JUDGMENT OF THE COURT
16 JUNE 1966[1]

Compagnie des Forges de Châtillon, Commentry et Neuves-Maisons v High Authority of the ECSC[2]

Case 54/65

Summary

Measures adopted by an institution — Decision — Constituent elements (ECSC Treaty, Article 14)

Cf. para. 1 (a), summary, Joined Cases 23, 24 and 52/63 Rec. 1963, p. 443.

In Case 54/65

COMPAGNIE DES FORGES DE CHÂTILLON, COMMENTRY ET NEUVES-MAISONS, a limited company having its registered office in Paris, represented by its Chairman and Managing Director, Paul Baseilhac, assisted by Jean-Pierre Aron, Advocate of the Cour d'Appel, Paris, with an address for service in Luxembourg at the offices of the Chambre Syndicale de la Sidérurgie Française, 49 boulevard Joseph-II,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Giuseppe Marchesini, acting as Agent, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application

— for the annulment of the individual decision of 21 July 1965, by which the defendant contests the applicant's right, within the framework of the equalization schemes for imported ferrous scrap, to deduct from the basis of assessment of the equalization contribution 13 831 metric tons of Armco pure iron scrap; and

— for damages for an alleged wrongful act or omission on the part of the defendant;

1 — Language of the Case: French.
2 — CMLR.

THE COURT

composed of: Ch. L. Hammes, President, L. Delvaux and W. Strauß (Rapporteur), Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Lecourt and R. Monaco, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

1. The applicant exploits a patent for the production of pure iron known as Armco, a metal characterized by a high degree of chemical purity. During the period in which the equalization scheme for imported ferrous scrap was in force, the applicant sold certain by-products of this manufacturing process. Considering that these by-products constituted ferrous scrap as referred to in the basic decisions which successively governed this scheme, it deducted the tonnage concerned from the basis of assessment of its equalization contributions.

2. By letter dated 12 June 1958 addressed to the applicant the Caisse de Péréquation des Ferrailles Importées (the Imported Ferrous Scrap Equalization Fund), hereinafter referred to as 'the CPFI', accepted these deductions except for certain materials described by the applicant as 'arisings from billets'.

However, following protests from the applicant, the CPFI also accepted the deduction of these arisings by letter of 12 August 1958 addressed to that party.

3. By letter of 17 August 1961, the defendant informed the applicant that:

'as the problem of Armco pure iron is under further consideration, the competent departments of the High Authority provisionally accept the method of declaration adopted by your undertaking and will inform you in the near future of their decision on this subject'.

By letter of 8 October 1962 addressed to the applicant the High Authority made known its intention of including the material in question in the basis of assessment of the contribution.

By letter of 8 April 1963 a statement of account drawn up in this manner was addressed to the applicant. As this statement did not constitute a decision, Application 52/63 by which the applicant sought to have it annulled was dismissed as inadmissible by a judgment of the Court of 5 December 1963 (Rec. 1963, p. 445 et seq.).

4. On 21 July 1965 the High Authority adopted the contested decision which was notified to the applicant on 31 August 1965. On 4 October 1965 the applicant introduced the present application.

II — Conclusions of the parties

In its application, the *applicant* claimed that the Court should:

'annul... the decision of the High Authority of 21 July 1965, notified to the applicant on 31 August 1965;

in the alternative, order the High Authority to pay the sum of 465 635.04 francs to the applicant by way of damages for a wrongful act or omission on its part;

order the High Authority to pay the costs.'

In its statement of defence, the the *defendent* contended that the Court should:

'1. Declare that the application for annulment is unfounded;
2. Declare that the claim for damages is unfounded;
3. Therefore, dismiss the application and order the applicant to pay the costs of the action.'

