2. Article 14 of Decision 1696/82 does not expressly impose an obligation on the Commission to adjust reference productions of all categories Ia to Id when the conditions in that article are satisfied. That is true even though the article provides for "suitable adjustments to its reference production ... for the category in question". The expression "category in question" used in the aforesaid Article 14 refers not to all Categories Ia to Id but only to those mentioned at the beginning of the provision, the abatement rates of which are of a scale which may create exceptional difficulties for the undertaking.

In Case 317/82

USINES GUSTAVE BOËL, a Belgian limited liability company having its registered office in Brussels,

FABRIQUE DE FER DE MAUBEUGE, a French limited liability company having its registered office in Louvroil (Nord), France,

both represented by E. Gutt of the Brussels Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 2 Rue Goethe,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, Donald W. Allen, and by its Legal Adviser, Etienne Lasnet, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission decision of 26 November 1982, notified by telex message of the same day and confirmed by letter of 3 December 1982, on a procedure for the application of Article 14 of Commission Decision 1696/82/ECSC of 30 June 1982 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal L 191, 1. 7. 1982, p. 1), is void,

THE COURT (Fifth Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart, O. Due, Y. Galmot and C. Kakouris, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Summary of the facts and written procedure

1. Article 14 of Decision 1696/82/ECSC of 30 June 1982 provides that:

"If by virtue of the scale of the abatement rates set in respect of a given quarter, the quota system creates exceptional difficulties for an undertaking, the Commission shall make suitable adjustments to its reference production and/or reference quantities for the category in question, provided that the undertaking makes an application to this effect during the first two months of the relevant quarter in the following instances:

The total reference production for Categories Ia to Id amounts to less than 1 000 000 tonnes a year and at least 75% relates to products where the abatement rate for one or more of these categories exceeds 20%; or

The total reference production for Categories IV, V and VI amounts to less than 100 000 tonnes and the abatement rate for one or more of these categories exceeds 20%."

2. The applicants asked the Commission to apply that article to Categories Ia, Ib, Ic and Id for the fourth quarter of 1982. More than 75% of the products composing the *total* reference production of products Ia to Id had abatement rates in that quarter exceeding 20%.

The Commission nevertheless rejected the request in so far as it related to Category Ic "on the ground that products of Category Ic are not subject to an abatement rate of at least 20% for the current quarter".

In this case the abatement rate was 16% (see Commission Decision 2585/82/

ECSC of 22. 9. 1982, Official Journal L 275, 25. 9. 1982).

It is that decision of the Commission of 26 November 1982, notified by telex message of the same date and confirmed by letter of 3 December 1982 which is the subject-matter of the applicant's action for a declaration that it is void. They rely on the single submission of infringement of Article 14 of Commission Decision 1696/82/ECSC of 30 June 1982 and Article 58 of the ECSC Treaty.

3. In a letter sent to the President of the Court and annexed to their application the applicants allege that following the Commission decision Fabrique de Fer de Maubeuge had to stop its production. Counsel for the applicants therefore requested that the case be expedited pursuant to the last part of Article 55 (1) of the Rules of Procedure of the Court.

The Commission answered the application by a defence received at the Court on 17 January 1983.

In order "not to prolong the written procedure to no purpose" the applicants decided to waive their right to lodge a reply.

4. 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.

By order dated 23 February 1983 made pursuant to Article 95 of the Rules of Procedure the Court decided to refer the case to the Fifth Chamber.

II — Conclusions of the parties

5. The *applicants* claim that the Court should:

"Declare void the decision of the Commission of the European Communities of 26 November 1982 on a procedure for the application of Article 14 of Decision 1696/82/ECSC of 30 June 1982;

Order the Commission of the European Communities to pay the costs."

The *defendant* contends that the Court should:

"Dismiss the application as unfounded;

Order the applicants to pay the costs."

III — Submissions and arguments of the parties during the written procedure

6. In the view of the *applicants* by refusing to adjust the reference production in respect of Category Ic products on the sole ground that such products were not subject to an abatement rate of at least 20% for the current quarter the Commission infringed Article 14 of Decision 1696/82/ECSC by adding a condition which it does not contain.

Application of that provision to products in Categories Ia to Id is subject to three conditions only:

(a) By virtue of the scale of the abatement rates set in respect of a given quarter, the quota system must create exceptional difficulties for an undertaking;

(b) The total reference production for Categories Ia to Id for such an undertaking must be less than 1 million tonnes a year;

(c) Where the total reference production for Categories Ia to Id is less than 1 million tonnes a year, at least 75% must relate to products where the abatement rate for one or more of these categories exceeds 20%.

