In Joined Cases 275/80 and 24/81

KRUPP STAHL AG, whose registered office is at 165 Alleestraße, Bochum 4630, represented by A. Gödde and F. Stemmer, members of its Board of Directors, assisted by K. Pfeiffer, H. Biedenkopf, P. Ossenbach, Advocates, with an address for service in Luxembourg at the Chambers of J.-C. Wolter, Advocate, 2 Rue Goethe,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by H. Matthies, Legal Adviser, assisted by E. Grabitz, Professor at the Free University of Berlin, with an address for service in Luxembourg at the office of O. Montalto, a member of the Legal Department, Jean Monnet Building, Kirchberg,

APPLICATION for a declaration that certain provisions of the notifications of the Commission of 1 November 1980 and 19 December 1980 determining, pursuant to the general Commission Decision of 31 October 1980 (Official Journal L 291, p. 1), the production quotas for the applicant for the last quarter of 1980 and the first quarter of 1981 are void,

THE COURT

composed of: J. Mertens de Wilmars, President, A. Touffait and O. Due, (Presidents of Chambers), Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, and U. Everling, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

1. Background to the Case

By Decision 2794/80/ECSC the Commission established a system of steel production quotas for undertakings in the iron and steel industry (Official Journal L 291, p. 1).

According to Article 2 of that decision the Commission was to fix quarterly production quotas for crude steel for the four groups of rolled products defined therein and more particularly described in Annex 1 to the decision.

According to Article 3 of the general decision the Commission was to fix quarterly production quotas "for each undertaking" on the basis of the reference production figures, as referred to in Article 3, of that undertaking and by application of abatement rates to those reference production figures as referred to in Article 5.

Article 4, points 1 and 2, of the decision lays down the general rules for calculating the quarterly reference production figures both for rolled products and crude steel. That provision reads as follows:

"(1) For each month of the relevant quarter, reference shall be made to the same month during the period from July 1977 to June 1980 during which the total production of the four groups of rolled products was the highest. The three months thus chosen, which will not necessarily be consecutive, shall constitute the reference period.

(2) The reference production figures shall be the same, for crude steel and for each of the other groups of rolled products, as the production of the corresponding items during the reference period."

Article 4, points 3, 4 and 5, describes the special cases in which the reference production and consequently the quotas are increased. Article 4, point 4, provides for adaptation of the reference production of an undertaking which, following an investment programme duly reported and not the subject of an unfavourable opinion from the Commission, activates a new plant after 1 July 1980 bringing the total production possibilities for the four groups of products to a level exceeding by at least 15 % the total production possibilities existing for 1979.

Article 4, point 5, provides that to take account of restructuring, the Commission must increase the reference production figures:

"— Where an undertaking's total production of the four groups of products during a reference period falls short of production in the same quarter of 1974, and

— Where this undertaking has achieved for the year ending in 1979 a profit which is shown in its annual report or reported to the national official agency responsible for the filing of the annual accounts of companies."

In that case the reference production figures have to be increased "so as to reach the total equivalent to the production of the corresponding quota of 1974".

Article 7 (2) of Commission Decision 2794/80/ECSC also imposes restrictions with regard to the delivery of products subject to the quota system. Undertakings "may not exceed, by group of products, for deliveries within the Common Market, the ratio of Community deliveries to total deliveries in the twelve months of the period from July 1977 to June 1980 in which the total production of the four groups of rolled products was the highest".

By notification dated 1 November 1980 the Commission determined the production quotas for Krupp Stahl AG for the fourth quarter of 1980.

By notification dated 19 December 1980 the Commission determined the production quotas for Krupp Stahl AG for the first quarter of 1981.

By letter dated 9 February 1981 the Commission recognized that it was necessary to apply Article 4, point 4, of Decision 2794/80/ECSC to Krupp Stahl AG as regards the products in Group I. In consequence it altered the company's reference production and quotas in respect of Group I and crude steel for the first quarter of 1980.

2. *Course of the procedure*

By application received at the Court Registry on 11 December 1980 the applicant brought an action for a declaration that the Commission's notification of 1 November 1980 was in part void.

By a second application received at the Court Registry on 9 February 1981 the applicant brought an action for a declaration that the Commission's notification of 19 December 1980 was in part void. After the Commission had, by letter dated 9 February 1980, informed the applicant of its decision to amend the notification of 19 December 1980, the applicant pursued its action in modified form by lodging a supplementary application at the Court Registry on 10 March 1981.

By order of 8 April 1981 the Court ordered the cases to be joined for the purpose of the oral procedure.

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.

II — Conclusions of the parties

Krupp Stahl AG claims that the Court should:

1. Declare void the notification of the defendant of 1 November 1980 in so far as it determines production quotas for hot-rolled wide and narrow strip

within the meaning of Group I of Article 1 of Decision 2794/80/ECSC and for crude steel;

2. Order the defendant to pay the costs.

The Commission contends that the Court should:

1. Declare that the actions in Cases 275/80 and 24/81 are unfounded;

2. Order the applicant to pay the costs.

III — Submissions and arguments of the parties

A — Admissibility

In its application in Case 275/80 the applicant devotes lengthy argument to the question of the admissibility of its action. It argues that although the contested measure is described as a notification it is in fact an individual decision within the meaning of Article 14 of the ECSC Treaty capable according to the second paragraph of Article 33 thereof of being the subject of an action before the Court of Justice.

According to the Commission the notifications in question in conjunction with the application therein of the provisions of the General Decision 2794/80 constitute individual decisions addressed to the applicant. Consequently the Commission does not challenge the admissibility of the actions for a declaration that the notifications are void.

In its application in Case 24/71 Krupp Stahl AG refers to the Commission's position in Case 275/80 and points out that in the order of the President of the Court of 16 December 1980 (Case 258/80 *Rumi* v *Commission)* it was also in principle thought that the notification of the quotas of 1 November 1980 constituted an "individual decision".

B — Substance

1. Infringement of essential procedural requirements and defective statement of reasons.

The applicant maintains that in so far as the contested notifications are individual decisions addressed to it they have to be in the form provided for by Decision 22/60 of the High Authority of 7 September 1960 on the Implementation of Article 15 of the ECSC Treaty (Official Journal, English Special Edition, Second Series VIII, p. 13). According to that decision, decisions relating to the ECSC must be described as such in their titles; show the date on which the High Authority, now the Commission, adopted them, be signed by the President, Vice-President or a member of the High Authority (now the Commission), be preceded by a reference to the provisions of the Treaty or the decisions which form their legal basis and contain a statement of reasons and be set out in articles. Notification may be by "registered post with receipted delivery". None of these formal requirements was observed by the contested notifications. The applicant points out that the notifications are not described as decisions in their title and do not appear to have been signed by a member of the Commission since there is only a mention of the name of a Commissioner. Nor do the notifications show the date of the Commission's decision, which indicates, in the applicant's view, that contrary to the rules of the ECSC Treaty the notification is not based upon a decision

of the Commission as a collegiate body but simply on the decision of Mr Commissioner Davignon who was specially authorized for that purpose in the present case. Finally there is no statement of reasons, the drafting is not set out in articles and notification was not effected by registered post with receipted delivery.

