JUDGMENT OF THE COURT
9 DECEMBER 1965[1]

Société Anonyme des Laminoirs, Hauts Fourneaux, Forges, Fonderies et Usines de la Providence and Others v High Authority of the ECSC

Joined Cases 29, 31, 36, 39-47, 50 and 51/63

Summary

Wrongful act or omission — Damage — Method of assessment — Review by the Court

(ECSC Treaty, Article 40)

When it is necessary, in assessing the damage arising out of a wrongful act or omission, to consider the situation as it would have been if there had been no wrongful act or omission, the Court must, whilst insisting that all available evidence be produced, accept realistic approximations such as averages which have been established by means of comparisons. The sampling methods habitually used in economic surveys make it possible to reach acceptable approximations provided that the basic facts are sufficiently reliable.

In Joined Cases

(1) 29/63, SOCIÉTÉ ANONYME DES LAMINOIRS, HAUTS FOURNEAUX, FORGES, FONDERIES ET USINES DE LA PROVIDENCE, having its registered office at Marchienne-au-Pont, Belgium, represented by Max Nokin, Chairman of its Board of Directors;

(2) 31/63, SOCIÉTÉ ANONYME DE LA FABRIQUE DE FER DE MAUBEUGE, having its registered office at Louvroil (Nord), represented by J. A. de Beco, its Chairman and General Manager;

(3) 36/63, HAUTS FOURNEAUX ET FORGES DE SAULNES ET GORCY (FORMERLY RATY ET CIE), a company limited by shares, having its registered office in Paris 16, represented by Roland Labbe, its Chairman and Managing Director;

(4) 39/63, ACIÉRIES ET FORGES DE FIRMINY, a company limited by shares, having its registered office in Paris 9, represented by its liquidator, Marcel Macaux;

1 — Language of the Case: French

(5) 40/63, SOCIÉTÉ DES ACIÉRIES DE POMPEY, a company limited by shares, having its registered office in Pompey, Meurthe-et-Moselle, represented by R. de Gunzbourg, its Chairman and Managing Director;

(6) 41/63, SOCIÉTÉ ANONYME DE L'ACIÉRIE ET DES LAMINOIRS DE BEAUTOR, having its registered office at Beautor (Aisne), represented by Georges Bureau, its Chairman and Managing Director;

(7) 42/63, SOCIÉTÉ DES HAUTS FOURNEAUX DE ROUEN, a company limited by shares, having its registered office in Paris 9, represented by Pierre Celier, its Chairman and Managing Director;

(8) 43/63, SOCIÉTÉ DES USINES SAINT-JACQUES, a company limited by shares, having its registered office in Paris 9, represented by André Guillanton, its Chairman and Managing Director;

(9) 44/63, COMPAGNIE DES FORGES DE CHÂTILLON, COMMENTRY ET NEUVES-MAISONS, a company limited by shares, having its registered office in Paris 9, represented by Léon Bureau, its Vice-Chairman and Managing Director;

(10) 45/63, SOCIÉTÉ ANONYME H. K. PORTER-FRANCE, having its registered office in Paris 8, represented by Jean Pillard, its General Works Manager, and Joseph Versavel, General Secretary;

(11) 46/63, UNION DES CONSOMMATEURS DE PRODUITS MÉTALLURGIQUES ET INDUSTRIELS, a company limited by shares, having its registered office in Paris 8, represented by Marcel Petiet, its Chairman and General Manager;

(12) 47/63, SOCIÉTÉ FIVES-LILLE-CAIL, a company limited by shares, having its registered office in Paris 8, represented by Jacques Thibault, its Chairman and General Manager;

(13) 50/63, UNION SIDÉRURGIQUE DU NORD DE LA FRANCE 'USINOR', a company limited by shares, having its registered office in Paris 9, represented by Maurice Borgeaud, its Managing Director;

(14) 51/63, SOCIÉTÉ D'EXPLOITATION DES FORGES D'HENNEBONT, a company limited by shares, having its registered office in Paris 8, represented by Félix Portal, its Chairman and Managing Director;

assisted by Jean-Pierre Aron, Advocate of the Cour d'appel, Paris,

all with an address for service in Luxembourg at the offices of the Chambre Syndicale de la Sidérurgie Française, 49 boulevard Joseph-II,

applicants,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Dr Italo Telchino, acting as Agent, and by André de Laubadère, Professor in the Faculty of Law of Paris, acting as co-Agent, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for reparation, on the basis of Article 40 of the Treaty establishing the European Coal and Steel Community, to make good the injury caused by the wrongful act or omission on the part of the Community in operating the scheme for equalization of imported ferrous scrap and scrap treated as such,

THE COURT

composed of: Ch. L. Hammes, President, L. Delvaux (Rapporteur), President of Chamber, A. M. Donner, A. Trabucchi and R. Lecourt, Judges,

Advocate-General: M. Lagrange (until 7 October 1964) and K. Roemer (from 8 October 1964)
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

Ferrous scrap accepted for equalization falls into two categories: imported ferrous scrap originating in third countries, and shipyard scrap from ship-breakers' yards or other scrap recovery yards within the Community.

As the Caisse de Péréquation des Ferrailles Importées (the Imported Ferrous

Scrap Equalization Fund) (hereinafter referred to by its French initials as the 'CPFI') bore the difference between, on the one hand, the purchase price of the ferrous scrap, which was either the price paid to the supplier in a third country, increased by the cost of sea freight or the price paid to a ship-breaker and, on the other hand, the equalization price, it was most important for the Community to buy scrap on the most favourable terms, which meant shipyard scrap. The steelworks near ship-breakers' yards required a smaller tonnage than was available for sale. Surplus shipyard scrap was only of interest to steelworks, such as the applicants', which were nearer import harbours than ship-breakers' yards, provided that scrap from such yards, delivered to the works, was no more expensive than imported ferrous scrap. In order to sell shipyard scrap to the iron and steel undertakings situated at a greater distance from the yards, the Office Commun des Consommateurs de Ferraille (the Joint Bureau of Ferrous Scrap Consumers) (hereinafter referred to by its French initials as the 'OCCF') undertook to compensate these undertakings for the difference between the cost of transporting the scrap from the producer's shipbreaking yard to the consumer's works, on the one hand, and the cost of transporting the imported ferrous scrap from the usual port of importation to the consumer's works, on the other hand; this difference is given the abbreviated designation of 'parity of transport costs' or 'transport parity'. According to the applicants, the payments promised by the OCCF were effected in full.

The High Authority considered that it could not allow the applicants to retain the benefits thus acquired and debited them with the sums received under this head in the statement of account which it communicated to them by letters dated 8 April 1963 (Schedule 1 to the applications).

The applicants allege that this injurious situation arose from a wrongful act or omission attributable to the High Authority which had not sufficiently checked the functioning of the equalization scheme. According to the applicants, the High Authority's liability arises from the judgment given by the Court on 15 December 1971 in Joined Cases 19/60, 21/60, 21/61 and 3/61 (*Fives-Lille-Cail and others* v *High Authority,* Rec. 1961, p. 565 et seq.) dealing with identical facts, and they state that it therefore only remains for them to prove the existence of the damages and to quantify them.

II — Conclusions of the parties

A — The *applicants* claim that the Court should:

'subject to any further pleadings and rejoinders thereto and generally any further submissions and conclusions,

order the High Authority, on the grounds of a wrongful act or omission on its part in operating the scheme for the equalization of ferrous scrap, to pay to the applicant(s) the sum of (see table *infra*) as damages;

and order the High Authority to pay the costs.'

Case	Amount claimed in the applications (New French Francs)	Amount as amended in the replies (New French Francs)
(1) 29/63 Providence	200 369.71	211 264.14
(2) 31/63 Maubeuge	3 713.58	2 895.21
(3) 36/63 Saulnes et Gorcy	40 071.86	33 911.28

Case	Amount claimed in the applications (New French Francs)	Amount as amended in the replies (New French Francs)
(4) 39/63 Firminy	121 230.51	114 953.38
(5) 40/63 Pompey	10 828.40	10 125.16
(6) 41/63 Beautor	5 720.51	5 474.05
(7) 42/63 Rouen	84 605.79	23 827.85
(8) 43/63 Saint-Jacques	3 609.18	3 359.75
(9) 44/63 Châtillon	134 562.46	129 739.39
(10) 45/63 Porter-France	5 819.81	5 318.34
(11) 46/63 Union des Consommateurs	4 917.16	4 704.05
(12) 47/63 Fives-Lille-Cail	59 519.66	39 392.02
(13) 50/63 Usinor	211 432.55	218 802.62
(14) 51/63 Hennebont	28 810.32	9 940.01

B — The *defendant* contends that:

'For those reasons and others which may be deduced or added, the Court should dismiss the applications lodged at the Registry by the fourteen undertakings on 22 May 1963, with all consequences in law, in particular with regard to costs.'

III — Submissions and arguments of the parties

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

A — *Admissibility*

The *defendant* makes no formal submissions on the inadmissibility of the applications.

1. It alleges however that in the applications the applicants have indeed shown the calculations whereby they endeavour to prove the amount of their damage, but that although they declare that they are able to supply the figures on which the said calculations are based, they have not done so: the applicants have thereby failed to comply with the requirements of Articles 38 to 42 of the Rules of Procedure. The *applicants* reply that there is absolutely no question of deliberately withholding supporting documents: the figures vary considerably from one application to the other, and the prolixity of the various documents to be collected meant that it was in practice impossible to produce them on the date for lodging the applications. They add that the necessary documents are appended to their reply.

