7. *Misuse of powers — Substitution of objective*
(See judgment in Case 2/57 paragraph 3)

8. *Ferrous scrap — Equalization — Uniform rate for the sake of administrative simplicity — Misuse of powers*
(See judgment in Case 2/57 paragraph 4)

In Case 15/57

COMPAGNIE DES HAUTS FOURNEAUX DE CHASSE, represented by Pierre Cholat, President-Director General, assisted by Roger Levilion, Advocate at the Cour de Paris with an address for service in Luxembourg at the Chambers of Bernard Delvaux, Advocate, 11 avenue Pescatore,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Gérard Olivier, acting as Agent, assisted by Professor André de Laubadère of the Faculté de Droit, Paris, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for the annulment of the decision of the High Authority of 12 December 1956 declaring that the Compagnie des Hauts Fourneaux de Chasse, Chasse-sur-Rhône, Isère, must pay to the Caisse de Péréquation des Ferrailles Importées (the Imported Ferrous Scrap Equalization Fund) the sum due on 31 August 1956 in fulfilment of the provisions on the equalization of imported ferrous scrap,

THE COURT

composed of: M. Pilotti, President, A. van Kleffens and L. Delvaux, Presidents of Chambers, P.J. S. Serrarens, O. Riese, J. Rueff, Ch. L. Hammes, Judges,

Advocate-General: M. Lagrange,
Registrar: A. Van Houtte,

gives the following

JUDGMENT

Facts

1. Procedure

The individual decision at issue is dated 12 December 1956 and was made enforceable by the imposition thereon of the competent authority's order for enforcement dated 4 March 1954, communicated to the applicant by certified copy in a letter from the

High Authority dated 30 March 1957. A certified copy of the decision and of the communication thereof have been placed on the file. It is to be noted that the date of the signature on the order for enforcement must be regarded as a clerical error so that '1954' must be read as '1957'. The applicant drew attention to this mistake without comment.

The decision at issue, which is dated 30 March 1957, was communicated to the applicant on 12 April 1957, as is clear from a declaration by the postmistress at Chasse-sur-Rhône dated 25 April 1957 and annexed to the application which, being dated 6 May 1957, was lodged within the period prescribed in the third paragraph of Article 33 of the Treaty and in Articles 84 and 85 of the Rules of Procedure of the Court of Justice. The form of the application calls for no comment.

The documents appointing the applicant's representative are in order and his signature has been verified as genuine.

The applicant's lawyer and the Agent and lawyer of the defendant have been properly appointed.

The statement of defence, the reply and the rejoinder were lodged within the periods prescribed, and all procedural requirements have been complied with.

By order of the President of the Court the application was assigned to the First Chamber for the purposes of any preparatory inquiry. The President of the Court designated Mr van Kleffens as Judge-Rapporteur and, in accordance with the last paragraph of Article 9 of the Rules of Procedure of the Court, designated Mr Lagrange as Advocate-General.

In the light of the preliminary report of the Judge-Rapporteur, the First Chamber decided to conduct certain measures of inquiry and to put certain questions to the parties; the answers to these questions and the final written conclusions have been placed on the file.

At the beginning of the oral procedure the Court decided to deal jointly with the present case and Case 2/57.

The parties submitted their oral observations at the public hearing on 22 February 1958.

At the hearing on 18 March 1958 the Advocate-General delivered his opinion, which was that the application be dismissed and that the Compagnie des Hauts Fourneaux de Chasse be ordered to pay the costs.

2. Conclusions of the parties

In its application, the *applicant* claims on grounds and submissions set out therein 'which it formally reserves the right to complete, supplement or even amend by subsequent pleadings, that the individual decision, dated 12 December 1956, made the subject of the order of enforcement by act executed by Mr Donnedieu de Vabres in Paris on 4 March 1954 and communicated to the applicant society by registered letter with acknowledgement of receipt, which was received by it on 12 April 1957, be annulled under Article 33 of the Treaty and that the High Authority, whose offices are at 2 Place de Metz, Luxembourg, be ordered to pay the costs'.

In its reply the applicant claims that the Court should:

'Declare the application lodged by the company against the decision of 12 December 1956 to be admissible and well-founded;
In consequence declare it void as regards the obligation to pay the contributions claimed both for the period 1 April 1954 to 31 December 1955 and for the period 1 January 1956 to 31 August 1956;
With all legal consequences, including those relating to the costs of the proceedings;
Without prejudice to further submissions and arguments.'

The application states that it is based on Articles 2, 3, 4, 5, 14, 15, 31, 33, 53, 65, 80 and 85 of the Treaty, the Protocol on the Statute of the Court of Justice, in particular Article 85 thereof, and the Convention on the Transitional Provisions, in particular Article 29 thereof.

The *defendant* contends that the Court should:

'Dismiss the application brought against the decision of the High Authority of 12 December 1956 making an order for enforcement for the recovery of the equalization

levy owed by the Compagnie des Hauts Fourneaux de Chasse, inasmuch as the applicant is debarred from submitting grounds of complaint against General Decisions No 22/54 and 14/55 which it did not submit within the prescribed period or, at least, inasmuch as the applicant adduces no ground of complaint calculated to demonstrate that Decisions No 22/54 and 14/55 are vitiated by misuse of powers affecting it;
With all legal consequences, including those relating to the costs of the proceedings.'

In its rejoinder the defendant maintains its conclusions.

3. Summary of the facts

The establishment of the common market in steel was fixed for 10 April 1953, two months after the establishment of the common market in coal on 10 February 1953. But, by decision of 6 March 1953, the Council of Ministers, on the proposal of the High Authority, postponed the date from 10 April 1953 to 1 May 1953 JO No 4 of 13. 3.1953). One of the grounds for this decision was the uncertainty prevailing on the market in ferrous scrap.
According to the High Authority, there were then two basic features of the situation on the market in ferrous scrap. In the first place, the very considerable diffferences in price, which had until recently divided the countries of the Community, had been substantially reduced; secondly, there continued to be an appreciable difference between the prices for ferrous scrap collected on the Common Market and those for imported scrap. There was a possibility that this situation would result in the transfer of purchases hitherto made abroad to Community ferrous scrap and that this would cause a substantial increase in prices. To meet this situation the High Authority considered that an equalization arrangement, together with the fixing of maximum prices, might bring the price of imported scrap down to the level of that obtaining on the Common Market and avoid upsetting the patterns of supply (General Report of the High Authority, 10.8.1952 – 12.4.1953, No 44).
During a transitional period, from 9 February to 15 March 1953, the High Authority carried out a distribution of ferrous scrap pursuant to Article 2 of the Convention and to Article 59 (3) of the Treaty; the ferrous scrap resources of each Member State were assigned to it with the exception of the exportation to Italy of 5000 metric tons of German scrap and 20 000 metric tons of French scrap (Decision No 2/53 of 17.2.1953, JO No 1 of 10.2.1953).
When this scrap was put into free circulation within the Community, the High Authority, acting under Article 61 of the Treaty and Annex II thereto, fixed maximum prices for specified basic zones. These prices were reduced in due course in order to avoid speculative hoarding and were fixed for each zone in order to encourage recovery (Decision No 28/53 of 13.3.1953, JO No 5 of 15.3.1953). This decision was amended by Decision No 44/53 of 23 December 1953 JO No 14 of 30.12.1953) and revoked by Decision No 21/54 of 26 March 1954 JO No 4 of 30.3.1954).
On 19 May 1953, pursuant to Article 65 and Article 53 (a) of the Treaty, the High Authority adopted Decision No 33/53 JO No 8 of 9 June 1953) authorizing agreements between pig-iron or steel producers belonging to the Community for the importation of ferrous scrap iron from third countries and the establishment of a Caisse de Péréquation des Ferrailles Importées (Imported Ferrous Scrap Equalization Fund). This decision was effective until 31 December 1953 but by Decision No 43/53 of 11 December 1953 JO No 3 of 15.12.1953) it was extended until 31 March 1954.
On the day on which Decision No 33/53 was adopted the High Authority addressed letters to the Schrottvermittlung GmbH (Düsseldorf)) and to the Consorzio Nazionale Approvvigionamenti Materie Prime Siderurgiche, S.p.A. (Milan), in which they were informed that their activities were incompatible with Article 65 of the Treaty and that they must be treated as prohibited organizations with effect from 14 June 1953.
At the beginning of 1954, it was clear that the equalization arrangement set up between undertakings producing pig-iron and steel and authorized by Decision No 33/53

