Delivered in open court in Luxembourg on 15 March 1966.

A. Van Houtte — Registrar

Ch. L. Hammes — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 22 FEBRUARY 1966[1]

Summary

Introduction (facts, conclusions of the parties) 60

Legal consideration 61

A — Admissibility 61

B — The substance of the case. 61

I — Submissions relating directly to the contested individual decisions 61

1. Infringement of Articles 80 and 81 of the Treaty . . . 61

2. Infringement of Article 47 of the Treaty 62

3. Infringement of Article 15 of the Treaty and Article 4 of Decisions Nos 2/57 and 16/58 63

(a) Inadequacy of the statements of reasons upon which the decisions are based 63

(b) Is the content of findings relating to the consumption of scrap by the applicant correct? 64

(aa) The period from August 1954 to January 1957 64

(bb) The period from February 1957 to November 1958. 65

(cc) Calculation of the consumption of scrap by reference to the consumption of electricity . . 65

4. Legality of the specific decisions fixing contributions payable by the applicant. 66

5. Conclusion. 66

II — Complaints relating to the general decisions concerning scrap 66

1. Determination of the accounting periods. 66

2. Taking account of scrap 'treated as imported' in the calculations 67

(a) Infringement of Article 1 of Decision No 22/54 . . 67

(b) Are the concepts used too vague? 68

(c) On taking account of equalization bonuses illegally obtained 68

3. Taking account of savings in the use of scrap effected by using pig-iron 69

1 — Translated from the German.

4. Determination of the equalization prices 70
(a) The powers granted to the Brussel Fund 70
(b) The use of different methods of determining the equalization prices 70
(c) Did the High Authority base its calculation on accurate figures? 70
(d) Fixing uniform average figures 71
(e) Infringement of Article 47 of the Treaty 71
5. Conclusion 71
C — Summary and opinion 71

Mr President,
Members of the Court,

The applicant in this case, on which I give my opinion today, is well known to us from various other proceedings in this Court, and in particular proceedings which it brought relating to the general levy of the European Coal and Steel Community. In the present case we have to deal with its liability to pay contributions under the ferrous scrap equalization scheme which —as we know— has been in liquidation for many years.

I will only give a short summary of the history of this case.

The essential point of departure is the fact that the applicant, which used ferrous scrap for its production (indeed, only Community scrap as it has said), for many years did not believe it was under a duty to make any declarations for the purposes of the equalization of scrap. Therefore the High Authority made a formal Decision on 15 April 1957 calling upon the applicant to supply it with particulars—required for the determination of its liability to pay contributions—of the movements of scrap at its works. The applicant complied with this decision by a letter of 19 May 1960, in which the amount of bought scrap liable to contribution for the period from April 1954 to November 1958 was stated to be approximately 22 000 metric tons. In the meantime (May 1958) the High Authority had had an investigation carried out at the applicant's works by the Société Fiduciaire Suisse (hereinafter called 'the SAFS') and had ascertained from its findings that the bought scrap liable to equalization was in the region of 30 000 metric tons. By a letter of 13 June 1960 it asked the applicant for further particulars of the movements of scrap at its works, a request which the applicant complied with on 13 December 1960 by sending it documents. In the months of November and December 1961, the applicant's works were inspected again. On 23 February 1962 the High Authority issued a second formal decision in which it called upon the applicant to produce the accounts of the electricity used for its production during the period from April 1954 to November 1958. The method adopted by the applicant to comply with this order was to send the High Authority a statement by its suppliers of electricity, from which its consumption of electricity during the particular period could be ascertained. Having taken all these steps the High Authority was in a position on 8 August 1962 to notify the applicant that it was proceeding on the basis that the amount of scrap liable to equalization which it had consumed during the period from April 1954 to November 1958 was approximately 58 000 metric tons. Accordingly the applicant —together with other undertakings—received on 8 April 1963 from the High Authority a letter setting out a statement of account of the contributions payable by it calculated in accordance with the provisions of Decision No 7/63 and calling upon it to pay the amount due. The applicant however did not comply with this demand for payment (and indeed according to the statements of the High Authority, which have not been disputed, it has still not paid any

equalization contributions); instead it set in motion administrative proceedings, during which at a number of meetings with officials of the High Authority and in a voluminous correspondence with them it discussed the questions arising out of its liability to pay contributions. The outcome was two decisions of the High Authority of 7 April 1965, in which the applicant's consumption of scrap liable to contribution was stated to be approximately 58 000 metric tons (the same figure as was mentioned in the communication of 8 August 1962) and the figure for the applicant's contribution debt was fixed at 395 858 600 lire (the same figure as was mentioned in the statement of account in the letter of 8 April 1963).

