months by the defendant to the request for exemption addressed to the Office Commun des Consommateurs de Ferraille (Joint Bureau of Ferrous Scrap Consumers) and to the Caisse de Péréquation des Ferrailles Importées (Ferrous Scrap Equalization Fund) by the applicant's letters of 31 March 1958 as unfounded;

2. Dismisses the application directed against the letter of 12 May 1958 from the Caisse de Péréquation des Ferrailles Importées (Imported Ferrous Scrap Equalization Fund) as unfounded;

3. Orders the applicant to bear the costs.

2. In Case 33/58:

1. Dismisses the application as inadmissible;

2. Orders the applicant to bear the costs.

Donner Riese Rueff

Delvaux Hammes Rosse Catalano

Delivered in open court in Luxembourg on 17 July 1959.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE[1]

Summary

Page

I — Procedure and admissibility 148

A — Application No 32/58 148

1. The conclusions directed against the 'decision' of the CPFI of 12 May 1958 149

2. The conclusions directed 'in so far as necessary' against the 'decision to postpone adopting a decision' resulting from the letter of 2 June 1958 149

3. The conclusions directed against the 'implied decision of refusal resulting from the absence of a reply for more than two months to the request for exemption addressed to the CPFI and the OCCF by letters of 31 March 1958' 150

1 — Translated from the French.

4. The conclusions raising the objection of illegality against 'the general decision constituted by the letter of 18 December 1957 addressed by the High Authority to the OCCF on the definition of the concept of "ferrous scrap from own resources" for the purpose of Decisions Nos 22/54, 14/55 and 2/57' 151
5. The conclusions directed 'in so far as necessary' against the 'general decision constituted by the letter of 17 April 1958' 152

B — Application No 33/58 153

C — Application No 42/58 153
1. The conclusions directed against the 'implied decision of refusal resulting from the absence of a reply for more than two months to the request for exemption addressed to the High Authority of the ECSC by letter of 23 July 1958' 153
2. The conclusions directed 'in so far as necessary' against the 'decision to postpone adopting a decision' resulting from the letter of 31 July 1958 to the applicant undertaking from the High Authority 153
3. and 4. The objection of illegality 153

II — Substance 154
First observation 154
Second observation 155
Third observation 155

III — Final opinion 156

Mr President,
Members of the Court,

I do not intend in these cases to go over the whole ground as I did in an opinion which I am sure the Court clearly remembers, and which, as they have shown and although they did not hear it, is also known to the eminent lawyers who pleaded before the Court last Saturday.

I

I shall first of all explain my views on the questions of procedure and admissibility, which arise in very different circumstances from those in the German cases.

A — Application No 32/58 (Société des Usines de Pontlieue)

By two letters of 31 March 1958, one of which was addressed to the Caisse de Péréquation des Ferrailles Importées (Imported Ferrous Scrap Equalization Fund) and the other to the Office Commun des Consommateurs de Ferraille (Joint Bureau of Ferrous Scrap Consumers) the undertaking claimed a 'total exemption from the application of the equalization levy (ferrous scrap)'. That claim was based on the decision of the Board of the OCCF which had granted exemptions 'in favour of the Netherlands undertaking Breedband and the Italian undertaking Breda, having different company names'. The letter to the OCCF also stated that the undertaking reserved its position as to 'the legality' of the levy itself and as to the 'validity of the decision of own resources given by the High Authority', 'until such time as the Court of Justice of the ECSC, before which this question is pending, has delivered its judgment'. That was an allusion to the German applications, already lodged at the time.

On 12 May 1958, the OCCF replied that the levy was due from all the undertakings falling within the criteria defined by the letter of the High Authority of 18 December 1957, (which refuses to exonerate 'group ferrous

scrap') even from those undertakings which had either lodged a claim for an exemption with the OCCF (until such time as an exemption was granted), or lodged an application with the Court of Justice (until such time as the latter had ruled in favour of the applicant).