was inadequate and could not be replaced on a voluntary basis under conditions which were satisfactory. Accordingly, by Decision No 22/54 of 26 March 1954 JO No 4 of 30.3.1954), the High Authority made, as provided in subparagraph (b) of the first paragraph of Article 53 of the Treaty, a financial arrangement providing for the equalization of ferrous scrap imported from third countries. The operation of this arrangement was entrusted to the Office Commun des Consommateurs de Ferraille (the Joint Bureau of Ferrous Scrap Consumers) and the Caisse de Péréquation des Ferrailles Importées referred to above. All undertakings which were consumers of scrap were obliged to pay the appropriate contributions. The Fund fixes the amount of the contributions; in default of payment the High Authority, at the request of the Fund, takes an enforceable decision. Decision No 22/54 was valid until 31 March 1955 and, by Decision No 2/55 of 26 January 1955 JO No 3 of 31.1.1955) it was extended until 30 June 1955.

By Decision No 14/55 of 26 March 1955 JO No 8 of 30.3.1955), adopted pursuant to subparagraph (b) of the first paragraph of Article 53, Article 65 (2) and Article 80 of the Treaty and effective until 31 March 1956, the existing arrangement was supplemented so as to take account of the supply position in the different regions of the Community on the basis of comprehensive estimates, adjusted from time to time, relating to demand and supply. With this end in view, the benefit of equalization could be made subject to certain conditions, one of them being that imported ferrous scrap must be used in certain regions of the Community. In order to guarantee regular supplies for the market the Joint Bureau was empowered to purchase on joint account from third countries the quantities intended to be made available subsequently to consumers.

In Decision No 14/55 the High Authority had already provided for measures to reduce the consumption of ferrous scrap by increased use of pig-iron. By Decision No 26/55 of 20 July 1955 (JO No 18 of 26.7.1955), which was effective until 31 March 1956, the High Authority fixed the detailed rules for implementation of these measures: with effect from 1 April 1955, the grant from the funds of the Equalization Fund to undertakings which were consumers of scrap of a bonus for scrap saved through increased use of pig-iron in open hearth furnaces, liquid basic Bessemer steel being treated as pig-iron.

By Decision No 3/56 of 15 February 1956 (JO No 4 of 22 February 1956), the bonus referred to in Decision No 26/55 was allotted also for ferrous scrap saved through increased use of liquid basic Bessemer steel in the electric furnaces.

Decisions Nos 14/55, 26/55 and 3/56 were extended until 31 January 1957 by Decisions Nos 10/56 of 7 March 1956, 24/56 of 22 June 1956 and 31/56 of 10 October 1956 (JO No 7 of 15.3.1956, No 15 of 27.6.1956 and No 23 of 18.10.1956).

The Compagnie des Hauts Fourneaux de Chasse operates blast furnaces situated in France in the neighbourhood of Lyon and Saint-Etienne. As a producer exclusively of haematite pig-iron and not of steel, it uses scrap only in order to enrich the charge of the blast furnace. It does not possess any ferrous scrap which is bought or produced by itself but its scrap needs are supplied entirely from purchases of sheet scrap and turnings from regular and long-standing suppliers in the Lyon region.

Since the equalization machinery was first introduced the applicant has refused to join the Fund and to pay the fees due. This continued to be its attitude after the promulgation of the decisions making the equalization of imported scrap compulsory (Decisions Nos 22/54 and 14/55). For this reason, in implementation of those decisions, the High Authority adopted the individual decision concerning the applicant on 2 May 1956 declaring that it was required to pay to the Fund the sum of 45 133 691 due for the period 1 April 1954 to 31 December 1955 and the individual decision of 12 December 1956 for payment of the sum of FF 84 582 316 due for the period 1 January to 31 August 1956. As these decisions were enforceable, the French Government, at the request of the High Authority, pursuant to Article 92 of the Treaty, issued an order dated 4 March 1957 for their enforcement. Since that date the applicant has made certain payments without, however, paying all

the amounts due to the Fund.
On 6 May 1956 the applicant brought the present action against the individual decision of 12 December 1956 the contents of which were as follows:

'The High Authority,
Having regard to Articles 53, 80 and 92 of the Treaty of 12 April 1951 establishing the European Coal and Steel Community (ratified in France under Law No 52/387 of 10.4.1952 (Journal Officiel de la République Française 1952, p. 3795));
Having regard to Decisions Nos 22/54 of 26 March 1954 (JO No 4 of 30.3.1954, p. 286) and 14/55 of 26 March 1955 (JO No 8 of 30.3.1955, p. 685) for the equalization of ferrous scrap imported from third countries, especially Articles 3 and 4 of the said decisions;
Whereas by enforceable decision of 2 May 1956, communicated on 9 July 1956, the High Authority declared that the Société des Hauts Fourneaux de Chasse, Chasse-sur-Rhône, which is an undertaking in the steel industry within the meaning of Article 80 of the Treaty, was required to pay to the Imported Ferrous Scrap Equalization Fund, Brussels, the sum of FF 45 133 691 for the period 1 April 1954 to 31 December 1955;
Whereas after adjustment of this figure as a result of a final check carried out after 2 May 1956, the said undertaking owes, in respect of the same period, the additional capital sum of FF 482 258 plus interest on arrears amounting to FF 144 158 for the period 1 April 1954 to 31 March 1955;
Whereas, moreover, the Compagnie des Hauts Fourneaux de Chasse has not, since 1 January 1956, paid the amount of the contributions which it owed to the Caisse de Péréquation des Ferrailles Importees under Decision No 14/55, referred to above, and the sum due in this respect amounts, according to a provisional statement of account, to FF 83 955 900 for the period 1 January 1956 to 31 August 1956;
Whereas the total of the sums due, in accordance with the foregoing, amounts to FF 84 582 316;

DECIDES:

Article 1

The Compagnie des Hauts Fourneaux de Chasse, Chasse-sur-Rhône (Isère), shall pay to the Caisse de Péréquation des Ferrailles Importées, 36 Rue Ravenstein, Brussels, the sum of
FF 84 582 316
(eighty-four million, five hundred and eighty-two thousand three hundred and sixteen).

Article 2

This decision may be the subject of enforcement pursuant to the said Article 92 of the Treaty.
This decision was considered and adopted by the High Authority at its meeting on 12 December 1956.