The fact that the decision in question may be regarded as an individual measure confined to bringing particular facts within one of the cases provided for by a general decision cannot, in the applicant's view, justify infringement of the formal requirements provided for by Decision 22/60 since the rules referred to therein apply to every decision whatever its subject-matter.

Apart from infringement of the essential procedural requirements provided for by Decision 22/60 of the High Authority, Decision 2794/80 of the Commission also infringes the requirement to state the reasons upon which it is based and that requirement, as the Court of Justice has frequently stated, does not derive from formal considerations but is intended to enable the parties to defend their rights, the Court to exercise its review of legality and the Member States and any national concerned to know the circumstances in which the Commission has applied the Treaty. The applicant recognizes that the reasons may even be stated summarily provided that they are clear and relevant; the requirements regarding the statement of reasons may vary according to the circumstances and in certain conditions reference to the statement of reasons in a basic general decision may be sufficient (judgment of 4 July 1963 in Case 24/62 [1963] ECR 85 and judgment of 1 December 1965 in Case 16/65 [1965] ECR 877). In the present case, however, the deficiency of the statement of reasons is so extensive that it is impossible for the undertakings to check either the law or the facts in relation to the notifications. More particularly the notifications do not show either the reference figures on which they are based or the provisions which were applied when the necessary adaptation under Article 4 of Decision 2794/80 was made. The supplementary explanations given orally to the applicant cannot in any event compensate for the insufficient statement of reasons since that statement must be part of the decision itself so as to enable the Court of Justice to carry out an effective review of it.

In the Commission's view the notifications must be considered in conjunction with Decision 2794/80 which states the general criteria which the individual decisions sent in the form of notifications to the undertakings simply apply. That state of affairs was recognized by the Court in its order of 16 December 1980 (Case 258/80 R *Rumi* v *Commission).* Since the notification is confined to applying mathematically the criteria contained in the general Decision 2794/80 to the production figures supplied by the applicant itself it was not necessary to state the reasons on which those notifications were leased, each time repeating a large part of Decision 2794/80. Moreover the applicant is wrong in claiming that it was prevented from checking the notification from the point of view of law and of fact since it does not challenge the calculations as such and its only complaint is that the Commission did not apply Article 4, points 4 and 5, of Decision 2794/80

cumulatively: their non-application is not denied. At the most the Commission admits that it might have added to the words "adapted pursuant to Article 4" in the notifications in question the number of the paragraph applied in each particular case but that is not a fundamental condition. The applicant itself moreover easily found which paragraph of Article 4 had been applied and the Commission gave all the necessary explanation to the undertakings which asked for them.

As to the question of the infringement of the essential procedural requirements provided for in Decision 22/60 of the High Authority the Commission observes first of all that in its view these formal provisions are not mandatory. Only the Treaty contains such provisions and in so far as Decision 22/60 is not simply repeating those provisions it contains rules relating to an administrative practice of the Commission from which it may deviate where as in the present case it is justified by particular circumstances. Moreover the majority of the rules of Decision 22/60, which the applicant alleges to be infringed, do not constitute essential procedural requirements. That is so as regards the description "decision", the written signature, the date and the division into articles. As regards the applicant's objection that the notifications are not based on a decision taken by the Commission as a collegiate body, the Commission states that the notification is based on a decision taken by the Commission following the procedure laid down for such cases as the present by the first paragraph of Article 27 of the provisional Rules of Procedure of the Commission of 6 July 1967 (Journal Officiel 147, p. 1, 179, p. 1) as amended on 23 July 1975 (Official Journal L 199, p. 43) which provide as follows:

"Subject to the principle of collegiate responsibility being respected in full the Commission may empower its members to take, in its name and subject to its control, clearly defined measures of management or administration."

It is on that basis that the Commission empowered one of its members, Viscount Davignon, to ensure implementation of Decision 1794/80 by working out quotas for each undertaking according to an arithmetical process leaving no discretion to the Commission. In those circumstances, since the determination of quotas is simply an administrative measure, the principle of collegiate responsibility of the Commission was respected in full.

2. Infringement of Article 4 of Decision 2794/80

In Case 275/80 the applicant complains that the Commission gave it only the benefit of Article 4, point 5, of Decision 2794/80. In its view the Commission ought also, pursuant to Article 4, point 4, of that decision, to have adapted the applicant's reference production figures since it had activated new plant after 1 July 1980, so bringing the production possibilities to a level exceeding by more than 15% the total production possibilities existing for 1979. In its application in Case 24/81, as amended after the Commission's decision granting it the benefit of Article 4, point 4, the applicant challenges the Commission's

right then to withdraw the benefit of Article 4, point 5. In the applicant's view, as it already stressed in Case 275/80, Article 4, points 4 and 5, are capable of simultaneous application.

In Case 275/80 the Commission denies that the conditions for applying Article 4, point 4, are satisfied and also maintains that the application of Article 4, point 4, rules out the application of Article 4, point 5. In Case 24/81 the Commission recognizes that the conditions for applying Article 4, point 4, are satisfied and it has consequently amended its decision. It maintains however that the application of that paragraph rules out the simultaneous application of Article 4, point 5.

(a) Conditions for applying Article 4, point 4

According to the terms of this provision adaptation of the reference production is possible where new plant is activated in so far as "the new production possibility thus established brings the total production possibilities for the four groups of products to a level exceeding by at least 15% the total production possibilities existing for 1979". The Commission, relying on the Questionnaire 2-61 on investments which was supplied by the applicant for 1980, maintains that the production capacity of Krupp Stahl AG increased by only 9.35% between 1979 and 1980. The applicant recognizes that the changes in capacity give rise to a maximum possible increase in production of 9.35% for the whole of 1980. On the other hand if the total production possibilities when the new plant is activated (the term "possibility" being here understood as the largest quantity that an undertaking can produce assuming that the production possibilities existing at the time of the estimate remain invariable for the unit of time, namely a year, taken as a reference) are compared with the maximum production in fact possible in 1979, the result is an increase in possibilities of 18.7%. In the applicant's view it is that criterion, implying the application of two distinct concepts of "production possibility" which is referred to in Article 4, point 4, when it is stated that the new production possibility must bring the total production possibilities to a level exceeding by at least 15% the total production possibilities existing for 1979. Such an interpretation is the only one consistent with the wording of Article 4 and the aim of Decision 2794/80.

On the one hand it is determinant that Article 4, point 4, simply speaks of an increase in "production possibilities" without referring to a specific calendar year. If that were not so it would be necessary in the applicant's view to apply, for the first two quarters of 1981, criteria which could not be definitely assessed until the end of the year, that is, six months after the expiry of the system brought into force by Decision 2794/80. Before then there would be only estimated figures which might prove to be inaccurate.