On 2 June 1958, the management of the OCCF informed the undertakings that, in considering the matter on the preceding 20 May, the Board of the said agency 'considered it preferable to await the judgments of the Court of Justice of the ECSC in respect of the various applications before the Court against the High Authority before stating its position (on the claim for an exemption). Until such time as the Board takes a decision', the letter added 'we would ask you to rectify your returns in accordance with the rules at present in force'.

On 30 June 1958, the undertaking's application was entered in the Court Registry. It contains five conclusions which I must now examine successively from the point of view of their admissibility. (In order to make things clearer, I shall examine them in a slightly different order from the one in which they are submitted.)

1. *The conclusions directed against the 'decision' of the CPFI of 12 May 1958*

Despite the general words used in the application ('declare the following contested decisions void and of no legal effect in that they are illegal and unjustified as to substance'), this cannot be anything other than an application for annulment.

The first question which the High Authority raises, but without insisting on it and without asserting inadmissibility under this head is: was the application lodged within the prescribed period of one month? The letter is dated 12 May, but it was not registered and the undertaking has declared that it is not in a position to establish the date on which it was received.

If one refers to French administrative case-law, the rule is that the limitation period against individual decisions only runs, at least as regards the person or persons to whom such decision is notifiable, from the date of notification. What is 'notification'? It is the measure adopted by the author of the decision having the effect of bringing the decision to the knowledge of the person concerned. Moreover – and still according to the same rules – it is for the author of the measure to prove that notification has taken place. 'Acquired knowledge' or reputed knowledge do not suffice.

Those principles would indeed seem to be those of the Treaty, if one refers to the combined provisions of the second paragraph of Article 15 and the third paragraph of Article 33.

Usually, proof appears from a post office statement of receipt which presupposes the sending of a registered letter with a request for a statement of receipt. That is supported by other evidence. There is no such other evidence in this case. If, therefore, there really was a decision lending itself to an application, the application would be admissible.

However (and this is the second question), I agree with the High Authority that such is not the position. The very content of the letter, as I summarized it a moment ago, suffices to prove that. The undertaking was claiming an exemption. The only answer which it received was that until such time as an exemption is granted by the OCCF, or until the Court of Justice has delivered judgment, the contributions remain due. Thus no decision is taken on the claim for exemption. In addition, there is a reminder as to the amount of the sums thus due. But as regards this, as the Court knows, it is the High Authority alone which, by virtue of Article 92, may adopt an enforceable decision. So there is no decision as to payment either.

These findings make it unnecessary for me to examine whether an application for annulment under the second paragraph of Article 33 can be brought against a decision which does not emanate from the High Authority, a question which the latter does not raise, although the point seems to me to be very debatable.

2. *The conclusions directed 'in so far as is necessary' against the 'decision to post-*

pone adopting a decision' resulting from the letter of 2 June 1958

There can be no doubt on this point: the letter in question is quite clearly not a decision. It is a postponement.

3. *The conclusions directed against the 'implied decision of refusal resulting from the absence of a reply for more than two months to the request for exemption addressed to the CPFI and the OCCF by letters of 31 March 1958'*

The reference to the absence of a reply does not say who it was that failed to reply, but it is clear that in the mind of the applicant it can only be the High Authority since, as we have just seen, the CPFI and the OCCF, to each of which the letters of 31 March were addressed, replied to them and those replies are contested as decisions.

Indeed, the High Authority does not say anything against that, and by implication admits that the fact of sending the letters of 31 March to the OCCF and to the CPFI means that notice was duly given to itself. It also admits that since no decision was adopted in respect of the claims set out in those letters, the application can be regarded as an action for failure to act under Article 35, lodged within due time.

But it argues that neither the first nor the second paragraph of Article 35 is applicable. The first because the applicant itself admits that it does not fulfil the conditions of 'local integration' required for the granting of exemption by the previous decisions of the High Authority, and therefore no such exemption can be granted to it. The second because the implied refusal to grant exemption is not vitiated by any misuse of powers affecting the applicant.