The parties maintained these conclusions in the reply and the rejoinder.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. *The application for annulment*

A — First submission: Infringement of Article 53(b) of the ECSC Treaty and the general decisions of the High Authority governing the equalization scheme for imported ferrous scrap

(a) *Does the material in question constitute ferrous scrap?*

The *applicant* maintains that, according to Decision No 2/57, with the exception of 'alloy scrap' all ferrous scrap is subject to equalization. It is not disputed that the products in question are not alloy scrap. Moreover, they fall within the definition given to ferrous scrap by the Brussels European Customs Nomenclature under No 73/03, since they constitute arisings from a manufacturing process which are intended for recasting. On the other hand, according to heading '73–07 (Semi-finished products)' of the above mentioned Nomenclature, the category of 'semi-finished products' in which the defendant wished to include this scrap does not include material used for recasting, but that intended for re-rolling.

In addition, this Nomenclature does not take into consideration 'the purity or the selling price of the product in question'. It maintains in particular that the high price of the material in question is justified on the grounds set out under (b) below.

During the period in question, the applicant had lodged two price lists with the High Authority entitled respectively 'Price list for semi-finished products in Armco pure iron for re-rolling' and 'Price list for semi-finished products in Armco pure iron for re-casting'; the products in dispute were sold exclusively according to the second price list. The difference between the respective prices for the two products remainted at about 5%. The description 'semi-finished products', which was also used by the price lists for the products in question, was in fact inaccurate. This is, however, explained by the fact that at the time the manner in which certain Community provisions were put into effect 'was not completely understood by the departments concerned'. Furthermore, the applicant was not bound to produce a price list for the products in question, as such an obligation only existed as regards ferrous scrap.

The applicant refers to the exchange of correspondence which took place in 1959 between its sister company and the Market Division of the High Authority, in the course of which that company had explained, without any statement's being made to the contrary, that one of its price lists 'wrongly entitled "semi-finished products for re-casting", ... was withdrawn on 8 November 1957'.

The *defendant* maintains that according to the applicant's own statements Armco pure iron is characterized by an exceptionally high degree of chemical purity. Its value 'must be sought, not in the form or dimensions of the product which incorporates it, but rather in its composition'. As in the case of all precious metals, 'each fragment has a value in proportion to that of the whole'. The defendant states that it is important to note 'that the production of Armco pure iron is the subject of a patent which covers a specific composition found both in Armco products and in the scrap from their manufacture'.

Secondly, 'one consideration is important ... as regards the distinction to be made between the concept of the "raw material" and that of the "manufactured product". In industry it is quite normal for one product which is finished at a particular stage to become the raw material for the following stage ... This being so, it is no longer of

decisive importance whether or not in this instance a billet of Armco iron ... can continue to be described as a semi-finished product when it is subsequently employed by a user as a raw material in an electric furnace instead of being re-rolled. In order to grasp the spirit of the concept covered by this term...it must be remembered...that ferrous scrap is above all a *recovered* product. Therefore, it is not clear how it was possible to include therein the materials in question, which were manufactured to order, always fulfilled specific conditions of analysis and sometimes had particular dimensions (to take just one example, billets manufactured with an additional charge to cover the process of cutting them into blooms in the dimensions requested by the customer). Moreover, the applicant has itself maintained that the so-called "Armco arisings" are specially produced and are provided for in the manufacturing programme, that is, the process is not one of the recovery of scrap or waste, but rather of the manufacture of a product...'

Moreover, it is clear from the applicant's own conduct during the functioning of the equalization scheme that it considered the material in question to be a semi-finished product in the true sense:

(a) By its Decision No 28/53 of 13 March 1953, to which several general decisions adopted in relation to the equalization scheme refer, the defendant had fixed maximum prices for ferrous scrap. This decision established, for all categories of ferrous scrap, price differentials which were applicable in relation to the basic category. As no differential was laid down for the products in question, if the applicant had correctly described them, it should have sold them at the price of ordinary ferrous scrap; in fact, the applicant rightly did not do this.