The present application is directed against these two decisions.

The applicant submits that the Court should annul these decisions on a number of grounds, some of which relate directly to the contested decisions, while others relate to the general decisions on equalization upon which they are based and which the applicant claims are illegal.

The High Authority regards the whole of the applicant's submissions as unfounded and submits that the Court should dismiss them.

Legal consideration

In my examination of all these issues I shall refrain from giving you to begin with, as the applicant has done, the history of the ferrous scrap equalization scheme and of the various stages of its development. Thanks to the large number of cases concerning the scheme we are sufficiently well acquainted with it. I shall rather turn immediately to the disputed questions of fact and of law and their connexion, when this appears to be necessary, with the relevant general equalization decisions.

A — Questions of admissibility

In the first place an objection that the application is inadmissible has to be dealt with, or more precisely, the reservations and doubts expressed by the High Authority on the admissibility of the application having regard to some of the wording in the applicant's pleadings have to be examined. These doubts are based on the fact that the application frequently refers to reasons for the *annulment* of general decisions, which could create the impression that the applicant is in fact asking for *their annulment*. Any attempts to annul these general decisions would have in fact to be held to be inadmissible, because the time-limit for commencing proceedings for their annulment expired long ago.

However, a closer examination shows that this is not in fact the applicant's intention. The relevant wording of its conclusions, which only calls for the annulment of *individual* decisions, as well as the reference in the application to Article 36 of the Treaty, which allows general decisions to be indirectly criticized, as the decided cases of the Court have repeatedly confirmed, do not support this supposition. The unfortunate wording of the application is to be understood as objections of illegality, the admissibility of which cannot be called in question.

Having clarified this issue I do not consider that there are any other questions relating to the admissibility of the application and I shall now immediately turn my attention to the merits of the application.

B — The substance of the case

In accordance with the method adopted by the applicant in submitting his claims the examination of them has to be divided into two parts and I deal first with the arguments which relate directly to the contested individual decisions, and in a later section with the various aspects of the objection that the general equalization decisions are illegal.

I — *Submissions relating directly to the contested individual decisions*

1. Infringement of Articles 80 and 81 of the ECSC Treaty

The applicant submits in the first place with reference to the decision determining the amount of scrap which it consumed, that during the operation of the ferrous scrap

equalization scheme its main products were dog-spikes, ('caviglie'), fish-plates ('ganasce') and rail plates ('piastre'), that is to say, products which according to Annex I to the ECSC Treaty do not come within the jurisdiction of the Community. It follows that the scrap used for the manufacture of these products could not be included in the equalization scheme, which can only be applied within the framework of the Treaty. It appears to me that it can quickly be shown that this point of view is untenable and that this is possible without considering the relationship between the applicant and the High Authority which has now lasted ten years, and the fact that during this period, in particular in the earlier proceedings relating to the general levy under the ECSC Treaty, the applicant never raised the objection that the High Authority had no jurisdiction, a fact which led the Court in Case 1/59 to find expressly that the applicant was an undertaking within the meaning of the Treaty. There is in fact no doubt that the applicant produces itself the steel required for the manufacture of its finished products. On any sensible view this fact is decisive in establishing whether it is a member of the Coal and Steel Community. On the other hand, nothing turns on the question whether the steel which it produces reaches the market or is produced for it, as the Court laid down clearly in Case 14/59. This proves conclusively that the High Authority did not overstep the limits of its jurisdiction, when, in assessing the applicant, it took into consideration in the equalization account the scrap used for the manufacture of its finished products. Other questions concerning the particular conditions of production of the applicant will be examined in a later section.

2. Infringement of Article 47 of the Treaty

A second complaint by the applicant is directed against the way the High Authority arranged the inspection at the applicant's works in 1961. The applicant argues that the SAFS was charged with carrying out the inspection but that this company in turn delegated its task to Fidital, a limited company incorporated under Italian law having its registered office in Milan. This was an infringement of Article 47 of the Treaty, which certainly permits the High Authority to charge certain persons of its choice with the task of inspection but not to grant such persons the right to delegate that task. As the findings relating to the applicant's consumption of scrap are based almost entirely on the results of the checks carried out by Fidital, it is said that it is right that they should not be taken into account. Under no circumstances can the checks lead to a reversal of the burden of proof, so that it lies always on the High Authority to show that the applicant has consumed specific amounts of scrap subject to equalization.

It seems to me however that this complaint is also untenable. The Court has already given its views on a similar argument in Case 18/62 (Rec. 1963, p. 561). On that occasion when the Court gave its judicial interpretation it drew a clear distinction between Articles 47 and 86 of the Treaty and emphasized that for the High Authority to carry out inspections by means of private auditing companies did not amount to a delegation of its sovereign powers, because such inspections were rather the direct result of the authorization by the High Authority of certain persons who appeared to it to be qualified for the purpose.