The *defendant* replies that the applicants, who in this instance did not have to observe any period of limitation in lodging their applications, have supplied no valid reason for their delay in indicating their evidence and have thereby infringed Article 42 (1) of the Rules of Procedure.

2. In its rejoinder, the *defendant* observes that in their reply the applicants have adopted a new method of calculating the alleged damage, equal to the difference between the cost price of the tonnage of ferrous scrap acquired by them from ship-breakers' yards and the cost price of the same tonnage of imported ferrous scrap. They were obliged to change their method because the defendant had put forward the objection that the calculations effected in the applications amounted to claiming the actual sum of the 'transport parity grant' wrongly drawn by them and the reimbursement of which had been claimed by the High Authority.

The outcome of this new method of calculation is that all the figures for compensation set out in the applications are completely upset and nine out of the twenty three applicants were led to discontinue their actions, since their use of shipyard scrap, far from resulting in a loss to them, had on the contrary been profitable. The amendments made in the reply are not merely corrections of calculations, admissible in the course of proceedings, but change the request for reimbursement of the 'transport parity grant', contained in the applications, into an action for reparation on the basis of damage sustained.

The defendant concludes from this that the change in the method of calculation infringes both:

Article 38 (1) of the Rules of Procedure, according to which the application shall state the subject matter of the dispute and the grounds on which the application is based together with the submissions of the applicant;

Article 42 (2) of the Rules of Procedure, which prohibits the raising of a fresh issue in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the written procedure.

The defendant furthermore submits that there has been an infringement of Article 38 (1) of the Rules of Procedure, in accordance with which the application shall contain an indication of any evidence founded upon. The defendant in fact states that if their claims in the reply are not considered fresh issues, the application must be held inadmissible as it does not contain the indication found in the reply of the evidence founded upon.

The application clearly contains neither evidence nor an indication of the evidence of the new factors in the calculations, such as the amount of the costs of transhipment.

Furthermore certain applicants refer in the reply to ports of importation which differ from those mentioned in their application.

3. The *defendant* summarizes its line of argument on the admissibility of the applications as follows.

The insufficiency of the indication of the evidence in the applications was not caused by lack of time but rather by an alteration in the line of legal argument which changed the very nomenclature of the evidence to be adduced.

According to the defendant, there are two possible solutions:

— either the applications must be declared inadmissible, on the grounds that they contain neither an indication of the evidence, nor the grounds and submissions required by Article 38 of the Rules of Procedure; in this case, according to the defendant, the Court has only to apply its judgment of 15 November 1961 (Joined Cases 19/60, 21/60, 2/61 and 3/61, *Fives-Lille-Cail and others* v *High Authority*, Rec. 1961, p. 589);

— or declare the new legal grounds introduced in the reply to be out of time and therefore inadmissible; in that case only the legal grounds and the evidence or indication of evidence contained in the applications should be admitted.

B — *On the substance*

To order pecuniary reparation from the Community, Article 40 of the Treaty requires three ingredients to be present:

— a wrongful act or omission on the part of the Community;

— an injury caused in carrying out the Treaty;

— a causal connexion between the wrongful act or omission and the injury.

1. The wrongful act or omission on the part of the Community

The *applicants* allege that the promises and the transport parity payments, which were conditions for their acceptance of quantities of shipyard scrap, constitute a wrongful act or omission owing to insufficient supervision of the

functioning of the equalization scheme. In its judgment of 15 December 1961 in Joined Cases 19/60, 21/60, 2/61 and 3/61 (*Fives-Lille-Cail and others* v *High Authority,* Rec. 1961, p. 565 et seq.), on facts identical with those in the present instance, the Court found that there was such a wrongful act or omission.

The defendant replies that even supposing that the applicants succeeded in proving their alleged damage, it could not be considered as entitling them to reparation.

(1) *The High Authority is not guilty of a wrongful act or omission giving rise to a right to reparation*

The defendant observes in the first place that the decisions of the Court do not constitute 'arrêts de règlement' (judgments producing quasi-legislative effects) and that the entitlement to reparation must be appraised *'in concreto'* in each case.

It is true that the case which was the subject of the judgment of 15 December 1961 and the present applications are analogous in certain aspects and that in the said judgment the Court ruled that the High Authority was guilty of a wrongful act or omission by its failure to supervise the authorities entrusted with the functioning of the equalization scheme. However in its judgment the Court found that the failure to supervise was aggravated because the promises of the transport parity grant were given when the High Authority was no longer restricting itself merely to carrying out checks, but had, by virtue of Decision No 13/58, taken over the management of the equalization scheme. Since the present disputes relate to facts prior to Decision No 13/58, the question can no longer be regarded as settled and the said judgment is not even a precedent upon which it is sufficient to rely. In these circumstances, the fact that the Court ruled in the said judgment that 'by the very fact that it had authorized the equalization scheme, the High Authority was bound to exercise supervision over it' does not necessarily imply that it meant by this that any failure whatever in supervision at any time would constitute a wrongful act or omission sufficient to give rise to liability. In this sphere, only the failure to exercise a reasonable degree of care is sufficient to entail the liability of the High Authority. In this connexion the defendant recalls that in its judgment of 4 April 1960 in Cases Nos 4 to 13/59, *Mannesmann and others* v *High Authority,* the Court remarked that 'the equalization scheme which was compulsorily applied to the many undertakings consuming ferrous scrap in the six countries of the Community always engenders the possibility of errors in the payment of equalization sums' (Rec. 1960, p. 281).

The *applicants* reply that they did not rely upon the judgment of 15 December 1961 as having the force of *res judicata* with regard to the present disputes. But they state that this judgment constitutes a precedent and that a mere perusal of several of its grounds supplies proof that the Court expressly referred to the High Authority's behaviour and failings with regard to all the facts which occurred before Decision No 13/58. The said judgment took into account 'the size of the transport parity payments made to French undertakings (349 021 dollars)', which figure corresponds to the matters forming the subject of the present applications, and the judgment refers to Decisions Nos 22/54 and 14/55, which certainly proves that the facts referred to in the judgment relate to the period before Decision No 13/58. The gravity of the wrongful act or omission of which the High Authority was guilty is established by the number of contracts which provided for compensatory 'transport parity grants' and by the number of grants allowed and it is emphasized by the severity with

which the judgment of 15 December 1961 censured the behaviour of the High Authority during the period before Decision No 13/58.

The *defendant* replies that in instances which, like the present one, took place in a period before Decision No 13/58, the Court must reconsider whether the High Authority was guilty of wrongful acts or omissions of such a kind as to entail its liability.

(2) *Recognition of a right to reparation meets with an insurmountable legal obstacle*

The *defendant* states that in its judgment of 22 March 1961 in Joined Cases 42 and 49/59, in the case of *SNUPAT* v *High Authority* (Rec. 1961, p. 99 et seq.), the Court ruled that, when the High Authority has committed errors in law—in that case illegal exemptions from the equalization levy were at issue —of which it was unaware and which benefited certain undertakings, it must be ordered to rectify these errors at the cost of those who had provisionally benefited from them and consequently it must revoke, even with retroactive effect, the administrative measures which sanctioned the said errors. Consequently, when the High Authority itself notices these errors and rectifies them of its own accord, how can it be ordered to nullify the very effects of this rectification by returning to those concerned the very sums whose reimbursement by the undertakings formed the object of the rectification? This is precisely the paradoxical and indeed absurd result to which the applicants' claim would lead. In these circumstances, the claim to a right to compensatory reparation could not be admitted, without depriving of its effect the obligatory rectification of legal errors.

In Joined Cases 19/60, 21/60, 2/61 and 3/61, *Fives-Lille-Cail and others* v *High Authority,* the latter alleged that the 'transport parity' reimbursements constituted a violation of the essential principles of the ECSC Treaty, that is to say, equal access to the sources of production and non-discrimination, which imply respect for natural geographical differences. In its judgment of 15 December 1961 on these applications, the Court referred to the 'virtues' of the above line of argument (Rec. 1961, p. 592) and in his opinion (Rec. 1961, p. 605) the Advocate-General approved of it. The applicants, among which are two of the four undertakings which brought Applications 19/60, 21/60, 2/61 and 3/61, interpreted the decision of the Court in this way, since they limit themselves at the present time to pleading a wrongful act or omission. It thus appears that the 'transport parity' reimbursements were illegal and that the High Authority was bound to claim their return.

The *applicants* reply that the defendant's line of argument is contradicted by the express terms of Article 40 of the Treaty. According to this Article, any wrongful act or omission confers a right to pecuniary reparation, but the reparation is proportionate to the injury sustained and not to the factors causing the wrongful act or omission. Outside the relationship of cause and effect to be established between the wrongful act or omission and the injury to be compensated, the figures of the one do not necessarily correspond to those of the other. The amount of the indemnity might be equal to, greater or less than, the figures relating to the wrongful act or omission; it is moreover quite possible to imagine errors, irregularities and omissions, etc., which cannot be expressed in figures, but which could nevertheless justify pecuniary reparation.

The applicants add in support of these considerations that, contrary to what the defendant claims, the purpose of the actions is not specifically to claim the benefit of the 'transport parity grants'; the applicants are concerned about one thing only: in furtherance of their ob-

ligation to comply with the final ground of the judgment of 15 December 1961, they must assemble, in order to submit them to the Court, all the factors for the examination undertaken in order to reply to the question put. Naturally, if in the course of the inquiry conducted by the Court, it appears necessary to amend the particulars to be used for quantifying the damage suffered, the applicants will do what is necessary; the amount of damages could thus differ from the sums representing the 'transport parities', as they appear in the applications submitted. This standpoint of the applicants is the best proof that their claims do not relate specifically to the parity reimbursements.