The purpose of both the abovementioned measure and, ultimately, of the equalization scheme was to avoid an increase in the prices of ferrous scrap; it is thus reasonable to accept that the same ferrous scrap was covered by each arrangement.

(b) It is significant that the applicant and its sister company rightly believed themselves to be obliged to publish price lists for the products in question. These two companies maintain that they were the only undertakings ever to have published price lists for materials which they claim nevertheless to have sold as ferrous scrap. It is also surprising that these price lists described the materials in question as 'semi-finished products' and specified that they were intended for re-casting, when the applicant is at present stating that such a description confers the character of ferrous scrap on the material in question.

(c) To the extent that the applicant bases its argument on the 5% difference in price between these two products, it must be observed that:

— this difference is further reduced if the increased price for the cutting of products for re-casting is taken into account;
— this difference is insignificant if it is remembered that, in normal circumstances, new scrap is sold at a price representing only 30 to 40% of the price of iron and steel products.

Finally, the defendant refers to two letters addressed by the applicant's purchasers to the defendant or to the French regional office, in which:

— one purchaser protests against the designation 'arisings from billets' and states 'that the product in question is billets for which we have to pay the ordinary price, plus a supplement to have them cut into blooms';
— another purchaser points out 'that the purpose of the designation "arisings from billets for re-casting" is to benefit from the reduced tariff"—that is, the railway tariff—'applicable to steelworks'.

As regards Decision No 28/53, the *applicant* replies that it is clear that a set of rules applying to ordinary scrap could not be applied to scrap with the particular character of the material in dispute. Furthermore, it considers that letters from undertakings wishing to avoid payment of the equalization contributions or employing different designations according to whether it is a question of benefiting from a more advantageous tariff or of applying the decisions governing the equalization scheme cannot be taken into serious consideration.

(b) *Does the price of the material in question depend directly on that of ordinary scrap?*

The *applicant* replies to this question in the affirmative. It maintains, in substance:

— that it is reasonable to fix the price of the material in question in such a way that the difference between this price and that of ordinary scrap represents the cost of the primary refining process which must be carried out before the qualities of this scrap can be compared to those of the products in dispute;
— that in practice during the period in which the equalization scheme was in force this difference remained almost constant, which shows that the price of these products was dependent on that of ordinary scrap.

In particular, it puts forward the following arguments.

Pre-refined scrap is quite distinct from ordinary ferrous scrap. It is true that it is not always the same as Armco scrap, but it is sufficiently pure to be used in place of the latter in the manufacture of high-quality steels.

The graphs which the applicant has placed in the file show that from January 1955 to December 1957 the difference in the respective prices of the two categories of scrap in question remained at approximately 255 francs; with three exceptions the variations in this difference did not exceed 4% of this sum. It is true that during and after 1958 the respective prices of the two products became very different, but this results from the fact that, first, there was plenty of ordinary ferrous scrap available and, secondly, the costs of labour and energy increased considerably.

The *defendant* produces figures to support its statement that the producers of the purest products other than Armco 'only make up half the difference which exists, as regards chemical analysis, between Armco and ordinary steel'. The substitute product cannot be identified with the true product. The graphs submitted by the applicant in no way show that there is a parallel between the prices in question; they often show the prices to have developed quite differently.

Furthermore, there are strong arguments for denying that such a parallel exists:

— In 1959 and 1960 the price of the products in dispute showed a 'staggering rise' while that of ordinary ferrous scrap remained relatively stable.

— Under (a) above the applicant accepted that the difference between the respective prices of billets intended for re-rolling and of the material in question remained constant until at least April 1957. 'It will nevertheless be unable to claim that the price of Armco billets for re-rolling was dependent on the price of pre-refined scrap, since these billets were in no way used as a substitute for the scrap. It is therefore, impossible to hesitate between the doubtful parallel with the price of ordinary scrap which it is attempting to establish by its graph and the clear parallel with the price of products specifically intended for the purposes of the iron and steel industry, which it accepts in its own declarations. The price of billets for re-casting was regulated by the price of ordinary billets, but remained at a slightly lower figure, since less care was required in the rolling process as they were intended for re-casting'.

