designed to confer the benefits of the clause on those undertakings whose utilization rates are relatively far removed from the Community average.

Since the crisis was widespread and thus common to all steel undertakings, the Commission was entitled to take the view that the output restrictions imposed could not entail "exceptional" difficulties except for undertakings satisfying certain conditions relating to the utilization rate of their production capacities.

To set the threshold at a deviation of 10% below the average rate of the capacity-utilization of the Community undertakings cannot be considered unlawful. The deviation required by the Commission should, on the one hand, enable the substantial integrity of the quota system to be maintained and, on the other hand, permit exceptional circumstances due to the enforcement of such a system to be taken into account.

2. By fixing a clearly defined reference period for determining the reference production figures of undertakings in the steel industry, Decision 2794/80 does not allow anything other than the actual productive capacity during that period to be taken into account.

3. One of the essential prerequisites under the laws of the Member States for an acknowledgement that an emergency situation exists is that the perilous situation justifying the unlawful act shall not have been brought about by the author of that act. That prerequisite is not fulfilled in a case in which the circumstance which has supposedly brought the emergency situation upon an undertaking derives from a choice of economic policy made by the undertaking itself.

4. The system of production quotas which was lawfully set up on the basis of Article 58 of the ECSC Treaty by Decision 2794/80, compliance with which is required of every undertaking concerned, would be gravely compromised — or indeed set at nought — if every undertaking were able, by pleading an emergency situation due to serious economic difficulties, to excuse itself from observance of the restrictions and to exceed at will the production quota allocated to it. The chain reaction thereby released would culminate in the collapse of the system, so that Article 58 of the Treaty would become a dead letter.

In Joined Cases 303 and 312/81

KLÖCKNER-WERKE AG, a steel undertaking having its registered office in Duisburg, represented by Professor Bodo Börner of Cologne University, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B Rue Philippe-II,

applicant,

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Norbert Koch, acting as Agent, asisted by Professor Eberhard Grabitz of the Free University of Berlin, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATIONS for a declaration that the individual decisions adopted by the Commission on 19 and 28 October 1981 are void,

THE COURT (Fourth Chamber)

composed of: A. O'Keeffe, President of Chamber, P. Pescatore, G. Bosco, T. Koopmans and K. Bahlmann, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

Faced with a manifest crisis in the steel market within the meaning of Article 58 of the ECSC Treaty, the Commission adopted Decision 2794/80/ECSC of 31 October 1980 (Official Journal L 291, p. 1) establishing a system of steel production quotas for undertakings in the iron and steel industry.

In accordance with Articles 2 to 4 of the general decision, the Commission fixes, in respect of every undertaking, quarterly production quotas for crude steel and for each of the four groups of rolled products, the first of which relates to the products at issue in these cases. The quotas are calculated on the basis of the quarterly reference production figures of each undertaking. To that end reference is made, for each month of the relevant quarter, 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 are not necessarily consecutive, form the reference period. The reference production figures for crude steel and for each of the four groups of rolled products are equal to the output of each of those products during the reference period.

However, in the contingencies envisaged by Article 4 (3) to (5) of the decision, the Commission may, within certain limits, increase the reference production figures and consequently the quotas allocated to the undertakings concerned.

The decision further provides (Article 14) that, where the production or delivery restrictions imposed by it or by its implementing measures entail exceptional difficulties for an undertaking, it may refer the matter to the Commission, providing all appropriate supporting documentation. The Commission is to examine the case without delay in the light of the objectives of the decision and, where appropriate, to adapt the provisions of the decision to the specific circumstances.

In pursuance of the above-mentioned decision, the Commission, in a letter dated 19 December 1980, notified the steel undertaking known as Klöckner-Werke AG of Duisburg of its reference production figures and production quotas resulting from the application of the abatement rates contained in Article 5 of the decision, in respect of the first quarter of 1981. Since the decision was a provisional one it was confirmed on 4 April 1981, after the quotas had been revised so as to exclude products exempted from the restrictions. The two individual decisions were not the subject of any legal action, and Klöckner's production quota for the first quarter of 1981 in respect of rolled steel in Group 1 was fixed at 539 003 tonnes.

On 4 February 1981 Klöckner submitted to the Commission an application under Article 14 of the decision seeking an increase in the quota granted to it, compliance with which would have involved it in "exceptional difficulties". By a letter of 19 October 1981 in the nature of an individual decision, the Commission rejected the application as unfounded.

Klöckner had meanwhile during the first quarter of 1981, exceeded by 28 682 tonnes the production quota imposed on it in respect of rolled products in Group I. The Commission reproved Klöckner for that overproduction and in a letter of 15 July 1981 asked it to submit its comments pursuant to Article 36 of the ECSC Treaty. Klöckner did so, in letters dated 27 July and 25 August 1981, which were supplemented by statements of the undertaking's representative at the hearing held on 24 September 1981. The Commission did not accept the explanations put forward by the undertaking, and, by a decision of 28 October 1981, fined it 2 151 150 European currency units in pursuance of Article 9 of Decision 2794/80.

In pursuance of Article 33 of the ECSC Treaty, Klöckner brought a first legal action, which was lodged at the Court Registry on 30 November 1981, seeking a declaration that the Commission's decision of 19 October 1981 refusing to

increase its production and delivery quotas for the first quarter of 1981 was void.

Under Articles 33 and 36 of the ECSC Treaty, Klöckner brought a second action, lodged at the Court Registry on 15 December 1981, seeking a declaration that the Commission's individual decision of 28 October 1981 fining it for having exceeded the quota was void, and requesting, in the alternative, a reduction in the amount of the fine.

By order of 5 May 1982, the Court, having regard to the affinity between the two cases, ordered that they be joined for the purposes of the oral procedure and judgment.

On 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 of 13 October 1982, it decided to assign the two joined cases to the Fourth Chamber.

II — Conclusions of the parties

In *Case 303/81,* the *applicant* claims that the Court should:

Declare the defendant's decision of 19 October 1981 void.

