OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 14 DECEMBER 1966[1]

Mr President,
Members of the Court,

Two actions have been brought under Case numbers 25/65 and 26/65 respectively, by two Italian steel undertakings, Simet and Feram, against the individual decisions of the High Authority of 11 February 1965 fixing the contributions due from these undertakings to the ferrous scrap equalization scheme at 252 974 228 lire and at 105 899 634 lire respectively. The two actions are also brought against general Decision No 7/63 of 3 April 1963 relating to the drawing up of the equalization accounts in respect of imported ferrous scrap.

You have joined these cases for the purposes of the oral procedure and of the judgment although the problems posed by the two cases are quite different. Simet was subjected to an estimated assessment by the inductive method based on the consumption of electricity and Feram was assessed on the basis of its declarations. As a result of the joinder I will deliver a single opinion covering both cases and I will examine in turn the admissibility of the two applications, the criticisms which both make against general Decision No 7/63 and finally the complaints directed against each of the contested individual decisions.

I — Admissibility of the applications

1. The High Authority maintains in the first place that the two applications are out of time. The applicants in fact were respectively notified of the contested decisions on 20 March 1965 (Simet) and 19 March 1965 (Feram). Their applications, which were sent from Turin on 21 April by registered parcel post, arrived at the Luxembourg customs on Friday 30 April at 5 p.m. but, by reason of the two holidays which followed (Saturday 1 May and Sunday 2 May), the Court was only informed of this on 3 May and took delivery of the applications on 4 May on which date they were entered at the Registry. The High Authority remarks that, taking account of the extension of time on account of distance prescribed for Italy, they ought to have reached the Registry at the latest on 30 April in the case of Simet and 29 April in the case of Feram. This was what it maintained in two applications made under Article 91 of the Rules of Procedure but, as you will recall, the decision on these applications was reserved for the final judgment by virtue of orders made on 13 July 1965.

The rules which you are called upon to apply are the following.

According to the third paragraph of Article 33 of the ECSC Treaty proceedings must be instituted within *one month* of the notification of the contested decision. Article 81 of the Rules of Procedure states that the period starts to run from the day following the receipt by the person concerned of notification of the measure. It should be remarked that, contrary to what the High Authority has said, the period is not one of 30 days but of one month and it may therefore vary slightly according to the number of days in the various months of the year. In other words, when an undertaking is notified of a decision on the 20th day in any particular month, the period starts to run from the 21st and expires in every case in the evening of the 20th day of the following month.

1 — Translated from the French.

To this must be added the extension on account of distance laid down by your Rules of Procedure pursuant to Article 39 of the Protocol on the Statute of the Court of Justice annexed to the ECSC Treaty. According to Annex II of the Rules of Procedure, save where the parties are resident in the Grand Duchy, procedural time-limits shall be *extended* on account of distance by a period varying according to the country and which for Italy is ten days. As is apparent from the language used, this is not a new period which follows upon an earlier one and which might have its own rules, but merely an extension of the latter. Going back to the previous example, I would say that the period which would normally expire on the 20th is extended for an applicant residing in Italy until the evening of the 30th.

On the other hand, when this period, whether or not extended on account of distance, expires on a Sunday or a public holiday, expiry is deferred until the end of the following working day.

Lastly it should be remembered that according to Article 37 (3) of the Rules of Procedure: 'In the reckoning of time-limits for taking steps in proceedings, the only relevant date shall be that of lodgment at the Registry'. We shall have to return later to this provision which you have already had cause to apply.