2. The existence and the amount of the damage

(1) *The existence of damage*

The applicants allege that during the period when they received 'transport parity grants' they had the right to choose imported ferrous scrap in preference to shipyard scrap. Consequently they state that but for the 'transport parity grants' they would certainly have chosen imported ferrous scrap, as the predominant motive guiding them was always the most advantageous cost price.

In support of their allegations, they endeavour to show that there were sufficient resources to be found in:

(a) ferrous scrap originating in third countries, especially the United States;
(b) sea-freight space;
(c) sufficient capacity of machinery for warehousing and unloading in the usual ports of importation;
(d) foreign exchange for French undertakings.

As to (*a*). The figures produced by the applicants are intended to establish that the stocks of ferrous scrap had increased from 1954 to 1958, that the tonnage of shipyard scrap for which the 'transport parity grants' were given represents only 2.2% of deliveries from third countries and that the supply of this additional tonnage could not present any difficulty.

As to (*b*). The applicants produce (Schedule 1 in all the applications) an attestation from the SITAM (Société Internationale de Transports Affrètements Manutensions Transit) dated 30 December 1962; from this they deduce that it was possible to freight an additional 160 000 metric tons of imported ferrous scrap for the French undertakings as a whole.

As to (*c*). The applicants produce certificates from the harbour masters concerned (Schedules 8 to 19 of all the applications).

As to (*d*). The applicants argue that each metric ton of imported ferrous scrap made available a metric ton of shipyard scrap which could have been exported, resulting in an equivalent return in foreign exchange.

The *defendant* replies as follows to the applicants' allegations.

(a) The argument based on the increase in stocks is not conclusive, since the tonnage of stocks corresponds to a specified period of consumption and, if the consumption is increased, a proportional increase in stocks must follow accordingly.

(b) The defendant then argues that, even if the total resources of imported ferrous scrap had been sufficient, as the applicants allege, the latter could not choose between shipyard scrap and imported ferrous scrap. To this end the defendant quotes the opinion of Mr Advocate-General Roemer in Joined Cases 19/60, 21/60, 2/61 and 3/61, *Fives-Lille-Cail and others* v *High Authority*:

'The Caisse de Bruxelles and, later, the High Authority was able to determine what quantity of ferrous scrap qualified for equalization; it thus possessed a means of guidance. In particular, to keep the equalization rates as low as possible, it was in a position to grant shipyard scrap a privileged place with

regard to equalization. It was only bound to ensure that this scrap was not distributed in a discriminatory manner' (Rec. 1961, p. 605).

It thus appears that the existence of general resources for the supply of imported ferrous scrap is quite insufficient to prove that a particular undertaking at a particular moment could have made a free choice of that source and consequently refused the contract for shipyard scrap which was offered it. In support of this observation reference should not be omitted to the case of certain Italian undertakings which, after directly purchasing imported ferrous scrap without going through the OCCF and then claiming the equalization payment, met with a refusal which they were obliged to accept.

It would thus be entirely wrong to think that the undertakings had a free choice. Moreover, for each period the tonnage of imported ferrous scrap capable of qualifying for equalization payments had maximum limits which could not be exceeded.

Thus the defendant concludes that, as the applicants' certainty of obtaining imported ferrous scrap in place of the shipyard scrap offered them was quite unfounded, the very existence of the alleged damage has not been established.

(c) With regard to the doubt as to the damage, the defendant further alleges that the importation of ferrous scrap involves hazards which do not exist in the purchase of shipyard scrap.

It adverts to the need to open irrevocable credits, the inconvenience in cases of dispute with foreign suppliers, possible quarrels with ship-owners and the possibility of demurrage on unloading. It alleges finally that ferrous scrap from ship-breakers' yards has always been regarded as of better quality than imported ferrous scrap which has on several occasions given purchasers unpleasant surprises.

The *applicants* reply as follows:

(a) With regard to the stocks, they maintain that it follows from the documents published by the High Authority, especially its Tenth General Report, that the requirements of imported ferrous scrap have always been covered to a large extent. Shipyard scrap consumed by the applicants represented 30 000 to 40 000 metric tons per year, that is to say, only 1 to 2% of the amount of the imported tonnages; it would therefore have been no problem to replace it with imported ferrous scrap.

(b) The defendant's reasoning, which endeavours to deduce from the special powers of the Brussels agencies an argument to establish the uncertainty of the damage suffered, is unfounded in fact and in law. In fact the Brussels agencies were regularly informed by their regional offices (in Germany, France, etc.) of the aggregate amount of the various countries' requirements. With regard to resources, on the basis of its periodic inquiries undertaken in the large producing markets (USA, North Africa, etc.), the OCCF drew up and submitted for the CPFI's approval a general statement of purchases to be negotiated by the OCCF on the various markets. All this work was of course carried out under the supervision of the High Authority. The total available tonnage was then distributed among the various countries, the distribution in each country being carried out by the regional office, according to the requirements made known by the various undertakings. No problem had ever been raised in this connexion between a specific firm and the Brussels agencies. The contracts concluded with the suppliers had in fact always met the stated requirements; in fact the question of an obligatory distribution, on the High Authority's own initiative, has thus never been raised.

Besides it would have been legally impossible, in the absence of a declaration of a 'serious shortage' made in accordance with the mandatory procedure laid down in Article 59 of the

Treaty; it is known that the High Authority has always been unwilling to have recourse to these exceptional measures with regard to coal, ferrous scrap and steel, etc. With regard to the ferrous scrap sector, the balance which was always achieved between supply and demand meant that the problem was not raised.

The Italian undertakings to whom equalization payments were refused purchased directly without going through the OCCF, thus clearly violating the basic rules of the equalization scheme which allowed only the Brussels agencies, under the supervision of the High Authority, to negotiate purchases outside the Community. The example quoted by the defendant is thus quite foreign to the particular problem at issue here.

(c) The difficulties in connexion with the quality of imported ferrous scrap referred to by the defendant especially concern that of non-American origin. Deliveries from the USA, which constitute 76% of the ferrous scrap received from 1955 to 1958, contain a high proportion of good quality ferrous scrap; this involves moreover a marking up of prices which has never given rise to dispute.

The applicants observe, with regard to the other hazards mentioned by the defendant, that a channel of commerce exposed to so many risks would consequently have played only a very small part in supplying the Community: in fact deliveries of imported ferrous scrap increased from 26 000 000 metric tons in 1955 to 39 000 000 metric tons in 1959.

The *defendant* replies that in claiming to have sustained damage it is insufficient to allege that at the time when the shipyard scrap was purchased it would have been possible to purchase imported ferrous scrap more cheaply, but that it is moreover necessary to prove:

(a) that at the same time scrap was not purchased on the internal market at prices, 'free works', equal to or higher than those of the shipyard scrap in dispute;

(b) that other scrap, treated as imported ferrous scrap, was not purchased from places equidistant to or further from the works than those in which the disputed ferrous scrap from shipbreakers' yards originated;

(c) that no purchases were made of other shipyard scrap originating in places equidistant to or further from those in which the disputed scrap originates;

(d) no purchases were in fact made of imported ferrous scrap at prices, 'free works' after equalization, equal to or higher than those for the disputed shipyard scrap;

(e) since only a difference in the transport costs was initially invoked, that no imported scrap was purchased which was delivered to the same ports as those from which the disputed shipyard scrap originates.

As to (*a*). In order to explain the defendant's allegation, it should be noted here that in its rejoinder (p. 39) the defendant pointed out that the equalization price was calculated on the basis of the prices actually prevailing within the Common Market, in the course of the month of delivery.

The defendant indicates that it is in possession of declarations of the average price 'free works' of all ferrous scrap bought each month, by each applicant, on the internal market. These declarations, checked at the works by the Société Fiduciaire Suisse, were used to fix the equalization prices.

In the schedules to the rejoinder numbered 3 (Providence), 17 (Firminy), 22 (Beautor), 25 (Rouen), 31 (Châtillon) and 44 (Usinor), the defendant compares the cost 'free works' of internal ferrous scrap and that of shipyard scrap (without the payment of the 'transport parities') bought by the applicants at the same time: according to these

figures, the cost of the shipyard scrap in dispute is lower than—and in the one instance of the applicant in Case No 41/63, Aciéries de Beautor the same as—the cost of internal ferrous scrap. The defendant observes that the average price, which it produces, with regard to internal ferrous scrap may be noticeably lower than that of less advantageous purchases. It further remarks that owing to lack of time it was unable to extend the comparison to the cases where internal ferrous scrap, acquired at less advantageous rates than shipyard scrap, was purchased at a difference in price lower than the amount of the injury claimed.

As to (*b*). The defendant points out that the applicants bought ferrous scrap from American military bases, without putting forward the slightest objection with regard to the transport costs, although they were equal to those of the shipyard scrap in dispute.

As to (*c*). The defendant observes that the applicant in Case No 51/63 (Forges d'Hennebont) accepted, without requesting the 'transport parity', considerable tonnages of ferrous scrap from the same ship-breaking yards as those which supplied the scrap in dispute, and that this took place every month without exception from February 1955 to December 1958.