In *Case 312/81,* the applicant claims that the Court should:

1. Declare the defendant's decision of 28 October 1981 null and void;

2. Alternatively, reduce the fine imposed by the contested decision to a sum which appears to the Court to be appropriate; and

3. Order the defendant to pay the costs.

In both cases, the *Commission* contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. Case 303/81

In its first submission, the *applicant* contests the lawfulness of the reasons cited by the Commission's decision of 28 October 1981, according to which the existence of exceptional difficulties within the meaning of Article 14 of the general decision could not be conceded unless the undertaking's utilization rate was more than 10% below the level of other manufacturers within the Community. In that connection, the applicant maintains that it is insufficient merely to adhere to an automatic criterion such as 10%. On the contrary, where the utilization of capacity is less than 10% below the level in question, the Commission is, according to the applicant, required to investigate all the circumstances of the case in order to ascertain whether they do not, after all, afford evidence of an exceptional difficulty. Not having undertaken such an investigation, the Commission, it is claimed, infringed the ECSC Treaty and has misused its powers.

The applicant's second objection to the decision at issue lies in the fact that, in assessing the utilization rate of the wide-strip mill at 50.4% when granting the quota, the Commission proceeded on the basis of too high a figure. In fact, the mill had been running at that time at no more than 39% of capacity, that is, 17% below the Community's average utilization rate of approximately 55%. The difference between the utilization rate adopted by the Commission, which is 5.4% lower than the average, and the

actual utilization rate, which is 17% lower than the average, is due to the defendant's having based its calculations on too low an assessment of the capacities of Klöckner's No II hot-rolled wide-strip mill; the Commission had assessed that capacity at 355 000 tonnes per month whereas the actual capacity amounted to 459 000 tonnes per month.

In pointing to the above figure, the applicant relies on the Technical Audit Report of 1 May 1981. The first part of the report, drawn up jointly by the Belgian Centre de Recherches Métallurgiques [Centre for Metallurgical Research] and the Japanese Kawasaki Steel Corporation, specifies that Kawasaki estimated the capacity of the No II hot-rolled wide-strip mill in Bremen at 487 000 tonnes per month, whilst the Centre for Metallurgical Research put it at a lower figure merely because it did not take as its basis the actual productive capacity as subsequently confirmed. That demonstrates that the figure of 459 000 tonnes per month established by Klöckner in its action is therefore too low rather than too high.

Should the Court consider that Kawasaki's expert report is insufficient to prove the true output capacity of the mill in question, the applicant asks that the latter be run at maximum capacity for six weeks under expert supervision, which would enable the problem to be settled once and for all.

Whilst admitting that the Commission based its estimate on information supplied by itself by way of Questionnaire No 2/61, the applicant undertaking none the less maintains that the point is unimportant. It considers that, for the purposes of applying Article 14 of Decision 2794/80, it is not earlier or theoretical output capacity which should be taken into account, but actual current capacity; it maintains that the statistics in question were supplied as a matter of routine and that therefore it should be permitted to revise them in the light of the true data. The fact that the undertaking thereby supplied incorrect information to the Commission on the aforementioned questionnaire might cause the Commission to fine it but does not warrant the imposition of too low a production quota.

Finally, the applicant argues that, when assessing its output capacity, the defendant in any case failed to take account of the capacity of the other mill in the Bremen works (the Bremen No I), the running of which had been temporarily halted in April 1974 for the purpose of restructuring the works.

In reply, the *Commission* contends, first, that Article 14 of Decision 2794/80 is a derogative provision and that the powers thereby conferred on it are subject to the precondition that the exceptional difficulties confronting the undertaking derive from the enforcement of the quota system. Bearing that premise in mind, the defendant has always accepted that an undertaking had to contend with exceptional difficulties whenever, following the enforcement of the quota system, the utilization rate of that undertaking was at least 10% less than the average utilization rate amongst Community undertakings. That yardstick enables the Commission to exercise the discretion conferred upon it by Article 14 of the decision objectively and without the risk of discriminating between the undertakings concerned. The specific

circumstances contemplated by Article 14 may arise where an undertaking's reference production figures, which must be established in accordance with Article 4 (1) and (2) of Decision 2794/80, deviated sharply from the Community average, yet without its being possible to envisage increasing them by virtue of paragraphs (3), (4) and (5) of that article. Situations of that type may arise on account, for example, of prolonged or recurrent technical problems, or strikes, leading to exceptionally low reference production figures. In such cases, enforcement of the general rules on quota fixing would cause the utilization rate of the capacity of the undertaking concerned to be reduced to a level far below the Community average. Besides, experience has shown that a deviation of less than 10% from the average utilization rate falls into the category of normal fluctuations. It follows, the Commission argues, that only a larger deviation may be taken into account without a risk of discrimination. The criterion adopted in applying Article 14 is therefore perfectly logical and lawful.

As to the second objection, whereby the applicant alleges that its utilization rate was 17% lower than the average amongst Community undertakings, the Commission confines itself in essence to summarizing the arguments which it put forward in Cases 119/81 and 244/81, in which that same problem was raised in relation to the second quarter of 1981. However, the Commission adds that, even if it were correct that the applicant possessed a No II wide-strip mill in Bremen with a capacity of 459 000, and not 355 000, tonnes per month, that fact could not have led to a raising of the quota under Article 14 of the general decision. That was so because the Commission, in its decision of 19 December 1980 fixing Klöckner's production quota for the first quarter of 1981, had already increased its reference production under Article 4 (3) of the general decision; since one of the conditions attaching to the increase was that an undertaking's average utilization rate of its output potential between July 1977 and June 1980 must lie 10 percentage points or more below the average utilization rate of the same plant by other Community undertakings during 1977, 1978 and 1979, and since the applicant maintained that the capacity of 459 000 tonnes per month already prevailed between July 1977 and June 1980, the reference production calculated in pursuance of Article 4 (3) of the decision should have been further increased in the notice of 19 December 1980 announcing the quotas. However, had that happened, the difference between the applicant's utilization rate and the Community average would, in the Commission's contention, have been lower than 10%, to wit 6.4%.

Turning to the problem of the output capacity of the No II mill in Bremen, the Commission refers to the statement which it submitted in Case 119/81. It wishes to stress, however, that its estimates regarding the capacities of undertakings were based on the annual notification supplied in Questionnaire No 2/61. In that connection, the Commission states that Klöckner, having initially declared in the statistical questionnaires a capacity of 3 770 000 tonnes a year for 1979 and 1980, in 1980 — by contrast — entered a higher capacity in respect of the same two years, namely 4 260 000 tonnes a year. Following that new declaration, the Commission carried out a check which led it to allow the higher capacity. Finally, from 1981

onwards, the applicant declared that its output capacity was — and had previously been — higher still, namely 5 508 000 tonnes a year, or 459 000 tonnes a month. It is difficult to accept that the applicant had, in the course of the same year, discovered yet another mistake which it had supposedly committed in the matter of its output capacity.