I myself also think that the application is not admissible under Article 35, but for different reasons.

Throughout this case – at least in the written procedure – the High Authority has reasoned as if the Brussels agencies, or itself, or again the Brussels agencies in application of directives given by it to them, had the power to grant 'exemptions' (that is the word which crops up all the time) from payment of a levy legally due. As I have had occasion to point out in my previous opinion, and as the learned counsel for the High Authority himself said at the oral hearing, the High Authority has no such power, and the Brussels agencies still less. The only basic legislative decisions are the decisions of the High Authority adopted in accordance with the manner laid down in Article 53 (b), that is to say, with the unanimous assent of the Council, in this case Decisions Nos 22/54, 14/55 and 2/57.

Those are the decisions which impose a levy on bought ferrous scrap and which also exempt scrap from 'own resources'. Thereafter, one can only have difficulties of application: in a particular instance is the scrap 'bought scrap' and thus subject to the levy?

In these circumstances, and in the absence of any special contentious procedure (such as exists in general in national revenue law), there should in principle be only two sorts of application.

1. The direct application for annulment of the basic administrative decisions, those which are taken in the manner prescribed under Article 53 (b).

2. The individual application against an enforceable decision under Article 92. According to the case-law of the Court resulting from the *Chasse* and *Meroni* judgments, undertakings have the right to argue in such applications that the basic decisions are illegal on all the grounds set out in the first paragraph of Article 33. The latter procedure is one which fully safeguards the rights of the parties concerned, as my colleague Roemer said in his reasoned opinion in the case of *Simet and Others* (36/58 *et seq.*) in his observations under the heading 'Remarks on Article 36'.

However the question is complicated by the fact that it is not the High Authority which itself manages the financial arrangements but the agencies to which it has confided the management of those arrangements.

It is reasonable to accept the proposition that such management includes establishing the bases for the levy, that is to say, the bases of assessment and collection. That is

what results from Article 12 of Decision No 2/57 (to take the latest date), and, on this point, the delegation of powers granted to the Brussels agencies certainly keeps within the limits allowed by the *Meroni* judgment.

There then remains the usual activity of executive 'control', which in French law is called 'tutelle administrative'. The detailed rules laid down for this purpose by Decision No 2/57 were held insufficient in the *Meroni* judgment. They nevertheless exist to a certain extent: in Article 15 of Decision No 2/57, which in particular provides that where the Boards of the OCCF or the CPFI are not in agreement 'as regards the measures for which Articles 3 to 11 (1) above make provision', the decision shall be taken by the High Authority. This is why in the German disputes I was able to take the view that the letter of the High Authority of 18 December 1957 was a decision.

Doubtless one could say that this procedure is only in some way connected with the 'internal relationships' between the management organization and the tutelary authority, and that third parties (however interested) have no *locus standi* to contest decisions adopted under such conditions. Such a point of view would seem to me to be much too narrow. I think, on the contrary, that these rules of tutelage (or of control) are established not only in the public interest, but also in the interest of the undertakings and that the latter may legitimately require that they be observed. I even think (and this seems to me to be in line with the *Meroni* judgment) that in cases where an intervention on the part of the executive is not provided for, or at least is not made obligatory (for example in the case where deliberations are concluded unanimously), it must be open to the undertakings to bring an application before the High Authority against those deliberations, despite the silence of the provision on that matter.

To summarize then, it is the duality of powers resulting from the existence of a management agency functioning under the control of the High Authority which makes possible the adoption of decisions by the latter apart from and halfway between the two extreme forms of power: legislative power and the final power to recover a levy by a decision which is enforceable. Let me add that in the present case too strict a solution would have devastating effects because the Brussels agencies are waiting for none other than the judgment of the Court before asking the High Authority to adopt decisions under Article 92, and the judgment as to substance would be delayed to a truly proper extent.

