix quarterly production quotas for crude steel and iron for the four groups of products described in the said Article II and further described in Annex I to the decision.

6. Article 4 (1) and (2) of the general decision lays down general rules for the calculation of quarterly reference production figures for both rolled products and crude steel.

It reads as follows:

"1. For each month of the relevant quarter, reference shall 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, shall constitute the reference period.

2. The reference production figures shall 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."

7. Article 4 (3), (4) and (5) sets out the special circumstances in which the reference production figures, and accordingly the quotas, may be increased.

Under Article 4 (3) the Commission with due regard to the criteria mentioned, must increase the reference production figures for an undertaking where average rates of utilization of the production facilities during the period from July 1977 to June 1980 was 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) lays down that where, further to the investment programme duly reported and not the subject of an unfavourable opinion, the undertaking activates a new plant, the Commission is to adopt appropriately the reference production of this undertaking as provided in that paragraph.

8. Under Article 14 of the decision, where the production or delivery restrictions imposed by Decision 2794/80/ECSC or its implementing measures entail exceptional difficulties for an undertaking, it may refer the matter to the Commission. The Commission is to examine the case without delay, in the light of the objectives of the decision. After such examination it has to adapt the provisions of the decision.

9. Under Article 5 (1) of general Decision 2794/80/ECSC, as amended by Article 1 of Commission Decision 3381/80/ECSC of 23 December 1980 (Official Journal L 355, p. 37) the rate of abatement in relation to reference production figures for the groups of rolled products is to be:

Rolled products		
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 %

The rate of abatement for crude steel is to correspond to the average abatement rates of the four groups of rolled products weighted according to the reference production of each of these groups of products (Article 5 (2)).

10. By individual decision of 3 February 1981 the Commission fixed the applicant's production quotas for the period from 1 January 1981 to 31 March 1981 as follows:

Rolled products	Reference				Reduction	Quota first quarter 1981
	January 1980	February 1980	March 1980	Total		
	tonnes	tonnes	tonnes	tonnes	%	tonnes
Category I	—	—	—	—	—	—
Category II	—	—	—	—	—	—
Category III	—	—	—	—	—	—
Category IV	22 707	23 465	18 946	65 118	27·64	47 119
Total I to IV	22 707	23 465	18 946	65 118	27·64	47 119
Crude steel	12 464	18 869	29 342	60 075	27·64	43 904

The Commission based its decision on the Act of Accession and in particular Article 2 thereof and on Article 3 of Decision 2794/80/ECSC, as amended by Decision 3381/80/ECSC. It added that "you (the applicant) may if you think you can take advantage of the adaptations laid down in Article 4 (4) lodge a formal request".

II — Written procedure

1. By application received at the Court Registry on 20 February 1981 the applicant brought an action for annulment of the individual decision of 3 February 1981, in reliance, first, on the inapplicability of general Decision 2794/80/ECSC to the iron and steel undertakings in the Hellenic Republic and, secondly, both on the unlawfulness of that decision for lack of an adequate statement of the reasons on which it is based and on infringement of Articles 58, 74 and 14 of the Treaty.

2. On 20 February 1981 the applicant, under Article 39 of the ECSC Treaty and Article 83 of the Rules of Procedure of the Court, brought an application for the suspension of the operation of the decision contested in the main proceedings.

3. In its observations on the application for urgent measures the Commission claims that the Court should:

1. Dismiss the application by the applicant seeking suspension of the operation of the individual decision;

2. Reserve the costs.

III — Submissions and arguments of the parties

A — The urgency and provisional nature of the suspension sought

According to the *applicant* it will be impossible for a decision on its application to be given before the end of the first quarter of 1981. It consequently risks serious loss against which it has been unable to make preparation. In past years it has not in fact had the benefit of Community protection but has been

subjected to competition both from the Community and non-member countries. Furthermore, the provisions for weighting and equitable treatment laid down in Article 4 (3) and (4) of the general decision are accompanied by conditions relating to earlier Community measures with the result that the applicant necessarily cannot benefit from them. The applicant makes the further observation that having regard to the small percentage represented by the production of Greek undertakings and to the fact that those undertakings have not been subjected to quotas for the last quarter of 1980 the serious loss arising from the operation of the general decision which may later be deemed unlawful is out of all proportion to the scarcely perceptible effects which would be felt if the general decision were not applied to the Hellenic Republic.