As far as Kawasaki's expert report is concerned, the Commission takes the view that it is based on a purely theoretical concept of capacity (though it is referred to as a technical one), not on the concept of maximum feasible productivity, which was the sole determining factor in this case. The expert report is therefore irrelevant.

Lastly, the Commission points out the contradictions existing between the arguments put forward in this case and those submitted in other, analogous, cases.

The *applicant* disputes the Commission's arguments in support of the criterion employed to ascertain the existence of exceptional difficulties, observing that the latter may manifest themselves not only at the technical level but also at the economic level — in the matter of servicing debts, for example — and it points to the margin of uncertainty in calculating the deviation between the utilization rate of the undertaking in question and the Community average. It further disputes the relevance of the considerations cited by the Commission, as to what would have happened if the undertaking had raised the present problem at the time when Article 4 (3) of the general decision was being applied. In its opinion, the Commission should, when applying Article 14, simply keep to the facts and check whether or not there are exceptional difficulties.

The applicant further disputes that there are contradictions between the arguments which it has put forward in this case and those adduced in other cases, and it adds that such alleged divergences are unimportant in any case, since they arose in different proceedings having different objectives. Lastly, it supports its claims with a new expert report, drawn up on 12 January 1982 by Professor R. Jeschar. The report allegedly discloses that Klöckner's output capacity was higher than that previously stated by the undertaking itself. Finally, the applicant explains the economic situation in which it would be placed as a result of the excessively low quotas fixed for it by the Commission.

The *Commission* contends that the economic situation of the undertaking cannot enter into the reckoning in evaluating whether there are exceptional difficulties, inasmuch as it cannot be regarded as a consequence of applying the production-quota system, since an undertaking's financial standing is determined not only by the volume of its output but also by the price obtained. The poor financial situation of the undertaking is, the Commission maintains, a pre-existing state of affairs and not a consequence of the quota system, which was set up precisely as a result of the fall in demand and the collapse of steel prices.

The Commission reasserts, moreover, that, since the applicant failed to contest the decision fixing the quotas for the first quarter of 1981, that decision has become immune to challenge. Hence the applicant's claim that the capacity of its No II Bremen mill had already reached 459 000 tonnes a month during the years

1977 to 1980 is quite irrelevant, for procedural reasons. Since the applicant cites that figure as its productive capacity for the first quarter of 1981, it must be concluded that that capacity must have increased since 1980. However, that growth in capacity, and the resultant decline in the utilization rate cannot be regarded as exceptional difficulties within the meaning of Article 14, since they are not a result of the establishment of the quota system.

Lastly, the Commission contests the relevance and evidential cogency of the new expert report, inasmuch as, like Kawasaki's report, it relates to the computation of the technical capacity, not the maximum feasible output.

2. *Case 312/81*

The *applicant,* in its second application seeking a declaration by the Court that the individual decision of 28 October 1981 fining it for having exceeded the quota fixed for the first quarter of 1981 in respect of Group I products is void, puts forward the following submissions:

(1) The decision under challenge is unlawful because it runs counter to a promise binding the Commission;

(2) The decision under challenge is unlawful because it is founded on the defendant's unlawful decision of 19 October 1981, which was the subject of the previous action;

(3) The decision under challenge is unlawful because it is based on general Decision 2794/80, which is likewise unlawful, especially Article 9 thereof.

A — First submission

The *applicant* maintains that the disputed decision is unlawful in so far as it runs counter to the promise which the Commission allegedly made to it, to waive any pecuniary sanction for exceeding the quota limit. In that connection, the applicant maintains that in order to overcome Klöckner's resistance to participation in the so-called Eurofer II negotiations designed to secure agreement from the larger European steel-works on voluntary cutbacks in production, Mr Defraigne, the Chef de Cabinet to the Vice-President of the Commission, Mr Davignon, acting for and on behalf of the latter, made two promises in the course of a telephone conversation with the chairman of the applicant's executive board, Herbert Gienow, on 19 March 1981, namely:

(i) First, that the officers of the Commission would endeavour to ensure that the applicant was properly treated in the negotiations;

(ii) Secondly, that the Commission would "solve the problem" arising from the fact that during the first quarter of 1981 the applicant was due to produce more than what was allowed under the purely provisional quota which had been previously allocated to it. The adjustment was to be effected irrespective of the success or failure of the Eurofer II negotiations.

The applicant adds that, at the very beginning of the conversation, it informed the defendant that all the forecasts indicated that it would have exceeded its production quota by 100 000 tonnes by the end of the first quarter of 1981.

It was on the strength of those promises that Klöckner took part in the negotiations, which enabled an agreement to be reached in respect of

certain products, and at the same time it refrained from bringing an action seeking a declaration of the nullity of the decision which was finally given on 1 April 1981 and which fixed definitively its production quota for the quarter in question.

The applicant takes the view that the promise whereby the Commission waived any pecuniary sanction — implied by the promise to "solve the problem" — is binding on the defendant inasmuch as it was made by the competent Member of the Commission, namely Mr Davignon, for whom Mr Defraigne acted merely as a messenger. The promise was, furthermore, clear and precise in its content as far as the Commission's waiver of a fine was concerned, even if the means to be adopted to attain that end (for example the raising of production quotas under Article 14 of general Decision 2794/80, or the amendment of the basis of calculation) were not yet specified.

Moreover, in view of the fact that, during the hearing of the applicant at the headquarters of the Commission, the latter's representative stated that Mr Defraigne denied having made the aforementioned promises, the applicant offers to call witnesses to prove the point.

The *Commission* contends that the words allegedly uttered by Mr Defraigne do not disclose what it was that the defendant promised the applicant, since the words "solve the problem" and "adjustment" — being open to several interpretations — do not support the inference that Mr Defraigne promised the applicant to refrain from fining it. Likewise, the words cannot be interpreted as a promise to increase the quota or to amend the basis of its calculation, and in no circumstances do they therefore serve to demonstrate the existence of a legal obligation binding the authority concerned.

In any event, the Commission denies that Mr Defraigne made the statements attributed to him by the applicant.

According to the Commission, the alleged promise is furthermore totally invalidated because it was not in writing; since the only legal means of attaining the goal desired was to fix the quota afresh at a higher level, that could have been done only by means of a fresh decision, which would have had to be in writing by virtue of Article 1 of Decision 22/60 of the Commission of 7 September 1960 on the implementation of Article 15 of the Treaty (Official Journal, English Special Edition, Second Series, VIII, p. 13).