There are no more facts to be considered in this case on this point than there were in the previous case. The fact that the task was not carried out by the SAFS, which normally conducted checks for the High Authority, and with which the latter was in direct contractual relations, but by an Italian firm, which was to some extent associated with the SAFS on an administrative level, would seem to be irrelevant, because the High Authority was aware that Fidital had been involved and had given its approval. Similarly the fact that it was a legal person which was formally entrusted with the task of carrying out the investigation is irrelevant, because there is no reason to suppose that the reports of its checks are incorrect. It is moreover appropriate in this case to repeat a statement which the Court made in Case 18/62. The applicant has neither produced evidence calling in question the competence and impartiality of the Fidital investigators nor disputed the

investigation by Fidital in 1961. There are therefore in the final analysis no reasons for disregarding the results of the investigation carried out by Fidital; on the contrary they must in principle be accepted until such time as the applicant produces evidence disproving their accuracy.

3. Infringement of Article 15 of the Treaty and Article 4 of Decisions Nos 2/57 and 16/58

In a third complaint the applicant puts forward certain arguments relating to the amount of bought scrap subject to equalization. Of these the principal argument is that the statements of the reasons for the decisions are inadequate.

(a) *Inadequacy of the statements of reasons*

In order to understand this complaint certain preliminary observations are necessary. The High Authority used three methods of calculation to determine the amount of bought scrap liable to equalization in this case: for the period from April 1954 to January 1957 it relied on the purchase invoices of scrap which are said to have been examined by its inspectors at the applicant's works. Only a certain number of these purchase documents for the period from February 1957 to November 1958 were available. Therefore the High Authority estimated the scrap consumed during this period on the basis of the sales invoices of finished products. Finally the entire account was checked with the aid of the applicant's figures for its consumption of electricity, from which the scrap used in the furnaces can be calculated in accordance with a specific formula.

The applicant's complaints concerning the inadequacy of the statements of reasons are consequently as follows. The inadequacy is said to lie in the facts:

— that the purchase and sale invoices referred to by the High Authority are not specified;
— that the proportions of the total amount of bought scrap, as determined by the High Authority, attributable to the various accounting periods are not stated; finally
— that there were inconsistencies in the application of the formula for input of scrap in relation to steel production. But these complaints too fail to stand up to a closer examination.

As other undertakings have done the applicant confuses first of all the requirements applicable to the duty to state the reasons upon which decisions are based with those which apply to the pleadings in an action or the procedure for adducing evidence. The Court has laid it down on more than one occasion that the statement of the reasons for a decision only has to refer to the *essential* considerations of fact and law upon which it is based. It is not therefore necessary to refer to the facts on which a decision is based in great detail but only in broad outline (cf. in particular, the Judgment in Case 8/65). Therefore the High Authority was fully entitled to dispense with the incorporation in the statement of the reasons for its decisions, all the invoices for the purchase of scrap and the sale of steel, on the basis of which it determined the amounts in question. Supplying particulars of the invoices could more appropriately be deferred until any court proceedings relating to the decision were in progress. Otherwise, the statement of the reasons for the contested decision, as can be seen from the tables now produced by the High Authority, would have grown to quite absurd proportions. As I have repeatedly emphasized this is not in keeping with the essential nature of the duty to state the reasons for decisions.

With regard to the appropriation of the amounts of bought scrap subject to equalization, as determined by the High Authority, to the various accounting periods, everything which has to be mentioned in this connexion is stated on page 5 of the contested decision. A more detailed statement of reasons cannot reasonably be required.

Finally, according to the arguments of the High Authority in its statement of defence the alleged contradiction in the statement of the reasons for the decision with reference to the relationship between scrap con-

sumed and steel produced can be explained by a mistake made by the applicant, namely that the scrap used in the furnaces was related once to crude steel and once to finished products. This had no effect on the result of the calculations.

Having regard to all these facts there is no justification for annulling the decision on the ground that its *form* is defective.

(b) *Is the content of the findings relating to the consumption of scrap by the applicant correct?*

Certain complaints, which are also part of this third submission, relating to the inherent correctness of the findings established by the High Authority have to be examined. Several aspects of this question must be distinguished.

(aa) The period from April 1954 to January 1957

To the extent to which the High Authority relied on the purchase invoices of scrap examined by its investigators—which it did during the period from April 1954 to January 1957—the applicant's arguments are limited to describing the High Authority's findings as absurd having regard to declarations which it made after a delay of two years, to alleging that some of the invoices in the table produced by the High Authority were, as appeared from their headings, from transport undertakings and not from suppliers of scrap and to criticising the inclusion in equalization during the whole of the period when the ferrous scrap equalization scheme was in operation of that part of its consumption of scrap used on contract work although it was not until Decision No 14/55 was taken that the provisions applicable for this purpose were laid down.