It follows from certain letters from the Armco company placed in the file that the scales applied in this instance cover all the semi-finished products in question and correspond to the percentage increases then applied by all French works to iron and steel products.

B — Second submission: Infringement of Article 15 of the ECSC Treaty

The *applicant* maintains that, as on the grounds set out in relation to the preceding submission incorrect reasons were given for the decision, in reality no reasons were given.

The *defendant* answers that its reply made within the context of the preceding submission is also capable of refuting the present complaint.

C — Third submission: Infringement of Article 4(b) of the ECSC Treaty

The *applicant* maintains that if they avoided paying the equalization contributions the

purchasers of the products in question would receive an undue advantage in relation to the purchasers of ordinary ferrous scrap.

The *defendant* replies that the argument put forward by the applicant alone led to discrimination, since it 'resulted, first, in rendering the purchasers of a semi-finished iron and steel product liable to bear the *ad hoc* price as increased by the ferrous scrap equalization contribution and, secondly, in obtaining for the applicant the incompatible advantages of this price and of the deduction of the sales in question from the basic rate of assessment of contribution'.

D — Fourth submission: Infringement of the rules applicable to the revocation of administrative measures

The *applicant* maintains that the contested decision is also illegal in that it revoked *ex tunc* the 'agreements' given by the CPFI of 12 June and 12 August 1958 which were quite regular.

Moreover, even supposing these agreements to be illegal, the applicant had every reason to trust both the regularity and the stability of the situation created by them; in fact:

— the first of these 'agreements' had also been communicated to the defendant;
— the second was made after 1 August 1958, at which date the defendant took over the management of the equalization schemes in accordance with its Decision No 13/58 of 24 July 1958; the CPFI thus acted as the direct agent of the defendant; furthermore, this decision only authorized the withdrawal of *earlier* acts of the agencies in Brussels; finally, it was conceived in terms too general 'to constitute a legal basis for the revocation of an administrative measure';
— by a circular of 19 February 1960, the defendant required purchasers of the material in question to pay equalization contributions;
— the subsequent events (cf. above, I,) also confirm the applicant's point of view.

In short, these 'agreements' were not revoked within a reasonable period.

The *defendant* basis its argument in particular on its Decision No 13/58. It maintains, moreover, that as the applicant has itself sold the material in question as semi-finished iron and steel products it could not count on the assurances given by the CPFI.

2. *The claim for damages*

Should the Court uphold the contested decision, the *applicant* considers that the fact that the CPFI granted it an illegal authorization constitutes a wrongful act or omission on the part of the High Authority. Had it not been for this wrongful act or omission, the applicant would have been aware that the products in question could not be deducted from the basic rate of assessment for contribution and would have sold them at higher prices. The applicant is attempting to demonstrate by means of a detailed calculation that, for the total tonnage delivered, the difference between these prices and those actually charged amounts to 465 635.04 francs. This sum represents the total equalization contributions payable for a similar quantity of assessable scrap and constitutes the loss suffered by the applicant.

The applicant's belief that its purchasers would have accepted the price in question results from the fact that, as it shows by means of calculations, this price 'did not mean any additional sacrifice, since the difference between the consumer price of the two categories of scrap remains constant, that is, the saving of the refining costs'.

In answer to the argument that it would have been unable to impose on its clients any price other than that fixed in its price lists, the applicant maintains that it is not obliged to submit a price list concerning arisings of ferrous scrap and that those which were submitted could be withdrawn or amended at any time.

'Should the Court require further explanation, the applicant offers to produce evidence of any additional factor which the Court might consider necessary to complete its inquiry into the present application.'