But it seems impossible to go further and to accept in addition that there is a procedure for making applications such that any interested party may at any time contest the bases of the assessment by bringing about a decision on the matter open to an application for annulment before the Court.

Such are the reasons for which an application based on Article 35 does not seem to me to be possible in the present case. No 'exemption' is involved, but only the question whether or not the scrap in issue is 'bought ferrous scrap' for the purposes of Decision No 2/57. There can only be two kinds of application in respect of that question: either a direct application for the annulment of a decision (express or implied) of the High Authority adopted on the basis of Article 15 of Decision No 2/57, that is to say, adopted by way of a ruling on a deliberation of the OCCF or of the CPFI; or an application against the final decision adopted under Article 92.

Such a system leaves the legal protection of the interested parties intact while preventing the functioning of an arrangement which is after all only an equalization fund from taking on an exaggeratedly contentious character.

4. *The conclusions raising the objection of illegality against 'the general decision constituted by the letter of 18 December 1957 addressed by the High Authority to the OCCF on the definition of the concept of 'ferrous scrap from own resources' for the purposes of Decisions Nos 22/54, 14/55 and 2/57'*

If, as I would suggest, it is accepted that the application is inadmissible in so far as it is

directed against the so-called decisions of 12 May and 2 June 1958, and that the conclusions put forward on the basis of Article 35 are also inadmissible, it obviously follows that the objection of illegality fails as a result.

The same is true *a fortiori* if one considers the letter of 18 December 1957 as a decision which is individual in character, which is the point of view of several of the applicants in the German cases and the one which I have been led to adopt, because the objection of illegality cannot concern an individual decision.

5. *The conclusions directed 'in so far as necessary' against the 'general decision constituted by the letter of 17 April 1958'*

On this point, there is no doubt about admissibility. The letter of 17 April was published in the Journal Officiel of 13 May, and the application was lodged on 30 June, that is to say, within the period resulting from the application of the combined provisions of Article 33 of the Treaty and of Article 85 (1) and (2) of the Rules of Procedure (indeed on the last day of the said period, if I have counted correctly). For it is, here, the date of publication which sets time running, even if it is accepted that the decision is individual in character, for, as regards third parties, namely persons to whom a decision is not notifiable, time starts to run from the date of publication, whether the decision is general or individual.

However the question arises as to the *scope* of the conclusions thus directed against the decision of 17 April 1958. The High Authority argues that the said decision has absolutely nothing to do with the definition of own resources, such as was given in the decision of 18 December 1957, its purpose being only to state the criterion according to which an exception is to be made to the said definition, the famous criterion of local integration. Thus the application, it is said, can have no purpose other than to criticize that exception namely the exemption granted to Breda Siderurgica and Hoogovens, and to other undertakings liable to find themselves in the same situation. The High Authority adds that the applicant's real purpose is quite otherwise, for the applicant argues that the criterion of local integration is too restrictive, not that it is too wide, and does not contest the principle of the definition of own resources contained in the letter of 18 December 1957.

I am not at one with the defendant on this. Legally speaking, first of all, I think that the decision of 17 April 1958, in stating the solution to the difficulties met by the Brussels agencies on an important point in assessing the equalization contribution, referred to the principles approved by the decision of 18 December 1957, but subjected them to what one might call a noticeable 'deflexion'. It is a decision taking new factors into account which is not purely confirmatory of the first. The question relating to the definition of own resources is thus placed in a different light, and in my opinion this must permit the undertakings which did not see fit to contest the first decision to discuss, upon the occasion of an application brought against the second, the whole of the question at issue, namely the definition of own resources. Such must be the position particularly because, in that decision of 17 April, the High Authority expressly takes up one of the essential arguments on which it had relied on 18 December so as to refuse to exonerate group ferrous scrap, namely that 'the organic ties within the Community between the steel-producing undertakings and other undertakings recovering ferrous scrap are numerous and differ in nature and scope'.