For the High Authority
(signed) René Mayer
President

4. Summary of the submissions and arguments of the parties

A — *Admissibility of the application*

The application is, in essence, brought against the detailed rules of the equalization scheme introduced by general Decisions Nos 22/54 and 14/55 the implementation of which led to the individual decision in question. Since that decision is in itself a straightforward case of application of the general basic decisions, the real subject of the application is, indirectly, therefore, the validity of those decisions. In these circumstances, the *defendant* considers that the applicant cannot support its application with grounds of complaint which were not submitted within the period allowed for proceedings to be brought against the general basic decisions. For this reason it contends that the application is inadmissible.
The defendant argues alternatively that, in so far as the application contests the general basic decisions, the applicant can rely only on the ground of misuse of powers affecting it. None of the grounds relied upon can be described as misuse of powers but, at most, only as infringement of the Treaty; those submissions are, accordingly, inadmissible.
Again in the alternative, the defendant considers the actual grounds of complaint that the Treaty has been infringed.

With regard to the right of undertakings to contend that an individual implementing decision is unlawful in order to contest the general basic decision, the defendant accepts this in the case of Article 36 of the Treaty. However, since that provision is an exceptional one it concludes, using the argument in reverse, that the right therein provided for must be withheld in other cases, such as that in the application before the Court.

The defendant goes into the question whether an undertaking can support an application against an individual decision by submitting as a ground of complaint a misuse of powers affecting it with which, in its view, the basic decision is vitiated but where that decision was not contested within the prescribed period. The defendant points out that no formal answer to this question can be found in the Treaty. It goes on to consider the case-law of the French Conseil d'État and tries to use it to identify the intention of the authors of the Treaty; it accordingly reaches the conclusion that the absence of any reference in the Treaty is to be taken as answering the question in the negative, that is to say, once the period for bringing proceedings against a general decision has been allowed to expire, an undertaking can no longer rely on misuse of powers affecting it as a ground of complaint against that decision. The defendant maintains this conclusion in its rejoinder. It adds that while it is true that, in its decisions, the Court has, in the case of an action against an individual decision, held all the grounds provided for under Article 33 of the Treaty to be admissible, that does not mean that this answers the question under consideration since this question did not arise in connexion with any of the cases which have been before the Court.

In its rejoinder, the defendant stresses the validity of the argument in reverse which it applied to the third paragraph of Article 36 of the Treaty in order to prove that that provision is an exceptional one. To this end, it draws particular attention to the Court's unlimited jurisdiction and the quasi-penal character of the fines and periodic penalty payments as evidence of the exceptional nature of Article 36.

Furthermore, the defendant rejects the applicant's argument that the latter's view is embodied in the Treaties establishing the European Economic Community and the European Atomic Energy Community. The fact that these new Treaties expressly provide that undertakings shall have the right to complain that a basic decision is illegal is no evidence at all that the same right is by implication contained in the Treaty establishing the European Coal and Steel Community.

In its reply the *applicant* maintains that its application is admissible for the following reasons. First of all, it contends that an undertaking cannot be debarred from complaining of misuse of powers if it has not brought proceedings against the general basic decision. In this connexion the applicant points out that there is no restriction in Article 33 of the Treaty providing for an applicant to be so debarred. In its view there is nothing in the case-law of the French Conseil d'État which provides a conclusive answer to this question. It adds that the principle put forward by the defendant would be iniquitous in that undertakings would be obliged to bring proceedings immediately against a general decision before being able to find out its precise effect in their particular case.

Secondly, the applicant objects to the fact that virtually all individual decisions would be immune from challenge as a result of the interpretation adopted by the defendant. On the other hand, the applicant points out that Article 33 of the Treaty contains nothing to justify the conclusion that the right of undertakings to rely on the four grounds against an individual decision ceases to exist when those grounds are applied to a general decision which forms the basis of the said individual decision. As for the argument in reverse which the defendant bases on Article 36 of the Treaty the applicant considers that it is untenable. The reason for that provision is the wish of the authors of the Treaty to remove any doubt about the special case for which it provides; furthermore, Article 36 provides for unlimited jurisdiction in the appeals to which it refers and this is not an essential condition for proceedings instituted under Article 33. The Treaty was not intended to prevent any review, even indirect, of the propriety of a

general decision in a case of this kind but the right of undertakings to cause a general decision to be declared void *erga omnes*; the admissibility of the present action is fully consistent with this concern.

B — *Substance*

The applicant seeks annulment of the individual decision of 12 December 1956 on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty and misuse of powers, but the first two grounds were not the subject of argument in either the application originating the proceedings or in the reply.

1. Infringement of the Treaty

(a) *Infringement of Article 29 of the Convention*

According to the applicant the equalization machinery contravenes Article 29 of the Convention in that the High Authority did not forestall the consequences against which the Convention provides and adopted neither the measures indicated in the Treaty nor those provided in Article 29 to prevent shifts in production levels from creating difficulties for undertakings.
In its reply the applicant develops its argument by claiming that the High Authority itself recognizes that prior to Decision No 2/57 the result of the scheme was to transfer production from pig-iron to steel and, moreover, to make it impossible for the pig-iron industry to stand the competition. In these circumstances the High Authority could not enact measures under Article 53 of the Treaty without at the same time adopting safeguards pursuant to Article 29 (1) of the Convention. This provision, which is of general application and, as is clear from Article 1 of the Convention, is intended to avoid the difficulties attributable to the establishment of the Common Market, applies *a fortiori* to those which may be attributed to measures issuing from the High Authority itself.
The *defendant* contends that this ground of complaint cannot constitute a misuse of powers arising from disregard of the objective of Article 53 of the Treaty through non-compliance with the objectives of Article 29 of the Convention. It further states that, in the event of the High Authority's having neglected to adopt the safeguards which it was under a duty to prescribe, the applicant ought to have raised this omission under Article 53 of the Treaty. Article 53 is quite distinct from Article 29 and a general decision adopted under Article 53 in normal application of the Treaty has nothing to do with the special safeguards referred to in Article 29 and provided in order to offset certain results of the establishment of the Common Market.

In its rejoinder the defendant states that this ground of complaint constitutes a submission of infringement of the Treaty and not of misuse of powers.
Furthermore it emphasizes that the applicant's reference to Article 1 of the Convention is insufficient evidence that Article 29 is applicable to any measures adopted pursuant to Article 53 of the Treaty. The defendant continues to take the view that Article 29 must be distinguished from Article 53 and that, moreover, Article 29 refers to special safeguards and not to safeguards in special or individual cases.

(b) *Interference with the normal conditions of competition*

The *applicant* considers that the equalization scheme is an infringement of the basic articles of the Treaty laying down the principles of competition the normal operation of which the scheme has distorted by giving preferential treatment to the consumption of scrap as against that of haematite pig-iron.
In its reply the applicant states that what is at issue in this case in the infringement of the second paragraph of Article 2, Article 3 (b) and (c), Article 4 (b) and (c) and the fifth subparagraph of Article 5 of the Treaty. The infringement arises from the fact that the equalization scheme encourages increased consumption of scrap at the cost of pig-iron through the operation of a charge which makes the cost price of pig-iron prohibitive.
The *defendant* admits that, by bringing the price of imported scrap down to the level of the price of domestic scrap, equalization

may encourage undertakings to develop or not to impose any restraint on their scrap consumption. However, this consequence of equalization does not justify condemning the introduction of the scheme; in the absence of equalization, the applicant's position would have been made much worse as the result of the inevitable increase in the prices of the scrap which it uses. Moreover, the applicant offers no evidence indicating the extent to which it experienced difficulty in disposing of its output of pig-iron. Nevertheless the defendant adds that the objective of Decisions Nos 26/55 and 3/56 and especially of Decision No 2/57, which was impugned by the applicant in another action, is precisely to make it possible for this consequence of equalization to be corrected by reducing the consumption of scrap.
In its rejoinder the defendant rejects the applicant's argument that when the High Authority adopts an equalization system as a means of ensuring a regular supply of scrap at a reasonable price, this constitutes interference with the principle of free competition contrary to Article 5 of the Treaty.