The *defendant* replies that there can be no question of a wrongful act or omission in view of the fact that the applicant itself sold the material in question as semi-finished products.

As regards the loss and the relationship of cause and effect, the defendant maintains, first, that 'if it were to be found that a wrongful act or omission had occurred (*quod non*)', the only period which could be taken into consideration is that between 12 August 1958 when the letter was sent and 30 November 1958 when the equalization scheme came to an end. Even that is excluded in the light of the general warning given by Decision No 13/58.

Secondly, the applicant would never have been able to make its purchasers bear the equalization levy. In fact:

— it was bound by the price lists properly submitted;

— one may accept the applicant's argument that, in the large iron and steel undertakings, the sales departments responsible for fixing selling prices were for a long time unaware of the possible consequences of their actions on questions of equalization; in this case, however, the applicant's sales department 'was unable to take into account and did not take into account the equalization factor... The prices in question ... were determined solely on the basis of supply and demand. It is, moreover, impossible to reconcile the idea of a price list which remains more or less constant over a period of months, if not years, with the existence of the considerable monthly fluctuations of the equalization contribution at that period';

— finally, the purchasers of the material in question believed that they too were not liable to pay the equalization contribution.

IV — Procedure

The procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided that there was no necessity to make any preparatory inquiry.

However, it requested the defendant to place on the file certain letters exchanged between the Armco company and its purchasers.

The defendant complied with this request within the prescribed time-limit.

The parties presented oral argument at the hearing on 5 May 1966.

The Advocate-General delivered his opinion at the hearing on 18 May 1966.

Grounds of judgment

I — The application for annulment

First submission: Infringement of Article 53 (b) of the ECSC Treaty and of the general decisions of the High Authority governing the equalization scheme for imported ferrous scrap

The contested decision regarded the material in question not as ferrous scrap within the meaning of the basic decisions which successively governed the equalization scheme for imported ferrous scrap (hereinafter referred to as 'the basic decisions'), but as a semi-finished product.

This decision thus denied the applicant the right to deduct tonnages of this material sold to its customers from its basis of assessment to the equalization contribution.

In this submission the applicant contends that this claim is unfounded.

First, the basic decisions do not define the 'ferrous scrap' to which they refer, except for 'scrap from alloy steels' which is of no relevance in this case.

Secondly, Decision No 28/53, which fixes maximum prices for ferrous scrap, enumerates twenty-five different categories of 'ferrous scrap' and defines them precisely.

It is not disputed that the material in question does not fall within any of these categories.

Furthermore, the purpose of the basic decisions is the same as that of Decision No 28/53, in that they seek to avoid the danger of a substantial increase in the price of ferrous scrap within the Common Market.

The relationship between all these decisions is shown in particular by Decision No 21/54, which rescinds Decision No 28/53 with effect from 1 April 1954.

In fact, it was on this date that Decision No 22/54, which was the first of the basic decisions, came into force.

Moreover, Decisions Nos 21/54 and 22/54 were both adopted at the same meeting of the High Authority and published in the same edition of the Official Journal of the ECSC.

It must therefore be admitted that the concepts of 'ferrous scrap', employed by Decision No 28/53 and by the basic decisions which have replaced it, are the same, with the result that the material in question is not covered by the basic decisions.

The applicant further maintains that this material must constitute ferrous scrap, from the very fact that it is intended for recasting.

However, no provision of the Treaty or of the basic decisions gives rise to such an interpretation of the concept of 'ferrous scrap'.

On the contrary, the list appearing in Annex I to the ECSC Treaty refers, under heading 4300 which does not include ferrous scrap, to 'Crude and semi-finished products of iron, ordinary steel or special steel, including products for re-use and re-rolling', which shows that in the minds of the authors of the Treaty material used for re-casting may constitute a semi-finished product.

Furthermore, until 8 November 1957 the applicant itself sold the materials in question on the basis of price lists notified to the High Authority which described them as 'semi-finished products in Armco pure iron for recasting'.