As for the nature of the applicant's arguments, it is true that their main purpose is to criticize as too narrow the criterion of 'local integration' and to substitute for it the criterion of the 'industrial group', much more than to contest as such the principle of imposing the levy on what has been called 'group ferrous scrap'. That attitude is easily to be explained, because the applicant knew that the question of principle had arisen in a number of applications (the ones brought by the German undertakings) on which the Court was going to have to rule. It was attempting, *until that should happen* (and

the terms of its claim of 31 March clearly show this) to obtain an 'exemption' as had been obtained by Breda and Hoogovens.
However, it cannot be said that the application *does not contest* the principle of the imposition of group scrap. On the contrary, the applicant undertaking expands at length on the tightness of the economic, social and industrial links which unite it to Régie Renault and it criticizes, notably in paragraphs XI and XII of its application, the purely legal criterion of ownership accepted by the decision of 18 December 1957 as too narrow and *contrary to the Treaty*. It argues that the criterion of the 'economic group' should be substituted for it. This is exactly the argument in the German applications.
Thus I think that, as regards these latter conclusions seeking the annulment of the decision of 17 April 1958, the Court should rule on the legality of the whole of the definition of 'own resources' exempt from assessment to the equalization levy, as it has been given by the High Authority.
Finally, I think that such legality can be fully assessed both with reference to the basic decisions and with reference to the Treaty, and not only from the angle of misuse of powers, because to my mind the decision of 17 April, just as the decision of 18 December, can be regarded as an individual decision. In addition to the arguments which I have put forward in this direction in my previous opinion, I think that I can rely on the *Nold* judgment of 20 March 1959, which refuses to make a distinction between the undertakings to which a decision is addressed and third parties for the purposes of assessing the individual nature of that decision.

B – Application No 33/58 (Société des Usines de Pontlieue)

The company has brought a special application against the decision of 17 April 1958. That application was registered on the same day as Application No 32/58. The conclusions in this application are substantially the same as the last conclusions of Application No 32/58 (the conclusions at No 5) and everything that I have just said on that subject is precisely applicable to them.

C – Application No 42/58 (Société des Aciers Fins de l'Est)

The conclusions in this application are as follows:

1. *The conclusions directed against 'the implied decision of refusal resulting from the absence of a reply for more than two months to the request for exemption addressed to the High Authority of the ECSC by letter of 23 July 1958'*

This question arises in the same circumstances as the circumstance which I have just examined a few moments ago in respect of Application No 32/58. The only difference is that the claim intended to set the procedure under Article 35 in motion was addressed directly to the High Authority.
I can only refer to my previous explanations, which lead to rejecting the possibility of obtaining a ruling on the dispute by such a means.

2. *The conclusions directed 'in so far as necessary' against the 'decision to postpone adopting a decision' resulting from the letter of 31 July 1958 to the applicant undertaking from the High Authority*

This was a mere acknowledgment of receipt saying that the request was being considered. It was obviously not a decision.

3 and 4. The undertaking contests, by way of *objection of illegality*, first, the 'general' decision constituted by the letter of 18 December 1957, and, secondly, the decision, also described as 'general' constituted by the letter of 17 April 1958.

If the Court agrees with my reasoning, it will also be led to refuse to entertain these

conclusions because the objection of illegality presupposes that the application is admissible, which in my opinion is not the case, and, furthermore, because in any event the objection of illegality cannot be raised against an individual decision, and it seems to me that it must be accepted that each of the decisions of 18 December 1957 and 17 April 1958 is such a decision.

Finally then, a ruling as to the substance of the dispute is called for, first, in respect of the conclusions at No 5 in Application No 32/58 and, secondly, the conclusions of Application No 33/58.