(c) *Disregard of the general objectives of the Treaty*

In its application, the *applicant* claims that Decisions Nos 22/54 and 14/55 do not accord with the general objectives of the Treaty in that they do not take into account the particular circumstances of the applicant. As the applicant explains in the reply, Article 3 of the Treaty requires the institutions of the Community to act in the common interest, which is to say that they must act in the interests of all those concerned; they are not empowered, under the pretext of pursuing the general interest, to adopt measures which give preference to the interests of certain of those affected and sacrifice the interests of others. In support of this view the applicant refers to Article 59 (4) of the Treaty and to Annex II thereto under which the High Authority is granted certain exceptional powers in cases expressly provided for. Even in these limited cases the High Authority is required to comply with certain requirements in order that the rights of those concerned may be safeguarded; the High Authority is bound to do the same when acting under Article 53.
The *defendant* states that there is no dispute that it took a general decision in the common interest (Article 3) with a view to achieving the objective of Article 3 (a) namely, a regular supply of scrap to the Common Market.
The *defendant* denies that, under the provisions of Article 3 of the Treaty, the institutions of the Community must act in the 'common' interest in the sense which the applicant wishes to give this adjective, namely that of the mere sum of all the individual interests involved; the High Authority is a public body which has the task of achieving the best possible balance between the various individual interests involved while acting in the general or common interest, the two concepts being inseparable.

(d) *Prohibited discrimination giving rise to an indirect subsidy*

In its application the *applicant* claims that it is the victim of discrimination as a result of the fact that the equalization scheme does not provide any special rules for the case of the applicant undertaking although its situation is not comparable with that of the steel industry. It states that the High Authority neglected to take account of: (i) the fact that local supply conditions and the applicant's geographical position place purchases of imported scrap out of its reach; (ii) the fact that the applicant's works consume only light scrap whereas equalization imposes a uniform rate on every category of scrap; and (iii), the fact that the equalization scheme introduces an indirect subsidy.
The applicant develops this argument in its reply stating:

As to (i): It has always obtained the scrap which it requires in the Lyon region without having to rely on imported scrap. It rejects in particular the defendant's argument that the absence of equalization would have resulted in the alignment of the prices of scrap in the Lyon region with the higher prices of imported scrap. The applicant regards this statement as a hypothetical one which is irrelevant to the proceedings.

As to (ii): There is no substance in the defendant's contention that it was necessary to ensure that the importation of light scrap did not constitute a heavier burden on equalization than the importation of heavy scrap. The applicant endeavours to show that this argument is paradoxical and that in any case it is based on a mere possibility. The price of light scrap has in fact always been lower than that of heavy scrap. So long as this situation obtains, a uniform rate bears relatively more heavily on light scrap than on heavy scrap.

As to (iii): In so far as the effect of equalization is to favour steel mills at the cost of pig-iron producers the scheme amounts to a subsidy for the former. The applicant also points out that first the High Authority and then the Court of Justice imposed a prohibition on the creation of discriminatory measures, defined the nature of the prohibited discrimination and, finally, indicated that the existence of these discriminatory measures constituted an indirect subsidy.

The *defendant* denies that the basic decisions involve discrimination. The different results to which, when account is taken of the particular circumstances of undertakings, the working of the arrangement introduced can lead are caused by the application of general rules to concrete situations; the rules merely express principles which have been objectively adapted to the furtherance of a particular aim, namely the regular supply of scrap at a reasonable price to the whole of the Common Market.

The actual position in which the applicant is placed may be different from that of other undertakings but it is still a comparable one.

As to (i): In the absence of equalization, the price of domestic scrap would inevitably tend to fall into line with that of imported scrap, which is much higher. The defendant produces figures as evidence that the equalization contribution was clearly less than the difference between the price of imported scrap and that of domestic scrap: this difference amounted to US $ 17.44 in July 1955 and to US $ 29.91 in July 1956, whereas equalization amounted to US $ 7.50 in July 1955 and to US $ 10.50 in July 1956. As for the remoteness of the Lyon district the defendant agrees that at a time of low economic activity the district may have a surplus of scrap and that competing undertakings in the Common Market can get their supplies there without difficulty; however, this gives no guarantee to the applicant. On the other hand, in a situation in which, in their own interests, competing undertakings are induced to purchase scrap in the Lyon district, it is obvious that the interplay of supply and demand would necessarily produce an increase in prices in that district and an alignment of those prices with those of imported scrap.

As to (ii): Every category of scrap is taken into account in the calculation of the contributions imposed by way of equalization in order to avoid the dearest scrap being subject to the highest rate of contribution. This method is necessary because, the equalization charge being a variable one, there could be no indication *a priori* which category would incur the heaviest charge. It is impossible to differentiate between the various categories of scrap because substitution is always possible in the various manufacturing processes. For these reasons the defendant draws the conclusion that the same considerations apply to consumers of bought scrap of all kinds, and this justifies the uniform equalization rate. On the subject of this rate, the defendant emphasizes that the price of light scrap (domestic or imported) must not be compared with that of heavy scrap (domestic or imported) but, at the most, the price of domestic scrap (light or heavy) may be compared with that of imported scrap (light or heavy).

As to (iii): In so far as the applicant's individual situation differs from that of other scrap consumers, the High Authority endeavoured to take this into account by supplementing the equalization machinery by Decisions Nos 26/55 and 3/56 to encourage economies in scrap. The applicant supplies no evidence that these measures had no effect. In its rejoinder, the defendant denies that there is any discrimination. It imposed the equalization contributions on all who benefited from the scheme, including the applicant; if the defendant had exempted

the applicant from equalization, it would have been guilty of discriminating in the latter's favour. The defendant does not deny that discrimination may amount to an indirect subsidy but that has nothing to do with Article 4 (c) of the Treaty, the wording of which refers only to action by the States. It adds that it is incorrect to claim that the Court has laid down a general principle that equalization under which charges are uniform constitutes discrimination.

2. Misuse of powers

In its application the *applicant* claims that the misuse of powers arises from the fact that the equalization scheme does not accord with the general objectives of the Treaty, distorts normal competition and tends to encourage the consumption of ferrous scrap to the detriment of that of pig-iron. Ferrous scrap equalization results in the applicant's having to bear exorbitant charges without any corresponding advantage and has not prevented a diversion of production and labour. Protective or transitional measures ought to have been adopted in order to make allowance for the applicant undertaking's particular situation, which cannot be compared with that of the steel mills. In view of this and of the local conditions under which it is supplied, the applicant is the victim of discrimination amounting to an indirect subsidy for the benefit of the steel industry.