It is true that the applicant now claims this description to be incorrect. However, as it is the corollary of the relatively high price of the material in question and as it was accepted by the applicant's customers, it appears to have been in accordance with commercial usage.

Certain customers of the applicant or of its sister company, which sells similar products, objected to their respective suppliers subsequently describing this material as 'arisings from billets', when according to the customers it was simply 'billets' and therefore a true semi-finished product within the meaning of heading 4300 of Annex I to the Treaty.

It must finally be noted that until 8 November 1957 the applicant published and sent to the High Authority price lists for the material in question, according to the provisions of the Treaty relating to semi-finished products.

The applicant further alleges that the difference between the respective prices of the material in question and of ordinary ferrous scrap remained more or less constant during the equalization period, with the result that it is reasonable to accept that the first price was dependent upon the second; and that it would therefore be fair to include the material in question in the equalization scheme, as its purchasers benefited from the regulating effect of the basic decisions.

The graph which the applicant placed on the file cannot show the parallel alleged, since it indicates several perceptible divergences in the evolution of the two prices in question.

Moreover, the applicant has not disputed that, after the equalization scheme came to an end, the price of the material in question increased considerably whilst that of ordinary ferrous scrap remained relatively stable.

The applicant's allegations show a definite parallel between the prices which it had fixed in its price lists, first, for this material and, secondly, for the 'semi-finished products in Armco pure iron for re-rolling', that is, for the genuine billets which, it admits, do not constitute ferrous scrap.

In fact, according to the reply, the difference between the prices was maintained at a constant 5% or, in absolute figures, at a maximum of 2000 or a minimum of 1950 French francs.

Thus, to follow the applicant's argument concerning the alleged parallel between the price of the material in question and that of ordinary ferrous scrap, it is necessary to accept that the price of billets intended for re-rolling and, therefore, for purposes for which ordinary ferrous scrap is not used was dependent upon the price of ferrous scrap.

Faced with such an unlikely argument it is necessary to accept the more convincing explanation furnished by the defendant, to the effect that the price of the products in question 'was determined by the price of ordinary billets, but remained at a slightly lower figure since less care was required in the rolling process as they were intended for re-casting'.

Finally the price of this material was always perceptibly higher than the price of ordinary imported ferrous scrap. If this fact is not itself sufficient to exclude the material in dispute from the application of these decisions, it is nevertheless evidence in favour of the argument put forward by the defendant.

In fact, it did not meet the purpose of the equalization scheme for the contribution in question to be imposed upon the purchasers of a product which was appreciably more expensive than that whose price was to be reduced by the equalization scheme.

It follows from all these considerations that this submission is unfounded.

Second submission: Infringement of Article 15 of the ECSC Treaty

The applicant maintains that, as the grounds for the contested decision are incorrect for the reasons set out in connexion with the preceding submission, the decision is vitiated by the infringement of an essential procedural requirement.

It follows from the above considerations regarding the first submission that these grounds have not been proved to be incorrect.

This submission must therefore be rejected.

Third submission: Infringement of Article 4 (b) of the ECSC Treaty

The applicant maintains that the contested decision discriminated in favour of purchasers of the material in question to the detriment of purchasers of ordinary ferrous scrap, who were obliged to contribute to the equalization scheme.

It follows from the preceding considerations concerning the first submission that such fundamental differences exist between these two categories of products that the different treatment accorded them by the defendant cannot amount to discrimination.

In particular, since, as has just been shown, the material in question does not constitute ferrous scrap within the meaning of the basic decisions, the defendant was not empowered to subject it to the payment of the equalization levy on the basis thereof.

Thus, in reality, the applicant's complaint refers to the basic decisions themselves.

On this point, it meets the objections set out in relation to the preceding considerations.

This submission must therefore be rejected.