In my opinion there can be no doubt that these are mandatory rules which must be observed upon penalty of being barred from taking proceedings, as is generally the case under national laws. Counsel for the applicants submitted two arguments against this view in the course of the oral procedure. First of all, Article 39 of the ECSC Protocol provides that: 'No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*'. But this exception proves the rule and places upon the applicant the burden of proving that the external factor, on which it wishes to rely, did in fact exist. Secondly, Article 82 of the Rules of Procedure which is worded as follows: 'Any time-limit prescribed pursuant to these Rules may be extended by whoever prescribed it'. The very limited scope of this Article must be remarked. Procedural time-limits may be fixed in two ways. Either by a provision of a general and abstract nature which applies to all cases or to a class of cases: this is so as regards time-limits for instituting proceedings and the extension of time-limits on account of distance fixed *by* the Treaty, *by* the Protocol and *by* the Rules of Procedure. Or by an individual decision taken each time according to the circumstances of the case: this is so as regards the reply and the rejoinder in respect of which Article 41 of the Rules of Procedure gives the President of the Court, or, possibly the President of a Chamber, power to prescribe time-limits. By comparing this Article with Article 40 one is led to the conclusion that it is only in cases of this kind, the only ones in which the time-limit has been fixed *pursuant to* the Rules of Procedure, that the President, who prescribed the time-limit, may extend it. But no such possibility exists in the case of time-limits for instituting proceedings or concerning the extensions on account of distance which are laid down in mandatory form by the relevant provisions.

Let us apply these facts to the present cases.

The applications, which were sent by parcel post from Turin on 21 April, were entered at the Court Registry on Tuesday 4 May. They had been preceded by a registered letter, sent on the same day and announcing that they had been dispatched. This communication had arrived at the Registry on 23 April but, since it contained no conclusions, it could not be regarded as an application.

It is common knowledge, say the applicants, that post takes 3 to 4 days, or 5 at the maximum, to reach Luxembourg from Italy. The unusual delay in the present case could therefore only be attributed to the inefficient functioning of the postal services, although it is impossible to know whether the Italian or Luxembourg services were at fault, but it does constitute in any event a case of unforeseeable circumstances or of *force majeure,* as provided for in Article 39 of the Protocol.

A number of objections may be made to this. The first is that the length of time which post takes to reach its destination depends on the method of dispatch which was chosen. When the applicants speak of a normal period of from 3 to 5 days they are no doubt right so far as ordinary or registered letters are concerned (proof of this is the registered letter addressed to the Registry which I have just mentioned). However, just as there are quicker methods (telegrams, telex, express letters), there are others, cheaper and notoriously slower, such as parcel post which was utilized by Simet and Feram and for which a period of 10 days from Turin to Luxembourg does not appear to exceed what is reasonably predictable. Since the time-limit for lodging an application is mandatory, it is for the applicants to send their mail on such a date that it can arrive in time, bearing in mind the method of dispatch which they have freely chosen.

Second objection: without embarking on a study of the different legal systems of the Member States, we may defend *grosso modo* unforeseeable circumstances and *force majeure* as external events beyond the control of the person under the obligation, of a kind which that person could not foresee and the consequences of which he could not imagine. This is certainly not so where there is a delay of some days in the transmission of post which it is always wise to take into consideration and which can be avoided by allowing a sufficiently large margin of time. As the High Authority observed during the oral proceedings, the situation is in no may the same as that brought about by prolonged strikes or by natural disasters of the kind which have recently befallen Italy. It is not enough that the applicants, on whom it is incumbent by virtue of Article 39 of the ECSC Protocol to prove the existence of unforeseeable circumstances or of *force majeure,* simple to allege that the postal services were not working properly, without even enquiring whether it was the Italian or the Luvembourg service.

I have therefore no hesitation in dismissing any idea of *force majeure* or unforeseeable circumstances in this case. However there remains a more delicate problem. The departments of the Court only received notice of the arrival at the customs of the two postal packets containing the applications on 3 May. They took delivery of them on 4 May, on which date the applications were entered in the register. But it is apparent from the information given by the customs administration that the packets arrived at Luvembourg railway station on Friday 30 April at 5 p.m., that is to say, the last day of the limitation period in the case of Simet, which had been notified of the contested decision on *20 March,* on the day after the last day of the said period in the case of Feram, which received the decision concerning it on *19 March.*

Of these two dates, 30 April or 4 May, arrival in Luxembourg or entry in the Court register, which is to be adopted? In principle, it is the second date, according to Article 37 of the Rules of Procedure which provides that in the reckoning of time-limits for taking steps in proceedings the only relevant date shall be that of lodgment at the Registry. Attention was drawn to this in your judgment of 17 July 1959 in Joined Casts 36 to 41/58 (Rec., 1958-