For evidence of the alleged misuse of powers the applicant refers, in its reply, to the statements made in its reply in Case 2/57. In order to establish whether a general decision victimizes a category of citizens of the Community, consideration must be given to the question whether the effects of the basic decisions do not reveal a serious lack of foresight or care which jeopardizes the position of industries exclusively producing pig-iron and is tantamount to disregard of the declared objective of the decision, namely the regular supply of ferrous scrap to the market at a reasonable price. Under Article 3 of the Treaty the institutions of the Community are required to act in the 'common' interest, that is to say, they must act in the interests of all and not in furtherance of the 'general' interest, which means giving preference to the interests of some and sacrificing the interests of others, which is contrary to the essential objective of its task. The applicant concludes from this that the High Authority acted under Article 53 in order to avoid making a declaration that there was a shortage and also in order not to be bound by the restrictions of Article 59 and Annex II. In disregarding these restrictions the High Authority demonstrated its intention to avoid them and in this way it used its powers for a purpose other than that for which they were conferred upon it. In support of its argument the applicant refers to the case-law of national courts and tribunals, especially in France. In addition to these arguments the applicant denies that there is any instrument conferring on the High Authority the right to disregard existing situations in promulgating a general decision.

In its reply in Case 2/57, the applicant emphasized, moreover, that the evidence which it produced proved that the author of the contested act did not really pursue the lawful aim but another one which was not lawful. As regards the first complaint raised in Case 2/57, namely, that the basic decisions do not accord with the general objectives of the Treaty, which constitutes evidence of a misuse of powers, the applicant first of all recalled that the legitimate aim which the High Authority set itself in pursuance of Article 3 is common ground and not the subject of dispute: this aim was the establishment of equilibrium in the pig-iron/steel market not only by maintaining but also by increasing the production of pig-iron. It is beyond dispute that equalization encouraged steel producers to consume more scrap, to the detriment of pig-iron, as a result of the reduction in the price of scrap, which made scrap cheaper than pig-iron, and because the price of pig-iron was substantially increased by the equalization contributions.

The applicant also pointed out that the statement of defence emphasizes that the objective of the equalization machinery was the regular supply of ferrous scrap to the Common Market. This objective differs from the aims described in the High Authority's memorandum of 6 July 1955 defining the general objectives, namely, the

need to restore the balance between pig-iron production and steel production by increasing the production of pig-iron. The substitution in this manner of the legal objective by a new one is evidence of a misuse of powers. Further evidence is supplied by the discrimination already mentioned and by the contributions which, owing to the absence of any protective measure, leave Common Market pig-iron defenceless against imported pig-iron, regardless of the consequences which Article 29 of the Convention states must be avoided. The measures provided for by Decisions Nos 26/55 and 3/56, which are designed to encourage undertakings to economize in the use of ferrous scrap, cannot render those decisions lawful. They involve limited, theoretical economies which are wholly dependent on the attitude of steel consumers; they are supplementary, indirect measures which are no substitute for direct and effective measures for the maintenance, if not the growth, of pig-iron production in accordance with the objective laid down in the High Authority's memorandum.

As for the second complaint, which it put forward in Case 2/57, to the effect that, for reasons which have nothing to do with the aim of equalization, the basic decisions treat heavy and light scrap on the same basis by making them subject to a uniform rate, the applicant emphasizes that the High Authority, in order to explain its failure to provide for different rates according to types of scrap, with the result that one category of persons concerned was benefited at the expense of another, the High Authority gives a reason which is evidence of lack of foresight, namely, the administrative complications to which different rates would give rise. It was, therefore, to avoid difficulties that the High Authority preferred the system of a uniform rate.

While it is true that the High Authority tried to soften the effect of its admission by stating that the importation of light scrap might in future make heavier demands on equalization than the importation of other categories, this is only a hypothetical argument so that the existence of a misuse of powers is not refuted.

The *defendant* claims that the High Authority adopted general decisions in the common interest in order to ensure a regular supply of ferrous scrap to the whole of the Common Market. The applicant does not contend that, instead of pursuing an objective of general interest, the High Authority in fact pursued an objective relating particularly to the applicant but that the individual result of the general decisions did not, as far as the applicant was concerned, correspond to the aim which the High Authority set itself. It is quite possible that the result of the measures adopted may have run contrary to the applicant's interests but that cannot constitute misuse of powers.

In its rejoinder, the defendant refers to what it stated in its rejoinder in Case 2/57 concerning the alleged misuse of powers. It objects to the confusion created by the way in which the applicant has stretched its imagination on the subject of misuse of powers; it considers that the applicant is confusing this concept with that of infringement of the Treaty. The defendant maintains its view that the complaints made by the applicant really refer only to cases of infringement of the Treaty.

As for the question whether a general decision can sacrifice the interests of a category of citizens of the Community, the defendant has explained in its rejoinder in Case 2/57 that it does not rely on the unlimited powers with which it is vested under Article 53 but argues on the basis of the limitation of those powers implied by the wording of that provision, namely, that the arrangements in question must be recognized as necessary for the performance of the tasks set out in Article 3 of the Treaty, a limitation which was fulfilled in the present case. Furthermore, the defendant denies that the applicant has a legally recognizable interest in the possible application of Article 59 and Annex II to the Treaty. On the contrary, the application of Article 59 (3) would have led to a distribution of resources without regard to the place of production; in those circumstances, the applicant could not possibly have claimed any advantage as the result of the availability of ferrous scrap in its supply region.

The defendant has also denied the applicant's contention that it used Article 53 in order to avoid declaring a shortage. Equalization has been carried out without chal-

lenge since 1 April 1954 and the applicant's arguments have no relevance to the charge that the High Authority has neglected the interests of pig-iron. Furthermore, under Article 59 (1), the High Authority must, in a case of serious shortage, first exhaust indirect courses of action; the High Authority has, *a fortiori,* an absolute duty to adopt these courses of action (such as the financial arrangements referred to in Article 53) in order to prevent such a shortage.

Again, the defendant rejects the applicant's contention that the infringement of the general principles of the Treaty (in particular, Article 3) and of Article 29 of the Convention is evidence of a misuse of powers. As to the disregard of the general objectives published by the High Authority in its memorandum of 6 July 1955, the defendant denies that the objective of the basic decisions differs from those objectives. Neither the memorandum nor the basic decisions are concerned with trying to strike a balance between the conflicting interests of pig-iron producers and steel producers but with putting into effect a series of measures required by the economic expansion which was to be foreseen. In view of this, there is no conflict of interests between pig-iron and ferrous scrap; the High Authority adopted the contested measures with the object of ensuring a supply of ferrous scrap at reasonable prices together with an increase in output capacity for pig-iron. The basic decisions do no more than introduce or maintain equalization in order to ensure a reasonable price for steel, correct the equalization in order to avoid increased consumption of ferrous scrap and, on the contrary stimulate growth in the use of pig-iron.

As regards the concern to avoid administrative complications which, according to the applicant, was the real reason for imposing a uniform equalization rate, the defendant has emphasized that it never stated that it took such a consideration into account; the decision to impose a uniform rate was made on other grounds, that is to say, as mentioned in the statement of defence, 'apart from any administrative complications'.

Law

A — Admissibility

The applicant is objecting to the individual decision for payment taken with regard to it by the High Authority on 12 December 1956 under the equalization scheme for imported ferrous scrap established by Decision No 22/54 of 26 March 1954 and by Decision No 14/55 of 26 March 1955. In the applicant's view those decisions are vitiated by certain irregularities and their resultant illegality necessarily means that the implementing decision taken concerning the applicant, which it is contesting, is also illegal.

The defendant contends that the applicant cannot impugn the legality of the basic decisions, which are general decisions, in its capacity as a private undertaking, except under the conditions and within the periods prescribed in Article 33 of the Treaty.