The *Commission* emphasizes that because the judgment of the Court in the main proceedings will not be given until after the period for which the individual decisions fixing the quotas has expired, this fact is insufficient to give rise to urgency; were this not so, any request for suspension of the operation of measures would have to be accepted on that footing. What the applicant should show is that a serious loss would be suffered if the measures sought were not granted. It has shown nothing of the kind and has merely stated that it *risks* serious loss through the application of the decision. The suspension must in fact be *necessary* to avoid serious and irreparable loss. The fact that the applicant was not prepared for the introduction of the production quotas does not necessarily mean that it will suffer a serious loss as a result of those measures.

As regards the adjustments to the reference production figures laid down in Article 4 (3) and (4) of the general decision, the Commission observes that the applicant is not precluded from the application of Article 4 (4). Other Greek undertakings in similar situations have had the benefit of the adaptations mentioned. Furthermore the Commission fails to see how the inapplicability of the provisions of Article 4 (3), which were intended to prevent any inequity arising solely to the disadvantage of certain undertakings which had participated in the voluntary delivery programmes, in which the Greek undertakings did not participate, could cause the applicant serious and irreparable loss.

As regards the applicant's observation that Greek production represents a small percentage of the Community market, the Commission's answer is that it is larger than Denmark's and almost fifteen times larger than Ireland's. The general decision moreover provided an exception in Article 1 (2) (a) for small undertakings below certain thresholds, but the applicant's production was far above those thresholds.

Finally, the Commission considers that suspension of the operation of the individual decision would inevitably nullify any later decision in the main proceedings confirming the contested decision. The individual decision would thus not in fact be suspended in its operation but annulled.

B — The applicability of the general decision and the information procedure

The *applicant* considers that the general decision does not constitute an act adopted by the Community institutions as enlarged by the entry of Greece because it was adopted before 1 January 1981. In its view neither Article 2 nor Article 146 of the Act of Accession provides a legal basis justifying the applicability of general Decision 2794/80/ECSC to Greek iron and steel undertakings.

The *Commission* on the other hand maintains that under Article 2 of the Act of Accession the "Community patrimony", that is to say, the original Treaties and the acts adopted by the institutions of the Communities, is binding on Greece from the time of its accession which took place on 1 January 1981. Article 2 does indeed provide that the acts adopted by the Communities shall apply under the conditions laid down by the Act concerning the Conditions of Accession but the adaptations and derogations provided for do not concern acts adopted under Article 58 of the ECSC Treaty. As regards adaptations of the acts of the institutions, these are provided for only to the extent to which they are necessary in order to bring such acts into line with the provisions of the Act of Accession. In that matter adaptations of a technical nature are involved which do not apply in the present case. Therefore there can be no doubt that acts adopted between 28 May 1979 and 1 January 1981 are binding on Greece.

The Commission further observes that the information procedure has been complied with in the present case. The communication of 6 October 1980 from the Commission to the Council for the purpose of obtaining the assent of the Council required by Article 58 (1) of the ECSC Treaty was sent to the Hellenic Republic on 9 October 1980 but the latter did not ask for the consultation provided for. Consequently the decision could not be the subject of consultations which had not been asked for.

C — The statement of reasons on which the general decision is based

The *applicant* after examining the recitals in the preamble to the general decision and the provisions of the decision states that as regards Greek undertakings it is inapplicable as to its substance, objectives and detailed rules. Thus the facts put forward in the statement of reasons and the special arrangement set out in Article 4 (3) and (4) indicate the state of affairs in the Community before Greece joined it.

The Commission's answer is that a statement of the reasons on which a general act is based cannot take account of the special position of each undertaking in the iron and steel industry in the perspective of each Member State, old or new. The interests of the iron and steel industry of the Hellenic Republic were taken into account in the transitional measures contained in the Act concerning the Conditions of Accession but that act did not provide for derogations as regards the possible application of Article 58 of the ECSC Treaty.

D — Alleged infringement of Articles 58 (1) and 74 of the Treaty

The *applicant* in substance accuses the Commission of having established a quota system without at the same time bringing into operation the procedure laid down in Article 74 of the Treaty which provides for measures of com-

mercial policy to counteract dumping. Its failure to do so deprives the fixing of quotas of any real significance and renders it unlawful.

The *Commission* recalls that it entered into and negotiated arrangements with non-member countries which export iron and steel products and emphasizes that an assessment of the application, simultaneously or otherwise, of Articles 58 and 74 constitutes a difficult choice of policy which falls within its discretion.