1959, p. 351) in order to dismiss the allegation of the Italian applicants that it was necessary to take account of the date of posting. In general the rule presents no difficulty since the application is normally transmitted either by the applicant himself or by the postal services as far as the Registry which has only to receive it and register it. But is the rule to be applied with the same strictness where, as in the present case, it is for the Court's own services to go themselves to collect the packet from the place where it is deposited as the result of customs or postal regulations? It is a fact that the applications had arrived in Luxembourg on 30 April and that, in theory at least, the appropriate department of the Court could have collected them and registered them on the same day. This is theoretical of course since this supposes that the department was informed immediately which, as you know, was not the case, but the mere possibility of this seems to me enough for it to be possible to dispense with too strict an application of the provisions of Article 37. Thus I am personally inclined to the view that the date of arrival of the applications in Luxembourg should be deemed in the present case to be the date of lodgment.

This interpretation, which I acknowledge to be a generous one, means that the application of Simet is to be regarded as admissible but not, for the reason I have given, the application of Feram. It will not however enable me to dispense with an examination of the substance of the arguments of the latter company any more than with those of the former.

I need not dwell for very long on two other objections put forward by the High Authority.

The first only concerns Application 25/65 of Simet. The defendant points out that this application is expressly directed against the individual decision of 11 February 1965 imposing on the undertaking the obligation to pay the sum of 252 974 228 lire whereas all the arguments and the submissions raised relate to the other decision of the same day fixing the basis of its assessment to contribution to the equalization scheme. This is true, but it is impossible to ignore the fact that the two decisions are closely connected, that the fixing of the amount due depends in particular on the determination of the assessable tonnage, as is pointed out in the contested decision which refers to the decision of the same day relating to the tonnage. In my view this would appear to justify, or at least to explain, the method adopted by the applicant.

On the other hand, the High Authority says that the two undertakings request the annulment of general Decision No 7/63, relying on all the grounds set forth in the first paragraph of Article 33 of the Treaty, whereas for this purpose they were only entitled to rely on the ground of misuse of powers. The subject-matter indicated at the head of the two applications in fact includes the annulment of the general decision, but the conclusions which end them, although requesting you to say that the decision infringes an essential procedural requirement, infringes the Treaty and constitutes a misuse of powers, do not claim that it should be annulled. It therefore requires very little effort to regard these conclusions as intended in reality to have the decision declared inapplicable to the two applicants and to consider it as being based, in accordance with your case-law, on all the grounds set forth in the first paragraph of Article 33.

II — General Decision No 7/63

It is from this point of view that I shall now examine the arguments developed in the two applications against general Decision No 7/63 on the basis

of which the contested statements of account were drawn up. The complaints put forward are numerous but for the greater part you have already had occasion to deal with and dismiss them. Furthermore the applicants are only entitled to invoke them in so far as there exists a direct legal connexion between the contested measure and the general decision (Case 21/64, *Macchiorlati,* judgment of 31 March 1965, Rec., 1965, p. 245).

First complaint. This is infringement of an essential procedural requirement consisting in the fact that the High Authority did not, before it adopted the decision, obtain the unanimous assent required by Article 53 (b) of the Treaty. The unanimous assent of the Council is necessary in the setting up of the financial arrangements for the purposes indicated in paragraph (a) of the same article but you have held that this requirement only applied where *the very basis* of the financial arrangements of equalization was affected or altered and this was not so in particular in the case of a decision instituting a system of credit interest (judgment of 13 July 1965, *Lemmerz-Werke and Mannesmann,* Rec. 1965, pp. 860 and 914). The same solution clearly applies here.

After this complaint, the legal nature of which is clear, the applicants go on to develop a series of other complaints of the widest variety which in the reply they attempt to show, often in an arbitrary manner, as amounting to misuse of powers. In fact this is, as we shall see, a general criticism of the policy followed by the High Authority ever since the establishment of the equalization scheme and of the results of that policy. On these matters, which have given rise to lengthy argument both in the written procedure and in the oral proceedings, I will endeavour to be as thorough but also as brief as possible.