Under Article 33, proceedings 'shall be instituted within one month of the notification or publication, as the case may be, of the decision or recommendation'. If such proceedings are brought by an undertaking or association within the meaning of Article 48 of the Treaty and are concerned with a general decision or recommendation, they are admissible only if the applicants consider it to involve a misuse of powers affecting them.

The application was lodged on 6 May 1957 and although, on account of this, the

time-limit laid down in the last paragraph of Article 33 has been observed in respect of the decision of 12 December 1956, which was made enforceable by the order for enforcement appended thereto by the competent authority dated 4 March 1957, a certified copy of which was communicated by the High Authority by letter of 30 March 1957, the period had expired in the case of Decision No 22/54 of 26 March 1954 and Decision No 14/55 of 26 March 1955.

These last decisions are not impugned directly but by way of the application against the enforceable decision of 12 December 1956. While the decision of 12 December 1956 is an individual decision affecting the applicant, Decisions Nos 22/54 and 14/55 are general decisions on which the decision of 12 December 1956 is based.

In order to establish whether, in support of its application against the individual decision, the applicant is entitled to plead the illegality of the general decisions on which it is based, consideration must be given to the question whether it can impugn the individual decision after expiry of the period prescribed in the last paragraph of Article 33 and by invoking against it not only a misuse of powers affecting the applicant but the four grounds of annulment referred to in the first paragraph of Article 33.

The Court takes the view that an unlawful general decision must not be applied to an undertaking and that obligations on the part of such an undertaking cannot arise from a general decision of that nature.

In the case of an appeal against a decision of the High Authority imposing pecuniary sanctions or periodic penalty payments, Article 36 of the Treaty provides as follows: 'In support of its appeal, a party may, under the same conditions as in the first paragraph of Article 33 of this Treaty, contest the legality of the decision or recommendation which that party is alleged not to have observed'. This provision of Article 36 is not to be taken as a special rule to be applied only in the case of pecuniary sanctions or periodic penalty payments but as the application of a general principle on which emphasis is placed in Article 36 only because it applied to the special case of an appeal in which the Court has unlimited jurisdiction. Nothing in the express reference made in Article 36 can be used as an argument in reverse so as to justify excluding the application of the same right in a case in which it is not expressly mentioned, since the Court has previously ruled that an argument *a contrario* is to be permitted only if no other interpretation proves to be appropriate and compatible with the wording and context and their underlying aim.

Any other decison would make it difficult to exercise the rights of appeal granted to the undertakings and associations referred to in Article 48 of the Treaty, since it would compel them to study every general decision when published in order to ascertain whether it is not capable of operating to their disadvantage at a later date and whether it cannot be considered to be vitiated by misuse of powers affecting them; undertakings would be encouraged to allow the pecuniary sanctions or periodic penalty payments provided for under the Treaty to be imposed upon them in order to be able, by virtue of Article 36, to contest the legality of the general

decisions or recommendations which they were alleged not to have observed.
After the expiry of the period prescribed in the last paragraph of Article 33, the right of an undertaking, in support of an appeal against an individual decision, to contest the legality of a general decision or recommendation on which the individual decision is based cannot result in the annulment of the general decision but only of the individual decision to which it has given rise.
The same principle is expressly embodied in the Treaties establishing the European Economic Community and the European Atomic Energy Community where, in Articles 184 and 156 thereof respectively, it is provided as follows: 'Notwithstanding the expiry of the period laid down in the third paragraph of Article 173 [or in the case of the EAEC Treaty, of Article 146] any party may, in proceedings in which a regulation of the Council or of the Commission is in issue, plead the grounds specified in the first paragraph of Article 173 [or in the case of the EAEC Treaty, of Article 146], in order to invoke before the Court of Justice the inapplicability of that regulation'. While this circumstance does not constitute a conclusive argument, it confirms the foregoing conclusion by showing that it also commended itself to the authors of the new Treaties.
The annulment of an individual decision based on the irregularity of the general decisions which gave rise to it applies to the effect of general decisions only in so far as the latter are embodied in the individual decision which is annulled. Any undertaking is entitled to invoke the four grounds of annulment referred to in the first paragraph of Article 33 against an individual decison concerning it. In these circumstances, when proceedings are brought against an individual decision, there is nothing to prevent an undertaking from being entitled to invoke the four grounds of annulment listed in the first paragraph of Article 33 in order to contest the legality of the general decisions or recommendations on which the individual decision is based.
For the foregoing reasons, the application is admissible.

B — Substance

1. *Infringement of the Treaty*

(a) Infringement of Article 29 of the Convention

The applicant's contention is that the purpose of Article 29 is concern to avoid any shifts in production levels; the High Authority is, accordingly, bound to adopt special safeguards not only when difficulties arise during the establishment of the Common Market but also when an undertaking is affected by the measures which the High Authority decides to adopt in implementation of the provisions of the Treaty — in the present case Article 53.
Nowhere in Article 29 is there any reference to such an obligation; it does no more than recognize that safeguards may be necessary to ensure that the establishment of the Common Market does not suddenly cause shifts in production levels which

undertakings would be in a position to overcome following some adaptation. The applicant has not, in this case, established that the difficulties of which it complains and that the shifts in production levels which it apprehends are attributable to the establishment of the Common Market. The fact that those difficulties may arise as a result of a measure (the introduction of an equalization scheme), which the High Authority has adopted in exercise of the powers conferred upon it by the Treaty, whereas the exercise of those powers is not directly connected with the establishment of the Common Market, cannot justify the adoption of safeguards within the meaning of Article 29 of the Convention.
As Article 29 of the Convention is not applicable, this complaint must be dismissed.

(b) Distortion of the normal conditions of competition

According to the applicant the normal course of competition has been distorted by equalization because the effect of the latter was to encourage the consumption of ferrous scrap at the expense of that of pig-iron. The defendant does not dispute that the reduction in the price of imported scrap as a result of equalization may encourage undertakings to increase their consumption of scrap; indeed, the defendant accepts that there has been some worsening of the applicant's position as a producer exclusively of haematite pig-iron. Nevertheless it corrected the situation by the allocation to undertakings consuming scrap of a bonus for ferrous scrap economies effected through increased use of pig-iron (Decisions Nos 26/55 and 3/56).
The question which is to be answered is therefore whether the High Authority, convinced as it was of the capital importance of preventing the price of domestic scrap from rising to the price level of imported scrap and determined for this reason to introduce equalization, was under a duty in law to prevent the scheme from having any repercussions which might harm the interests of producers of pig-iron or of some of their number.
In view of the fact that, when introducing equalization, the High Authority adopted indirect measures (the bonus for economies in ferrous scrap through increased use of pig-iron) designed to improve to some extent the position of pig-iron producers, the question arises whether this precaution was sufficient or whether more comprehensive steps should have been taken to maintain in its entirety the competitive position of producers of pig-iron, for example, by a direct measure exempting ferrous scrap used in pig-iron production from the equalization contribution.
On this point, the Court considers that the applicant's contention that, in adopting its measures, the High Authority ought to have ensured that there was no change in the competitive position of producers of pig-iron as compared with other scrap consumers is an unreasonable demand. If it were accepted that such a strict obligation existed it would be necessary to apply it not only to the case of pig-iron producers but also to all cases in which the competitive position of a producer coming within the jurisdiction of the Community was affected, even indirectly.