E — Alleged infringement of Article 58 (2) of the Treaty

The *applicant* considers that the general decision did not comply with the considerations of equity provided for in Article 58 (2) of the ECSC Treaty. According to that article the Commission shall determine the quotas "on an equitable basis, taking account of the principles set out in Articles 2, 3, and 4" of the Treaty. Indeed, if Article 4 (3) of the general decision is not applicable to undertakings which, not being within the Community, were unable to participate in the voluntary reduction programmes and Article 4 (4) is not applicable to undertakings whose investments for the same reason could not form the subject of an opinion of the Commission, then the general decision discriminates between this latter category of undertakings and the others.

The *Commission* recalls that Greek undertakings may benefit and have in fact benefited from the adaptation provided for in Articles 4 (4) and 14 of the general decision. There is therefore no discrimination.

IV — Oral procedure

The parties were duly given notice to attend the sitting on 19 March 1981 concerning the adoption of interim measures.

Decision

1 Under Article 39 of Treaty establishing the European Coal and Steel Community actions brought before the Court shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested decision be suspended. It may also prescribe any other necessary interim measures.

2 Under Article 83 (2) of the Rules of Procedure of the Court suspension of the operation of any measures and the decision ordering interim measures are dependent on the existence of circumstances giving rise to urgency and to grounds establishing a *prima facie* case for such measures.

3 By general Decision 2794/80/ECSC of 31 October 1980 (Official Journal L 291, p. 1), a system of steel production quotas was established for undertakings in the iron and steel industry. Under Article 2 (1) of that decision the Commission is to fix quarterly production quotas for crude steel and for four other groups of rolled products.

4 Under Article 3, the Commission is to fix those quotas for each undertaking "on the basis of the reference production figures as referred to in Article 4 of that undertaking [and] by application of abatement rates to these reference production figures as referred to in Article 5".

5 The Commission applied the general decision to Greek undertakings with effect from 1 January 1981. By individual decision of 3 February 1981 it fixed quotas for the applicant for the first quarter of 1981 as follows:

Quota first quarter 1981 — tonnes	
Rolled products	
Category IV	47 119
Total I-IV	47 119
Crude steel	43 904

6 By application, registered on 20 February 1981, the applicant brought an action under Article 33 of the ECSC Treaty in substance for the annulment of the individual decision of 3 February 1981. The application is based principally on the claim, first, that the general decision which forms the basis of the contested individual decision, is not applicable to the iron and steel undertakings of the Hellenic Republic and, secondly, that it is unlawful for lack of an adequate statement of the reasons on which it is based and for infringement of Articles 14, 58 and 74 of the ECSC Treaty.

7 On 20 February 1981 the applicant, under Article 39 of the ECSC Treaty and Article 83 of the Rules of Procedure of the Court, brought an application for the suspension of the operation of the contested decision.

8 It points out that it is a new undertaking which did not start production until 1977. Although production increased rapidly, rising as regards rolled products in Group IV, from 39 223 tonnes in 1977 to 120 535 tonnes in 1978, 185 752 tonnes in 1979 and 238 297 tonnes in 1980, account must be taken of the fact that that increase was from a very small initial production. It adds that the volume of production for 1980 suffered unfavourably from the effects of an earthquake and a strike in the electricity industry.

9 From this the applicant deduces that the application of the system of quotas brought into operation by the general decision has inequitable results so far as concerns the applicant which distort its competitive position. Since the facts relate not to a period of normal activity but to a period in which a new undertaking was getting under way, the reference production figures taken hold back an increase in production which features a nascent undertaking. The applicant is thus put into a markedly less favourable situation than its average competitor.

10 The applicant further points out that the quotas adopted jeopardize the undertakings which it has entered into for its export products. Finally, it gives particulars of substantial losses for the first two months of 1981 which it attributes to the application of the quota system.

11 Although the applicant failed to take advantage of the opportunities for adaptation of the quotas offered in particular by Articles 4 (4) and 14 of the general decision, the Commission stated in the course of the oral procedure that it was prepared to consider whether the applicant could benefit from such adaptation provided it was furnished with the facts necessary to enable it to assess the situation.

On those grounds

by way of an interlocutory judgment,

THE PRESIDENT OF THE COURT

hereby orders as follows:

1. **The Commission shall take steps to investigate as a matter of urgency the opportunities for adaptation of the quotas allotted to the applicant for the first quarter of 1981 in the light of Article 14 or any other provision of general Decision 2794/80/ECSC and of Decision 3381/80/ECSC supplementing and amending it.**

2. **The applicant shall furnish the Commission with all information necessary for this purpose.**

3. **The Commission shall inform the President of the Court not later than 15 April 1981 of the result of this investigation.**

4. **The remainder of the application for the adoption of interim measures is dismissed.**

5. **The costs are reserved.**

Luxembourg, 20 March 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President