The first complaint against the High Authority is that it disregarded the recommendations which the Council attached to its unanimous assent relating to Decision No 14/55. It is said that whereas the Council had recommended that the equalization levies should not be increased except for very serious reasons and that an excessive increase in the consumption of scrap should be avoided, the rates of levy and consumption have simply grown larger. Even supposing that these recommendations could have any binding force, Decision No 7/63—the only one which is criticized—does not appear to have disregarded them. The various interest charges remarked upon by the applications do not stem from that decision but from earlier general decisions, in particular from Decision No 7/61 the legality of which has already been confirmed by your judgment in the *Lemmerz-Werke* case. As regards the increase in the consumption of scrap, this has clearly nothing to do with the contested general decision.

Similarly, the serious frauds which are said to have been committed and to have caused injury to the Community undertakings and which the applicants assess at several tens of milliards of francs, will perhaps one day give rise to an action founded on the High Authority's liability (see your judgment of 2 June 1965, *Feram* and others, Rec., 1965, p. 402). But for the present it is impossible to find that they constitute a defect in Decision No 7/63.

On the other hand it is easier to understand the substance of the complaint that the High Authority did not make known the criteria on the basis of which the data appearing in the annexes to the decision in dispute were obtained and that it did not sufficiently specify in that decision the calculations which it took as the basis for its action. The tables annexed to the decision merely contain the aggregate results and not the details constituting those results. It is alleged in consequence that there has

been an infringement of Article 47 of the Treaty which requires the High Authority to publish such data as could be useful to Governments or to any other parties concerned. But your judgment of 22 March 1966 in the case of *Macchiorlati* (Rec., 1966, p. 82) refused to assign this meaning to Article 47, since what was concerned was the equalization scheme.

There is one matter on which the applicants laid particular stress in the course of the oral proceedings. They had at first maintained that the calculation of the data necessary for determining the equalization charge meant that the consumers of internal scrap bore the heaviest charge since the calculation involved reducing the weighted cost price for this scrap and increasing the price for imported scrap. To what might appear as a complaint of discrimination against the consumers of internal scrap the High Authority replied that all the undertakings operating within the Community could benefit from imported scrap and that, since the problem was confined to the choice which each undertaking could freely make for itself, it was impossible to speak of discrimination. However, with the assistance of a table produced by Feram after the written procedure had been closed so far as it was concerned —a table which was the subject of lengthy comment by its Counsel during the oral proceedings—the applicants sought to dispute even the *correctness* of the data adopted for the purpose of calculating the equalization rate. This amounts to alleging that Decision No 7/63 is illegal. You have this document in the file. Starting with the average weighted prices for internal scrap for five of the Community countries, these prices having been indicated in a letter from the High Authority of 5 February 1965, the applicants deduce what they call a 'Community average' by a purely arithmetical operation and this average does not correspond to the one adopted in the various annexes to Decision No 7/63 under the title 'weighted average'. The fact is that the reasoning of the two parties is quite different. The 'Community average' is purely arithmetical and takes no account, as the High Authority has done, of the quantity of scrap bought by each country of the Community. It is therefore not surprising that the figures obtained do not agree. The method applied by the High Authority derives directly from general Decision No 18/60 which is not contested and the applicants have submitted nothing which could prove that this method is in conflict with the Treaty.

The reply also alleges that two other articles of the Treaty have been infringed: Article 17 by reason of the fact that the High Authority failed to publish a general report on the activity of the bodies responsible for the equalization scheme, and Article 78 because it did not publish a report on the balance sheet relating to the scheme nor did it submit such a report to the auditor. But, even assuming that the submissions had not been presented out of time, these articles do not in any event place any duty on the High Authority in this matter and there is no connexion between these alleged obligations and Decision No 7/63.

Finally, still on the subject of general Decision No 7/63, the applicants remarked that, as the High Authority has itself admitted, this decision does not create any obligation on the part of the undertakings to make payments. They ask how, in these circumstances, the contested individual decisions, which are based on this general decision, can give rise to such obligations. Their criticism is therefore directed not to the legality of Decision No 7/63 but to its effects. However, if an answer is necessary, one can agree with the defendant when it says that the general decision fixes the criteria which determine the obligations on the part of undertakings and that the obligation to

make payments on the part of these undertakings only arises with the individual decisions concerning each of them.

It seems to me therefore that none of the numerous complaints against general Decision No 7/63 can be upheld.