On the other hand if the increase in production were assessed taking into account the possible production for the whole of 1980, that, in the applicant's view, would lead undertakings which, activating new plant, could close down outdated plant, to postpone such reduction in their production, otherwise desirable because of the situation of excess production, for unless they did so

they must expect not to obtain the benefit of Article 4, point 4. On the other hand undertakings whose reference production is calculated solely on the basis of Article 4, points 1 and 2, could reduce their production possibilities without having to expect a reduction in their reference production figures.

In addition for yet another reason the Commission's interpretation is incompatible both with the wording and the aim of the rules adopted. To assess the production increase in terms of the maximum possible production increase for 1980 in relation to that of 1979 would amount to requiring a more or less large increase in those possibilities according to whether the activation of the new plant takes place earlier or later in the course of the year. The wording of Article 4, point 4, does not justify such a result. Nor is there any reasonable ground which does so.

In the Commission's view Article 4, point 4, must be interpreted in the general context of the system of production quotas. The object of the provision in question is to take into account, in the quota system, new production capacities created after the expiry of the reference period. But this is subject to certain preconditions and is not to take place immediately and not to the full extent.

Thus the Commission must not have given an unfavourable opinion on the investment programme in question. In the applicant's case the Commission states that although the surplus capacity in the hot wide-strip sector does not prevent modernization of the existing plant, it does mean that new investments in that sector must be accompanied by the shutting-down of old plant. In that connection and on the assumption that the applicant would show understanding for this point of view the Commission did not give an unfavourable opinion on the investments of Krupp Stahl AG.

A further condition is that the increase in capacity must be significant. The Commission in that respect stresses that the applicant is the only integrated undertaking in respect of which, at least for 1981, application of Article 4, point 4, comes into question. As regards calculation of the growth in production capacity the Commission considers that it had to use for that purpose the information taken from the annual inquiry into investments made by means of Questionnaire 2-61 in which the concept of "maximum possible production" is that which the Commission has always used. It has nothing in common with the concept of a technical production capacity used by the applicant: such an abstract and technical concept is of no use to those wishing to obtain as realistic as possible a view of the market.

That the application of these criteria results in not taking the new plant into account immediately, but only for 1981, is the result intended by the provision, which is aimed at a gradual introduction of the new production possibilities. The new production possibilities are moreover never fully taken into account.

On the basis of those explanations the Commission considers that it was not necessary to state expressly in Article 4, point 4, of Decision 2794/80 that the increase in production possibilities

referred to a whole year since it is clear that such increase must be compared with the total production possibilities existing for 1979 and that it is not possible, as the applicant would like to compare data based on different concepts.

The applicant is also mistaken in thinking that the Commission's view would lead to worthless results since the production capacity for 1981 cannot be assessed. The questionnaire which undertakings had to send to the Commission in the spring of 1980 contains figures for 1979, 1980 and 1981 which are the only ones which could conceivably be taken into account in a uniform manner.

As regards the impact of Article 4, point 4, on the possibilities for undetakings, which have undertaken new investment, to shut down plant, the Commission observes that the absence of an unfavourable opinion on an investment shows that after consideration there is no cause in the Commission's view to shut down certain old plant. In those circumstances the undertaking has no ground for shutting down the plant on its own initiative. The Commission also observes that although, under Article 4, points 1 and 2, closure is irrelevant in a case of normal reference production, that is because there it is not a question of considering capacity but of production actually achieved. Finally the Commission admits that in requiring a production increase of 15 % for the whole of 1980 it is imposing a condition which will not be fulfilled save in very rare cases, but that is fully justified by the objective pursued which is to take account of large, new plant only gradually and to a limited extent.

(b) The simultaneous application of Article 4, points 4 and 5

The applicant admits that the wording of Article 4 is not felicitous and that it may be concluded from the reference both at point 4 and point 5 of Article 4 to an increase in the reference production that the two systems allow only one increase in the reference production and that only the provision most favourable to the undertaking concerned applies to it. Such an interpretation however would in its view conflict with the purpose and general scheme of Decision 2794/80.

In that respect it observes first of all that the term "production" is not always used in the same sense in Decision 2794/80. For example, whereas in Article 4, points 1 and 2, the reference production is the volume of production calculated according to Article 4, points 1 and 2, in Article 5, points 1, the same term obviously refers to the production resulting from the application of the adaptation rules in Article 4, points 3 to 5, that is, to the production as already increased. The fact that the term "reference production" is to be found in Article 4, point 4, does not therefore mean that that provision cannot be applied to the reference production as already increased pursuant to Article 4, point 5.

Further the aim of the provisions of Article 4 with the exception of point 4 is to ensure that past circumstances are taken into account in calculating the reference production figures. Point 4 is intended to deal with the effects of bringing into operation new capacity. It follows that to take account of point 4

only as an alternative to the other provisions of Article 4 of Decision 2794/80 would withdraw a benefit granted because of one particular situation simply because the undertaking in question may enjoy another benefit by virtue of a completely different situation. That would mean treating different situations similarly which is discrimination prohibited by Article 4 of the ECSC Treaty and is a misuse of law.

In conclusion, in the applicant's view, neither a literal interpretation of Article 4 nor an interpretation based upon the connections between points 4 and 5 or their objectives justifies applying them in the alternative. Point 5 simply comes after point 4 in Decisions 2794/80 without being presented as an alternative; the points relate to completely different circumstances and have different objectives intended to take account of those circumstances.

In both cases, even if it does not consider the question to be decisive in Case 275/80, the Commission denies that it is possible to apply points 4 and 5 of Article 4 of Decision 2794/80 simultaneously.

In the first place, in the Commission's view, the applicant is wrong in thinking that the concept of reference production is not used in the same sense in Articles 4 and 5 on the ground that, unlike Article 4, Article 5, point 1, obviously refers to production as already increased. The applicant is not in fact taking account of the first sentence of Article 4 stating "the quarterly reference production figures for each undertaking shall be calculated as follows:"

The calculation is made in two stages:

— Calculation of the normal reference production figures (points 1 and 2).

— In so far as point 3, 4 *or* 5 is applicable, amendment of those normal reference production figures by virtue of *one* of those provisions.

— In other cases the normal reference production figures are unchanged.

Article 5 is then applied to the result obtained to calculate the production quotas. The existence of that systematic connection therefore excludes the possibility of applying several corrections to the "normal" reference production figures cumulatively.

The Commission also rejects the applicant's argument to the effect that Article 4, points 3 and 5, refer to the past whereas point 4 refers to the period subsequent to June 1980. In the Commission's view the decisive factor is the reference period taken into account. That is 1974 in point 5 and the period 1977-80 in point 4. It is therefore wrong to take as basis the higher production of 1974 (applying point 5) and to apply to it a further upwards correction provided only for the period 1977-80. A double increase of that kind could, in the Commission's view, lead to unreal reference production figures, depriving the rate of abatement of any practical effect.