In view of the very terms of Article 14 of Decision 1696/82/ECSC of 30 June 1982 it is not necessary for the abatement rates for all categories of Ia to Id products to exceed 20%. Where the total reference production for Categories Ia to Id amounts to less than 1 million tonnes a year it is sufficient that 75% relates to products for which the abatement rate exceeds 20%.

7. In its judgment of 18 March 1980 in Joined Cases 154, 205, 206, 226 to 228, 263, and 264/78, 31, 39, 83 and 85/79 [1980] ECR 907 paragraph 84 at p. 1009, the Court confirmed in respect of Article 58 of the ECSC Treaty that "as a result of the very nature of the exceptional measures provided for by the Treaty, which derogate in one or more particulars from the normal working of the market and affect it more or less profoundly, such measures are circumscribed by mandatory conditions as to form and substance which must be very strictly observed in order to ensure the legality of the decision, and amongst which are stated in an exhaustive manner the principles and objectives which must necessarily govern the adoption of the derogative decision, whilst the other principles and objectives laid down by the Treaty may be regarded as held in abeyance for the limited period during which the said derogative decision remains in force".

The applicants infer that that reasoning applies not only to Article 58 of the ECSC Treaty but also to a measure applying Article 58. The Commission has therefore infringed not only Decision 1696/82/ECSC but also Article 58 of the ECSC Treaty.

8. For its part the *Commission* considers that the question is whether the expressions "suitable adjustments to its reference production . . . for the category in question" mentioned in Article 14 refer to all the Categories Ia to Id where, of "the total reference production for Categories Ia to Id ... at least 75% relates to products where the abatement rate for one or more of these categories exceeds 20%" or only to *such* of those categories of which the abatement rate exceeds 20%. In the Commission's view Article 14 allows it to adjust each category individually.

Contrary to the applicant's contention, Article 14 is not an exception to the quota system but rather an adjustment in the event of exceptional difficulties encountered by one or more undertakings and caused by the quota system itself. In the manifest and serious crisis which has confronted the Community steel industry since 1980 almost every steel undertaking is experiencing difficulties.

The object of Article 14 is to provide limited opportunities for adjusting quotas when the system causes exceptional difficulties *by virtue of the scale of the abatement rates.* It is significant that the article begins by expressly stating: "If, by virtue of the scale of the abatement rates set in respect of a given quarter, the quota system creates exceptional difficulties . . .".

9. Article 14 represents an easing of a system the very essence of which is to restrict production. By definition production must necessarily be reduced in proportion to the increase in the abatement rate. Conversely a lesser abatement rate involves a proportionately lesser reduction of production. There are therefore no exceptional difficulties caused by the quota system unless the abatement rate is raised. If the rate were low and the undertaking experienced difficulties they would necessarily be structural and not due to the quota system.

It would indeed be discriminatory to adjust the reference production in individual cases only in order to make allowance for difficulties in other categories. That might lead to arbitrary allowances from one category to another when an undertaking is not even experiencing financial losses.

The Commission's argument is the only one reconcilable with the actual principles of Decision 1696/82/ECSC, that is to say with the calculation of the quotas by applying the abatement rates by category to the reference production. Adjustments are therefore justifiable only by category when difficulties arise in that category.

Moreover, to take account for each category of an abatement rate greater than 20% ensures objective identification of the exceptional difficulties encountered by an undertaking and suitable remedies (raising of the quotas).

IV — Oral procedure

At the sitting on 23 March 1983 the applicants, represented by E. Gutt of the Brussels Bar, and the Commission, represented by E. Lasnet, acting as Agent, assisted by Mr Kutscher, an official of Directorate E Steel, a technical expert, presented oral argument and answered questions put by the Court.

The Advocate General delivered her opinion at the sitting on 4 May 1983.

Decision

1 By application lodged at the Court Registry on 13 December 1982 the limited liability company Usines Gustave Boël, incorporated under Belgian law, and the limited liability company Fabrique de Fer de Meubeuge, incorporated under French law, brought an action under the second paragraph of Article 33 of the ECSC Treaty for a declaration of the nullity of the

individual Commission decision of 26 November 1982 on a procedure for the application of Article 14 of Commission Decision 1696/82/ECSC of 30 June 1982 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal L 191, 1. 7. 1982, p. 1).