As to (*d*). The defendant argues that, according to Schedules 83 to 105 to the rejoinder, the applicants themselves admit that they purchased imported ferrous scrap at a cost 'free works' in excess of that of the disputed shipyard scrap.

As to (*e*). The defendant alleges (Schedule 50 to the reply) that the applicant in Case No 51/63 (Forges d'Hennebont) accepted the imported ferrous scrap which it purchased in 1956 at exactly the same ports as those in which the disputed shipyard scrap emanated.

(2) *The amount of the damage*

The *applicants* seek to calculate the difference between the price of the shipyard scrap purchased, without taking account of the 'transport parity', and the price of the same tonnage of imported ferrous scrap, presumed to have been received in the same period; according to them, this difference proves the existence of the damage and limits its amount, since this difference in price represents the additional charge finally imposed upon the applicants.

(a) The cost price of the imported ferrous scrap, free on board ship to the port of delivery, is equal to the equalization price increased by the cost of transhipment from the ship into the wagon or barge and by the cost of transport from the usual port of importation up to the consumer's works. The transhipment costs are estimated at 2 dollars per metric ton as is noted in Decision No 18/63.

The cost price of shipyard scrap, free on rail or barge on leaving the ship-breakers' yard, is equal to the same equalization price, increased by 2 dollars—to take account of the absence of transhipment costs—and by the cost of transport from the ship-breaker's yard to the consumers' factory.

The difference between the cost price of shipyard scrap and that of imported ferrous scrap is thus equal to the difference between the cost of transporting the scrap from the ship-breaker's yard to the consumer's factory and the estimated cost of transporting the imported ferrous scrap from the usual port of importation to the consumer's works, taking account of the transport rates prevailing at each particular period.

Applying this method of calculation to every case in question, each of the applicants gives the figures for the cost of transporting the disputed shipyard scrap, from which it subtracts the estimated figures arrived at, taking account of the transport costs prevailing at the time of delivery of the ferrous scrap in dispute, for the trans-

port costs of an equivalent tonnage of imported ferrous scrap from the usual port of importation to the consumer's works: according to this method, the difference constitutes the amount of the damage.

Case	1 Tonnage of shipyard scrap purchased (metric tons)	2 Cost of transport from the breaker's yard to the works (New French Francs)
(1) 29/63 Providence	11 108	285 652.15
(2) 31/63 Maubeuge	174	4 687.42
(3) 36/63 Saulnes et Gorcy ...	3 160	104 095.81
(4) 39/63 Firminy	7 172	159 389.32
(5) 40/63 Pompey	590	17 950.37
(6) 41/63 Beautor	542	9 229.90
(7) 42/63 Rouen	6 265	89 554.79
(8) 43/63 Saint-Jacques	1 738	56 274.91
(9) 44/63 Châtillon	6 857	165 951.22
(10) 45/63 Porter-France	770	17 519.45
(11) 46/63 Union des Consommateurs	246	7 839.08
(12) 47/63 Fives-Lille-Cail	5 075	121 724.06
(13) 50/63 Usinor	13 905	355 647.47
(14) 51/63 Hennebont	3 146	44 728.85

Case	Costs of transport from the usual port of importation to the works (New French Francs)	Amount of the damage (New French Francs) Column 2— Column 3
(1) 29/63 Providence	85 282.44	200 369.71
(2) 31/63 Maubeuge	973.84	3 713.58
(3) 36/63 Saulnes et Gorcy ...	64 023.95	40 071.86
(4) 39/63 Firminy	38 158.81	121 230.51
(5) 40/63 Pompey	7 121.97	10 828.40
(6) 41/63 Beautor	3 509.39	5 720.51
(7) 42/63 Rouen	4 948.91	84 605.79
(8) 43/63 Saint-Jacques	52 665.73	3 609.18
(9) 44/63 Châtillon	31 388.76	134 562.46
(10) 45/63 Porter-France	11 699.64	5 819.81
(11) 46/63 Union des Consommateurs	2 921.92	4 917.16
(12) 47/63 Fives-Lille-Cail	62 222.40	59 519.66
(13) 50/63 Usinor	144 214.92	211 432.55
(14) 51/63 Hennebont	15 918.53	28 810.32

(b) The applicants state that they are in a position to supply all the documents to prove the correctness of the foregoing calculations, that is:

— The OCCF's promises before each order for shipyard scrap was signed;
— The documents relating to the signing and handing over of the orders

for the tonnages of shipyard scrap, the subject of the application;

— The settlement of the CPFI, through the Union des Consommateurs de Ferraille of the sums with which the OCCF's commitments were concerned;

— The applicants' costs for the transport of the tonnages of scrap in dispute from the ship-breakers' yards to the works;

— The costs which the applicants would have had to bear for the transport of a tonnage of imported ferrous scrap equivalent to the disputed tonnage of shipyard scrap, from the port of importation to the works; in this connexion, each of the applicants designates, as the usual port of importation, the port or ports through which it received the imported ferrous scrap during the period when the equalization scheme functioned, as well as the means of transport (rail and/or waterway) whereby this imported ferrous scrap was sent on to their works.

(c) The applicants submit that the foregoing evidence, which will be supplemented to the extent that the Court deems it useful, completely proves, in accordance with the judgment of 15 December 1961 (Fives-Lille-Cail), the existence of the damage and quantifies it precisely.

The defendant replies as follows to the arguments set forth in the applications.

(a) The calculation effected by the applicants consists in subtracting the cost price of the imported ferrous scrap (equalization price, plus 2 dollars for transhipment costs, plus the cost of transport from the port to the works) from the cost price of the shipyard scrap (the equalization price, identical with the foregoing, plus 2 dollars, plus the cost of transport from the breaker's yard to the works), which results in claiming as damages the same amount as the 'transport parity'. The judgment of 15 December 1961 (Fives-Lille-Cail) expressly laid down that it was inadmissible to identify the damage sustained with the amount of the 'transport parity' promised or paid (Rec. 1961, p. 592). Consequently the applicants have quite failed to establish that 'the purchase of shipyard scrap in respect of which no transport parity grant is available would have been ... more expensive than simply purchasing imported ferrous scrap' (Rec. 1961, p. 593) or how much more expensive it would have been.

(b) The aforementioned calculations have been prepared on the basis of figures which have not been proved and, although the applicants have declared that they are able to supply proof of them, they have at any rate failed to do so.

(c) The defendant then alleges that the lump-sum of 2 dollars, granted to purchasers of imported ferrous scrap for the cost of transhipment from the ship to the wagon or barge, is far removed from a true estimate of the said costs, being merely in the nature of a grant, intended to compensate a part of the transhipment costs. These were at the expense of the purchasers of imported ferrous scrap, save for the deduction of the lump-sum of 2 dollars, since— with the exception of the period when Decision No 34/56 was in force, when the equalization price was calculated 'free on rail or barge'—the equalization price was always calculated delivered cif port of entry, that is to say, on board ship to the dock at the port of importation.

In other words, in calculating the transhipment costs of imported ferrous scrap, the applicants have shown a uniform amount of 2 dollars, when they ought to have shown the actual transhipment costs, less 2 dollars per metric ton, reimbursable through the equalization scheme.

The defendant supports its argument with some examples drawn from its documents, which are necessarily incom-

plete, since the Brussels agencies only paid the transhipment costs during the period when Decision No 34/56 (Official Journal, 1956, p. 382) was in force.

Since, in the instances quoted, the costs of unloading the imported ferrous scrap, not reimbursed through equalization, covered the entire amounts of the 'transport parity grants' claimed, and even exceeded them, the defendant deduces from this that the same situation must have obtained in the other periods in respect of which it does not have any documents, since, during these periods, the transhipment costs were paid by the consumers of imported ferrous scrap.

The defendant thus considers that it has at all events shown the inaccuracy of the calculations put forward by the applicants.

The *applicants* reply as follows:

(a) With regard to the documentary evidence, they allege that the abundance and diversity of the documents to be collected made it impossible to gather them by the date when the applications were submitted; they declare that the required documents are annexed to their reply.

(b) With regard to the methods of taking account of the costs of transhipment at the sea port, they allege that the problem of the 'lump sum of 2 dollars' is much more complex than the defendant states. They refrain from broaching the question whether the 'lump-sum of 2 dollars' is in the nature of a grant, intended to compensate part of the transhipment costs, or whether it is a realistic estimate of the said costs, or whether it is a realistic estimate of the said costs. They merely observe that if the equalization agencies, when they adopted from the beginning the 'lump-sum of 2 dollars' in their negotiations with the undertakings as they did in all their accounting, might legitimately admit that this value represented the approximate average of the actual costs of transhipment, the undertakings, for their part, could thus only conform to a practice not of their making but established by the Community agencies.

(c) The applicants find that as a consequence of the defendant's objections the problem is presented to them in an entirely different light. The High Authority considers that, in comparing the prices 'free works' of the shipyard scrap in dispute and of the imported ferrous scrap, it is important to insert, instead of the 'lump-sum of 2 dollars', the amount of the actual costs of transhipment. The question of choice of the port of importation is consequently raised. In the method of calculation adopted in the applications, this choice made no difference, since the rate of 2 dollars had been adopted uniformly for all the ports of importation. Under the new method of calculation required as a result of the defendant's objection, the port to be selected, for the comparison to be valid, must be the one most frequently used by each of the applicants.

The schedules to the reply contain all the particulars which the applicants used in order to quantify the damage suffered by them, using the new method. The port of importation taken is the one from which each of the applicants received the greatest tonnage of imported ferrous scrap (Schedules 1 to 22A to the reply).