Fourth submission: Infringement of the general principles of law applying to the revocation of administrative measures

The applicant complains that the contested decision revoked *ex tunc* the 'CPFI agreements' dated 12 June and 12 August 1958 by which the description of 'ferrous scrap' was accepted for the material in question.

Alternatively, it maintains that even if these 'agreements' are assumed to be illegal, they could not validly be rescinded.

First, the applicant had every reason to have confidence in the stability of the position created by these 'agreements'; secondly, their rescission was not effected within a reasonable period of time.

It follows from the preceding considerations concerning the first submission that the declarations of the CPFI led to an incorrect application of the basic decisions and thus cannot be considered valid and in no way constitute genuine 'decisions'.

A decision must in fact appear as a measure emanating from the competent authority, intended to produce legal effects and constituting the culmination of procedure within that authority, whereby the latter gives its final ruling in a form from which its nature can be identified.

In this instance, certain of these conditions are absent.

First, it has in fact neither been established nor even alleged that the statements in question result from a formal discussion on the part of the CPFI.

Moreover, as regards in particular the letter of 12 June 1958 headed 'Investigation by the SA Fiduciaire Suisse into your tonnages subject to contribution', one reads:

'We refer to the report drawn up by the SA Fiduciaire Suisse concerning the investigation into your tonnages subject to contribution. In this respect, may we make the following observations:

1. .....

2. Part of your Armco arisings sold to third parties was deducted and part was not

deducted from the tonnages subject to the levy ... The ferrous scrap resulting from the Armco products is to be treated in the statements as ordinary ferrous scrap. Consequently, the 257 metric tons are still deductible ...

3. ..... '

This letter appears to be merely a communication inviting the applicant to rectify its statements in connexion with the equalization scheme.

Moreover as regards the letter of 12 August, it was drafted and notified after the entry into force of Decision No 13/58, in accordance with which the High Authority, considering, *inter alia*, that 'it is necessary for the powers delegated to the Equalization Fund ... to be resumed by the High Authority', provided that 'the right which [the basic decisions] conferred on the Equalization Fund ... shall fall to the High Authority, which may entrust the administrative work to the Equalization Fund or any other appropriate body'.

Consequently, at the date in question, the CPFI no longer had the power to take decisions which could be regarded as decisions of the High Authority.

The High Authority has the power to revoke decisions and may even do so retroactively, subject in exceptional cases to considerations of legal certainty.

This power is even greater when the 'revocation' concerns not a formal decision, but a simple statement.

In this instance, the applicant was only able to rely for a relatively short period on the maintenance of the position adopted by the CPFI.

Under the terms of Article 1 (b) of the abovementioned Decision No 13/58, which came into force after the first and before the second of the letters in question, the defendant reserved the right to 'rescind as far as is necessary any resolutions' of the agencies in Brussels and 'to take any measures entailed in rescinding them'.

The effect of this provision was to make all the measures adopted by these bodies appear rather precarious.

Secondly, bearing in mind the magnitude of the task of reconsidering all these measures, the beneficiaries of any favourable statements could not expect a final decision on these statements to be taken in a short time.

On 25 November 1959, a letter addressed by the Market Division of the High Authority to the applicant's sister company, which had the same general manager, referred to a 'disagreement between you and your purchasers' about the description of material similar to the material in question.

By letter of 17 August 1961, the High Authority's Market Directorate informed the applicant that the problem in question was 'at present under further consideration' and that the competent departments of the High Authority 'provisionally accept the method of declaration adopted by your undertaking'.

By letter of 8 October 1962 the Market Directorate informed the applicant of its final decision, which is identical with that maintained by the defendant in the present case.

Finally, it must be borne in mind that, by continuing an advantage illegally granted to an undertaking within the framework of the equalization scheme, the defendant would not only be increasing the burdens borne by the other undertakings, of which at least some are competitors of the recipient undertaking, but above all put the latter in a privileged position.

It follows from the above considerations that this complaint must be rejected.