Any set of economic rules necessarily has consequential effects, even on the interests of those within the jurisdiction to whom those measures are not directly addressed. The application of the principle advocated by the applicant would render unlawful any action in the economic field which the State considered necessary to safeguard major interests if it had not provided for the whole range of interests involved however remote they might be from those which that action was primarily designed to further. A public authority has a duty to act with circumspection and to intervene only after carefully balancing the various interests concerned while so far as possible restricting the foreseeable damage to third parties. It is accordingly necessary to establish in this case whether the High Authority took the interests of pig-iron producers sufficiently into account. In this connexion the Court asked the parties, during the preparatory inquiry, to supply specific information on the results of the measures adopted by the High Authority in order to encourage purchasers of ferrous scrap to increase their consumption of pig-iron. In its reply the High Authority supplied information for the period 1 April 1955 to 31 July 1957 from which it appears that economies in ferrous scrap for which a bonus was paid amounted to 1 643 101 metric tons or 21% of imported scrap. This information shows that a considerable quantity of scrap was saved and replaced by pig-iron. The period in question included six months under the new system set up by Decision No 2/57 but this is of no significance since, under the new rules, the bonus previously granted for replacing scrap by pig-iron was maintained for those six months.

The applicant went only so far as to state that there had been some reduction in the production of open hearth steel compared with that of electric steel but it did not give an adequate answer to the question asked, nor did it dispute the figures supplied by the High Authority. In its final written conclusions and its oral submissions the applicant stated that the High Authority's data proved nothing since it had not indicated to what extent undertakings (and especially the applicant's undertaking) producing haematite pig-iron had benefited from the economies thus achieved. However, against the conclusions which can, as a whole, be drawn from the facts referred to by the High Authority, the applicant has not adduced any information to show that the bonus did not in fact have the effect of making good the disadvantages which the introduction of equalization entailed for producers of pig-iron.

Nor is it open to the applicant to support his contention by referring to the fact that, in the recitals in the preamble to Decision No 2/57, the High Authority acknowledged that Decision No 26/55 on the detailed rules for implementation of the financial arrangement had not been entirely successful in achieving economies in scrap by increased use of pig-iron. Even if the bonus system did not provide a complete safeguard for producers of pig-iron it must not be concluded from this that that system grossly and arbitrarily neglected the interest of producers of pig-iron. Finally, the fact brought out by the applicant in reply to questions put during the preparatory inquiry, that the production of open hearth steel did not follow the same course as that of electric steel does not exclude the possibility that,

as the High Authority demonstrated, ferrous scrap was to an appreciable extent replaced by pig-iron. The applicant's contention has no foundation in fact.
In adopting special measures in order to restrict the consumption of scrap by increased use of pig-iron, the High Authority demonstrated that it had given fair and careful consideration to the interests of producers of pig-iron. The preparatory inquiry revealed that those measures were not without appreciable effect. The legality of the High Authority's measures was not conditional on their being fully effective in maintaining the previous scrap/pig-iron ratio; the equalization system does not, consequently, infringe the rules of the Treaty on the maintenance of normal conditions of competition.
The contention that the equalization scheme is unlawful because it undermines the applicant's competitive position is without foundation.

(c) Disregard of the general objectives of the Treaty

According to the applicant, the institutions of the Community are, under Article 3 of the Treaty, required to act 'in the common interest', an expression meaning that the institutions must act in the interests of all concerned without exception; the High Authority is, accordingly, not empowered to adopt measures 'in the general interest', that is to say, measures which are in the interest of the generality of those concerned, if those measures are capable of harming the interests of certain of them, such as those of the applicant in the present case. In any case, Article 59 (4) vests the High Authority with exceptional powers for cases expressly provided for. Even in those cases, the interests of those concerned are the subject of certain safeguards specified both in Article 59 and in Annex II to the Treaty; it follows that the High Authority is also bound to observe these safeguards when it acts under Article 53.
The Court rejects the interpretation placed by the applicant on the expression 'common interest'; as was stated in section (b) above, the High Authority's role as a public authority does not involve an obligation to use its power to make regulations only on condition that no interest is adversely affected. This does not mean that the High Authority may ignore the special interests of those concerned and act so harshly that those interests are compromised very much more than can reasonably be expected. On the contrary the High Authority is bound to act with all the circumspection and care required to balance and assess the various, often conflicting, interests involved and to avoid harmful consequences in so far as, within reason, the nature of the decision to be taken permits. Where the High Authority is empowered to promulgate measures 'in the common interest', it can use its power to make regulations as the circumstances require, even at the expense of certain individual interests.
Nor is there any justification for the reference to Article 59. The precautionary measures prescribed in that article and also in Annex II to the Treaty are bound up with the exercise of the exceptional powers laid down for the situation referred to therein. Such a situation did not exist at the time when the decisions were

taken. The fact that the High Authority cannot make a fair allocation of the resources without having to consult the undertakings concerned is explained by the seriousness of the situation which such an allocation has to deal with but this is no justification for turning that special provision into one of general application apart from the case referred to in Article 59.

(d) Prohibited discrimination giving rise to an indirect subsidy

(i) The first complaint made by the applicant under this heading is based on the fact that its situation cannot be compared with that of other scrap consumers; it uses only scrap from Lyon district for which there was no need whatever for equalization. It denies that the price of Lyon scrap would fall into line with that of imported scrap if equalization had not been introduced; the applicant describes the claim to the contrary as a hypothetical one which is incapable of being checked. The Court rejects this complaint since there can be no doubt that, so long as the supply of domestic scrap is insufficient to meet the needs of the Common Market, the prices of domestic scrap will tend to fall into line with the higher prices of imported scrap. There is no reason why the price of scrap in the Lyon district should not follow this general tendency and the applicant has failed to mention any special circumstances which would establish that the Lyon district is not affected by the general trend of prices. Moreover, it follows from the figures produced during the preparatory inquiry that the prices for scrap in the Lyon district went up in parallel with the price of scrap in other districts and the price of imported scrap. Furthermore the applicant itself stated that the price of scrap which it bought showed some increase on account of purchases by competing undertakings, especially foundries using hot-blast cupolas which at least in part, are not subject to the equalization scheme.
Nor is there any substance in the applicant's contention that there is no possibility of the competing undertakings obtaining supplies on the Lyon market in light scrap. In the Lyon district the applicant is not the only scrap purchaser and there is no reason for believing that other purchasers would not enter this market if the difference in prices were appreciably greater than the difference attributable to additional transport costs.
(ii) Secondly, the applicant claims that the application of a uniform equalization rate to all categories of scrap constitutes a discriminatory measure prohibited under the provisions of Article 4 (b) of the Treaty. The applicant claims to use only light scrap, which it obtains cheaply and on which the uniform equalization rate falls relatively more heavily than in the case of the heavy scrap used by the steel mills. The Compagnie de Chasse is accordingly not in a situation which compares with that of the steel mills and in those circumstances the application in this case of uniform rules is alleged to constitute unlawful discrimination.
On the other hand the defendant states that there is much in common between the various categories of ferrous scrap as a result of the fact that they are interchangeable and that they are used jointly by the various consumers. Accordingly,

the different effects of the equalization rate on the various categories of scrap put the applicant in a position comparable to that of other consumers so that there can be no question of the scheme's being discriminatory.
It is clear from the documents put in by the parties during the preparatory inquiry that neither the applicant nor any other scrap consumer exclusively uses one category of scrap. For example, in its consumption of scrap, the applicant uses, according to the nomenclature established by the High Authority (Decision No 28/53, JO No 5 of 15, 3. 1953, pp. 98 and 99), approximately 80% of 'turnings' and 20% of bales coming under the category of 'light scrap', whereas the steel mills in the same region use between 10% and 25% 'turnings' and, in addition, 'heavy' and 'light' scrap in varying proportions.
There are, therefore, two groups of purchasers using to some extent the same categories of scrap. However, inasmuch as the steel mills have, as far as 75% of their purchases are concerned, bought certain categories which the applicant does not use, it is conceivable that a uniform rate may have different effects. But the prepararatory inquiry did not reveal any specific evidence that such a difference exists. Considering that any differnce could only make itself felt in the case of a proportion of the purchases and bearing in mind the general tendency towards the alignment of prices applicable to the categories of scrap of foreign and domestic origin the applicant has not advanced sufficient legal proof that the application of a uniform rate constituted discrimination to its detriment.
In these circumstances, this complaint cannot be accepted as well founded.