The amendment of the original calculations, as the result of adopting a single port of importation and substituting the actual amount of the transhipment costs for the 'lump sum of 2 dollars' used in the applications, means that the damage sustained by each applicant must be worked out anew. The amount of such damage is given in the conclusions in the reply (see *supra*, conclusions of the parties, under A).

As a result of the said amendments to the initial calculations, 9 of the 23 original applicants had to admit that the

disputed scrap from ship-breakers' yards had been, for them, less expensive than imported ferrous scrap. Since they sustained no damage they later discontinued their actions.

The *defendant* replies that the method chosen by the applicants in their attempt to prove damage is subjective, biased and incomplete. Moreover, the applicants' calculations are invalidated by mistakes and omissions. The defendant says that it could not correct all the calculations of all the applicants so as to prove beyond any doubt that in none of the cases had any damage been suffered since it only has some of the necessary documents.

It states that damage has been proved in none of the cases. It considers that all the applicants obtained their shipyard scrap at 'free works' prices equal to or less than the average prices of ferrous scrap which they bought as a general rule.

The defendant first of all puts forward a general argument covering all the cases. It then seemed to it that it was necessary to summarize separately the objections which it raised to the calculations of each individual applicant, since each applicant must individually prove the damage sustained by it.

(a) General criticism of the applicants' evidence

1. *Choice of the port of importation*—At the outset, the defendant observes that in their reply all the applicants—with the exception of the applicant in Case No 50/63, Forges d'Hennebont—endeavour to prove the damage caused to them on the basis of ports other than those proposed to them by the Union de Consommateurs de Ferrailles de France (the French Association of Ferrous Scrap Consumers) (UCFF) when the contracts were concluded, or indeed other than those which they mentioned in their applications.

In Schedules 1 and 22A to the reply, the applicants choose a 'main port of importation'. The defendant disputes that the damage can be ascertained solely on the basis of the main port, which is almost always the one with the lowest costs. It alleges that in claiming to establish actual damage the applicants must not make a comparison with the most expensive imported ferrous scrap received at that time; at the very least, they should take account of the average of the costs relating to their imports, and thus on the basis of all the ports through which they received imported ferrous scrap. The defendant also states that the applicants often choose a port through which they have received no scrap for the year in the course of which they allege damage as regards shipyard scrap (see Schedules 17, 22A and 24 to the reply).

Finally, in Schedules 8, 13, 26, 34, 41 and 49 to the rejoinder, the defendant sets out a series of errors or omissions which it has found in Schedules 1 to 21A to the reply, which are the tables showing, for each applicant, the tonnages of imported ferrous scrap from 1954 to 1958 and the ports used.

2. *Calculation of the costs of unloading in the ports of importation*—The tables which make up Schedules 23 to 36 to the reply, as well as Schedule 64A, give the details of the stevedorage costs etc., together with the total cost per metric ton. Schedule 37 to the reply forms the yearly summary of the tonnages of imported ferrous scrap unloaded in each of the ports. Schedules 38 and 39 to the reply are the summaries by port and by year of the arithmetical average of the net costs per metric ton, in dollars (Schedule 38) and in old French francs (Schedule 39).

The defendant states that Schedule 45 to 64A to the reply which, according to the applicants, are 'the statements of the Groupement d'Importation de Produits Sidérurgiques (GIPS) (Iron and Steel Products Import Association)

showing, for the tonnages of ferrous scrap imported by the applicants, the port used, the costs of unloading etc. at the port and the costs of transport from the port to the works', only cover a minute proportion of the ships featured in Schedules 23 to 36 to the reply. These latter schedules are used to ascertain the averages featured in Schedules 38 and 39 to the reply, which are used in their turn to ascertain the damage to all the applicants.

The defendant then alleges that each of the applicants employs in his own particular case the costs of unloading ships whose cargo was entirely destined for other undertakings unconnected with it. However, it says that, in calculating damage, a comparison can only be made between the costs relating to shipyard scrap received and those costs which relate solely to the imported ferrous scrap received by each undertaking.

The defendant observes that the applicants use yearly arithmetical averages by port. In its opinion, the method of weighted averages is required, and in the schedules to the rejoinder (schedules submitted separately) it shows the comparison between the weighted and the arithmetical averages.

The defendant moreover sets out (see schedules to the rejoinder submitted separately) a series of arithmetical errors and errors in the exchange parities in Schedules 23 to 36 to the reply.

Finally the defendant notes that in Schedules 23 to 36 to the reply the applicants deducted from the cost of unloading the imported ferrous scrap the whole of the dispatch money (unloading allowance) which was granted to them. It states that the letter addressed on 16 January 1962 to the CPFI by the UCFF (Schedule 1 to the rejoinder) proves that the applicants themselves in fact gave a bonus of half the dispatch money to the forwarding agent as an incentive to expedition. It follows from this that only half of these allowances can be deducted, and the defendant has made this correction in the schedules to the rejoinder submitted separately.

3. *Choice of the method of transport from the port to the factory.*—The defendant alleges that in their comparison the applicants on the one hand keep strictly to the means of transporting the shipyard scrap which they actually used, whereas, on the other hand, for imported ferrous scrap nine of the applicants systematically choose the means of internal transport (water or rail) more favourable to them. This is why in the schedules to the rejoinder the defendant ascertained the means of transport actually used by the applicants for their imported ferrous scrap.

Finally, the defendant observes that the applicant in Case No 42/63 (Hauts Fourneaux de Rouen) alleges that it has sustained damage in connexion with scrap from the ship-breakers' yard in Grand-Quevilly, which is the very place in which the works are situated. It tries to prove that the cost of transporting imported ferrous scrap from the port of Rouen to the works is less than those from the ship-breaker's yard to the works. In fact, the applicant had the scrap from the ship-breaker's yard in Petit-Quevilly sent for preparation and subsequently returned to the works. Since according to the contract the shipyard scrap in question was of the same quality as the imported ferrous scrap, the latter must also have made the double journey, breaking bulk, necessitated by preparation.

4. *Calculation of the costs of transport from the port to the works*—These calculations appear in Schedules 65 to 82 to the reply.

The defendant states that, although Schedules 65 to 68 to the reply establish the transport costs by inland waterway for certain contracts, the applicants on the other hand give no information on the ships whose cargo was transported by rail to the works

and the impression is thus given that almost all the imported ferrous scrap was transported by inland waterway. The defendant says that this was not the case and indicates in the schedules to the rejoinder the means of transport used as it emerges from its own documents. Finally it points out omissions in Schedules 65 to 68.

According to the defendant, the employment of average freight costs for the calculation of damage is as open to dispute as that of the main port of importation and that of the average costs of unloading. By means of some copies of transport documents in its possession, the defendant has indicated in the schedules to the rejoinder the amount of the actual costs of internal transport which are sometimes two or three times as high as those claimed by the applicants.

Finally, the defendant observes that the railway tariffs (Schedules 73 to 82 to the reply) produced by the applicants do not show the actual costs of transport. In fact the defendant says that the applicants do not explain, with regard to the ferrous scrap actually imported, the type and capacity of wagons employed, and furthermore the cost of unloading on to the platform cannot be ascertained from the tariffs. In the schedules to the rejoinder, the defendant shows the actual costs as they emerge from the consignment notes, which often exceed those alleged by the applicants.

Finally the defendant points out that in Schedule 96 to the reply the figure indicated by the applicant in Case No 42/63 (Hauts Fourneaux de Rouen) for rail transport from the port of Rouen to the works completely fails to correspond to the figure given in the railway tariffs produced by the applicants (Schedules 73 to 82 to the reply).

5. *The final calculation effected by the applicants*—The defendant alleges that in Schedules 83 to 105 to the reply, which assess the damage, the applicants combine and of necessity multiply all the abovementioned errors of principle and of calculation.

Moreover, states the defendant, there are numerous errors of calculation particular to these schedules. These errors are set out in the schedules to the rejoinder. It observes finally that in columns 5 and 6 of Schedules 83 to 105 to the reply the applicants include in the amount of the transport costs of shipyard scrap the tax on the provision of services, which was however reimbursed by the French administration as from 1 January 1955.

(b) Criticism of the evidence adduced by each individual applicant

1. *Application 29/63* (*Forges de la Providence*)—The applicant alleges that it has suffered damage in respect of shipyard scrap costing less, free works, than the average price of internal ferrous scrap which it received in the same month (Schedule 3 to the rejoinder).

The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Antwerp and Dunkirk, and although it received more than 25% of its imported ferrous scrap through the port of Dunkirk, where the costs of unloading were much higher than in Ghent (Schedule 4 to the rejoinder).

The applicant bases its calculations on transport by waterway, although it regularly used rail transport which cost almost double (Schedule 5 to the rejoinder).

2. *Application 31/63* (*Fabriques de Fer de Maubeuge*)—The alleged damage relates exclusively to contract 302/DN, carried out in April 1956. At that time the applicant received a quantity of imported ferrous scrap seven times greater through the port of Dunkirk, at a price 'free factory' equivalent to that of the disputed shipyard scrap (Annex 6 to the rejoinder).

3. *Application 36/63* (*Saulnes et Gorcy*)—Schedules 8 and 90 to the reply

contain errors and omissions (Schedules 13 and 14 to the rejoinder).

The applicant bases its calculations on the port of Ghent, although the 'transport parities' were promised for Dunkirk and paid for Antwerp and it received the imported ferrous scrap through the ports of Dunkirk and Calais where the costs of unloading were from two to three times higher than at Ghent (Schedule 15 to the rejoinder).

