

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses the application;
2. Orders the applicants to pay the costs.

Koopmans

Mackenzie Stuart

Bosco

Delivered in open court in Luxembourg on 16 February 1984.

For the Registrar

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS
DELIVERED ON 12 JANUARY 1984 ¹

*Mr President,
Members of the Court,*

In an application made on 29 April 1983, Usines Gustave Boël SA, Brussels, and its French subsidiary, Fabrique de fer de

Maubeuge SA, Louvroil, have brought proceedings in which the Court has unlimited jurisdiction under the second paragraph of Article 36 of the ECSC Treaty against the Commission's decision of 24 March 1983, notified on 30 March to the undertaking Usines Gustave Boël

¹ — Translated from the French.

SA, La Louvière, Belgium, imposing on that undertaking a fine of BFR 111 024 570 pursuant to Article 58 of the ECSC Treaty.

The applicants seek a declaration that that decision is void or, in the alternative, the reduction of the amount of the fine, and ask that formal note be taken that the applicants reserve the right to claim compensation for the damage resulting from the provision of the bank guarantee required by the Commission in return for refraining from enforcing the fine pending the proceedings before the Court.

I — Article 1 of the contested decision states that in the third quarter of 1981 the undertaking "Usines Gustave Boël" of La Louvière exceeded its production quota for Category Ic products by 1 007 tonnes and exceeded by 3 878 tonnes the part of that quota which could be delivered on the common market, those quotas having been allocated to it under the system established by Commission Decision No 1831/81/ECSC of 24 June 1981.¹ For the fourth quarter, the decision records production of 14 943 tonnes in excess of the quota for Category Ic products and the exceeding of the parts of the production quotas for Categories Ia and Ic which could be delivered on the common market by 261 tonnes and 14 921 tonnes respectively.

1. The applicants do not deny that the quotas were, in fact, exceeded but in support of their submissions directed against that first article they argue first that the excesses recorded for Category Ic products should be imputed to

Fabrique de fer de Maubeuge SA, which is a company legally distinct from Usines Gustave Boël SA.

That argument calls in question the legality of the individual decisions fixing the quotas or parts of quotas of the "Boël group" for the third and fourth quarters of 1981.

It should be pointed out that the notifications to each undertaking or group of undertakings fixing or adjusting its quota for each quarter constitute individual decisions and that only the decisions which fix the abatement rates for each quarter are general in nature.

The Court has consistently held² that in an application for a declaration that an individual decision is void, the applicant may not raise the objection of illegality relating to another decision addressed to him which has become final.

In those circumstances the applicant companies may not rely on the illegality of the Commission decisions which fixed their quotas for the quarters in question. That submission must therefore be rejected.

It may be noted, as a general point, that Fabrique de fer de Maubeuge SA is part of the "Boël group", which is considered to be "a single undertaking" in accordance with Article 2 (4) of Decision No 1831/81/ECSC;³ the fine in

1 — Official Journal, L 180, 1. 7. 1981, p. 1.

2 — Most recently, in the judgment of 19. 10. 1983, Case 265/82 *Usinor* [1983] ECR 3105, paragraph 7 of the decision.

3 — "For the purpose of this Decision, any group of concentrated undertakings within the meaning of Article 66 of the Treaty shall be considered as a single undertaking even if such undertakings are located in different Member States" (Official Journal, L 180 1. 7. 1981, p. 1).

question was imposed for exceeding the quota duly allocated to the "Boël group".

While there is in fact a company called "Usines Gustave Boël" which has its registered office in Brussels, one of its branches is Usines Gustave Boël SA located at La Louvière. The latter, which is an undertaking engaged in production in the steel industry within the definition in Article 80 of the ECSC Treaty, is able to control¹ the French undertaking, Fabrique de fer de Maubeuge SA, Louvroil, which is also engaged in production in the steel industry. The latter two undertakings are therefore "concentrated" within the meaning of Article 66 (1) and are part of the "Boël group".²

Moreover, the argument cannot be accepted that the undertaking "Boël, La Louvière", is not able to pass on the burden of the fine to another company in the group; that is an internal matter for the group of undertakings³ and cannot call in question a rule corresponding to the specific requirements of the quota system.

2. In a second submission the applicants complain that the Commission failed to state reasons, or adequate reasons, for its refusal to comply with their requests for *adjustments* to the quotas for the third and fourth quarters of 1981.

For the reasons set out above, and to the same extent, the second submission is also inadmissible. However, in so far as the applicants also allege that insufficient grounds were stated for the decision imposing a *fine*, the submission may be considered.

The arguments put forward by the applicants in this regard concern the quotas which were fixed for the "Boël group" and are arguments that they have already had the opportunity to assert. The fact that the Commission failed to reply to those contentions is not material to the decision which fixed the disputed fine since the fine is the objective consequence of exceeding a quota. The statement of the grounds for the decision on this point is sufficient, if concise. Finally, it is clear that in the procedure under Article 58 of the ECSC Treaty, the Commission was not obliged to reply to all the points raised by the applicants.

3. In another group of submissions (the third, fourth, fifth and sixth submissions) the applicants challenge the individual decisions which fixed reference productions and quantities and the production quotas or part of quotas which could be delivered on the common market for the undertaking "Usines Gustave Boël, La Louvière", and the implied or express decisions refusing adjustment of the quotas pursuant to Article 14 of general Decision No 1831/81/ECSC.

In the fourth submission, in particular, the applicants claim that the criterion adopted by the Commission for determining reference productions in Category 1c, after its introduction, altered the traditional share of pro-

¹ — cf. Decision No 24/54 of the High Authority of 6. 5. 1954, Official Journal, English Special Edition 1952-58, p. 16.