III — The individual decision addressed to Simet

In order to criticize the individual decision which it is contesting, Simet, to whose arguments I shall presently come, adopts two consecutive standpoints. It maintains that the High Authority could not in the present case carry out an estimated assessment by the inductive method. It adds that, even supposing that it were entitled to use this method, it did so in an arbitrary and defective manner since the figures it adopted were incorrect. These are two points which have to be examined.

1. The power which was used in the present case has its basis in Article 2 of Decision No 13/58 which provides that, should the undertakings fail to declare the factors for calculating the contributions, the High Authority shall be entitled to carry out an estimated assessment. It is also entitled to correct on its own initiative declarations in support of which no valid proof can be supplied. These principles are reaffirmed by Article 15 of Decision No 16/58. This is therefore a subsidiary, exceptional method which is only applicable when certain conditions are satisfied.

The contested decision, or more precisely the decision of the same date determining the tonnage of ferrous scrap for the purposes of equalization, has properly applied this method. It starts by pointing out that during the checks which were carried out the undertaking was asked, *inter alia*, for five accounting documents to which I shall return, and it is because these documents were not submitted that the High Authority made an estimated assessment of the consumption of scrap by reference to the consumption of electricity used in the furnace.

From the outset of the proceedings this has been vehemently denied by Simet. It maintained that although three of the documents mentioned in the decision of 11 February 1965 had not been produced, this is because there was no provision of law which required undertakings to keep them (the documents are monthly schedules of purchases and movements of scrap, certificates of weight of scrap received, and the cash book). On the other hand it says that it always transmitted to the inspectors of the ECSC the compulsory books such as the invoices register and the day book and that it is still willing, subject to certain formal conditions, to submit these to the High Authority. It concludes that the incorrect nature of the decision of 11 February 1965 removes any legal basis for the High Authority to have recourse to an estimated assessment. The defendant has been equally firm in its statement that Simet had submitted none of the requested documents, in particular the day book, which, according to the High Authority, would alone have sufficed it to ascertain the real facts, assuming that this book truly reflected them.

Faced with such contradictory attitudes, you requested the High Authority on two occasions, before the hearing of 8 November last and during that hearing, to produce certain documents which might make it possible to establish the exact documents which had been called for, on what occasion and in what form. The High Authority answered your requests in detail but without completely removing the obscurities and uncertainties in this matter.

Without going into the detail of the documents in your file, I will simply state the general impression which they create. There can be no doubt that at the beginning there was a reluctance

on the part of Simet, and indeed refusals, to provide the Société Anonyme Fiduciaire Suisse with the documents which it had orally requested. But, following the individual decision of 22 July 1959 requiring it to produce certain documents specified by name (among which, curiously enough, there did not appear the day book), the applicant appears to have given way. The report of the Société Fiduciaire Suisse of 15 June 1960 does not mention any refusal to transmit documents. It merely takes the view that the checks carried out with the aid of the documents submitted confirmed the results of an earlier check. Similarly Mr Chaudat, a member of the High Authority's inspectorate, in his report of 15 March 1962, indicates the documents which were communicated to him at his request but makes no reference to any refusal.

In these circumstances the statements on which the contested decision is based appear to be somewhat questionable, for it can hardly be said that the undertaking did not *submit* the accounting documents which were *requested* of it. No doubt the refusal or the failure to produce documents are not the only reasons which may justify recourse to an estimated assessment. The High Authority also has the power to refuse to accept declarations when they are not accompanied by any valid proof and perhaps it might have been able to dispute in this case the value and the conclusive force of certain documents produced by Simet such as invoices or the balance sheet book. But this is not the position which it adopted and it is not for us to substitute ourselves on this matter for the author of the contested measure. It is enough to find that the reason given for resorting to a departure from the normal procedure is not confirmed by the file so that the decision loses any valid basis and must be annulled. Although this is the conclusion which I have reached it does not exempt me from examining whether, in the context of the system applied by the High Authority, the criticisms made of the assessment used to ascertain the assessable tonnage are justified.