Lastly, the Commission takes the view that the alleged promise by Mr Defraigne cannot in any case commit the defendant, for want of confirmation or ratification by the competent department. In legal terms however, such ratification is impossible since the fine is mandatory whenever the quota is exceeded. It follows that any ratification would have given rise to an infringement of Community law.

In reply, the *applicant* claims that the promise at issue was clear and precise in content, since the "problem" which had been the subject of the discussion between Mr Defraigne and Mr Gienow was specifically that of the breach of the quota limit and its consequence, namely the imposition of the fine. Hence the solution to the problem could have meant only the elimination of that legal consequence. Furthermore, the content of the promise is borne out by the general context in which the conver-

sation must be seen, initiated as it was by Mr Defraigne who had contacted Mr Gienow in order to request his participation in the Eurofer II negotiations.

Finally, the applicant persists in stating that Mr Defraigne spoke solely as a mere messenger for Mr Davignon, that is, for a person empowered to represent and bind the Commission. The defendant's objection that the promise was not reduced to writing is irrelevant inasmuch as it was a promise which did not necessarily involve a refixing of the quota, since the means to be employed in order to give effect to the waiver of the fine were not expressly stated.

In its rejoinder, the *Commission* stresses the ambiguity of the statements attributed to Mr Defraigne and the impossibility in legal terms of implementing the alleged promise. It again denies that Mr Davignon ever instructed Mr Defraigne to give the promise in question on his behalf. As regards the problem of reduction to writing, the Commission observes that a promise relating to an administrative measure must in any case assume the same form as was laid down for the measure itself.

B — Second submission

The *applicant* maintains that the disputed decision is unlawful inasmuch as it is founded on a similarly unlawful decision of 19 October 1981, whereby the defendant rejected a request to have the production quota increased for the first quarter of 1981. The unlawful nature of the rejection of that request has been demonstrated in Case 303/81, and, if the Court were to decide to grant this application, then the disputed fine would have to be cancelled as well, because the consequence would be that the applicant's definitive quota could not be treated as having yet been fixed.

As far as that submission is concerned, the *Commission* confines itself to referring back to the arguments set forth in Case 303/81.

C — Third submission

The *applicant* takes the view that Decision 2794/80, which is the legal basis for the individual decision impugned is unlawful on four grounds:

(i) Breach of the duty to guarantee a minimum level of utilization,

(ii) Failure to observe the implications attaching to the prohibition of subsidies laid down by Article 4 (c) of the ECSC Treaty,

(iii) Absence of assent on the part of the Council,

(iv) Unlawfulness of imposing quota restrictions on exports.

From the unlawfulness of the general decision derives that of the contested individual decision, owing to the direct link which exists between the two.

(a) Admissibility of the submission

The *Commission* maintains that the submission is admissible only in so far as the applicant maintains that Decision 2794/80 is illegal in its entirety for lack of the assent of the Council. In that case, Article 9 of the general decision is also unlawful. According to the judgment of the Court of 31 March 1965 (*Macchiorlati* v *High Authority*, Case 21/64 [1965] ECR 175), the unlawfulness of a general decision may not be pleaded

unless there is a direct legal link between that decision and the measure in dispute. That applies to Article 9 of Decision 2794/80, since it lays down both the conditions for imposing fines and the quantum thereof.

In addition, the argument is inadmissible because the applicant has not indicated which the specific provisions are against which the submission is directed. Moreover, it would likewise be inadmissible if the applicant were to raise it in order to assert the unlawfulness of Articles 4 and 5 of the general decision, as no direct legal link exists between those provisions, which fix the bases for calculating the reference production figures and the quotas, and the individual decision under challenge.

The *applicant* replies that its strictures relate to Decision 2794/80 as a whole, and it therefore contests the objection of inadmissibility.

(b) Breach of the duty to guarantee a minimum level of utilization

The *applicant* takes the view that Decision 2794/80 is unlawful inasmuch as it fails to guarantee a minimum utilization of output capacity by the undertakings concerned. Indeed, since it is more dangerous for an undertaking cutting back its production by, say, 10 % to reduce a 50 % utilization rate to 45 % than to lower the rate from 100 % to 90 %, the production quota fixed for an undertaking must not depress the utilization rate below a certain limit. That limit must be in keeping with the average rate of utilization of productive capacity amongst the steel undertakings of the Community. That is indicated both by the inferences which may be drawn from the provisions of the ECSC Treaty and by a general principle to be found in the legal systems of all Member States. Hence the Commission is prohibited from reducing reference production by a given and invariable percentage, without taking account of the productive capacity in existence at the outset; it should rather protect those undertakings which are potentially worst affected by the cutback, namely those in which the utilization rate of productive capacity is particularly low at the outset.

In its defence, the *Commission* confines itself to reiterating its objection of inadmissibility.

The *applicant* replies that, in this case too, its objection is aimed at the general decision as a whole inasmuch as it infringes Article 58 of the ECSC Treaty, not as containing any specific unlawful provision but for want of a provision which should legally have been present. Since in any case claims are designed, not to cause the defendant to insert further articles into the general decision but rather to obtain the Court's declaration that the two individual decisions adopted pursuant to the general decision at issue are void, it could not have achieved its end by bringing an action for failure to act, whereas it was free to pursue the same end by alleging the unlawfulness of the general decision. That being so, the objection of inadmissibility is, according to the applicant, unfounded.

In its rejoinder, the *Commission*, whilst insisting on its objection of inadmissibility, adds that the argument is

unfounded even in substantive terms, since Article 58 of the ECSC Treaty does not restrict the Commission's freedom of choice as regards the basis for the equitable determination of quotas. It is therefore impossible reasonably to deny that selecting the criterion of undertakings' actual output may serve as an equitable basis for quota fixing, since it is a criterion which represents an objective basis of assessment and enables total output to be reduced without altering the undertakings' respective positions on the market.

Both parties also refer to the written pleadings submitted in Case 119/81.

(c) Non-observance of the prohibition of State subsidies

The *applicant* argues that the distribution of the quotas in pursuance of the general decision at issue is not determined on an equitable basis in yet another respect, inasmuch as the Commission took no account of the effects of subsidies granted to the steel industry in certain Member States, contrary to Article 4 (c) of the ECSC Treaty. The applicant claims that the defendant should have taken those unlawful subsidies into consideration either by granting a higher quota to the unsubsidized undertakings or else by reducing the quota awarded to those undertakings which enjoyed such assistance. Indeed, the aforesaid infringement of the Treaty entailed, in the case of recipient undertakings, increases in production which would not have occurred without the subsidies, since such undertakings were able to make larger investments than the other undertakings.