II

As to the substance of the dispute, that is to say, the legality of the definition of 'own resources' as it emerges from the decision of 18 December 1957, and as clarified and detailed by the decision of 17 April 1958, I must say that after having again seriously reflected upon the question in the light of the new applications and of the arguments put forward both in the written and oral procedures, I think that I ought in every way to stick to my method of approach developed on the occasion of the first dispute, including the hesitations to which I referred on a number of points.

I shall do no more than make some additional observations relating more particularly to the cases which are before the Court today or to the way in which certain arguments have been presented.

The *first* concerns the question whether the deliveries of ferrous scrap by Régie Renault to its two subsidiaries are for legal purposes a sale or more particularly are made in execution of a contract of sale. In a very brilliant pleading an attempt has been made to prove to the Court that this is not so, especially because of the absence of 'liberty' which is at the basis of any contract.

I should not wish to become involved in a learned exposition on the theory of contracts and of the contract of sale in particular. Let it suffice to remind the Court (and again do excuse me for doing so) of some elementary principles of French law on this subject, from civil law and from commercial law.

At civil law, a contract of sale exists as soon as there is agreement as to the thing and as to the price (Article 1583 of the Civil Code). Agreement between whom? Between natural or legal persons having civil capacity and capable, therefore, of entering into a contract. There is no point in considering whether in terms of economics one of those persons is in a situation of dependence in relation to the other, or whether the property of the seller is more or less the same as the property of the purchaser, nor any other factor external to the making of the contract itself. It is only in the field of lack of real consent that the question of the validity of the contract could be contested.

From the point of view of form, the sale can be made by official legal document (acte authentique) or by private document (seing privé) (Article 1582). But – and it is here that commercial law intervenes – the Commercial Code provides (Article 109) that 'purchases and sales may be evidenced (there follows a list which includes in particular):

. . .

by an accepted invoice;

by correspondence;

by the books of the parties'.

It is not denied that the deliveries of ferrous scrap by Régie Renault to its two subsidiaries take place in accordance with commercial usage, that an invoice is made out, that Régie Renault is credited with the amount of the value of the goods delivered, which is an individual amount, and that the operations are entered in separate accounts. Thus there is indeed an agreement as to the thing and as to the price. There is a transfer of property and not merely of possession. As in the German cases, and although the principles of civil law are different in Germany and in France, I think that we indeed have a sale here.

It seems that the most that one could argue is that what is involved is work under contract farmed out by Régie Renault to its subsidiaries. Renault thus remains the owner of the goods throughout the process of manufacture. But this is not argued, and

for good reason, because, as I have had occasion to point out in my previous opinion, Decision No 2/57 (Article 10) expressly assimilates scrap processed into pig iron or steel to bought ferrous scrap and thus renders it subject to the equalization levy as is the latter.

Second observation. This concerns what could be called 'the degree of integration' between Régie Renault and its subsidiaries. On the financial plane, this integration is clearly almost complete. But on the industrial plane, it seems, according to the most recent information supplied by the parties – with a diligence and a precision which I can only commend – that it is appreciably less far-reaching than had at first been thought.

As regards SAFE (Hagondange), it appears that for the years 1955 to 1958 127 765 metric tons of ferrous scrap were obtained from 'internal recovery' at the factory, that is to say, were constituted by the factory's own arisings, 5 365 metric tons were obtained from Régie Renault and 21 825 metric tons were bought in the trade.

As regards Saint-Michel-de-Maurienne (SNUPAT), there was an inverse proportion. During the same period it received 74 101 metric tons of allied ferrous scrap and ordinary ferrous scrap from Renault, 777 metric tons from a subsidiary of the latter, and 3 118 metric tons from the trade. Thus it appears that Renault is by far the main supplier of scrap to the factories of Pontlieue.

Taking now the deliveries of steel made by each of the two subsidiaries, the figures are as follows:

SAFE: 127 290 metric tons delivered to the Renault group and 84 170 elsewhere.