2. The calculation was carried out under conditions with which you are familiar. The consumption of electricity used in the furnace, ascertained from the invoices, is assessed at 31 543 620 kWh for the period from 1 June 1956 to 13 November 1958. Then, in accordance with the result arrived at by the committee of experts in respect of a furnace with a capacity of six to seven metric tons, one takes a consumption of 850 kWh per metric ton of steel produced, which gives a production of 37 111 metric tons of steel. Finally, the ratio between the specific input of scrap and steel produced is assessed at 1 015 kg per metric ton, taking account of scrap reused. The result is a figure of 37 668 metric tons of bought scrap which forms the basis of assessment.

This assessment is disputed by Simet on the following four grounds:

(a) The capacity of the furnace

In support of its reply the undertaking produced a copy of the invoice of its supplier, Tagliaferri, dated 21 February 1956, according to which the furnace only had a capacity of four to five metric tons and not of six to seven as is stated in the decision of 11 February 1965.

In its rejoinder the defendant concedes the validity of this document and as a result substitutes for the coefficient of 850 kWh per metric ton a coefficient of 900 kWh/t adopted by the committee of experts for furnaces of four to five metric tons. The method of calculation laid down in the decision results in this way in reducing the assessable tonnage to 35 574 metric tons and the debt of the undertaking to 238 631 270 lire. The High Authority asks you not to annul the criticized

decisions but to take note of these alterations which were caused by the applicant's delay in supplying the necessary data for calculating the contributions. In fact, the situation is not precisely the same as that in the judgment in the *ILFO* case, relied on by the High Authority (28 April 1966, Rec., 1966, p. 138), since the High Authority could, it seems, have obtained an accurate picture of the capacity of the furnace without waiting for an invoice to be submitted. Nonetheless the solution suggested is simple and practical and I therefore recommend that you should take note of the part satisfaction given to the applicant and to rule on the remainder of its claims.

(b) The second disputed point

The High Authority fixed the commencement of the assessment period at 1 June 1956, relying in particular on the fact that as from that date there was a substantial consumption of electricity (at least 800 000 kWh per month). On the other hand Simet maintains that it only started its production in January 1957 and as evidence of this produces the invoice which I have already mentioned on the reverse of which appears the certificate of an officer of a fiscal authority dated 27 November 1956. It interprets this certificate as signifying that the furnace only arrived at the undertaking's premises on that date and says that it is obvious therefore that, taking account of installation and trials, it could only have begun to operate in January 1957.

This interpretation is clearly unjustified. One has only to look at the document in question to see that the date of 27 November refers to the check carried out by the fiscal authority and not to the arrival of the plant in question. The invoice of the previous 21 February which states that the furnace is *available for use by the undertaking.* on the other hand, leads one to believe that it had in fact reached Simet if not on that date then at least on a date very close to it. It is true that lengthy reference has been made to legal provisions in favour of undertakings in the south of Italy in order to maintain that the sole purpose of despatch on the date shown on the invoice was to enable Simet to obtain certain facilities. It was therefore implied, although never expressly stated, that this invoice was in some way anticipatory if not fictitious. It is not for me to discuss the legislation, lengthy extracts of which were read at the oral proceedings. What is unquestionable is that one can only accept or reject *in toto* the documents relied on by the applicant. If one accepts, as the applicant asks and as the High Authority concedes, that the information contained in this document on the capacity of the furnace is true, one must also accept the date which it bears and the statement that at this date the furnace was available to the undertaking.

As for saying, as does Simet, that a monthly consumption of at least 800 000 kWh (that is to say, more than one half of the highest consumption recorded during the period of assessment) could only relate to its ancillary departments, and not to production in the steelworks, there are no reasonable grounds for accepting this. It should be added that, according to the documents produced and the checks carried out, there existed on 1 January 1957 stocks of semi-finished products, finished products and scrap and that the trading account for 1956 mentions a consumption of raw materials of the order of 230 million lire.

These findings, taken as a whole, must lead to the rejection of Simet's claim with regard to the beginning of the period of assessment.

(c) The third complaint relates to the figure adopted by the defendant for the purpose of assessing the tonnage of steel produced by reference to the criterion of electricity consumed. A

though the ratio of 850 kWh/t has been finally replaced by the ratio of 900 the applicants' criticisms are in no way abated for these two figures are the maximum which had been adopted by the committee of experts established by the High Authority for furnaces of six to seven metric tons or from four to five metric tons respectively. It is the conclusions of this committee which Simet disputes in the first place by referring to the opinions, differing on various points, which its members are said to have issued and by laying before the Court the 'experts' report' produced by Mrs *Barge* in Case 18/62. This contrary report did not convince you at the time. No new factors have been submitted which might lead you to alter case-law which is now well established.