Let me deal with this last point first: this criticism is obviously untenable, because Decision No 14/55 which deals with that part of consumed scrap which was used on contract work does not introduce new rules into the equalization of scrap, but is merely intended to clarify expressly a rule which can be inferred from the principles governing the equalization of scrap which have been applied from the very beginning of the scheme.

With regard to the complaints under this head it must therefore be emphasized that the High Authority is in principle fully justified in relying on the result of its checks, because up to 1958 (the year when the first checks took place) the applicant had made no declarations of scrap whatsoever and because its later declarations (in 1960) could obviously not be reconciled with the results of the checks. Therefore my argument concerning the burden of proof, which I put forward earlier in connexion with Article 47 of the Treaty, namely that the onus is on the applicant to prove that the data obtained by the High Authority are incorrect, applies to this particular period.

Bearing this in mind the applicant's arguments, to the extent to which they only describe the results of the checks in general terms as 'absurd', cannot be regarded as adequate. This is equally true of its observation that some of the so-called invoices for scrap in fact came from transport undertakings and not least because the High Authority has quite persuasively explained that there were some deliveries of scrap by the Italian railways, handled by its Waggon Department. These objections of the applicant would only merit attention if it were to prove by documentary evidence that the findings of the High Authority were wrong. It has made no serious attempt to do so. It simply states that the accounting documents for the period in question are no longer in its possession without giving any explanation for this state of affairs. But it could not succeed in justifying their absence, because owing to the very nature of the relationship between it and the High Authority characterized from the beginning by disputes concerning its obligations to supply declarations and to pay contributions relating to the equalization of scrap there was every reason to suppose that it would keep all documents which might be required as evidence until the final settlement of the unresolved disputes.

Since we do not have before us, as we could have expected, any evidence to the contrary from the applicant for the period from August 1954 to January 1957 and since its legal

argument based on Decision No 14/55 does not appear to be valid we have no option but to accept as correct the results obtained by the High Authority.

(bb) The period from February 1957 to November 1958

The same considerations apply in the first place to the period from February 1957 to November 1958 in that the applicant merely disputes the correctness of the High Authority's data concerning sales of steel products, which were used as the basis for calculating its consumption of scrap, without producing any business documents by way of evidence in rebuttal.

In addition the following arguments relating to this period have to be examined:

— The applicant submits that the High Authority has taken into account finished products which do not come within the jurisdiction of the Community. I have however already shown in my examination of the first of the applicant's submissions that this argument is not valid. The decisive factor is that the applicant itself produces the crude steel which it requires to manufacture its finished products. It is therefore legitimate to deduce from the volume of finished products the amount of scrap which has to be used for the production of crude steel.

The applicant then argues that the High Authority based its calculations only on the *consumption* of scrap without making to the necessary extent deductions for own arisings and the reduction of stocks, as provided by Decisions Nos 2/57 and 16/58. This complaint too is invalid. The High Authority asserted, without being challenged in its pleadings that the applicant never kept very large stocks of scrap, so that any reduction of stocks could be ignored in the calculation of the contributions which it had to pay. With regard to the arisings, the High Authority took them into account by assigning a lump sum in respect of them. In this way a distinction was made according to the type of products manufactured by the applicant. The High Authority gave a detailed explanation of this in Schedule 5 to its statement of defence and the figures mentioned in the statement of the reasons for the decision show that it proceeded exactly on this basis. But the applicant did not produce in proper form the evidence necessary to show that in its case it had accumulated a very large stock of arisings, either because of the special nature of its production or because of complaints by its customers of material defects in the products.

The applicant's criticisms could only appear to be justified in so far as it argues that by calculating the consumption of scrap on the basis of the sales of finished products some amounts of scrap might very well be brought into account twice. This is because steel products sold in February 1957 had to be produced with the aid of scrap which was bought at the latest in January 1957 and as such is already included in the calculation of scrap consumed for the period from April 1954 to January 1957. This argument falls down in part if it is borne in mind that the High Authority solely took into consideration sales invoices up to and including November 1958. The result was that the consumption of scrap used to manufacture steel products which could only be sold after 30 November 1958 was not taken into account.

In this way errors in calculating the consumption of scrap with reference to the first months of the second period could to some extent be off-set. In addition the High Authority went out of its way to check the accuracy of the results of its calculations against the figures for the consumption of electricity, which produced similar results. The applicant's argument could only appear if it could be shown that this method of calculation had produced errors.