SNUPAT: 63 388 metric tons delivered to Renault as against 16 470 elsewhere. The proportion of products sold elsewhere is thus far from negligible, even for SNUPAT

The memorandum submitted on this subject by the applicants points out that the deliveries of steel to Renault from one or the other of the two factories *were never below* the deliveries of ferrous scrap made by Renault to them. It is tempting to say that it is indeed the least that a parent company can require of subsidiaries integrated thus far, that it gets back in steel at least an amount corresponding to its deliveries of scrap!

Third observation, in relation to prices. In my previous opinion, I said that the delivery prices of scrap within a group should 'at least approximately' follow the prices on the market, so that the latter are of interest. And I observed that such did indeed seem to be the position in the disputes then involved. In the present cases a comparison by way of two curves (one of which, moreover, is full of angles and the other being largely a straight line) appears to indicate that it was in effect only very approximately that delivery prices followed trade prices. It should be noted, however, that the former are not completely divorced from the latter. It will be seen that they go up or down when the market trend in the same direction has clearly set in. There is, all the same, a desire to follow such trends, although at a certain distance.

What does all this prove? Quite simply that in the present cases there has been a certain relaxation in the application of the rules of accounting orthodoxy. In fact, the main purpose served by the financial autonomy given to an 'establishment' resides in the usefulness provided by that autonomy so as to obtain, in a given sector of manufacture, an accurate view of the cost price of that manufacture, including the overheads or the *pro rata* amount thereof to be attributed to the said manufacture. That exercise is carried out daily in the establishments dependent on the same legal person, such as works belonging to the State. In order for the result to be achieved and the accounts to be accurate, it is obviously necessary for debits and credits to be entered at the real price. *A fortiori* must it be thus where, as here, it is the sale price that is involved, not just the book price. So long as there is a genuine market in ferrous scrap, open enough for prices to find their own level, the said prices cannot be ignored by the groups with regard to their own transactions.

Thus it finally emerges that the difficulties

raised by the present dispute are indeed the same as those resulting from the examination of the German cases. I do not want to go over the ground again, for I believe that I have examined those difficulties as conscientiously as possible in my previous opinion.

I would only add that the examination of the present dispute, which has given me the occasion to get nearer to factual reality by presenting me with other cases of integration, confirms my opinion that the criterion of local integration adopted by the High Authority is very probably the only criterion available once an exemption from the levy for group scrap is accepted, after having admitted the principle of the said levy.

In effect the criterion of local integration is simple and objective. Of course there can be borderline cases (length of a mining railway, etc.). But it will always, it seems, be relatively easy to determine the borderline, because there is a manifest difference between the circuit to be found within a locally integrated industrial group and the purely 'economic' circuit which can exist between establishments having a different function and which only have in common the fact of belonging, in financial terms, to the same group. For example there is nothing in common between the cases of local integration achieved by Hoogovens or by Breda and the case of Saint-Michel-de-Maurienne or of Hagondange. Renault sends the latter some of their ferrous scrap by rail at normal French railway rates. It can well be imagined that, for some reason or other, such as the cost of carriage, it may be worth while for the works at Pontlieue to purchase its scrap from the Lyons market where, as we have learned from recent disputes, supplies are plentiful, rather than have it come from Billancourt. What would then have changed as regards the nature of the operation of the works? This shows the arbitrariness of a distinction between scrap from own resources and bought scrap based on any criterion other than local integration tied in with the technical concept of own *arisings*.

In reality the true question is whether there are reasons which can legally justify the exemption itself. I am inclined to think so but, when all is said and done, it is on this point in particular that I still have some doubts.

It is with the hindsight of the above observations that I am of the opinion:

1. *As to Application No 32/58:*

   that the conclusions should be rejected as inadmissible, except for those directed against the decision of the High Authority of 17 April 1958;

   that the latter conclusions should be rejected as unfounded.

2. *As to Application No 33/58:*

   that it should be dismissed as unfounded.

3. *As to Application No 42/58:*

   that it should be dismissed as inadmissible; and

   that the costs should be borne by the applicant undertakings in each case.