The Commission also observes that cumulative application of points 4 and 5 could involve discrimination between undertakings in the same position

according to whether they have activated new plant before or after 1 July 1980.

Finally the Commission finds confirmation of the alternative nature of Article 4, points 4 and 5, of Decision 2794/80 in their aims. Point 5 is aimed at taking account of a reduction in production by an undertaking in relation to its production in 1974. Point 4 is intended to take account of the activation of new plant and thus the introduction of new capacity after 30 June 1980. The Commission admits that new plant may constitute rationalization or modernization which must be welcomed, but it stresses that such new plant counterbalances (in whole or in part) a reduction in production which took place before the plant was activated. It follows that it would be manifestly contrary to the aim of the two provisions to take the two processes into consideration separately, that is to say, first to reward the reduction in production (point 5) and secondly to correct the reference production figures on the basis of an increase in production compensating for that reduction (point 4).

The Commission illustrates its argument with the following example:

"Before July 1977 (beginning of the reference period) two undertakings, "A" and "B", both reduced their production, which as 100 in 1974 to 80. Subsequently "B" activated new plant of a capacity of 30.

"A" is given a reference production of 100 (point 5) and "B" 110, whether the new plant is activated *before* or *after* 1 July 1980, for if the production of the new plant takes place during a reference period (point 1) neither point 4 nor point 5 applies; if the new plant is not activated until after 1 July 1980 point 4 applies.

The applicant considers that in the latter case "B" must be allocated first 100 pursuant to point 5 and then, *and in addition*, 30 pursuant to point 4, that is 130 in all, whereas the production capacity amounts only to 110. The applicant should explain why it considers point 5 should be applied *before* point 4. If in the example point 4 is applied first, 80 + 30 gives 110. In that case and even if the cumulative principle is adopted, point 4 no longer applies, for 110 is more than 100, that is to say that during the reference period the production has not been less than that in 1974 as required by point 5."

In the Commission's view points 4 and 5 can therefore apply only in the alternative, the undertaking in question being entitled to have applied to it the paragraph most favourable to it for each group of products.

That is why for the first quarter of 1981 it amended by letter dated 9 February 1981 the applicant's reference production figures for Group I by applying Article 4, point 4, and maintained the reference production figures for Groups II to IV calculated on the basis of Article 4, point 5.

The applicant rejects the Commission's analysis. In its view Article 4 provides three systems of increase of the reference production without stating that there can be only one increase and there is no general principle of interpretation of Community law according to which several provisions granting different benefits in different circumstances are

applicable in the alternative. As regards the Commission's argument to the effect that "the existence of that systematic connection therefore excludes the possibility of applying serveral corrections to the 'normal' reference production figures cumulatively", the applicant considers that analysis of the different possibilities of increase shows that each of them is related to completely different circumstances; there is no possible systematic connection between them and accordingly nothing to prevent the simultaneous application of the rules contained in Article 4, points 3 to 5. The fact that the objectives pursued by Article 4, points 3 to 5, are completely different, as the Commission recognizes, also excludes their application in the alternative. Finally the Commission is wrong in objecting that the cumulative application of Articles 4 and 5 could involve discrimination between undertakings. If there is discrimination because capacity activated before 1 July 1980 can be taken into account in calculating the reference production figures only if the date when it was activated is sufficiently remote, that discrimination results not from the interpretation advocated by the applicant but from the system constructed by the Commission.

The applicant also challenges the example put forward by the Commission. In this respect it first of all points out what it considers to be errors of law and fact in the example. Thus in its view it is wrong to assume that "B" is granted a reference production of 110 whether the new plant was activated before or after 1 July 1980. To take new plant activated before 1 July 1980 into account in calculating the reference production pursuant to Article 4, point 1, is possible only subject to strictly limited conditions and quite impossible in certain circumstances.

In the same way the allegation that, if the applicant's legal argument was followed, the quota would be higher than the actual capacity if Article 4, points 4 and 5, were applied cumulatively, is shown on examination to be untenable. It is based on the one hand on confusion between actual production and capacity and on the other hand on the wrong assumption that the new capacity is fully taken into account in the quota; it is only taken into account to the extent of approximately 65 %, as provided for in Article 4, point 4. Finally it is also wrong to contend that after applying Article 4, point 4, "even if the cumulative principle is adopted" point 5 no longer applies because the reference production is less than the production in 1974. As the Commission itself rightly stated, the adaptation rules of points 3 to 5 must always be related solely to the normal reference production figures within the meaning of points 1 and 2 and not to the reference production already increased pursuant to the systems of adaptation.

More fundamentally however the applicant criticizes the Commission for not having compared two undertakings only one of which had effected the restructuring measures taken into account pursuant to Article 4, point 5, whereas both have new plant in operation after 1 July 1980. Such a comparison would, in the applicant's view, give the following result:

"— Undertaking A reduced its 1974 production of 100 to 80 before July 1977 and after 1 July 1980 activated

new plant with a capacity of 30. Since according to point 4 two-thirds of that capacity may be taken into account in calculating the reference production, A is given a reference production of 100. Application of point 5 gives the same result. If the two systems of adaptation were applied together the reference production would be 120, but since the defendant considers that would not be permissible the reference production remains at 100.

— Undertaking B did not engage in restructuring measures and therefore did not produce less from 1977 to 1980 than in 1974. For all those years its reference production was 100 and consequently it is fixed at that amount pursuant to points 1 and 2. After 1 July 1980 B, just like A, activated new plant which even in the defendant's opinion involves an increase in the reference production to 120. B is therefore in a better position than A."

Since the defendant did not apply Article 4, point 5, in the present case, the two examples given need to be supplemented by a third variant:

"— Undertaking C, like undertaking A, reduced its 1974 production of 100 to 80 before July 1977 but did not subsequently instal new plant. Application of Article 4, point 5, leads in this case to a reference production of 100."

If these three examples are compared then it is apparent that the Commission's interpretation of Article 4 of Decision 2794/80 leads to discrimination. The facts in the first and third examples are treated similarly although they are quite different. Only undertakings which have not engaged in restructuring measures may benefit from Article 4, point 4.

In answer to those arguments the Commission maintains that neither a literal analysis nor the internal logic of Article 4 nor an analysis of the objectives pursued by that provision justifies the cumulative rather than alternative application of points 4 and 5 of that article.

The Commission observes that, in its view, since points 4 and 5 of Article 4 represent exceptions to the system provided for in points 1 and 2 of that article, such exceptions may be taken simultaneously into account only if Article 4 provides so expressly. It also remarks that, in its opinion, the two provisions in question have the same aim, namely the restructuring of the European steel industry. Such restructuring may be achieved either by reduction in capacity (point 5) or increase in capacity and modernization of the undertaking (point 4). It would not however be possible, as the cumulative application of point 4 and point 5 would assume, for a particular undertaking simultaneously to increase and reduce its production.