As none of the submissions put forward by the applicant has been found to be justified, the application for annulment must be dismissed.

II — The claim for damages

In the event of the application for annulment being dismissed, the applicant, in an alternative plea, requests the Court to order the payment of such damages as will make good the damage which it has suffered by a wrongful act or omission on the part of the defendant.

It considers this wrongful act to consist in the fact that the CPFI 'authorized the applicant to deduct from the basis of assessment of its equalization contributions the tonnages in dispute, without previously establishing the legality of this procedure'.

Secondly it maintains that but for this error it would have sold the material in question at a higher price, comprising the ruling price as increased by the equalization contribution to which this material would have been subject had the basic decisions been applicable to it, since if the information received by the applicant had been correct that party would have been aware both of the advantage to its customers as the result of the non-assessment of this material, and of the disadvantage to itself if it was not deductible.

It is first necessary to consider whether the applicant was injured by the actions of the CPFI which are criticized in this case.

As the attitude adopted by the applicant after the CPFI made its statements did

not differ from that adopted earlier, it appears that these statements did not form the basis of its pricing policy.

In fact, the same policy was followed previously, that is, during the period when on its own admission the applicant had to consider the possibility that the products in question would not be accepted as 'ferrous scrap'.

In addition, it cannot be proved that the applicant's customers would have accepted without further ado an increase in the price of the material in question.

First, the price which the applicant was able to obtain was the result of supply and demand. Secondly, the customers, who have always maintained that the material in question did not constitute ferrous scrap, were not the victims of any error.

The claim for damages must therefore be dismissed without its being necessary to decide whether the actions criticized constitute a wrongful act or omission or to admit the offers of proof made by the applicant.

III — Costs

Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant has failed in its application.

It must therefore be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 4, 14, 15, 33, 40 and 53 of the Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statue of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69 (2);
Having regard to Decisions Nos 28/53 (Official Journal of 15 March 1953, p. 97), 21/54 (Official Journal of 30 March 1954, p. 286) and 13/58 (Official Journal of 30 July 1958, p. 269) of the High Authority;

THE COURT

hereby:

1. **Dismisses the application for annulment and the claim for damages as unfounded;**

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

Hammes Delvaux Strauß

Donner Trabucchi Lecourt Monaco

Delivered in open court in Luxembourg on 16 June 1966.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 18 MAY 1966[1]

Mr President,
Members of the Court,

The application upon which you have to decide today is the outcome of a debate which has continued over a long period, concerning facts which are even older.

It has given rise to a very comprehensive written procedure involving in particular the production of numerous documents to which I shall refer later. Moreover, at your own request, valuable details of a technical nature were submitted at the hearing.

The Compagnie des Forges de Châtillon, Commentry et Neuves-Maisons manufactures products in pure iron known as Armco, which is characterized by a particularly high analytical purity. With its sister company (Les Aciéries et Tréfileries de Neuves-Maisons, Châtillon) it appears to be the only company in France to carry on this activity. During the functioning of the equalization scheme, it considered the scrap arising from this manufacture to be ferrous scrap as referred to by the basic decisions of the High Authority and consequently deducted the tonnage of this material from the basis of assessment of its equalization contributions.

This interpretation of the decisions has not always been accepted by the competent bodies. After refusing on 12 June 1958 to accept a deduction in respect of the materials described by the company as arisings from billets, the Imported Ferrous Scrap Equalization Fund (the CPFI) accepted the applicant's point of view on the following 12 August.

As for the departments of the High Authority which had resumed responsibility for the equalization scheme, in 1961 they informed the company that the question of Armco pure iron was under 'further consideration' and then in 1962 stated that they intended to incorporate this material into the basis of assessment of the equalization contributions. You will recall that by a judgment of 5 December 1963 you dismissed the application brought by the company against the statement of account addressed to it as inadmissible, on the ground that it did not constitute a decision.

1 — Translated from the French.