² — Commission Decision of 7. 7. 1975 on the setting up of Queensborough Steel Co. Ltd by Usines Gustave Boël SA and Helical Bar Ltd.

³ — Judgment of 13. 7. 1962, Joined Cases 17 and 20/61 *Klöckner and Hoech* [1962] ECR 325.

duction held by the “Boël group”, which fell from 1.16 to 0.95%, while at the same time some competing undertakings did not even use up their production quotas.

It must be observed that since those individual decisions have become final, because they were not disputed within the prescribed time-limits, the applicants’ submissions calling them in question in these proceedings are inadmissible; the applicants may not plead the illegality of the provisions of a general decision unless the contested individual decision is based on those provisions.

On the substantive question, the Commission rightly replies that the system adopted does not discriminate against the applicants in any way; it cannot however guarantee to each undertaking that the share of the market it has acquired will be maintained, nor can it allow quotas to be exceeded even as a result of excessive expectations, even those held in good faith.

This Court has already held that the extension of the quota system to production for export and the establishment of a system of delivery quotas were consistent with the Treaty¹ and that Article 58 “in no way places the Commission under a duty to guarantee to any given undertaking, to the detriment of others within the Community, such minimum production as that undertaking regards as appropriate in accordance with its own criteria of profitability and development.”²

4. In their seventh submission, the applicants question the Commission’s

refusal by implication to adjust their references for Category Ic products for the third quarter of 1981 and for all Category I products for the fourth quarter of 1981.

Here again it should be observed that no action for the annulment of that refusal was brought within the appropriate time-limits.

Furthermore the grounds on which the Court, by judgment of 22 June 1983,³ dismissed an action brought within the time-limit by the same applicants for the annulment of a decision concerning the fourth quarter of 1982 are perfectly applicable to the present case.

5. In their eighth submission the applicants allege that the Commission failed to reply to the letter of 28 October 1981 in which “Usines Gustave Boël SA, La Louvière”, requested the adjustment of the production quotas of its undertaking and of “Fabrique de fer de Maubeuge” for the fourth quarter of 1981 and gave the Commission notice in the following terms: “unless the Commission indicates otherwise, we shall consider you to be in agreement with the production quotas set out above and with the delivery quotas which follow from them”. Since the Commission failed to reply, the applicants claim that they were legitimately entitled to conclude that it had approved the adjustments which they proposed and applied, and that those adjustments would not constitute “excess production”. They point out that since the Commission does not decide on requests for adjustment of quotas until after the end of the quarter for which they are made, undertakings have no option, if they wish to survive,

1 — Judgment of 7. 7. 1982, Case 119/81 *Klöckner* [1982] ECR 2627, paragraph 21 et seq. of the decision; judgment of 11. 5. 1983, Case 244/81 *Klöckner* [1983] ECR 1451 at paragraphs 39 to 37 of the decision.

2 — Judgment of 11. 5. 1983, Case 244/81, cited above, paragraph 27 of the decision.

3 — Case 317/82 [1983] ECR 2041, paragraph 12 of the decision.

but to exceed the quotas allocated to them and thus to render themselves liable to fines.

The Commission correctly replies that the silence of its officers cannot be treated as tacit consent. Any relaxation of the obligatory and general quota system must be made pursuant to Article 14 of general Decision No 1831/81/ECSC and can be granted only by an express individual decision stating the grounds on which it is based. The lack of a reply to the letter of 28 October 1981 is, however, regrettable.

II — Finally, the applicants request a reduction in the amount of the fine and argue that the Commission did not have the power, unilaterally and retrospectively, to lay down additional detailed rules not included in Article 12 of Decision No 1831/81, in which pursuant to Article 58 (4) of the Treaty it had itself fixed the amount and rules for the determination of fines.

In particular the decision took into account the fact that the "Boël group" was operating at a profit and that the excesses¹ amounted to more than 10% of the quotas or parts of the quotas

I propose that the application be dismissed and that the applicants be ordered to pay the costs.

which could be delivered on the common market (with the exception of the excesses of 1 007 tonnes in Category Ic and of 161 tonnes in Category Ia); it failed, in contrast, to take into consideration the fact that the group had restructured itself without official aid, unlike other undertakings.

To the extent that those submissions are admissible I am of the view that they should be rejected on the basis of the considerations raised in the Court's judgments of 18 March 1980 in *Valsabbia*² and of 11 May 1983 in *Klöckner*.³

A final point worthy of mention is that Article 12 of Decision No 1831/81, interpreted in the light of Article 58 (4) of the ECSC Treaty, in no way precludes the Commission from modifying the amount of the fines having regard to the circumstances of the infringement.⁴ In the present case the Commission has in fact taken into account the past record of the undertaking.

In consequence the request for reduction of the fine does not appear to be justified, and there are no grounds for the Court taking formal note as requested.

1 — A fine had already been imposed on the undertaking "Usines Gustave Boël SA, La Louvière" on 24. 11. 1982 for exceeding by 2 581 tonnes its production quota for Category I products notified to it for the second quarter of 1981.

2 — Joined Cases 154, 205, 206, 226 to 228, 263 and 264/78, 39, 31, 83 and 85/79 *Valsabbia and Others v Commission* [1980] ECR 907, paragraph 159 of the decision: "... by deciding to apply a relatively low coefficient for the calculation of the fines, namely ... 10% of [the] value [of the underpricing] in the case of the medium-sized undertakings operating at a loss ... , having regard to the rate which it may apply under Article 64 of the Treaty — twice the value of the unlawful sales — the Commission properly took account of the circumstances of the cases".

3 — Case 244/81 *Klöckner v Commission* [1983] ECR 1451, paragraphs 36, 37 and 38 of the decision.

4 — Judgment of 16. 11. 1983, Case 188/82 *Thyssen v Commission* [1983] ECR 3721, paragraph 20 of the decision.