As regards the discrimination which, according to the Commission, would ensue from a cumulative application of points 4 and 5, the Commission remarks that, in its view, the applicant has not denied the possibility of such discrimination. It has simply maintained that discrimination could come about

independently of the application of point 5 because of the defective drafting of point 4. In that respect the Commission contends that point 4 might be capable of causing discrimination if interpreted strictly and literally to purely hypothetical cases, but that had not been the case. Moreover, in a case where a reasonable interpretation did not enable the question to be settled satisfactorily, it would always have been possible to examine the problem from the point of view of Article 14 of the decision.

The Commission then calculates the various possible reference production figures for the applicant.

— Effective reference production figures (Article 4, points 1 and 2);

— 1974 reference production figures (Article 4, point 5);

— Adaptation following the activation of new plant after 1 July 1980 (Article 4, point 4).

In the Commission's view the applicant wishes the basis to be not the effective reference production figures but the 1974 reference production figures adapted following the activation of new plant after 1 July 1980. That would lead to a much higher total than the 1974 production which in the system introduced by the Commission could be taken only in exceptional cases as a basis instead of the normal reference production, and which according to the Commission's case (effective reference production figures and adaptation) would in spite of everything be exceeded.

The examples put forward by the applicant contain a number of errors.

Thus in example A it is not the capacity but the adaptation resulting from the activation of the new plant which must be taken as 30. Undertaking A must therefore receive 110 and not 130 as the applicant contends.

In example B it is assumed that an undertaking which carried out no restructuring measures could have maintained its production at the same level without interruption from 1974 to 1980. The Commission considers that possible only if the undertaking were particularly competitive, which means that it had already modernized its structures and had adapted itself to the market. It would be quite fair to treat such an undertaking more favourably than others which had only begun their restructuring operations later; the assumption that these undertakings could have maintained their production at the level of 1974 in spite of the crisis is absurd. Their production would have diminished not because of restructuring but because of unprofitability which it would be fair to take into account.

The example C put forward by the applicant corresponds to the Commission's case A. The undertaking receives 100 and thus is not treated the same way as in the applicant's example A.

3. Illegality of Decision 2794/80

In Case 275/80 the applicant raises the objection that Decision 2794/80 is illegal. Article 4, point 4, constitutes a breach of the Commission's duty under Article 58 (2) of the ECSC Treaty to determine quotas on an equitable basis. In making the benefit of Article 4, point 4, dependent on the absence of an unfavourable opinion by the Commission

on the investment programme the Commission in fact gave to the unfavourable opinion within the meaning of the fourth paragraph of Article 54, which by its very nature is not binding, as is clear from the fourth paragraph of Article 14 of the Treaty, legal effects which that opinion could not have.

The Commission considers that the objection of illegality is inadmissible. There must be a connection between the general decision which is alleged to be illegal and the individual decision which it is sought to have declared void. There is no such connection where the general provision or at least the article of a general provision, the illegality of which is being alleged, was not applied in the particular case and therefore its defectiveness could have had no effect upon the particular decision. That is so in the present case where the objection of illegality is directed against an article of the decision which was not applied to the applicant. In support of its view the Commission cites the judgments of the Court in Joined Cases 41 and 50/59, Case 18/62 and Case 32/65.

In regard to the substance of the objection, the Commission, after stressing that it did not give an unfavourable opinion on the applicant's investment programme, states that although the unfavourable opinion is not a legally binding measure it is nevertheless a fact. It means that the Commission considers the proposed investments undesirable. For the purposes of the system of production quotas there is no reason for rewarding such undesirable new plant by fixing a higher reference production. The condition laid down in Article 4, point 4, is thus only the expression of the general objectives which the Commission pursues in its decision and cannot therefore be relied upon to support an objection of illegality.

In its rejoinder in Case 275/80 the Commission states that since the applicant has not replied to those objections it assumes that the objection of illegality is no longer being pursued.

In Case 24/81 the applicant raises an objection of illegality in regard to the system of delivery quotas provided for by Article 7 (2) of Decision 2794/80. In so doing it does not comment on the merits of the legal argument on which the Commission founds its view that the objection of illegality in Case 275/80 is inadmissible. So far as the applicant is concerned, even assuming this argument to be well-founded the condition stated therein, for the admissibility of an objection of illegality, namely "a connection between the general decision and the individual decision to the effect that the individual decision is based on the general decision" is fulfilled as far as Article 7 of Decision 2794/80 is concerned. That follows from the fact that Article 7 of Decision 2794/80 refers for the determination of the delivery quotas to the production quotas fixed pursuant to Article 3. Thus the total of the delivery quotas for the Community market and for non-Community markets is equal to the production quotas defined by the defendant. The fixing of production quotas thus amounts to fixing

delivery quotas and the "connection" required by the Commission exists.

As to the substance of its submission, the applicant maintains first that Article 58 of the ECSC Treaty only authorizes the Commission to establish a system of production quotas and not a system of delivery quotas. The doctrine of implied powers cannot justify the establishment of a system of delivery quotas. That doctrine, which moreover is rejected by the great majority of the governments of the Member States, is also rejected by legal writers having regard to specific articles of the Treaties (Article 95 of the ECSC Treaty, Article 235 of the EEC Treaty and Article 203 of the EAEC Treaty) providing detailed rules for the case where the powers given by the Treaties are not sufficient to achieve their aims. The Court itself has not recognized any general principle according to which the Commission has all the requisite legislative powers to achieve the aims of the Treaty without regard to the rules contained in the Treaty for each particular factual situation. It has simply accepted, in particular in Case 8/55 ([1954 to 1956] ECR 292 at p. 299) the application to Community law of a rule of interpretation "generally accepted in both international and national law, according to which the rules laid down by an international treaty or a law presupposes the rules without which that treaty or law would have no meaning or could not be reasonably and usefully applied."

The application of those principles to this case compel the conclusion that powers in relation to delivery quotas may not be inferred from Article 58 of the ECSC Treaty unless the powers expressly conferred in relation to production quotas do not enable in any circumstances the aims of the Treaty to be achieved. There can be no question of that, as is shown by the practice in the matter of cartels. In addition, if the Commission really has an implied right to take all necessary measures to re-establish a balance between supply and demand on the Community market it ought, in the applicant's view, to have imposed import quotas. In that respect, however, Article 74 of the ECSC Treaty allows the Commission only to make recommendations to the governments of the Member States. Since the doctrine of implied powers is thus not applicable in relation to imports, the same rules must also apply to delivery quotas.

Legal writers consider the introduction of delivery quotas under Article 58 of the ECSC Treaty as contrary to the Treaty.