(cc) Calculation of the consumption of scrap by reference to the consumption of electricity

I now come to the complaints directed against the calculation of the consumption of scrap by reference to the consumption of electricity. The Court has emphasized on many occasions (cf. in particular Case 18/62) that there can be in principle no objection to this method of calculation, if the High Authority is forced to make an estimate based on its own information

because the necessary declarations of scrap have not been supplied or are proved to be incorrect. Further the Court has also not raised any objections against the details of this method of calculating as worked out by a team of experts.

Therefore the only question for us to answer is whether in this case arguments were submitted for which there are no precedents in the case-law of the Court and, if so, whether they can be regarded as valid. However, this does not appear to me to be the case. Unless I am mistaken, in addition to other objections which have already been examined the following have been raised: the High Authority's calculation does not take into account the fact that the applicant always used a very large amount of pig-iron for its production and disregards the fact that part of the consumption of electricity was used in the manufacture of finished products. In my opinion this objection can be disposed of by the fact that the applicant has not attempted to produce a scintilla of evidence let alone any convincing evidence in support of its claim, which it is under a duty to do according to the case-law of the Court. Such proof would have been particularly vital on the question whether the applicant did in fact use a considerable amount of *new* pig-iron or whether—as the High Authority assumes—it used old pig-iron which under the rules relating to equalization was treated as scrap. Bearing in mind all these facts we can therefore conclude that there may very well be certain inaccuracies in the calculation made by the High Authority, but that they are within the limits which the Court regards as acceptable when undertakings affected fail to assist the equalization scheme to arrive at accurate data by correctly performing their obligations. I can therefore see no justification for disputing the High Authority's findings concerning the scrap consumed by the applicant.

4. Legality of the specific decisions fixing the contributions payable by the applicant

Finally, during the oral procedure the applicant raised a separate objection against the decision in which the High Authority fixed the amount of its contributions. It argues that a new general decision has recently been issued (Decision No 19/65 of 15 December 1965 relating to the preparation of the final accounts for the equalization of imported ferrous scrap and scrap treated as such), which contains new criteria for determining the contributions payable. As a result the contested individual decision lost its previously valid basis (Decision No 7/63).

I think we can however disregard this complaint, because we have to consider the legal situation at the time when the contested decision was issued. Since it is only provisional—as are in general the previous individual decisions relating to the equalization of scrap—the High Authority will not fail to check the findings which it made under it against the data contained in Decision No 19/65 and to serve on the applicant—to the extent to which it is affected—a new decision determining the contributions which it must pay.

5. Conclusion

It is therefore my provisional conclusion that none of the complaints directed against the disputed *individual* decisions can succeed.

II — *Complaints relating to the general decisions concerning scrap*

The examination of the issue has not however been exhausted by the foregoing analysis, because the applicant takes the view that general Decision No 7/63 and the other decisions relating to scrap upon which it is based have defects, which affect the individual calculations applicable to the applicant. Let us examine the individual arguments upon which this objection of illegality is based.

1. Determination of the accounting periods

In the first place the applicant complains that Decision No 19/60 fixed for the beginning of the operation of the ferrous equalization scheme two lengthy accounting periods, each having a uniform rate of contribution, namely 12 months for the

period of validity of Decision No 22/55 and 22 months for the period of validity of Decision No 14/55. Decision No 12/60 is therefore incompatible with the principle that the Equalization Fund must use accounting periods of one or at most 3 months and contrary to other general Decisions (Nos 2/57 and 16/58) which also fix accounting periods of three months. No reason was given for this departure which is discriminatory and amounts to a misuse of powers.

With regard first of all to the complaint that the statement of the reasons for the decision is inadequate, this is without any doubt unfounded, as can clearly be seen from the recitals in the preamble to Decision No 19/60. In this connexion whether the *substance* of the recitals is valid is irrelevant since this complaint is directed against the form of the decision.

Furthermore the High Authority explains that the Fund in Brussels, during the period when it was administering the equalization scheme, applied in the case of Decision No 22/54 an accounting period of twelve months and in the case of Decision No 14/54, first an accounting period of nine months corresponding to the period during which it remained in force and then after this period had been extended a further accounting period of thirteen months. Only the payments of contributions were demanded each month. The High Authority therefore did no more than approve the practice adopted by the Fund, after it took over the administration of the scheme and after it was able to confirm *a posteriori* that this practice did not entail unfair treatment of the undertakings concerned.

In addition the High Authority rightly calls attention to the fact that it was always legally entitled to amend earlier general decisions relating to scrap, if they laid down a different method of calculation, since the first decisions relating to scrap naturally could not be deemed to take precedence over later general decisions.