According to Klöckner, the Commission cannot confine itself to referring to the possibility of taking action against those infringements under Article 88 of the ECSC Treaty (never, incidentally, used by the defendant for that purpose), nor can it refer to Article 67 thereof, since the latter provision does not relate to subsidies forbidden under Article 4 (c).

The *Commission* replies that the argument is unfounded inasmuch as Article 58 of the ECSC Treaty is not intended to rectify distortions of competition due to State subsidies, in respect of which the Commission has other means of action available to it.

On this point, too, the parties refer moreover to the memoranda submitted in Case 119/81.

(d) Absence of assent by the Council

According to the *applicant* the general decision at issue was not the subject of the Council's assent as laid down by Article 58 (1) of the ECSC Treaty. The Commission, although asked on several occasions to produce the Council's decision giving its assent, confined itself to producing a press bulletin from the General Secretariat of the Council — a document having no relevance at all. Indeed, it was only by examining the documents submitted by the Commission to the Council for the purposes of the meeting at which the assent was due to be given, together with the minutes and the tape-recording of that meeting, that is was possible to discover whether an "assent" really was forthcoming and whether it had the content required by

the ECSC Treaty. There is therefore, in the first place, a lack of evidence.

In any case, the applicant, concurring with the pleadings lodged in analogous cases (Cases 119 and 244/81), maintains that the Council's assent is necessary in respect of all the constituent parts of a quota system, not merely in relation to certain supposedly essential aspects thereof — factors which are, moreover, unidentifiable except by means of an objective criterion which the Commission has been unable to specify. That being so, the Council's "assent" would not, even if it was given in this case, have the content laid down by the Treaty. In fact in Case 119/81 — in which the same question was raised — the Commission produced the text of its proposals to the Council for the adoption of the system of production quotas (document of 6 October 1980, reference No COM/80/586 Final). A comparison of that text, which the applicant wishes to have produced in this case as well, if appropriate, with the definitive text of Decision 2794/80 would disclose the existence of many important differences. In those circumstances, it is impossible to discover from the documents on the file in relation to which text the Council gave its alleged assent. Furthermore, in the absence of any objective criterion it is impossible to check whether or not any divergences between the two texts have a bearing on essential points. The primary requirement of legal certainty is thereby disregarded.

Both at law and in fact the *Commission* contests the applicant's arguments, as well as the requests for production of fresh documents, which it regards as unnecessary. As may be seen from the preamble to Decision 2794/80, the Council did indeed give its assent. The Commission adds that the first subparagraph of Article 58 (1) of the ECSC Treaty does not specify what is to be understood by "assent"; the scheme and purpose of the text, however, show that it is unnecessary for the Commission to transmit to the Council a proposal for a quota system which is formulated in every detail and submitted in the form of a draft decision. On the other hand, Article 58 institutes a decision-making procedure in three phases. In accordance with the first subparagraph of Article 58 (1), the Commission notes, as the first phase, that the Community is confronted with a period of manifest crisis and that the means of action provided for in Article 57 are not sufficient to deal with it; as the second phase, the Commission takes the decision to establish a system of production quotas. Article 58 (2), as a third phase, authorizes the Commission to arrange the system in detail and to make it mandatory by means of one or more instruments. It is only in the second phase that the Council is involved in the procedure. In order to establish a quota system the Commission must obtain the Council's assent but is not required to do so as far as its arrangement and its embodiment in legal instruments are concerned. Since those principles were observed in this case, the procedure whereby Decision 2794/80 was adopted was consistent with the requirements of Article 58 of the ECSC Treaty.

(e) Unlawfulness of imposing quota restrictions on exports

The *applicant* notes for the first time in its reply that under Decision 2794/80 the Commission has fixed a further quota, in respect of the share of steel output which is intended for export to non-member countries, and observes that it is illegal

since all power over exports to non-member countries of goods covered by the ECSC Treaty is retained by the Member States. The Commission has therefore acted beyond its powers. Moreover, the control thereby exerted by the defendant over the volume of goods offered on the markets of non-member countries penalizes only products originating in the Community, contrary to the objectives of the ECSC Treaty.

The *Commission* contends that that submission, too, is quite unfounded. Article 58 of the Treaty, which authorizes the Commission to establish a system of production quotas, in seeking to obtain a general reduction in supply, makes no distinction between production intended for export outside the Community and that intended for marketing within the common market. Furthermore, since the fall in demand in the common market was the result of the world-wide economic situation, the means employed to combat the crisis must also take account of the fall in demand on the world market. That opinion is borne out by the consideration that Article 3 (a) of the Treaty requires the Community institutions to ensure an orderly supply to the common market, "taking into account the needs of third countries". When production quotas are fixed, therefore, regard may even be had to demand from non-member countries.

IV — Oral procedure

At the sitting on 15 December 1982 oral argument was presented by Klöckner-Werke AG, represented by Professor Bodo Börner, and the Commission, represented by Norbert Koch, a member of its Legal Department, acting as Agent, assisted by Professor Eberhard Grabitz. In the course of the sitting, the Commission's representative submitted two documents.

The Advocate General delivered his opinion at the sitting on 23 February 1983.

Decision

1 By an application lodged at the Court Registry on 30 November 1981, Klöckner-Werke AG, a steel undertaking having its registered office in Duisburg, Federal Republic of Germany, instituted proceedings under the second paragraph of Article 33 of the ECSC Treaty, seeking a declaration that the Commission's decision dated 19 October 1981 refusing it an increase in its production and delivery quotas for the first quarter of 1981 (Case 303/81) is void.

2 By an application lodged at the Court Registry on 15 December 1981, Klöckner brought a further action under the second paragraph of Article 33

and the second and third paragraphs of Article 36 of the ECSC Treaty, seeking a declaration that the Commission's decision of 28 October 1981 fining it for exceeding the aforementioned quotas is void, or, in the alternative, seeking to have the fine reduced (Case 312/81).

3 By an order of 5 May 1982, the Court, having regard to the relationship between the two cases, ordered that they be joined for the purposes of the oral procedure and judgment.

4 By a letter of 19 December 1980, the Commission, in pursuance of general Decision 2794/80/ECSC, establishing a system of steel production quotas for undertakings in the iron and steel industry, had notified Klöckner of its reference production figures and production quotas for the first quarter of 1981. Those arrangements were confirmed by a letter dated 4 April 1981, after the quotas had been revised so as to exclude products falling outside the restrictions.