(iii) The third point raised by the applicant concerns the infringement of Article 4 (c) of the Treaty as a result of the discriminatory effect, amounting to an indirect subsidy, created by the equalization scheme in favour of the steel mills and at the expense of producers of pig-iron. The defendant admits that equalization tended to encourage the consumption of scrap, and that is why it wished to counteract this effect by introducing a bonus for any increase in the consumption of pig-iron.
This issue has already been considered above under heading (b) for the purpose of determining whether there was any ground for believing that there has been interference with the normal conditions of competition, a question which was answered in the negative. For the same reasons, the changes which occurred in the respective postions of producers of pig-iron and the steel mills as a result of the decisions cannot be described as either discrimination or as indirect subsidies since the prohibition of the latter in Article 4 (c) of the Treaty refers only to subsidies granted by the States. This complaint is therefore without foundation.

2. *Misuse of powers*

The two parties agree that, in order to prove a misuse of powers, it must first of all be established that powers exist and then that they have been used for a purpose other than that for which they were conferred.
The parties are agreed that under Article 53 (b) of the Treaty there is a power to

set up a financial arrangement, that is to say an equalization scheme; the Court also considers that this point has been established.

The only question, therefore, is whether the use to which the High Authority put this power can be described as a misuse of powers. The majority of the applicant's arguments. have already been considered above from the standpoint of infringement of the Treaty; in the circumstances of this case there is no need to consider them afresh from the standpoint of a misuse of powers, since the applicant failed to specify what this illegality consists in. On the other hand the complaints which the applicant has added to those which have already been considered must be looked into more particularly from the standpoint of misuse of powers.

In the first place the applicant is of the opinion that, by introducing equalization under Article 53 (b) of the Treaty, the High Authority evidenced its intention of evading the safeguards provided for in the provisions of the Treaty covering exceptional situations, such as the safeguards in Article 59 of the Treaty.

In this connexion it must be recognized that there might have been a misuse of powers if the High Authority had been faced with a situation covered by the procedure in Article 59 and, in order to evade the safeguards provided for in Article 59, had nevertheless deliberately decided to make use of Article 53 (b) and of the financial arrangements provided for therein. But it has not been established that, when the basic decisions were taken, the High Authority was faced with such a situation. In the circumstances, there is no evidence that the introduction of the equalization system by way of a financial arrangement established pursuant to Article 53 (b) was vitiated by misuse of powers. The complaint is without foundation.

Secondly, the applicant has claimed that, according to the wording of the decisions introducing equalization, their object was the regular supply of scrap to the Common Market but that this aim had been substituted for the objective set out in the Memorandum of the High Authority defining the general objective, published in the Journal Officiel of 6 July 1955, namely, an attempt to balance the pig-iron/steel market. The applicant is of the opinion that this substitution is evidence of misuse of powers. The defendant has replied that neither the memorandum nor the basic decisions were concerned with trying to strike a balance between the conflicting interests of pig-iron producers and steel producers but with putting into effect a series of measures which, in the High Authority's view, were required by the economic expansion which was to be foreseen. In this context, the decisions of the High Authority had as their object the establishment of reasonable prices for ferrous scrap with a view to ensuring a regular supply of this material together with an increase in output capacity for pig-iron.

This ground of complaint must be rejected because the legality of the basic decisions cannot depend on their conformity or otherwise with the memorandum published by the High Authority but only on their conformity or otherwise with the Treaty. In no sense does the memorandum contain the only possible definition of the legal objective which the High Authority is entitled to pursue. To prove a misuse of powers the applicant would have had to demonstrate that the decisions themselves were in fact pursuing an objective other than that for the pur-

poses of which the High Authority was entitled to act; the variation which the applicant has pointed out between the wording of the memorandum and that of the basic decisions does not suffice to constitute such evidence.
Thirdly the applicant claims that an example of misuse of powers arises from the application of a uniform equalization rate not because such uniformity was necessary to attain the objective pursued but in order to avoid the administrative complications which would have been created by the application of a graded rate, which would have had a balanced effect on the price of the various qualities of scrap, particularly those used exclusively by independent pig-iron producers.
It is true that, in its written observations and during the preparatory inquiry, the defendant pointed out the difficulties and administrative complications which would have ensued if a system of graduated rates had been applied. There is nothing however to justify the statement that the main reason which led the High Authority to introduce a uniform rate was the desire to avoid complications of that nature; since this rate was consistent with the provisions of the Treaty, the contested decisions would still be in order even if it were proved that a uniform rate was also selected out of concern to avoid administrative complications.
This complaint is therefore without foundation.

Costs

Under Article 60 of the Rules of Procedure of the Court of Justice, the unsuccessful party shall be ordered to pay the costs but where parties succeed on some and fail on other heads, the Court may order them to bear their own costs in whole or in part.
As the defendant has failed in its submission concerning the admissibility of the application, it must bear a quarter of the total of the costs, the remaining three-quarters being paid by the applicant.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 2, 3, 4, 5, 33, 34, 36, 53, 59 and 80 of the Treaty, Annex II to the Treaty and Article 29 of the Convention;
Having regard to Decisions of the High Authority No 22/54 of 26 March 1954 (JO No 4 of 30. 3. 1954) and No 14/55 of 26 March 1955 (JO No 8 of 30. 3. 1955);
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice and the rule on costs;

THE COURT

hereby:

1. **Dismisses the application for annulment of the decision of the High**

Authority of 12 December 1956 declaring that the Compagnie des Hauts Fourneaux de Chasse, Chasse-sur-Rhône, Isère, shall pay to the Caisse de Péréquation des Ferrailles Importées the sum due on 31 August 1956 in implementation of the provisions relating to the equalization of imported ferrous scrap;

2. **Orders the defendant to pay a quarter of the costs of the action and the applicant to pay three-quarters thereof.**

Pilotti van Kleffens Delvaux

Serrarens Riese Rueff

Delivered in open court in Luxembourg on 13 June 1958.

A. Van Houtte — Registrar

M. Pilotti — President

A. van Kleffens — Judge-Rapporteur

OPINION OF MR ADVOCATE GENERAL LAGRANGE[1]

Summary

I — *Facts* . . . 234

II — Admissibility . . . 234
Application No 2/57 . . . 234
Application No 15/57 (Objection of illegality) . . . 235

III — *Consideration of the substance of Application No 2/57* . . . 237
Misuse of powers as a result of rules adversely affecting pig-iron producers as compared with steel producers . . . 237
Misuse of powers as a result of the application of a uniform equalization contribution to scrap purchases which are not comparable . . . 237

IV — *Consideration of the substance of Application No 15/57* . . . 243
Infringement of Article 29 of the Convention . . . 243
Infringement of the 'principle of free competition' . . . 243

V — *Final opinion* . . . 244

1 — Translated from the French.