Lastly, the complaint of discrimination proves to be unfounded as well. The preliminary objection can be raised against this complaint that in relation to the accounting periods the undertakings were all on exactly the same footing. Further no evidence has been adduced by the applicant to show that the adoption of other and shorter accounting periods would have reduced the amount of the contributions which it had to pay. On the contrary the High Authority has shown that the opposite is the case by stating in its final pleading that the adoption of the accounting periods as provided by Decision No 19/60 favours the applicant and that its contribution debt would have *increased* if the three-monthly periods of accounts which it demanded had ever been adopted.

For these reasons the applicant's arguments relating to the determination of the length of the accounting periods cannot succeed.

2. Taking account of scrap 'treated as imported' in the calculations

The applicant takes the view that the further objection can be raised that certain amounts of scrap—I will deal with their technical description a little later—were included in the equalization. If this scrap is not taken into account, and there are various compelling considerations for not doing so according to the applicant, the whole of the equalization charge and consequently the proportion of contribution payable by the applicant would be reduced.

These arguments must be considered from several points of view:

(a) The applicant submits that the inclusion in the calculation arising out of Decisions Nos 18/60 and 20/60 of *scrap treated as imported* for the *entire* period during which the equalization scheme remained in force is not permissible. Article 1 of Decision No 22/54 only mentions imported scrap, so that for the period during which this decision was in force only imported scrap could be taken into account.

For a preliminary observation on this complaint reference may be made to the argument already put forward earlier in this opinion that general decisions relating to scrap rank *pari passu*, with the result that the High Authority may in principle reconsider the rules adopted in earlier decisions and amend them or supplement them in later decisions.

But apart from this preliminary observation the applicant's argument is not valid, be-

cause Article 2 of Decision No 22/54 expressly mentions scrap treated as imported, and what is more—contrary to the applicant's view—not only in the sense that it is to be taken into account in the future. This proves beyond doubt that it is subject to equalization under Decision No 22/54. On the other hand the fact that it is neither mentioned in the heading nor in Article 1 of the Decision is unimportant, because a legislative regulation has to be interpreted as a whole and headings and introductory articles, which clearly are only intended to provide a succinct description of the nature of the system introduced, are not the determining factors.

(b) The applicant also complains of the use of the vague expressions 'scrap treated as imported' ('ferraille assimilée') and (in Decisions Nos 14/55, 2/57, 16/58) 'expensive scrap' ('ferraille onéreuse') which cannot be precisely defined, so that it is left to the discretion of the administration to decide what type of scrap can be taken into account for equalization. There is also no statement of the reasons for extending the equalization scheme in this way and that is why it appears to be arguable that, from the date when Decision No 14/55 came into force, in addition to imported scrap only shipyard scrap, which is expressly referred to can be accepted for equalization.

The High Authority's justifiable comment on these complaints is that it is often impossible to provide in legislation which applies to a complex economic situation, definitions having a sufficient degree of precision to permit the legislative regulations to be applied as it were to each specific case. It could very well prove to be necessary, in order to avoid unforeseeable discrimination, to grant the administrative undertaking implementing the legislation, a certain degree of discretion. This view is in fact unexceptionable provided that reliable guidance for the administration's conduct can be found in the object and general content of the legislation. In my opinion however it applies in the equalization scheme to the expressions 'scrap treated as imported' and 'expensive scrap', which are used in addition to the expressions 'imported scrap' and 'shipyard scrap': all these expressions must therefore relate to scrap the acquisition whereof is associated with considerable expense, (as in the case of shipyard scrap) or which did not belong to the common market for scrap, because it was not subject to the general export prohibitions. The High Authority emphasizes that it was in the general interest of all undertakings to include this type of scrap in the equalization scheme, because its price did not as a rule attain the level of the import price and because for this reason the demand for imported scrap, which, together with higher equalization bonuses would have resulted in a higher equalization charge for consumers of scrap, was reduced.

These considerations which arise out of a study of the object and general content of the general decisions relating to scrap at the same time meet all the requirements which an adequate statement of the reasons for a decision can be expected to fulfil.

Finally it must not be overlooked in this connexion that the High Authority after taking over the administration of the equalization scheme carried out stringent checks to ascertain whether certain amounts of scrap qualified for equalization. Evidence of this is provided, for example, by the conditions which were laid down in Decision No 23/58 governing the acceptance of scrap other than imported scrap for equalization. In any event the applicant could not claim and certainly not prove that by reason of the form and content of the general decisions, of which it complains, amounts of scrap were in fact included in equalization which could not reasonably be taken into account.

There can therefore be no legal objection to the acceptance of other expensive scrap for equalization.