5 In those notices, which were not the subject of any proceedings, Klöckner's production quota for the aforesaid quarter in respect of rolled steel products in Group I was fixed at 539 003 tonnes. However, on 4 February 1981, Klöckner, acting under Article 14 of general Decision 2794/80, requested the Commission to increase the quota, alleging that the output restrictions imposed on it would entail "exceptional difficulties" for it.

6 By decision of 19 October 1981, the Commission rejected the request as unfounded. Klöckner brought an action under Article 33 of the ECSC Treaty, which was lodged at the Registry on 30 November 1981, seeking a declaration that that decision was void.

7 During the first quarter of 1981, Klöckner exceeded the production quota imposed on it in respect of rolled products in Group I by a margin of 28 682 tonnes. Klöckner was reprimanded for the surplus in a letter dated 15 July 1981, whereby the Commission asked it to submit its comments pursuant to the first paragraph of Article 36 of the ECSC Treaty. Klöckner complied

with that request by way of letters dated 27 July and 25 August 1981, supplemented by the statements of its representatives at the hearing held on 24 September 1981.

8 By a decision of 28 October 1981 pursuant to Article 9 of Decision 2794/80, the Commission rejected the explanations put forward by Klöckner and fined it 2 151 150 European currency units. In reponse to that decision Klöckner brought an action under Articles 33 and 36 of the ECSC Treaty, which was lodged at the Registry on 15 December 1981 and which sought either a declaration that the Commission's decision imposing on it the above-mentioned fine was void or, in the alternative, a reduction in its amount.

The application against the decision of 19 October 1981 refusing to increase the quotas under Article 14 of general Decision 2794/80 (Case 303/81)

9 In support of this action, the applicant puts forward two submissions, the first of which concerns a disregard of the concept of "exceptional difficulties" contained in Article 14 of general Decision 2794/80, and the second the erroneous and unrealistically low assessment of the applicant's productive capacity and hence of the utilization rate of those capacities.

First submission, alleging a disregard of the concept of "exceptional difficulties" contained in Article 14 of Decision 2794/80

10 Article 14 of Decision 2794/80 is worded as follows:

"Where the production or delivery restrictions imposed by this decision or its implementing measures entail exceptional difficulties for an undertaking, it may refer the matter to the Commission, providing all appropriate supporting documentation.

The Commission shall examine the case without delay, in the light of the objectives of this decision.

Where appropriate, the Commission shall adapt the provisions of this decision."

11 In its administrative practice, founded on experience acquired in the steel market, the Commission has been applying the provision in the sense that it takes the existence of "exceptional difficulties" into consideration whenever it finds that the rate of utilization of an undertaking's productive capacity is more than 10% lower than the average utilization rate of capacity among Community undertakings.

12 The applicant maintains that, by adopting that criterion, the Commission is not only infringing Community law but also misusing its powers, inasmuch as that criterion, which is purely automatic and formal, is not contained in Article 14, of which it contravenes both the spirit and the letter. The Commission is, on the contrary, required to take into consideration all the special circumstances of each particular case, in order to assess whether the undertaking concerned has encountered exceptional difficulties, even at a strictly economic and financial level.

13 The Commission contends that it is required to avoid any differentiation in its treatment of the undertakings involved, and hence to adhere to a strictly objective criterion such as the one adopted. It further stresses that, in the application of Article 14, only those difficulties may be taken into consideration which have resulted directly from the establishment and enforcement of the quota system, whereas that is not the case with difficulties of an economic nature connected with an undertaking's profitability.

14 It should be observed first of all that the equity clause in Article 14 does not apply unless an undertaking is experiencing exceptional difficulties which are caused by the enforcement of the system of production quotas. Whilst it is true — as the applicant states — that the equity clause is aimed at difficulties brought upon certain undertakings by the enforcement of general rules which do not take account of specific situations, the Commission cannot however be taken to task for fixing a threshold designed to confer the

benefits of the clause on those undertakings whose utilization rates are relatively far removed from the Community average.

15 Since the crisis was widespread and thus common to all steel undertakings, the Commission was entitled to take the view that the output restrictions imposed could not entail "exceptional" difficulties except for undertakings satisfying certain conditions relating to their utilization rates.

16 Further, to set the threshold at a deviation of 10% from the average cannot be considered unlawful. The deviation required by the Commission should, on the one hand, enable the substantial integrity of the quota system to be maintained and, on the other hand, permit exceptional circumstances due to the enforcement of such a system to be taken into account. By setting the margin at 10%, therefore, the Commission has not exceeded the bounds of its discretion under Article 14.

17 As far as the allegation of a misuse of power is concerned, it should be pointed out that the applicant has explained it in its reply by alleging that the Commission, in adopting the disputed individual decision, wrongly thought that where the utilization rate was less than 10% below the average, it was no longer empowered to exercise its discretion with a view to ascertaining whether in the applicant's case there were "exceptional difficulties". The allegation merges with the applicant's main argument, namely that the criterion adopted by the Commission infringes Article 14 of the general decision inasmuch as it excludes from the ambit of the article those circumstances which do not give rise to a utilization rate more than 10% below the Community average. As that interpretation of Article 14 has already been refuted by the Court, that claim cannot be upheld.

18 The first submission must therefore be dismissed.

Second submission, alleging an underestimation of the applicant's productive capacity

19 The applicant argues in the alternative that, even if the lawfulness of the criterion adopted by the Commission in applying Article 14 is accepted, an

increase in its quotas should be allowed. The defendant is wrong, it maintains, in claiming that the rate of utilization of Klöckner's capacity stood at only 5.4% below the average, because in fact the deviation was 17%. In the first place, the Commission is relying on inaccurate data concerning the output capacity of the Bremen No II hot-rolled wide-strip mill and, in the second place, it wrongly omitted to give consideration to the capacity of the other rolling-mill in the same works (the Bremen No I mill), the running of which was temporarily halted during 1974. Hence, once these mistakes have been corrected, the Commission must increase the disputed quotas precisely by virtue of its usual criterion.

20 As regards the first part of that argument, concerning the output capacity of the Bremen No II mill, reference should be made to the reasons stated in the judgment of the Court of 7 July 1982 (Case 119/81, [1982] ECR 2627) on the subject of Klöckner's production quotas for the second quarter of 1981, in connection with which the same problem had previously been raised.