The applicant also considers that the wording of Article 7 (2) of Decision 2794/80 is not clear. It allows a whole series of interpretations and thus makes it impossible for the undertakings concerned to calculate their delivery quotas. It might even lead to a certain discrimination between manufacturers. More particularly, the applicant states that it is not clear whether the duty which Article 7 imposes on undertakings not to exceed, as regards deliveries of products subject to the quota system in the common market, the ratio between Community deliveries and total deliveries during a particular period, concerns all products including those from stock, imports or other sources of supply or refers only to deliveries of products manufactured by the undertaking during the period of validity of the quota system. The first paragraph of Article 9

of Decision 2794/80 seems however to indicate that Article 7 applies only to the deliveries of products manufactured by the undertaking during the period of validity of the quota system. In that case however there would be discrimination in favour of undertakings which are able to compensate for the restriction on their possibilities of delivery in the common market by deliveries from stock or other sources. Such discrimination would favour the least competitive undertakings if they possessed extensive stocks and would not be justified by the purpose of the quota system. The applicant adds that the system introduced by Article 7 (2) of Decision 2794/80 also discriminates against undertakings which during the reference period fixed by that provision reduced their stocks by exports to markets outside the Community. That means that undertakings affected by the delivery quota system could, while it applies, sell only part of their current production on the Community market although during that reference period they have delivered the whole of their production in the common market.

Secondly, the applicant considers that, as regards products of Group I, under the delivery quota system it is uncertain whether the delivery quotas cover that part of the production quotas which are not sold to third parties but processed within the undertaking. There is no doubt that according to the wording of Article 7 (2) such processed products do not come within the system of delivery quotas. This favours undertakings with an integrated production system. In this respect too, there is discrimination contrary to the objective of Decision 2794/80.

Thirdly, the reference period prescribed by Article 7 (2) of Decision 2794/80 is quite inappropriate. The reference period in question is one of twelve months whereas the system of delivery quotas, as may be inferred from the first paragraph of Article 9, is related to the production quotas determined on a quarterly basis. Therefore in the applicant's view it would have been more appropriate to establish reference periods on a quarterly basis rather than a reference period of a whole year. The reference period adopted makes it objectively impossible for undertakings to determine their quotas. Moreover the applicant fails to see why delivery quotas had to be determined on the basis of a reference period in which "the total production of the four groups of rolled products was the highest". In contrast to the amount of deliveries the volume of production is irrelevant in this context, all the more so since there is classification according to the type of product.

Accordingly the applicant maintains that Decision No 2794/80 does not determine delivery quotas with the precision and reliability required of a body of rules the contravention of which is punishable by a fine.

In conclusion the applicant contends that even assuming delivery quotas for the common market were admissible, the fact remains that the combined effect of the fixing in Decision 2794/80, total production quotas, on the one hand, and delivery quotas for the common market on the other amounts to fixing export quotas which institutions of the Community have in any event no power to do.

As in Case 275/80 the Commission takes the view that the objective illegality is inadmissible. There is no connection between Articles 4 and 7 of Decision 2794/80. Article 7 is intended to prevent, in the event of exports declining, products which have not been sold outside the Community from being offered on the Community market. For that purpose it is provided that the ratio of Community deliveries to total deliveries as existing in the reference period should not be exceeded. The ratio is not identical with the total of the production quotas but is a statistical ratio for each undertaking and is defined independently of the production quotas for the undertakings.

Only after a fine has been imposed under the first paragraph of Article 9 on an undertaking which has infringed Article 7 (2) may that undertaking raise an objection of illegality in relation to that article.

In the alternative the Commission contends that the objection of illegality is in any event unfounded. The power which the Commission has under Article 58 of the ECSC Treaty to fix production quotas by implication includes the power to adopt the rules laid down in Article 7 (2) which fixes neither delivery quotas nor export quotas. The purpose of the grant of the powers provided for in Article 58 of the ECSC Treaty is to deal with a decline in demand amounting to a crisis and to re-establish the balance between supply and demand on the market. The purpose of Article 7 (2) is simply to introduce a system to prevent a decline in demand on the markets of non-member countries from affecting the supplies in the common market. That provision remains within the limits of the powers which the Commission has under Article 58 of the Treaty according to the case-law of the Court cited by the applicant, without there being any necessity of establishing whether the Community has general implied powers. Without these rules the purpose of the grant of powers which is to re-establish a balance between supply and demand, could not be achieved or could be achieved only by means of rules restricting to a far greater extent the freedom of decision of undertakings.

The Commission considers the applicant's observations regarding the difficulties of interpreting Article 7 as an attempt to obtain an abstract interpretation of the content of that article. No such claim may be made in an application for a declaration that a measure is void. Furthermore, the first paragraph of Article 9 in conjunction with Article 7 (2) is clear because after determining the production quotas on the basis of the ratio, laid down by Article 7 (2) and known to the undertakings, between sales in the common market and exports, each undertaking knows when liability to a fine under the first paragraph of Article 9 arises.

IV — Oral procedure

At the sitting on 27 May 1981 the parties presented oral argument.

The Advocate General delivered his opinion at the sitting on 25 June 1981.

Decision

1 By applications registered at the Court Registry on 11 December 1980 and 9 February 1981 Krupp Stahl AG brought pursuant to the second paragraph of Article 33 of the ECSC Treaty two actions for a declaration that the notifications of 1 November (Case 275/80) and 19 December 1980, the latter as amended by letter dated 9 February 1981 (Case 24/81), are void in so far as they determine production quotas for crude steel and for hot-rolled wide and narrow strip under Group I of Article 2 of Decision 2794/80/ECSC of 31 October 1980 establishing a system of steel production quotas for undertakings in the iron and steel industry (Official Journal L 291, p. 1).

2 Article 3 of Decision 2794/80 provides that the Commission is to fix quarterly production quotas for each undertaking "on the basis of the reference production figures as referred to in Article 4 of that undertaking" and "by application of abatement rates to those reference production figures as referred to in Article 5". Article 4, points 1 and 2, determines the method for calculating the reference production. Article 4, points 3 to 5, defines three exceptional situations justifying an increase in the reference production figures calculated pursuant to points 1 and 2.

3 Article 4, points 4 and 5, read as follows:

"(4) Where, further to an investment programme duly reported and not the subject of an unfavourable opinion, the undertaking activates a new plant after 1 July 1980, the Commission shall adapt appropriately the reference production of this undertaking, provided it finds that the new production possibility thus established brings the total production possibilities for the four groups of products to a level exceeding by at least 15 % the total production possibilities existing for 1979.

In this case, the reference production shall be increased by a quantity derived from application to the new production possibilities of a rate corresponding to the highest annual average rate of utilization of the same plant in the Community during the years 1977, 1978 and 1979, less five percentage points. The reference production for crude steel shall be adapted accordingly.

(5) To take account of restructuring, the Commission shall increase the reference production figures:

— Where an undertaking's total production of the four groups of products during a reference period falls short of production in the same quarter of 1974, and

— Where this undertaking has achieved for the year ending in 1979 a profit which is shown in its annual report or reported to the national official agency responsible for the filing of the annual accounts of companies.

In this case, the Commission shall increase the reference production figures so as to reach the total equivalent to the production of the corresponding quarter of 1974."