2 Article 14 of Decision 1696/82/ECSC provides:

"If, by virtue of the scale of the abatement rates set in respect of a given quarter, the quota system creates exceptional difficulties for an undertaking, the Commission shall make suitable adjustments to its reference production and/or reference quantities for the category in question, provided that the undertaking makes an application to this effect during the first two months of the relevant quarter in the following instances:

The total reference production for Categories Ia to Id amounts to less than 1 000 000 tonnes a year and at least 75% relates to products where the abatement rate for one or more of these categories exceeds 20%; or

The total reference production for Categories IV, V and VI amounts to less than 100 000 tonnes and the abatement rate for one or more of these categories exceeds 20%."

3 By letters dated 6 October and 2 November 1982 the applicants asked the Commission to apply that provision to them for the fourth quartet of 1982 in respect of Categories Ia, Ib, Ic and Id. According to the applicants the total reference production of Categories Ia to Id in their undertakings was less than 1 000 000 tonnes per annum and amounted for that quarter to more than 75% of products the abatement rates for which exceeded 20%.

4 The Commission acceded to the request in respect of Categories Ia and Ib the abatement rates of which were respectively 44% and 42% but did not accede to the applicants' request in respect of Category Id in so far as that had a positive abatement rate. On the other hand it rejected the application in respect of Category Ic "on the ground that products of Category Ic are not subject to an abatement rate of at least 20% for the current quarter".

The abatement rate for products of Category Ic in the fourth quarter of 1982 had been fixed at only 16% by Commission Decision 2585/82/ECSC of 22 September 1982 (Official Journal L 275, 25. 9. 1982).

5 The action by the applicants therefore seeks to have the Commission decision declared void solely in respect of the refusal to adjust the reference production in respect of Category Ic products.

6 The applicants make the single submission of infringement of Article 14 of Commission Decision 1696/82/ECSC of 30 June 1982 and Article 58 of the ECSC Treaty. In their view by refusing to adjust the reference production in respect of Category Ic products on the sole ground that Category Ic products were not subject to an abatement rate of at least 20% for the current quarter the Commission added to Article 14 a condition which it does not contain. According to that article it suffices for 75% of the total reference production of Categories Ia to Id to relate to products the abatement rates of which exceed 20% and it is not at all necessary for the abatement rates of each of the categories to exceed that threshold. In support of that submission the applicants claim that any measure applying Article 58 of the ECSC Treaty must be strictly observed since it constitutes a derogation from the normal working of the market.

7 That submission cannot be upheld. Article 14 of Decision 1696/82/ECSC, according to its wording, provides limited scope for adjusting the quotas solely when an undertaking experiences "exceptional difficulties" "by virtue of the scale of the abatement rates". In those circumstances the Commission is required to take into consideration the special situation in each case in order te determine whether the undertaking in question is confronted with exceptional difficulties resulting from the reductions in production imposed on it. Accordingly only difficulties which are the direct consequence of the establishment and application of the quota system may be considered when Article 14 is applied. It follows that it is only for categories the subject of a high abatement rate that an adjustment may in exceptional circumstances become necessary. Any other solution would have arbitrary results in so far

as it would allow the adjustment of reference production of categories least affected by the system of restriction of production solely in order to counteract the difficulties involved in aplying high abatement rates to other categories.

8 In this case it was possible for account to be taken of the difficulties experienced by the applicants as a result of the high abatement rates applied to Categories Ia and Ib and not of any which they might have in respect of the relatively moderate abatement rate applied to Category Ic.

9 It must further be observed that Article 14 of Decision 1696/82/ECSC does not expressly impose an obligation on the Commission to adjust reference productions of all Categories Ia to Id when the conditions in that article are satisfied. That is true even though the article provides for "suitable adjustments to its reference production ... for the category in question". The expression "category in question" used in the aforesaid Article 14 refers not to all Categories Ia to Id but only to those mentioned at the beginning of the provision, the abatement rates of which are of a scale which may create exceptional difficulties for the undertaking.

10 Finally in referring to a percentage of 20% both in the first and second indents, Article 14 of Decision 1696/82/ECSC makes it possible to determine objectively the threshold from which the quota system and in particular the fixing of abatement rates may cause for a category of particular products difficulties such as may be taken into account.

11 As to the argument to the effect that Article 58 of the ECSC Treaty has been infringed, although it is true that any measure applying the system restricting production must be interpreted strictly, it must however be observed that the interpretation suggested by the applicants would result in unreasonably

enlarging the scope for adjusting the quota system and thus indirectly undermine the system for restricting production as a whole.

12 It must therefore be declared that the Commission has correctly applied Article 14 of Decision 1696/82/ECSC and Article 58 of the ECSC Treaty. The application must therefore be dismissed.

Costs

13 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submission they must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicants to pay the costs.**

Everling Mackenzie Stuart

Due Galmot Kakouris

Delivered in open court in Luxembourg on 22 June 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Fifth Chamber