JUDGMENT OF THE COURT (Sixth Chamber)
14 June 1989 *

In Case 219/87

Hoogovens Groep BV, a company incorporated under Netherlands law, having its registered office in IJmuiden (Netherlands), represented by F. O. W. Vogelaar and L. H. van Lennep, of the Hague Bar, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 8 rue Zithe,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Rolf Wägenbaur, assisted by Piet Vercruysse, of the Brussels Bar, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre,

defendant,

APPLICATION for a declaration that Commission Decision No 1434/87/ECSC of 20 May 1987, a general decision repealing Decision No 3524/86/ECSC amending Decision No 3485/85/ECSC on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry, is void,

THE COURT (Sixth Chamber)

composed of: T. Koopmans, President of Chamber, T. F. O'Higgins, G. F. Mancini, F. A. Schockweiler and M. Diez de Velasco, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 1 March 1989,

* Language of the case: Dutch

after the hearing the Opinion of the Advocate General delivered at the sitting on 28 April 1989,

gives the following

Judgment

1 By an application lodged at the Court Registry on 15 July 1987, Hoogovens Groep BV (hereinafter referred to as 'Hoogovens') brought an action under the second paragraph of Article 33 of ECSC Treaty for a declaration that Commission Decision No 1434/87/ECSC of 20 May 1987 repealing Decision No 3524/86/ECSC amending Decision No 3485/85/ECSC on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1987, L 136, p. 39) is void.

2 Commission Decision No 3485/85/ECSC of 27 November 1985 (Official Journal 1985, L 340, p. 5) extended the system of monitoring and production quotas for certain products of undertakings in the steel industry for the period from 1 January 1986 to 31 December 1987 in respect of Categories Ia, Ib, Ic, II and III, IV and VI. Article 15(1) of that decision laid down the conditions for the transfer of references within two groups of categories of products, namely Categories Ia, Ib, Ic, II and III (Group 1) and Categories III, IV and VI (Group 2). Article 15(2) empowered the Commission to authorize exchanges, sales or transfers of reference production or quantities in the event of the closure, sale or transfer of plants to a non-member country after 1 January 1980. Article 15(3) provided that, in those circumstances, the Commission was empowered to authorize transfers of the reference figures corresponding to the plant in question within the groups of categories set out in Article 15(1).

3 Since products in Category Ic were no longer to be subject to the quota system with effect from 1 January 1987 and it was therefore necessary to avoid disruption of the steel market brought about by artificial inflation of the references of products remaining subject to quota as a result of transfers of references of

products soon to be liberalized, the Commission resolved, by Decision No 3524/86/ECSC of 19 November 1986 amending Decision No 3485/85/ECSC (Official Journal 1986, L 325, p. 35), to limit with immediate effect the application of the transfer possibilities referred to in Article 15(1) and (3) of Decision No 3485/85 to products in Categories Ia, Ib, II, III, IV and VI.

4 By Decision No 3746/86/ECSC of 5 December 1986 amending Decision No 3485/85/ECSC (Official Journal 1986, L 348, p. 1), the Commission excluded Category Ic from the quota system.

5 Finding that the repercussions of possible reference transfers from Category Ic to the categories remaining subject to quota were not of such a serious nature as to justify the measure adopted by Decision No 3524/86, the Commission repealed the latter decision by Decision No 1434/87 with retroactive effect from 19 November 1986.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure 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.

7 The applicant claims that, in adopting the contested decision, the Commission was guilty of a misuse of powers affecting the applicant by failing to provide for the measures necessary to ensure the maintenance of its relative position on the market.

8 As a semi-monoproducer 90% of whose total reference production consists of products from two categories, the applicant derives no more benefit from the transfer possibilities provided for in Article 15 of Decision No 3485/85 than monoproducers, who are characterized by the fact that their reference production of one category represents not less than 80% of their total reference production. In order for it to maintain its relative position on the market, therefore, the applicant should be treated in the same way as monoproducers. Although the Commission's legislation provides for adjustments in favour of monoproducers

whose relative position is affected by transfers to the category of products which they make, no measure of that kind was introduced in favour of semi-monoproducers such as the applicant.

9 In order to determine whether the applicant's allegation of a misuse of powers is well founded, it is necessary to consider whether the Commission, in adopting the contested decision, exercised its powers for purposes other than those for which those powers were conferred upon it.

10 To that end, it is necessary to examine whether the aim of the system of production quotas, which the Commission is required to introduce in certain circumstances by Article 58 of the ECSC Treaty, imposes on the Commission the obligation to ensure that undertakings in the applicant's position are able to maintain their relative position on the market.

11 In that regard, the Court has already acknowledged that 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. It concluded that Article 58 is not designed to enable undertakings to exempt themselves in a period of crisis from the consequences of their earlier decisions regarding investment and output (see the Court's judgments of 7 July 1982 in Case 119/81 *Klöckner-Werke* v *Commission* [1982] ECR 2627, and of 11 May 1983 in Case 244/81 *Klöckner-Werke* v *Commission* [1983] ECR 1451).

12 The system of transfers of references from one category to another provided for in Decision No 3485/85/ECSC, whose legality has never been called in question, inevitably leads to an alteration in the relative position of undertakings with regard to the categories of products affected by the transfers.

13 It is for the benefit only of undertakings which produce only one product or whose reference production of one category represents not less than 80% of its total reference production that the Commission provided in Article 15(1) that it

would grant the necessary adjustments if, as a result of transfers of references authorized under that provision, it finds that there is a substantial reduction in the ratio between their reference figures and those for all other Community undertakings.

14 That derogation from the general system of production quotas is justified by the consideration that monoproducers, a concept whose incorporation in the rules on quotas and whose definition have not been called in question, are in a special position inasmuch as, unlike producers manufacturing more than one product, they cannot have recourse to transfers from Article 15 or are able to do so only to a very limited extent.

15 No such reason exists in the case of undertakings which do not fulfil the special conditions characterizing monoproducers, and therefore the Commission was under no obligation to extend the guarantee of an undertaking's relative position on the market to undertakings in the applicant's position.

16 In those circumstances, it must be held that the Commission has not been guilty of a misuse of powers affecting the applicant by failing to guarantee the applicant's relative position on the market.

17 The action must therefore be dismissed.

Costs

18 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the applicant has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

Koopmans O'Higgins

Mancini Schockweiler Diez de Velasco.

Delivered in open court in Luxembourg on 14 June 1989.

J.-G. Giraud
Registrar

T. Koopmans
President of the Sixth Chamber