(c) The applicant then puts forward the complaint, which is yet another argument forming part of its second submission directed against the general decisions relating to scrap, that the equalization calculations are defective on the ground that they included amounts of scrap, for which equalization was obtained by fraud, and on the ground that there were variations in the figures for the scrap subject to equalization for which no detailed explanation was given.

The second of these two complaints is certainly unfounded, first because it has always been emphasized that all the accounts prepared so far have been provisional and secondly because it is evident that alterations to the results of the calculations are attributable to the checks carried out by the High Authority. The duty to state the reasons for a decision cannot however reasonably be regarded as requiring the inclusion of all the results of these checks in general decisions.

With regard to the fraudulent practices in connexion with the equalization scheme it must likewise be stressed that the accounts relating to scrap are provisional. It is impossible to make any reliable statements concerning the equalization bonuses obtained by fraud, as long as the investigations have not been completed and steps are being taken to obtain repayment of the relevant amounts. Only after these matters have been concluded and, if necessary, after the Court has found that the High Authority has committed a wrongful act or omission—which it has not yet done—with the result that the High Authority has to cover this deficiency in the equalization out of its general budget, only then will it be possible to decide whether certain sums, which were in fact paid out by the fund, must after all not be permitted to appear in the equalization account. Having regard to this fact the applicant has no justifiable reason to complain of the charging of equalization bonuses which are alleged to have been obtained by fraud.

If we take all these considerations into account it appears that none of the complaints concerning the general decisions relating to scrap examined so far is likely to help the applicant to succeed.

3. The method adopted to take account of savings in the use of scrap effected by using pig-iron

In a third complaint the applicant calls attention to the fact that Decisions Nos 14/55, 2/57 and 16/58 provide in general terms for the payment of bonuses for savings in the use of scrap effected by using more pig-iron. In order to implement this principle Decision No 26/55, which granted a bonus for the use of pig-iron in Siemens-Martin furnaces, and Decision No 3/56, which granted a bonus for the use of Thomas steel in electric furnaces, were issued. On the other hand other methods of effecting savings were not taken into consideration, namely those used in solid-charge furnaces which could have been adopted by the applicant and would have led to substantial savings of scrap. This amounts to a discrimination which can only be remedied by not taking into account the measures for effecting savings in the use of scrap which have already been expressly recognized and by eliminating from the accounts the amounts of the bonuses granted in respect of these measures.

In this connexion it must first of all be emphasized that the applicant does not argue that it did *in fact* achieve economies in the use of scrap by using more pig-iron and is consequently entitled to bonuses. Such an inference would obviously be untenable, because the general principle laid down for the first time in Decision No 14/55 could naturally not be put into effect without the taking of implementing decisions, which would enable it to be applied to individual cases. That is why the expert's report produced by the applicant only mentions theoretical possibilities which would have to be taken into account under such implementing decisions.

It seems to me very doubtful whether such alternatives are in fact necessary to ensure compliance with the principle of equality of treatment or the prohibition against discrimination. On general principles there can be no discrimination when the special treatment of one undertaking is based on an objective consideration of its case. Further the mere fact that a general rule does not specifically cover the special situation of a particular undertaking does not substantiate the complaint of discrimination.

In connexion with the last point, as the High Authority rightly emphasizes, it is of material importance to note that criteria had to be laid down in a general decision, which encouraged savings in the use of scrap and which were to some extent a pre-estimate of the savings expected. For this purpose it was necessary for the general

decision to lay down general and definite criteria which were based on constant figures and were adapted to profitable production processes which could easily be employed. Only those technical methods of production which satisfied these requirements could be considered in the context of the rules governing bonuses.

In my opinion it cannot be accepted that the applicant has produced evidence that the methods of effecting savings which it could adopt at its works satisfied these requirements. The expert's report produced by the applicant, which considers that a 30% input of pig-iron is possible *in certain circumstances* is too vague for this purpose. The calculation of costs in the report which has not been completely substantiated —according to the High Authority's evaluation—must lead to the conclusion that the use of *scrap* at the applicant's works produced considerably more savings than the use of pig-iron. The applicant's situation was therefore in marked contrast to the situation of other undertakings, which moreover—a fact overlooked by the applicant—received bonuses for savings only by way of *compensation* for the higher costs of using pig-iron in their furnaces and which in reality therefore sought no profit by applying the methods for achieving savings in production in the general interest.

The High Authority therefore cannot be accused of infringing the prohibition against discrimination or even of distorting the conditions of competition, if it only provided for the grant of bonuses under the equalization scheme for certain technical methods of effecting savings in the use of scrap.

4. Determination of the equalization price

Finally in its last submission the applicant criticizes the determination of the equalization prices, that is the prices which fix the equalization bonuses for imported scrap and other expensive scrap and consequently the calculation of the equalization charges which have to be levied. A series of decisions relating to the fixing of the equalization price (Nos 18/60, 20/60, 7/63 and other earlier decisions) have been taken, which are said to be defective in many respects.