21 Once again, the applicant refers to the "Kawasaki expert opinion" of 1 May 1981, which is a report drawn up jointly by a group consisting of experts from the Belgian Centre de Recherches Métallurgiques [Centre for Metallurgical Research] and from the Japanese company, Kawasaki. The Court has held that opinion to be valueless owing, in particular, to the divergence of views which it discloses between the two groups of experts who drafted it, inasmuch as the Belgian institution gives a lower estimate of the capacity at issue than that adopted by the Commission, whereas the experts from the Japanese company postulate an appreciably higher capacity.

22 In these proceedings the applicant has failed to furnish any new factual information which might enable the above finding to be revised. By producing the Jeschar report, based on a mathematical simulation, the applicant is endeavouring to revise one aspect of the report by the Belgian institution and Kawasaki, which has been held by the Court to be in any case inconclusive. As to the Wollert-Elmendorf report relied on by the applicant, it is an accountancy document designed to evaluate the financial consequences of the fixing of the production quotas allocated to the undertaking for the third quarter of 1981, as compared with a hypothetical situation described by the applicant, consisting in the allocating of quotas

based on a hypothetical output consistent with average capacity utilization amongst Community undertakings. That accountancy report, which is intended to evaluate what is financially at stake in the litigation between the applicant and the Commission, is based on an assessment of a productive capacity (459 000 tonnes a month, or 5 508 000 tonnes a year) which the Court has already expressly rejected in its judgment of 7 July 1982. The report therefore sheds no new light on the question raised by the applicant concerning its productive capacity.

23 As to the second part of the submission, concerning the failure to give consideration to the capacity of the Bremen No I rolling-mill which was taken out of commission in 1974, it is sufficient to recall that the Court took the view, in the judgment mentioned above, that since Decision 2794/80 fixes a very definite reference period, it does not allow anything other than the actual productive capacity during that period to be taken into account. In view of the fact that the Bremen No I rolling-mill was out of commission during those periods, the Commission was justified in disregarding its productive capacity.

24 Since the second submission also cannot be upheld, the application in Case 303/81 as a whole must be dismissed.

The application against the decision of 28 October 1981 fining the applicant for exceeding the quota limits (Case 312/81)

25 In support of its second application, the applicant puts forward a number of submissions which may be summarized as follows:

1. Illegality of general Decision 2794/80, which is the legal basis for the individual decision in dispute;

2. Illegality of the individual decision of 19 October 1981 refusing to increase the quotas under Article 14 of Decision 2794/80, which is the logical premise of the individual decision in dispute;

3. Breach of a promise given to the undertaking by the Commission's representative, namely to waive any pecuniary sanction for exceeding the relevant quota limits;

4. Existence of an emergency situation justifying the over-production and precluding its penalization by way of a fine.

Submissions alleging that Decision 2794/80 and the individual decision of 19 October 1981 are illegal

26 During the oral procedure, in view of the fact that the above-mentioned judgment of 7 July 1982 had upheld the legality of Decision 2794/80 by rejecting all of Klöckner's submissions in that connection in Case 119/81, the applicant declared that it would desist from raising the question again. There is therefore no further reason for the Court to examine it.

27 The second argument has likewise become devoid of purpose on the ground that the action brought against the individual decision of 19 October 1981 has been dismissed as unfounded.

Submission alleging breach of the promise not to impose the fine

28 The applicant points out that in March 1981, by which time it was already clear that Klöckner would exceed the quotas granted to it for the first quarter of 1981, the Commission promoted the negotiations known as Eurofer II, which sought to obtain agreement from the larger European steel-works on voluntary restrictions of production, in order to avoid extending the quota system. In that connection, talks were held between the Commission and Klöckner, because the applicant had no intention of taking part in the negotiations and the Commission was endeavouring to overcome its resistance.

29 In that connection it is alleged that Mr Defraigne, the Chef de Cabinet of the Vice-President of the Commission, Mr Davignon, acting for and on behalf of the latter, made a promise to Mr Gienow, the chairman of

Klöckner's executive board, during a telephone conversation on 19 March 1981, namely that if Klöckner undertook to participate in the negotiations, the Commission would "solve the problem" arising from the fact that by the end of the first quarter of 1981 the applicant was due to produce more than the provisional quota hitherto allocated to it; the adjustment was to be effected irrespective of the success or failure of the Eurofer II negotiations.

30 Klöckner takes the view that the promise in question is binding on the Commission because it was made by the responsible authority, for whom Mr Defraigne acted merely as a messenger. Klöckner claims that, regard being had to its context, the promise was clear and precise in content, its subject-matter being the Commission's waiver of a fine, even if the means to be employed in achieving that end were not specified.

31 The Commission disputes the basis of Klöckner's argument on both factual and legal grounds, contending that Mr Defraigne, in telephoning, did not use the words alleged by the applicant, nor had he given any promises "for and on behalf of Mr Davignon, as his messenger"; and that, in any event, there can be no question of a promise such as might commit the defendant, regard being had to the general nature of the utterances ascribed to Mr Defraigne.

32 The Commission further argues that the supposed promise was not such as to bind it, for lack of ratification by the competent department; that a hypothetical ratification would have been unlawful in any case, since the fine is mandatory whenever quotas are exceeded; and finally, that if the supposed promise were interpreted to mean that it envisaged an increase in the quotas sufficient to cover the margin of excess for the quarter at issue, it was invalid for lack of being evidenced in writing.

33 Klöckner's argument must be disallowed, first on account of the general nature of the utterances ascribed to Mr Defraigne. The use of the expression "solve the problem", even if examined in the context expounded by the applicant, cannot be regarded as a commitment to engage in a specific course of action.

34 Whatever the circumstances, even if it were hypothetically possible to accept that the utterances attributed to Mr Defraigne concerned the non-enforcement of the fine, such a declaration would be devoid of legal force, for if the "promise" related to the waiver of the legal consequences of over-production officially determined, it would be illegal inasmuch as Article 9 of Decision 2794/80 requires the Commission to impose the fine whenever production in excess of the quotas is determined.

35 It follows that that submission also must be dismissed.

Submission as to an emergency situation

36 The applicant maintains that if it had observed the quotas allocated to it, the resultant losses would have been so serious that it could not have survived. That state of affairs is allegedly due, primarily, to the excessively low level of the quotas granted to it, which entailed a rate of utilization of output capacity far lower than the Community average, and hence inadequate revenue in relation to overhead costs. In the second place, the undertaking is encountering special difficulties at the economic and financial level, owing to the very high cost of restructuring the plant which it has brought into operation since 1973, in response to the suggestion and inducements of the Commission itself. Those expenses led to a lack of liquid funds which had repercussions on the indebtedness and the reserves of the business. The presence of precarious financial circumstances is proved by an expert report prepared by accountants and submitted by the applicant. Lastly, the undertaking refers to the crisis in the steel market.