The actual costs of rail transport are almost always higher than the theoretical costs which it puts forward (Schedule 16 to the rejoinder).

The applicant accepted imported ferrous scrap costing, 'free works', more than the disputed shipyard scrap.

4. *Application 39/63* (*Firminy*)—The applicant alleges that it has suffered damage as regards shipyard scrap costing, free works, less than the average price of internal ferrous scrap which it received in the same month (Schedule 17 to the rejoinder).

The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Dunkirk and Antwerp and it received 30% of its imported ferrous scrap through Dunkirk where the unloading costs were twice as high as at Ghent (Schedule 18 to the rejoinder).

The applicant bases its calculations on transport by waterway, although its imported ferrous scrap was transported by means of 597 wagons and 201 barges (Schedule 19 to the rejoinder).

The applicant accepted ferrous scrap imported through Ghent and transported by rail with transport costs three times higher than those indicated by the applicant (see contract 2/BER/1938 reproduced in Schedule 19 to the rejoinder).

5. *Application 40/63* (*Aciéries de Pompey*)—The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Dunkirk and Antwerp. Moreover the alleged damage does not concern the years 1954 and 1955 and Antwerp was in 1954 its only port and in 1955 its main port of importation (Schedule 20 to the rejoinder).

The applicant also bases its calculations on transport by waterway, although a significant part of its imports was transported by rail at a much greater cost (Schedule 21 to the rejoinder).

The applicant could have used inland waterways to transport the shipyard scrap obtained in Rouen.

6. *Application 41/63* (*Beautor*)—The applicant alleges that it has suffered damage as regards shipyard scrap costing, free works, less than the average price of internal ferrous scrap which it received in the same month (Schedule 22 to the rejoinder).

The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Rouen, Dunkirk or Antwerp.

The applicant received ferrous scrap imported through Le Havre, a port further from its works than Rouen where all the disputed shipyard scrap originated (Schedule 23 to the rejoinder).

The applicant could have used inland waterways to transport the disputed scrap.

7. *Application 42/63* (*Hauts Fourneaux de Rouen*)—The applicant alleges that it has sustained damage as regards shipyard scrap costing less, free works, than the average price of internal ferrous scrap which it received in the same month (Schedule 25 to the rejoinder).

The applicant bases its calculations on a port through which no ferrous scrap was imported throughout the entire duration of the equalization scheme.

The applicant includes transport costs occasioned by the preparation of ferrous scrap in its calculations.

The applicant puts forward costs of rail transport which do not accord either with the tariffs of the SNCF or with the actual costs over the same

distance for the disputed shipyard scrap, shown in Schedule 90 to the rejoinder.

8. *Application 43/63 (Usines de Saint-Jacques)*—Schedule 14 to the reply contains errors and omissions (Schedule 26 to the rejoinder).

The applicant bases its calculations on the port of La Pallice, although the 'transport parities' related to Marseilles (Schedule 27 to the rejoinder).

9. *Application 44/63 (Forges de Châtillon, Commentry et Neuves-Maisons)*—Schedules 15 and 98 to the reply contain errors and omissions (Schedules 29 and 30 to the rejoinder).

The applicant alleges that it has sustained damage as regards shipyard scrap costing, free factory, less than the average price of internal ferrous scrap which it received in the same month (Schedule 31 to the rejoinder).

The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Dunkirk and Antwerp and more than 55% of its imported ferrous scrap was received through Dunkirk and Antwerp (Schedule 32 to the rejoinder).

The applicant also bases its calculations on transport by waterway, although a large percentage of its imported ferrous scrap, especially that leaving from the port of Ghent, was transported by rail at twice the cost shown by the applicant (Schedule 33 to the rejoinder).

The applicant could have used inland waterways to transport its shipyard scrap.

10. *Application 45/63 (H. K. Porter-France)*—Schedule 16 to the reply contains errors and omissions (Schedule 34 to the rejoinder).

The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Dunkirk and Antwerp. Moreover in the course of the years 1955 and 1956, the only years in respect of which it alleges that it has sustained damage, it imported through Dunkirk a tonnage double that of the disputed shipyard scrap, at unloading costs clearly higher than those in operation at Ghent (Schedule 35 to the rejoinder).

The applicant accepted ferrous scrap imported through Dunkirk at the same time, at a transport cost as high as that of the disputed shipyard scrap (see contract 53/EAR/1287 reproduced in Schedule 36 to the rejoinder).

11. *Application 46/63 Union des Consommateurs)*—The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Dunkirk or Antwerp and in 1954, the only year in respect of which it alleges that it has sustained damage, all its ferrous scrap came through Antwerp (Schedule 37 to the rejoinder).

The applicant bases its calculations on transport by waterway, although its imported ferrous scrap was transported by means of 75 wagons and 18 barges (Schedule 38 to the rejoinder).

12. *Application 47/63 (Fives-Lille-Cail)*—The applicant bases its calculations on the port of Ghent, although the 'transport parities' related to Dunkirk and Antwerp and although it received 24% of its imported ferrous scrap through the port of Dunkirk where the costs of unloading were much higher than at Ghent.

13. *Application 50/63 (Usinor)*—Schedules 24 and 104 to the reply contain errors and omissions (Schedules 41, 42 and 43 to the rejoinder).

The applicant alleges that it has sustained damage as regards shipyard scrap costing, free works, less than the average price of internal ferrous scrap which it received at the same time (Schedule 44 to the rejoinder).

The applicant bases its calculations on the port of Ghent, although the 'transport parities' offered also related to Dunkirk and Antwerp and the 'transport parities' paid also related to Dunkirk, although in 1954 all its imported ferrous scrap came through Dunkirk and although each year it received a large

tonnage of imported ferrous scrap through Dunkirk, with costs of unloading and transport distinctly higher than in Ghent (Schedules 45 and 46 to the rejoinder).

The applicant bases its calculations with regard to its works at Denain on transport by waterway for the years 1954 and 1955, although in 1954 its imported ferrous scrap was transported by means of 194 wagons and 5 barges and in 1955 by means of 634 wagons and 120 barges; it also bases its calculations with regard to its works at Valenciennes-Louvroil-Hautmont exclusively on transport by waterway, although the ferrous scrap actually imported was transported by means of 1 067 wagons and 75 barges (Schedules 47 and 48 to the rejoinder).

The actual expenses of transport by rail known to the High Authority are without exception higher than the notional expenses put forward by the applicant (Schedules 47 and 48 to the rejoinder).

The applicant could have had the disputed shipyard scrap which came from Saint-Nazaire transported by inland waterway.

14. *Application 51/63 (Forges d'Hennebont)*—Schedule 22 to the reply contains errors and omissions (Schedule 49 to the rejoinder).

The applicant bases its calculations on the port of Lorient, although the damage alleged concerns only the years 1954 and 1955 and it received no imported ferrous scrap through Lorient before 1957. Moreover of all the imported ferrous scrap which it received in 1956, the first year when it was imported, 12 578 metric tons were through Saint-Nazaire, Nantes and La Pallice, precisely the places in which the disputed shipyard scrap originated.

Until the end of December 1958 the applicant each month received, without claiming 'transport parity', considerable tonnages of shipyard scrap originating either in the same places or in ports further from its works than the disputed scrap.

Using the data contained in Schedule 105 to the reply, the defendant has compared the cost price of the disputed shipyard scrap in the first place with the cost price of all the imported ferrous scrap received by the applicant and, in the second place, with the cost price of all the ferrous scrap imported in 1956, the first year of importation and the year following the purchase of the disputed shipyard scrap. The outcome of these calculations is in the first case a gain of 7 036.42 new French francs and in the second case a gain of 26 516.84 new French francs instead of the alleged damage amounting to 9 940.01 new French francs.

(3) The causal connexion between the wrongful act or omission and the damage

The *applicants* allege that since their works were nearer to the ports of importation than to the ship-breakers' yards they normally had to use imported ferrous scrap. They consequently made it a condition of their acceptance of the disputed shipyard scrap that the OCCF should give an undertaking that scrap from such yards, free works, would not cost them more than imported ferrous scrap. Thus before the placing of each order the OCCF promised that the applicants would be compensated for the difference between the costs of transporting the ferrous scrap from the ship-breaker's yard to the works, on the one hand, and from the usual port of importation to the works, on the other hand.

The *defendant* replies that various considerations, for example the fact that shipyard scrap was always considered to be of better quality than imported ferrous scrap, rendered at the very least doubtful the assertion that the promised 'transport parity' payment was the sole reason why the undertakings concerned accepted the contracts for the purchase of shipyard scrap.

The *applicants* reply that American ferrous scrap, which constitutes three-quarters of the imported ferrous scrap, contains a large proportion of high quality ferrous scrap and that the resort to shipyard scrap was always subject to the assurance that it could be obtained at a price equal to the maximum for imported ferrous scrap.

The *defendant* replies that the applicants' assertion is made much more questionable by the withdrawal of nine of the twenty three original applicants, and by certain findings with regard to a number of the applicants who have pursued their applications.

1. Nine applicants discontinued their applications because they realized that shipyard scrap, even without the 'transport parity' reimbursement, cost them less than the imported ferrous scrap. The defendant says that it follows from this that the acceptance of the contracts with regard to the disputed shipyard scrap was not, as the applicants allege, conditional on the certainty of paying a price corresponding to that of imported ferrous scrap, and that it is by no means established that without this certainty the applicants would have refrained from concluding these contracts.

