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,

During the period in which Decision 1831/81 of 24 June 1981 (Official Journal L 180 of 1 July 1981, p. 1 et seq.), Klöckner-Werke AG, which has contested the notification of quotas for the third quarter of 1981 in Case 244/81, [2] received similar notifications in respect of the fourth quarter of 1981 and the first two quarters of 1982.

There are three notices at issue, the first dated 26 October 1981 and based — as far as the abatement rates applicable to the fourth quarter of 1981 are concerned — on Decision 2979/81 (Official Journal L 298 of 17 October 1981, p. 11), the second dated 4 December 1981 and based on Decision 3328/81, which governed the first quarter of 1982

1 — Translated from the German.

2 — Case 244/81 — *Klockner-Werke AG* v *Commission of the European Communities.*

(Official Journal L 334 of 21 November 1981, p. 34), and the third dated 24 March 1982 which, as regards abatement rates, was based on Decision 532/82 (Official Journal L 65 of 9 March 1982, p. 5).

Those instruments too were referred to the Court of Justice by applications dated 8 December 1981, 15 January 1982 and 28 April 1982.

In the first of the above-mentioned actions (Case 311/81) the applicant claims that the Court should:

1. Declare the defendant's decision of 26 October 1981 void;

2. Alternatively:

   (a) declare the production quotas in the said decision void in so far as, with regard to Categories I a and I b, they fall short of certain stated figures;

   (b) declare the production quotas void in so far as it may be shown that production is intended for non-member countries;

   (c) declare the decision void in so far as it determines a proportion of the production quotas which may be delivered on the Community market.

The applicant's claims in Cases 30 and 136/82 are identically worded, except that the main claim refers, in each case, to a different decision and that different figures are inserted only as regards the alternative claims numbered 2 (a).

In those cases the Commission likewise considers the alternative claims numbered 2 (a) and 2 (b) to be inadmissible, and it takes the view that the main claims and the claims in the alternative numbered 2 (c) should be rejected as unfounded.

Briefly stated, my opinion on all three cases considered jointly is as follows:

1. The reasoning in support of the main application in the cases under consideration here is identical to that in Case 244/81 (cited previously).

The objection was that the quota provisions led to the applicant's falling below the minimum level of employment called for by Article 58 of the ECSC Treaty, giving rise to the complaint, once judgment had been given in Case 199/81,[1] that the quota provisions wrongfully failed to contain a clause to prevent an emergency situation from arising and to ensure the applicant's survival. It is further argued that an infringement of essential procedural requirements has occurred, on the ground that no statement of reasons was given for the deterioration in the applicant's situation brought about by Decision 1831/81, as compared with its position under Decision 2794/80. We further note the long-familiar complaint that the consequences of the prohibition of subsidies imposed by Article 4 (c) of the ECSC Treaty have been ignored, and that it is not permissible either to restrict exports to non-member countries or to fix delivery quotas for the common market. Lastly, it is again submitted that Decision 1831/81 never received the assent of the Council of Ministers.

I need not examine all that in detail yet again, especially as I have already considered any subtleties and special points displayed by the applicant's submissions in the present proceedings

1 — Judgment of 7 July 1982 in Case 119/81, *Klöckner-Werke AG* v *Commission of the European Communities* [1982] ECR 2627.

when I expressed my opinion on similar charges made in the context of Case 244/81 (cited previously). I shall therefore merely refer to my observations contained in the Opinion on the aforementioned case and, to summarize, I shall simply remark that only the charge that the quota system did not adequately provide for emergency situations to be taken into account and the complaint that Decision 1831/81 did not contain a sufficient statement of the reasons for allowing a deterioration in the situation of undertakings which, under previous provisions, benefited from a special adaptation of their reference production figures, are well founded, in addition to which it is arguable that the last-mentioned consequence of the new system has no objective justification.

Accordingly, the applicant's principal claims in the three cases under consideration should be granted: the quota notifications addressed to the applicant must be declared void because their legal basis, namely Decision 1831/81, appears to be defective.

2. Cases 30 and 136/82 further contain a supplementary argument, presented for the first time by the reply, in conjunction with the first submission, namely that the Commission misapplied Article 4 (3) of Decision 2794/80, read in conjunction with Article 6 (1) (b) of Decision 1831/81, inasmuch as it underestimated the applicant's capacity for the years 1977 to 1979 and thereby arrived at too low a margin of increase for the reference production when observing the adaptation requirements under Article 4 (3). The applicant alleges that, had the Commission — correctly — conceded that its No II rolling-mill in Bremen had an output capacity of 459 000 tonnes per month, it would have had to allow the applicants higher production quotas in the context of Decision 2794/80, which in turn would have operated in the applicant's favour when it came to working out the arithmetical mean pursuant to Article 6 of Decision 1831/81 (the details of which are set forth among the facts of the case in my Opinion in Case 244/81 (cited previously)).

I am uncertain whether the applicant wished to insist on that head of complaint following the Court's judgment in Case 119/81 (cited previously), which was given after the applicant's last written pleadings had already been drafted. That may reasonably be doubted, not least because the applicant did not refer to it again during the oral procedure.

However that may be, it may readily be shown that such considerations cannot afford any additional ground for a declaration of nullity.

The Commission has rightly pointed out that it is only the production quotas relating to the fourth quarter of 1980 and the first quarter of 1981 which are of importance in relation to Article 6 of Decision 1831/81, and it has stressed that the notifications in question were not contested by the applicant in so far as an application in Article 4 (3) of Decision 2794/80 was at issue. The Commission was thereby enabled to proceed on the basis of the figures established at the time, and it does not seem permissible — the measures in question being *individual* ones, after all — to return to them after expiry of the periods allowed for bringing an action.

Another important point is that a similar objection, but one which related to the second quarter of 1981, has previously been made in Case 119/81 (cited previously), in which the Court held that there could be no question of a misapplication of Article 4 (3) of Decision 2794/80 on grounds of an erroneous assessment of the applicant's capacity between 1977 and 1979. No new facts or evidence on the matter are discernible here either; instead, the applicant relies principally on the documentation which has already been submitted in Case 119/81 (cited previously). If, at that time, such documentation was insufficient to demonstrate that the applicant's capacity between 1977 and 1979 should have been set at a higher level, it can scarcely be assumed that the Court would now appraise matters differently as regards that period.

An additional remark may be made in this context. Were the Court to concur with the views I have expressed in Case 303/81, [1] and concede that the applicant would have been entitled to a higher production quota if Article 14 of Decision 2794/80 had been correctly applied in the first quarter of 1981, there would at least have had to be repercussions in terms of Article 6 of Decision 1831/81, referring as it does to all adjustments granted; a recalculation of the applicant's quota entitlement under Decision 1831/81 would therefore be called for.

3. Lastly, as far as the alternative claims in the present actions are concerned, here again I can do no more — since, apart from the figures quoted, they coincide with the alternative claims numbered 2 (a), (c), and (d) in Case 244/81 (cited previously) — than refer back to my Opinion in that case. First, therefore, the assumption must be made that the alternative claim numbered 2 (a) was not maintained once the submissions had been amended, and secondly, it must be held that the alternative claims numbered 2 (b) and (c) are in any case unfounded.

4. In conclusion, I propose that Applications 311/81 and 30 and 136/82 be allowed as well, that the quota notifications received by the applicant concerning the fourth quarter of 1981 and the first two quarters of 1982 be declared void, and that the Commission be ordered to pay the costs of the proceedings.

1 — Case 303/81, *Klöckner-Werke AG* v *Commission of the European Communities.*