37 The applicant was consequently confronted by the alternative of either contravening the quota system in order to achieve a revenue consistent with its economic situation or else abiding by the quotas and being thereby forced into insolvency. Klöckner therefore took action in an emergency situation, with the result that its conduct, although illegal in an objective sense, was justified, and that no sanction can be imposed upon it.

38 Klöckner maintains that, since an emergency situation is recognized in the legal systems of all Member States as justifying unlawful conduct, the same

principle must prevail in Community law. Indeed, the fundamental right of every individual to survive is safeguarded in Community law, particularly in the field of the quota system for steel production inasmuch as it forms the basis for a number of provisions of the general decision of the Commission, such as those providing for the raising of the quotas in cases of exceptional difficulties or of excessively low rates of utilization of productive capacity, or again those providing for a reduction of the abatement rate applicable to the reference production of small undertakings manufacturing reinforcing bars or of undertakings in Greece. Those provisions are merely examples of the practical application within the Community of the principle of the emergency situation.

39 The applicant maintains that the fact that the above-mentioned provisions are applicable only to certain categories of small undertakings entails a breach of the principle of non-discrimination, inasmuch as the reservation in favour of the emergency situation must necessarily be general in character, regardless of the structure or the size of an undertaking.

40 According to the applicant, the conditions for recognizing an emergency situation are all satisfied in this case. The interest infringed was merely formal in character, aiming to achieve an orderly running of the quota system, whereas the illegal conduct was designed to safeguard a fundamental right, namely the right to survival. The perilous situation constituting the emergency is a direct consequence, both of the establishment and of the enforcement of the quota system, and is in no way due to bad business-management or mistakes of economic policy. On the contrary, the undertaking has complied fully with the Commission's suggestions for modernizing the Community's steel industry. Lastly, the undertaking has been unable to have resort to any legal means in order to escape the danger of insolvency.

41 The Commission contends in the first place that an emergency situation cannot be invoked in the specific context of the quota system for steel production, owing to its incompatibility with the objectives of Article 58 of the ECSC Treaty. That article aims to distribute equitably amongst all Community undertakings the sacrifices required as a result of the crisis in the steel sector, with a view to maintaining or restoring their profitability in the long term, whereas that goal would be unattainable if every undertaking

were able to exempt itself from any sacrifice by pleading an emergency situation. Breaches of the quota limits would, if permissible on that score, necessarily entail lowering the quotas of other undertakings, with the result that the latter, in their turn, might claim to find themselves in an emergency situation and thereby justify exceeding their quotas.

42 At all events, the Commission denies that the conditions for an emergency situation are fulfilled in this instance. In its view, the applicant's future was not at risk when the over-production at issue occurred; moreover, the supposed risk was not a result of the establishment of the quota system but was due to mistakes made by the applicant in its investment policy in previous years. The accountancy report does not afford reliable evidence to sustain Klöckner's arguments, inasmuch as it relates to a single sector of the undertaking and is based on data which cannot be checked. Conflicting interests set the survival of one undertaking against that of the majority, if not the totality, of the others. Lastly, the applicant could have removed the supposed threat to its existence by legal means and was therefore in no way justified in taking the law into its own hands.

43 Before consideration is given to the Commission's main contention, namely that the principle of an emergency situation is incompatible with Article 58 of the ECSC Treaty, the special circumstances pleaded by the applicant in support of its application must be examined.

44 As to the first circumstance which supposedly led to the emergency situation, namely the award of a quota which was insufficient in relation to the undertaking's actual productive capacity, it must be recalled that the Court has already refuted that argument, which cannot therefore be taken into consideration.

45 As to the other circumstance which supposedly brought about the emergency situation, namely the very high cost of the restructuring carried out by the undertaking since 1973, it should be observed that that fact derives from a choice of economic policy made by the undertaking itself. Under the legal systems of the Member States, however, one of the essential prerequisites for

an acknowledgement that an emergency situation exists is precisely that the perilous situation justifying the unlawful act shall not have been brought about by the author of that act. That prerequisite is therefore not fulfilled in this case.

46 As far as concerns the manifest crisis which struck the steel market, it is appropriate to stress that the crisis affected steel undertakings in general and thus necessitated the establishment of the quota system provided for by Article 58 of the ECSC Treaty. That article provides that in the event of a decline in demand, if the Commission considers that the Community is confronted with a period of manifest crisis and that the other means of action provided for in the Treaty are not sufficient to deal with it, it is required, following the consultations stipulated therein, to establish a system of production quotas. The system was lawfully set up by the Commission by means of Decision 2793/80, compliance with which is required of every undertaking concerned. However, the system of production quotas would be gravely compromised — or indeed set at nought — if every undertaking were able, by pleading an emergency situation due to serious economic difficulties, to excuse itself from observance of the restrictions and to exceed at will the production quota allocated to it. The chain reaction thereby released would culminate in the collapse of the system, so that Article 58 of the Treaty would become a dead letter.

47 The above considerations indicate that, even supposing that the concept of an emergency situation were admitted in principle into Community law, the applicant's last submission alleging such a situation must be disallowed.

The alternative claim for a reduction in the amount of the fine

48 The applicant has not set forth any special arguments in support of its alternative claim for a reduction in the amount of the fine. It must therefore be presumed that it is based on the same arguments as underlie the principal claim. In examining those arguments, the Court has found no reasons such as to justify a reduction of the fine.

Costs

49 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the applicant has failed, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. **Dismisses the applications;**

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

O'Keeffe Pescatore

Bosco Koopmans Bahlmann

Delivered in open court in Luxembourg on 11 May 1983.

P. Heim
Registrar

A. O'Keeffe
President of the Fourth Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 23 FEBRUARY 1983 [1]

Mr President,
Members of the Court,

Both the cases on which I am expressing my views today are concerned, once again, with the steel quota provisions as laid down by Decision 2794/80 (Official Journal L 291 of 31 October 1980, p. 1 et seq.), which are already familiar from a series of other proceedings. The decision was in force from 1 October 1980 until 30 June 1981.

The first of the two cases at issue here concerns a decision of the Commission whereby it refused to raise, pursuant to Article 14 of Decision 2794/80, the

1 — Translated from the German.