(a) The applicant first of all complains that the Brussel Fund was authorized to determine the equalization price and that it did not notify undertakings of the prices which it fixed (although as far as I can see it is by no means clear whether in the final analysis the applicant still pursues this complaint). It is certainly unfounded to the extent that after the issue of Decision No 13/58 and after taking over the administration of the equalization scheme, the High Authority checked all the instructions issued by the Fund and then published decisions relating to the determination of the equalization prices applicable to the various accounting periods.

(b) I can deal as briefly with a second observation by the applicant that different ways of calculating the equalization prices were used for the different accounting periods, for no particulars of this complaint are given, especially of the extent to which it was prejudiced by this circumstance.

(c) The applicant quite rightly makes the further point that to arrive at a reliable equalization price an accurate determination and check of the prices paid for Community scrap was necessary. But to the extent to which it criticizes by implication the High Authority on this aspect of equalization it cannot succeed.

It is in fact clear that under the scheme for equalization of ferrous scrap the necessary data for fixing the equalization prices were extracted from the declarations which undertakings consuming scrap were under a duty to supply in accordance with the meaning and purpose of the equalization scheme, declarations which for the most part were delivered in a form which could not be faulted and the accuracy whereof the High Authority verified after making several thorough checks. As against this we should not be misled by the fact that during its dispute with the applicant over prices which had actually been paid on the market the High Authority relied on prices published in newspapers because, as the High Authority rightly stressed, that was a *procedural* matter, from which no conclusions can be drawn concerning the way in which it determined prices while the equalization scheme was in force.

(d) The applicant's complaint that the determination of uniform average prices for the entire Community is discriminatory, having regard to the different prices existing inside the Common Market, is at first sight impressive. As the applicant itself had to pay much higher prices for scrap inside the market, it was prejudiced by a uniform rate of contribution for the entire Community in comparison with undertakings which could purchase scrap inside the market at a price below the official equalization price. However the first point to take on this argument is that the applicant has failed to produce any valid evidence in support of its contention. It could only produce two declarations from suppliers said to have supplied it with scrap, whereas, having regard to the notices in newspapers quoted by the High Authority relating to prices of scrap in Italy, a proper appreciation by the applicant of the evidence required in the circumstances could and must have led to the production of the purchase invoices.

Further, as the High Authority emphasizes, it is quite possible that the higher prices actually paid by the applicant for scrap bought in the Community can be explained by the use of expensive scrap from pig-iron. The determining factor must in the final analysis without any doubt be that, even if there are price differences inside the Common Market, the concept of a common unified market precludes the fixing of different equalization prices for each region. The final result was that even with uniform rates of contribution there could in the end be a satisfactory equalization, once, for instance, it is realized that the import prices actually paid in the various regions of the Community were not uniform. Finally it is not clear that it is just the smaller undertakings which cannot help being unjustly victimized by this kind of equalization arrangement, because far from being forced to buy scrap inside the market, as the applicant claims, they could at any time participate through the Joint Bureau in Brussels in the importation of scrap for the account of the Community.

There can therefore be no question of the determination of uniform equalization prices having any discriminatory effect.

(e) There still remains for examination the applicant's last complaint that Article 47 of the Treaty has been infringed in that the High Authority did not publish or communicate all those factors for the equalization of scrap, which were necessary to determine the different data for the equalization calculations.

This complaint is clearly unfounded to the extent to which it relates to factors such as the rate of contribution and the equalization prices which alone had any significant influence on the business operations of the undertakings liable to pay contributions. These factors were in the beginning communicated in good time and directly by the Brussels authorities or by circulars from their regional offices and later by the High Authority itself.

If the applicant goes so far as to say that every single factor forming part of the calculation of the equalization accounts should have been made available to undertakings, the answer to this argument is that Article 47 does not lay down such a far-reaching obligation. There are no commercial reasons whatsoever for supplying such additional information which would also impose an unnecessary burden on the administrative authorities.

5. Conclusion

Taking all these facts into consideration we are therefore forced to the conclusion that the complaints in support of the objection that the general decisions relating to scrap are illegal will not help the applicant to succeed.

C — Summary and opinion

Without its being necessary to grant the applicant's requests to adduce evidence by witnesses, which would only be meaningful, if the burden of proof in the present

case lay on the High Authority, I can now give the following opinion: the application of the limited partnership Macchiorlati Dalmas e Figli against the High Authority of the ECSC is admissible, but in no respect well-founded. Under our Rules of Procedure the applicant must therefore bear the costs.