4 By notification of 1 November 1980 the Commission determined the production quotas for the applicant for the fourth quarter of 1980. In doing so it applied Article 4, point 5, of Decision 2794/80. The applicant however took the view that it satisfied not only the conditions of Article 4, point 5, but also of Article 4, point 4. It therefore sought the benefit of the cumulative application of these two provisions. It made the same request in regard to the production quotas which the Commission had determined by notification of 19 December 1980 for the first quarter of 1981.

5 Both requests were rejected by the Commission. As regards the production quotas for the fourth quarter of 1980 the Commission contends that the conditions for the application of Article 4, point 4, were not satisfied, but even if they had been it would not have been possible, as the applicant desires, to apply Article 4, points 4 and 5, cumulatively. As regards the production quotas for the first quarter of 1981 the Commission admitted in a letter dated 9 February 1981 addressed to the applicant that the conditions for applying Article 4, points 4 and 5, were satisfied. It nevertheless adhered to its contention that the paragraphs could not be applied cumulatively. After finding that the application of Article 4, point 4, was more advantageous to the applicant than the application of Article 4, point 5, it amended, in the above-mentioned letter, the notification of 19 December 1980 by applying Article 4, point 4, instead of Article 4, point 5.

Infringement of essential procedural requirements and insufficient statement of reasons

6 Although the applicant claims a declaration that the notifications addressed to it are void only in so far as they determine the production quotas for Group I products referred to in Article 2 of Decision 2794/80, it nevertheless contends that those notifications were, taken as a whole, issued in breach of the essential procedural requirements prescribed by Decision 22/60 of the High Authority of 7 September 1960 on the implementation of Article 15 of the ECSC Treaty (Official Journal, Special Edition, Second Series VIII p. 13) and in breach of the general duty to state reasons which is intended to enable the parties to defend their rights and the court to exercise its review of legality.

7 The form of decisions recommendations and opinions of the High Authority is determined in detail by Decision 22/60. Thus it is provided that the measure is to be expressely described in its title, that it must show the date of its adoption, the form of signature, contain reference to relevant legislation and to opinions obtained, be furnished with a statement of the reasons on which it is based and be set out in the form of articles. In addition it prescribes the procedure for notifying measures of the High Authority.

8 It is not denied that the notifications sent to the applicants do not comply with these formal requirements. The Commission however denies that they are essential requirements non-compliance with which makes the contested notifications void.

9 Decision 22/60 prescribes in such a detailed manner the formal presentation of measures of the High Authority in order clearly to distinguish the nature of measures by using standard forms. Failure to comply with that requirement nevertheless does not entail the nullity of measures when they are unquestionably individual decisions taken on the implementation of a scheme previously established by means of a general decision adopted in accordance with the formal requirements prescribed by Decision 22/60. That is precisely the case with the contested notifications which constitute no more than the application of Article 3 of Decision 2794/80 under which the

Commission fixes quarterly production quotas for each undertaking and notifies them of it. The submission that the contested notifications did not comply with the formal requirements laid down by Decision 22/60 must therefore be rejected.

10 It does not follow however that such notifications may be exempted from stating the reasons on which they are based. In that respect the applicant objects that the Commission did not state which of the points of Article 4 of Decision 2794/80 it was applying or indicate the grounds on which it relied.

11 In the Commission's view the notifications sent to the applicant must be considered in conjunction with Decision 2794/80 of which they constitute a mathematical application on the basis of production figures supplied by the applicant itself. The applicant moreover had no trouble in determining by reference to that decision which provisions thereof had been applied to it.

12 The applicant's submission in relation to the notification relating to the first quarter of 1981 is manifestly unfounded. As amended by letter dated 9 February 1981 the notification refers not only to the point of Article 4 which was applied but to the reasons which led the Commission to apply it. In those circumstances there can be no question of there being no statement of reasons.

13 As regards the notification of 1 November 1980, it is to be regretted that the Commission did not consider it necessary to state the provisions which it was applying and to explain the interpretation which it was thus giving to Decision 2794/80. It is however true that it was possible for the applicant, by examining the figures in the notification in the light of the methods of calculation defined in the decision, to determine which provisions had been applied to take account of its own economic position. The Commission's summary statement of reasons was therefore not such as to deprive the applicant of the opportunity of checking the correct application, in regard to

itself, of the rules laid down by Decision 2794/80 or to prevent the Court from exercising its task of review and therefore cannot adversely affect the validity of the notification of 1 November 1980.

The conditions for applying Article 4, point 4, of Decision 2794/80

14 Article 4, point 4, provides for adaptation of the reference production when the new production capacities bring "the total production possibilities for the four groups of products to a level exceeding by at least 15 % the total production possibilities existing for 1979". It is not denied that the applicant activated on 1 July 1980 an additional pre-heating oven, the construction of which was not the subject of an unfavourable opinion on the part of the Commission. In the applicant's view the effect of that new plant was immediately to increase the production capacity of its undertaking by at least 15 % for the four groups of rolled products covered by the quota system and it concludes from this that it is entitled to the increase in the reference quota provided for by Article 4, point 4. The Commission denies that the conditions for applying that provision are satisfied. In its view the total production possibilities for the four groups of products in question was increased, as a result of the investment in question, by only 9.5 % in relation to the total production possibilities existing for 1979.

15 That discrepancy arises from a difference of interpretation of Article 4, point 4. The applicant maintains that it suffices that the new plant should, on the day on which it is activated, increase the production capacity by 15 % in relation to that for 1979. It bases that argument essentially on the wording of the provision which does not specify the annual nature of the increase in production possibilities and the fact that the interpretation proposed by the Commission would make taking into consideration new production capacities depend on the date on which they became operative.

16 In the Commission's view on the other hand it is necessary to compare the maximum production possibility for the whole of 1980 as estimated in the Questionnaire No 2-61 ECSC completed by the applicant itself in the spring of 1980 with the maximum production possibility for the whole of 1979 as stated in the same questionnaire. The particulars supplied by the applicant

itself show that by applying those criteria the maximum total production possibility for 1980 is only 9.5 % higher than those existing for 1979.

17 The Commission justifies its position by arguing that it needs to establish a comparison between identical information already available, namely the production possibilities existing for the whole of each of the years 1979 and 1980. If that leads to taking account of new plant only as from 1981 it is in accord with the objective of point 4 which is intended to ensure that new capacity is gradually taken into account.

18 The Commission is not to be criticized for the concern which prompts it to have recourse, in its interpretation of Article 4, point 4, to facts which are known, easily comparable and which enable the effectiveness of the quota system to be maintained by strictly limiting the possibility of exceptions. Further it is necessary that the interpretation adopted should not be such as to make the application of Article 4, point 4, subject to conditions which are not justified by the objectives of the rules in question and which are a source of discrimination.