The defendant adds that when the contracts were concluded the undertakings were quite unaware what the ultimate price of the ferrous scrap would be, since the equalization price was calculated on the basis of the prices actually prevailing on the internal market during the month of delivery.

2. The defendant goes on to observe that in the reply two undertakings (Providence and Usinor) claim compensation of 430 066.76 new French francs and consequently consider that they have suffered damage to this extent, although the 'transport parity' reimbursement (the amount of their claim in the applications) only amounted to 411 802.26 new French francs.

The defendant says that comparison of these two figures shows that the 'transport parity' reimbursements did not compensate the loss suffered by these undertakings because of the preference given to shipyard scrap over imported ferrous scrap. How then does one understand that the undertakings nevertheless agreed to conclude the said contracts if, as they claim, 'the resort to shipyard scrap was always subject to the assurance that it could be obtained at a price equal to the maximum for imported ferrous scrap'?

The defendant deduces from this that the relation of cause and effect between the promise of 'transport parity' reimbursements and the acceptance of the contracts put forward has not been established.

IV — Procedure

The statements of the parties were presented in the proper form and within the prescribed time, and the procedure followed the normal course.

Cases 29 to 51/63 were joined for the purposes of the procedure and judgment, by order of the Court dated 12 June 1963.

As a result of the discontinuance by the applicants of the applications in Cases 30, 33, 34, 35, 37, 38, 48 and 49/63 the Court, by order of 5 November 1963, severed these cases and ordered them to be removed from the Register of the Court.

On 21 January 1964, after hearing the preliminary report of the Judge-Rapporteur and the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

On 6 March 1964, the applicants lodged a note, with tables annexed thereto, correcting as follows the amount of the alleged damage, taking account of the observations submitted by the defendant in its rejoinder:

		New French Francs
29/63	Providence	174 926.10
31/63	Maubeuge	1 742.19
36/63	Saulnes et Gorcy	41 461.87
39/63	Firminy	93 950.85
40/63	Pompey	11 372.45
41/63	Beautor	5 851.26
42/63	Rouen	42 428 98
43/63	Saint-Jacques	4 942.41
44/63	Châtillon	99 442.74
45/63	Porter-France	3 542.00
46/63	Union des Consommateurs	4 717.29
47/63	Fives-Lille-Cail	28 042.67
50/60	Usinor	161 593.69
51/63	Hennebont	6 020.86

At the first hearing in open court on 12 March 1964, the Court decided that the note lodged on 6 March 1964 must be considered as a verbal note or memorandum for the purposes of oral submissions. It asked the defendant to define its position in writing with regard to the said note before 20 March 1964 and authorized the parties to exchange notes until the resumption of the oral procedure, which was fixed for 21 April 1964.

On 19 March 1964 the defendant lodged its reply to the applicants' note of 6 March 1964.

On 11 and 14 April 1964 the applicants lodged their reply to the defendant's note correcting as follows the damage alleged in their note of 6 March 1964:

		New French Francs
29/63	Providence	148 122.01
31/63	Maubeuge	1 646.06
36/63	Saulnes et Gorcy	40 711.75
39/63	Firminy	72 446.93
40/63	Pompey	9 284.55
41/63	Beautor	5 290.62
42/63	Rouen	42 428.98
43/63	Saint-Jacques	4 942.41
44/63	Châtillon	69 869.28
45/63	Porter-France	3 542.00
46/63	Union des Consommateurs	4 205.24
47/63	Fives-Lille-Cail	28 042.67
50/63	Usinor	151 627.16
51/63	Hennebont	6 020.86

On 20 April 1964 the defendant lodged its reply to the notes of 11 and 14 April 1964.

The second hearing in open court was held on 21 April 1964. Mr Advocate-General Lagrange delivered his opinion at the hearing on 12 March 1964.

By an order of 6 October 1964, the Court decided to appoint an expert whose task it would be to reconcile the parties and, failing that, to deliver a reasoned report on the difficulties dividing the parties and to specify the components and the sum of the possible

damages if the expert considered that the figures set down by the applicants must be corrected.

By an order of 4 December 1964, the Court, with the agreement of the parties, appointed as expert Mr Philippe Le Mattre, Deputy Manager of the Office central des transports internationaux par chemin de fer of Berne, setting 15 March 1965 as the time-limit for lodging the report at the Registry.

By a letter recorded at the Registry on 9 December 1964, the expert accepted the task defined by the Court in its said order of 6 October 1964. At the expert's request, the Court, by an order dated 9 March 1965, extended until 15 May 1965 the time-limit set for lodging his report. This report was lodged on 28 April 1965 and communicated to the parties.

By a letter lodged on 14 June 1965, the applicants informed the Court that the expert's report did not require any observations from them.

On 14 June 1965 the defendant lodged its observations relating to the expert's report.

As a result of the discontinuance by the applicant concerned of his application, the Court, by order of 24 December 1965, severed Case 32/63 and ordered it to be removed from the Register of the Court.

The Court examined the expert and the parties at the hearing in open court on 28 September 1965 in accordance with Article 49 (5) of the Rules of Procedure. The expert presented an oral report on the defendant's written observations on his written report.

The applicant in Case 51/63 notified the Court through its counsel that by reason of its present company structure it was prohibited by French law from discontinuing its action and that it left this matter to the discretion of the Court.

The expert took the oath laid down in Article 49 (6) of the Rules of Procedure.

By a letter entered on the Court Register on 15 October 1965, the expert notified the Court of the corrections to be made to his report in consequence of the oral proceedings of 28 September 1965.

Mr Advocate-General Roemer delivered his opinion at the hearing on 19 October 1965.

Grounds of judgment

A — Admissibility

1. The defendant argues that in their applications the applicants did not produce the figures on which they based their calculations of the amount of the damage allegedly suffered and that therefore they did not comply with the requirements of Article 38 of the Rules of Procedure. The applicants reply that it was not possible for them to produce their documentary evidence before the lodging of their reply, since the figures varied considerably from one claim to another and also because of the abundance of the various documents which had to be collected.

This first objection of inadmissibility must be rejected, and the explanation given by the applicants must be considered as acceptable. Moreover, the absence of the figures in the applications cannot have put the defendant at

any disadvantage, since it has been able to discuss the figures produced by the applicants in their reply, both in its rejoinder and during the oral procedure.

2. The defendant then argues that the applicants infringed Articles 38 and 42 of the Rules of Procedure in that their reply replaces the method of calculating the alleged damage used in their applications by an entirely different method. According to the defendant the calculations in the application resulted in a claim for the very amount represented by the 'transport parity' improperly received, whereas in the reply the claim for the 'transport parity' reimbursement has been transformed into action for reparation based on the existence of damage equal to the difference between the cost price of the tonnage of shipyard scrap acquired and the cost price of the same tonnage of imported ferrous scrap.

This second objection of inadmissibility must also be rejected. In fact an examination of the wording of the applications reveals that the applicants have attempted therein to show that without the grant of the 'transport parity' the tonnage of scrap bought by them had cost them more than the same tonnage of imported ferrous scrap would have done if bought over the same period. Furthermore the reply neither changes the subject matter of the dispute, nor does it introduce fresh issues. All the applicants have done therein is to rectify their calculations so as to take into account objections put forward by the defendant in its statement of defence.

3. In its written observations on the expert's report, lodged at the Registry on 14 June 1965, the defendant alleges that in assessing the damage alleged by the applicants there should be taken into account the increase in the ferrous scrap equalization contribution which would have been demanded of the applicants if they had chosen to buy imported ferrous scrap instead of the shipyard scrap which they did in fact obtain. During the hearing in open court on 28 September 1965, the applicants put forward the view that this line of reasoning on the part of the defendant should be declared inadmissible having regard to Article 42 (2) of the Rules of Procedure.

The abovementioned allegation on the part of the defendant must be considered as admissible. Its argument is in fact merely that, in order to calculate any damage which the applicant may have suffered, it is necessary to establish with accuracy all the advantages and all the disadvantages which would have arisen if imported ferrous scrap had been substituted for the shipyard scrap which was in fact consumed.

4. Therefore the applications are admissible.

B — The substance of the cases

The applicants allege that, since the benefit of the 'transport parities', which had been granted to them by the so-called 'Brussels' authorities, was later taken away from them by the High Authority, they have suffered damage, in so far as they had only agreed to take deliveries of shipyard scrap because they had been promised that they would receive the said 'transport parities'. They also allege that the disputed promises, which were both made and carried out consistently for a period stretching over several years, can only have arisen because of defective supervision on the part of the defendant of the running of the equalization scheme, and therefore constitute a wrongful act or omission on its part. It is further asserted that this wrongful act or omission was the cause of the alleged damage, the amount of which is calculated as the difference between the purchase price of the shipyard scrap in fact received, without the deduction of the transport parity grant, and the price of imported ferrous scrap which the applicants could have received over the same periods.

1. *As to the wrongful act or omission attributed to the defendant*

It is not denied that the promises that the applicants would be paid the transport parity were made and fulfilled. Furthermore it is a fact that the incompatibility between the transport parity grant and the objectives of the equalization system only became apparent, in clear and express terms, when Decision No 18/60 was adopted. Thus the applicants could reasonably have believed that the said promises were legal and that the authorities which made them were acting within their powers.

In examining the question whether the giving of these promises is attributable to a wrongful act or omission on the part of the defendant for which it may be held liable under Article 40 of the Treaty, a distinction should be made between the periods before and after Decision No 13/58. By this decision the High Authority took over the administration of the equalization scheme.