19 The interpretation proposed by the Commission finds support neither in the wording nor in the objectives of the provisions in question. They provide for a comparison between the total production possibilities existing for 1979 and the new production capacity arising from the activation of new plant. The difference between the two production capacities must be at least 15%. In thus comparing the production capacity existing for 1979 with that existing when new capacity is brought into operation the benefit of Article 4, point 4, is granted to every undertaking which increased its production capacity by more than 15% at any time during the second half of 1980. On the other hand in comparing, as does the Commission, the annual production capacities for 1979 and 1980 the increase in the quota is made to depend on an increase in production capacities which must be proportionately larger according to how late in the second half of 1980 new plant is activated and the result is to favour or place at a disadvantage undertakings on the basis of a factor alien to the system.

20 It follows that the interpretation and application by the Commission of Article 4, point 4, in its notification to the applicant of 1 November 1980 are not well-founded and that accordingly the notification must be declared to be void.

The cumulative application of Article 4, points 4 and 5, of Decision 2794/80

21 The restructuring policy of Krupp Stahl AG obliged it to reduce its production until July 1980. At that time it activated new plant which substantially increased its production possibilities. It follows that the applicant satisfies the conditions of both points 4 and 5 of Article 4. It therefore asks that it be granted the cumulative benefit of the increases in the reference production provided for by both provisions. The Commission considers that in a situation such as that of the applicant there is no ground for cumulatively applying Article 4, points 4 and 5, and that only the provision which is most advantageous to the undertaking in question should be applied.

22 Both the Commission and the applicant rely on the wording of Article 4 in support of their argument. In the Commission's view the structure of the article indicates that only one correction to the reference production calculated on the basis of points 1 and 2 may be made. In the applicant's view the fact that the various possibilities of adapting the normal reference production are given in sequence in points 3, 4 and 5 of Article 4, without its being stated that the application of one excludes the application of the others, is decisive and implies the possibility of cumulative application.

23 Neither the wording nor the structure of the provision enables the matter to be settled one way or the other. It is therefore by considering the objectives pursued by Decision 2794/80 and more particularly in Article 4, points 4 and 5, that it must be decided whether or not those points are capable of cumulative application.

24 The Commission justifies its refusal to apply those two provisions cumulatively by the necessity to preserve the general objectives of the decision which are to re-establish a balance between supply and demand by means of

strict control of production. A double increase in the reference production might, in the Commission's view, jeopardize the whole system. It would put the applicant undertaking in an excessively advantageous position in relation to its competitors and would create a discriminatory system with regard to undertakings which had first reduced their production and then brought into operation new production capacities but before July 1980.

25 The applicant finds justification for the cumulative application to which it considers itself entitled in the fact that points 4 and 5 of the provision at issue are concerned with different cases and have different objectives. Point 4 takes account of a growth in capacity in respect of which the Commission has not given an unfavourable opinion whereas point 5 takes account of previous restructuring efforts which have led to the elimination of non-competitive capacities. Every undertaking which, like the applicant, has undertaken both forms of restructuring is entitled to the two increases cumulatively, each taking account of a particular kind of restructuring.

26 It is clear, as the Commission stresses, that extensive application of the exceptions to the reference production system provided for in Article 4, points 3 to 5, of Decision 2794/80 would imperil the fundamental objective of the decision, namely to re-establish a balance between supply and demand in the steel market. It follows that a restrictive interpretation is consistent with the general objective of the decision. That is therefore the interpretation which must be adopted unless it prevents certain special objectives of the provisions at issue of Decision 2794/80 from being taken into account.

27 As regards the specific objectives of Article 4, points 4 and 5, it is true, as the applicant points out, that they take account of two different kinds of re-structuring. It does not however follow that the two provisions must therefore be applied cumulatively.

28 On the contrary it follows from the nature and the objectives of the two different restructuring measures referred to in Article 4, points 4 and 5, that from the economic point of view their effects are in normal cases intended to compensate one another and not to be cumulative. That economic connection in turn necessitates the rejection of an interpretation which would result in the two quota increases being cumulated and give rise to abnormal production possibilities clearly exceeding the objectives of the provision in question.

29 Finally it must be pointed out in support of the Commission's argument that if the applicant's reference quotas were to be increased twice it would result in favouring the applicant to the detriment of undertakings which had also reduced and then increased their production capacity but had done all this before 1 July 1980. Such a difference in treatment cannot be justified in regard to the objectives of the decision. It would mean severer treatment of undertakings which had been speedier in implementing their restructuring programme.

30 It follows from the foregoing that the Commission rightly refused to apply Article 4, points 4 and 5, of Decision 2794/80 cumulatively. The applicant's submission must therefore be rejected.

Objections of illegality raised in regard to Article 4, point 4 and Article 7 of Decision 2794/80

31 The applicant raises two objections of illegality in regard to Decision 2794/80. The first of those objections related to the requirement that there should not be an unfavourable opinion of the Commission and is the means whereby the applicant contests the legality of the consequences attached by the decision to the existence of an unfavourable opinion. The second objection relates to Article 7 of the decision and involves a denial that the Commission has power to lay down delivery quotas.

32 With regard to those two objections it should be pointed out that although in an action for a declaration that an individual decision is void the applicant may allege that certain provisions of the general decisions which the

contested decision implements are illegal, the applicant may do so only if the individual decision is based on the rules alleged to be illegal.

33 In this case the contested notifications do not apply the consequences attached to an unfavourable opinion since no such opinion was given in respect of the applicant's new investments. Nor do they fix delivery quotas and are not therefore based on Article 7 of Decision 2794/80. Accordingly the objections of illegality raised by the applicant are inadmissible.

Costs

34 The Commission has failed in its submissions in Case 275/80 and the applicant in Case 24/81.

35 However since the two cases have been formally joined for the purposes of the oral procedure and the parties have treated them as such during the written procedure, it is impossible to determine the costs attributable to each of the cases. It is therefore right for the purposes of the proper administration of justice to apply Article 69 (3) of the Rules of Procedure according to which the Court may where the circumstances are exceptional order that the parties bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Declares that the Commission's notification of 1 November 1980 relating to the applicant in the reference production and production quotas for the fourth quarter of 1980 is void in so far as it relates to Group I of rolled products and crude steel;**

2. For the rest, dismisses the application;

3. Orders the parties to bear their own costs.

Mertens de Wilmars Touffait Due

Mackenzie Stuart O'Keeffe Koopmans Everling

Delivered in open court in Luxembourg on 28 October 1981.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 25 JUNE 1981 [1]

Mr President,
Members of the Court,

In autumn 1980 the Commission noted that in the course of the third quarter of that year there had been a sudden and considerable drop in the demand for steel, that the rate of utilization of the steel undertakings of the Community had fallen sharply and that in the Community there had been a marked fall in steel prices which had coincided with an increase in manufacturing costs. This led the Commission to assume that the European steel industry was confronted with a period of "manifest crisis". Since the Commission was convinced that the indirect means of action provided for in Article 57 of the ECSC Treaty were not adequate, and that it was necessary to take direct and binding measures in the sphere of production in order to restore equilibrium between supply and demand, it decided to apply Article 58 of the ECSC Treaty and to introduce a system of production quotas. This was done by Decision No 2794/80/ECSC of 31 October 1980 which was published in the

1 — Translated from the German.