As regards the period prior to Decision No 13/58, Decision No 14/55 delegated the administration of the financial arrangements to the OCCF and to the CPFI 'subject to the responsibility of the High Authority'. By virtue of these words the said authorities were placed under the supervision of the High Authority, and the latter was made responsible for an appropriate supervision of the scheme. This system was intended to give a certain amount of autonomy to the OCCF and to the CPFI, and the applicant under-

takings were not unacquainted with the administration of these two bodies. The system thus cannot be considered as one in which responsibility was transferred absolutely and automatically to the said bodies, but as an arrangement requiring the High Authority to exercise reasonable supervision.

It is not denied that the promises made and carried out by the OCCF, and in particular by some of its regional offices, occurred without any consultation with or approval by the board of administration on which the defendant was represented. Furthermore the activities undertaken under the equalization scheme were so numerous, diverse and decentralized that it was not possible to undertake a specific and immediate investigation of each action. However, in view of the fact that the promises at issue extended over a period of several years, in the long term they could not have escaped the attention of the High Authority. In fact the total amount of sums paid in respect of transport parity mounted up over the years to a considerable sum. It came to more than $\frac{1}{2}$ million dollars for the whole period during which the equalization scheme was operating, both before and after Decision No 13/58. The conclusion to be drawn from this is that although the first promises could certainly still be attributed to some reason other than lack of care on the part of the defendant in exercising its supervision, nevertheless it must be recognized that towards the end of the period prior to Decision No 13/58 the High Authority's lack of care became increasingly obvious.

Decision No 13/58 gave the High Authority the powers previously delegated to the OCCF and to the CPFI, and only left the latter, or any other appropriate body, with the task of carrying out instructions. From 1 August 1958, the date when Decision No 13/58 entered into force, the High Authority's duty was no longer just to supervise the equalization scheme but it became directly responsible for the actions taken under the equalization scheme, including the promises in connexion with transport parity reimbursements.

It follows from these considerations that, both as regards the period before and the period after the Decision No 13/58, the promises to grant transport parities which were given from 1 January 1957 onwards are attributable to wrongful acts or omissions on the part of the High Authority of a nature such as to make it responsible for them. Therefore the High Authority must be held accountable for damage arising out of the deliveries of shipyard scrap on orders placed as from that date.

2. *The objections of a general nature raised by the defendant*

(a) The defendant argues that the alleged damage cannot be assessed.

When it is necessary to consider a situation as it would have been if there had been no wrongful act or omission, the Court must, whilst insisting that all available evidence be produced, accept realistic approximations, such as averages which have been established by means of comparisons.

(b) The defendant alleges that the undertakings were not free to choose at will between shipyard scrap and scrap exported to the Community, and could not therefore be sure of obtaining the latter instead of the former. It is further asserted that the CPFI had the power to determine the quantities of ferrous scrap accepted for equalization, and in particular to put shipyard scrap in a privileged position in this respect.

The explanations given by the applicants, which are not contradicted by the defendant, show that during the period when the equalization scheme was operating the question of imposing an official allocation by way of compulsory powers never arose.

(c) The defendant also asserts that the quality of shipyard scrap has always been considered better than that of imported ferrous scrap and that therefore the applicant undertakings would have taken supplies of shipyard scrap even without the transport parity grant.

The applicants have replied that the quality of imported ferrous scrap, at least as regards the scrap originating in America, is comparable to the quality of shipyard scrap and this has not been contested by the defendant.

(d) Finally the defendant objects that when consumers placed their orders for imported ferrous scrap they did not know what the final cost of these orders would be, because the equalization price was calculated on the basis of the prices actually quoted on the Community market during the month when delivery took place. According to the defendant the promise with regard to the transport parity could not, therefore, have been the decisive factor, as the applicants allege, in their choice between shipyard scrap and imported ferrous scrap. The defendant says that the undertakings' uncertainty as to the final cost of their orders for ferrous scrap is confirmed by the fact that the applicants in Cases 29/63 (Providence) and 50/63 (Usinor) each claimed in their reply damage amounting to FF 211 264·14 and FF 218 802·62 respectively, although the sums which they received in respect of the transport parity grant were not more than FF 200 369·71 and FF 211 432·55. According to the defendant this calculation made by the applicants shows that the transport parity grant was not a compensation for the loss which these undertakings suffered because of the preference given to shipyard scrap over imported ferrous scrap.

The fact that the equalization price was not known until after the making of the contract cannot be denied. Nevertheless it remains possible that the transport parity grant was a decisive factor in the choice made by the applicants, whose works were further away from the ship-breakers' yards than from the ports through which the imports came. The damage results from the fact that the freedom of choice of the applicant undertakings was impaired by the promises improperly given to them with regard to the transport parity grant. Moreover the fact that the applicant undertakings did not know the equalization prices at the time when they made this choice cannot have had an influence on their decision. For in spite of this uncertainty, they were sure of paying the same price, called the equalization price, for any one grade of ferrous scrap, whether it came from ship-breakers' yards or was imported. Therefore the decision to turn to the one source of supply or the other in fact depended on as accurate an assessment as possible of the transhipment costs and of charges for carriage inside the Community.

3. *The damage alleged by the applicant undertakings*

In assessing their loss the applicants have used the only method possible. This consists in imagining the position which would have arisen for each factory concerned as regards the purchase of ferrous scrap, if the promises relating to the transport parity had not been made. Although in using this method it is not possible to arrive at an exact assessment of the damage, nevertheless the sampling methods habitually used in economic surveys make it possible to reach acceptable approximations provided that the basic facts are sufficiently reliable.

The expert appointed by the Court, in performing the task entrusted to him, has attempted to decide how much weight should be given both in qualitative and quantitative terms to the various supporting documents put in evidence. In his opinion the documents produced are sufficiently conclusive, both qualitatively and quantitatively. He also thinks that they constitute a reliable basis for determining the level of transport costs by rail and by waterway *which were in fact* borne by the applicant undertakings for the carriage of ferrous scrap originating in third countries during the years when they used the shipyard scrap in dispute in these cases.

In reconstructing the position as it would have been if the applicants could have freely chosen to use imported ferrous scrap, the expert has taken into account the ports which were in fact used, including the minor ports, and this has led him to make alterations to the applicants' calculations. The defendant has made the observation, as regards the transport by rail of shipyard

scrap, that the applicants had used the most expensive form of transport, but the expert has rightly pointed out that since the CPFI had approved the provision for this means of transport in contract, the applicants have done no more than keep within the bounds of what was agreed. The expert has also made judicious use of calculations involving weighted averages for working out the transport costs. He has examined the transhipment charges applied in the ports, and this has led him to approve in general terms the figures put forward by the applicants.

In its written observations on the expert's report, the defendant has objected that, when the expert was comparing the cost price of shipyard scrap with that of imported scrap in calculating the amount of the damage suffered, he should have taken into account not only the equalization price and transport costs inside the Community, but also the increase in contributions which the applicants would have had to bear because of the extra imports, and which would have been in proportion to their basis of assessment.

It is necessary to take this objection into account in assessing the damage suffered. It is indeed undeniable that during the period at issue the undertakings contributing to the equalization scheme would have had to bear an increased charge because of the additional purchase of imported ferrous scrap instead of shipyard scrap. During the hearing on 28 September 1965 the applicants argued, but to no purpose, that the figures put forward by the defendant were based on the total tonnage of imported ferrous scrap which would have been consumed instead of the shipyard scrap which was in fact consumed, and that they should not be placed at a disadvantage because of the joinder of their applications. In the Court's opinion the calculation of the whole of the quantities of imported ferrous scrap which would have been consumed by the applicants in place of the shipyard scrap is to be explained, not by the joinder of the applications, but by the structure of the equalization scheme, the underlying proposition for which was the interdependence of all the undertakings involved.

For the assessment of the damage allegedly suffered by the applicants, it is necessary to take account of the factors considered relevant by the expert, with the corrections resulting from the present judgment. In particular the undertakings whose position has been adversely affected have produced sufficiently persuasive documentary evidence to prove the costs relating to the imported scrap.

As has been said before, the assessment cannot be based on the whole of the ferrous scrap taken into consideration by the expert, but only on the deliveries of ferrous scrap made to each of the applicants in respect of orders placed after 31 December 1956. Therefore in order to assess any damage

which may have been sustained, it is necessary to make new calculations based solely on shipyard scrap delivered to the applicants pursuant to orders placed from 1 January 1957 onwards, and which originally attracted the transport parity grant.

It is therefore proper to grant the parties a stay of three months in order that they may inform the Court of the figures which they shall by then have agreed between them, or, if they fail to agree, in order that they may submit their separate figures to the Court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinions of Mr Advocate-General Lagrange and of Mr Advocate-General Roemer successively;
Having regard to Articles 40 and 53 of the Treaty establishing the ECSC;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to the Rules of Procedure of the Court, especially Articles 38, 42, 43, 49 to 54, 60 and 69;

THE COURT

by way of preliminary judgment, and without prejudice to any of the rights of the parties:

1. **Requires the parties to produce to the Court, within three months from the date when this judgment is delivered, the figures of any agreed damages;**
2. **Requires the parties in default of agreement to lodge with the Court, within the same period of three months, submissions containing their separate figures;**
3. **Reserves the costs.**

Hammes Delvaux Donner

Trabucchi Lecourt

Delivered in open court in Luxembourg on 9 December 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President