Simet, relying on an observation made by one of the experts assembled by the High Authority, goes on to mention in its report, without otherwise dwelling on the point, that the consumption of electric current by a furnace may reach a high figure when that furnace is also used to produce alloys and this is exactly what happened in its case. In so doing, it disputes by implication the parameter adopted by the High Authority. But this observation is of no importance since the undertaking does not produce alloys or at any event has never declared production of this kind.

The last ground relied on in order to claim that the parameter should be raised to at least 1 000 kWh is the age of the transformer and of the *furnace* of the undertaking. Two answers can be given in order to dispose of this argument. First it consists of mere allegations unsupported by any attempt to prove them. But is also curious, to say the least, that in support of the argument there should have been advanced the age of a furnace which was commissioned in 1956 thanks to the assistance, says the applicant, of the Caisse du Midi.

(d) Lastly Simet disputes the ratio between the specific input of scrap and steel produced which the contested decision fixes at 1 015 kg per metric ton 'taking account of scrap re-used'. It would like to see this ratio reduced to 950 kg at the most. The undertaking says that it carrier out a certain amount of processing work and therefore recovers a large quantity of arisings and it is unfair that it should not have been credited with these. It adds that the ratio between the arisings in the steelworks and production should have been calculated on the basis of at least 6% of the total liquid steel production, taking account also of the frequency of abortive tappings and all the other usual recoveries with both the steelworks and the rolling mill.

Some of these factors, for example the frequency of abortive tappings, are too vague to be taken into consideration and they are not supported by a shred of evidence. Furthermore it is obvious that the calculation of the input of scrap must necessarily take account of arisings at the different stages of production. The High Authority does not ignore this. In the rejoinder it shows that the figure of 950 kg is contradicted by the calculation of the input of ferrous scrap carried out by the applicant itself. Starting with the average input per metric ton of steel, as it appears from the schedules for the period February 1957—November 1958, and deducting successively 60 kg per metric ton in respect of scrap recovered in the steelworks and 65 kg per metric ton of ingots charges for arisings from rolling it arrives at 1 016 kg per metric ton, that is to say precisely the figure contained in the contested decision and one which is in no way unlikely.

In answer to Simet's complaint that it was the victim of discrimination the defendant said at the oral proceedings that in the figure which appears in the decision fixing the levy there is all the calculation by means of which account

is taken of all aspects, of all recoveries in the course of the manufacturing process. It represents a result, a net figure as is indicated by the phrase by which it is accompanied—'taking account of scrap re-used'.

But it is precisely this method which you condemned in your judgment of 30 June last in the case of *Preo* (Rec. 1966, p. 326). The contested decision in that case was founded on the same procedure and contained the same elliptical remark on scrap re-used. You took the view that this could not constitute a sufficient statement of reasons for an assessment and that an assessment must indicate and indeed explain the average figure adopted in respect of arisings so that the parties concerned could conduct their defence and the Court carry out its duty of review. The identical situation in this case makes it impossible for a different solution to be adopted. In this respect, too, I can only conclude on the basis of your case-law that the decision fixing Simet's obligations under the equalization scheme is illegal.

IV — The individual decision affecting Feram

Application 26/65 made by Feram need not detain us so long. The contested decision of 11 February 1965 states first that the amounts of the contributions due must be calculated, taking account of the exemption of steel castings, on a basis of assessment of 32 805 metric tons which was communicated to the undertaking. Following the posting on 8 April 1963 of a statement of account drawn up in accordance with Decision No 7/63, Feram, although it did not point out any errors in this statement, by a letter of 29 May 1963 criticized the functioning of the equalization scheme and also general Decisions Nos 7/61 and 7/63. The first of these criticisms, acording to the contested decision, forms the subject-matter of this company's application in Case 9/64 which was then pending before this Court and which you dismissed in your judgment of 2 June 1965, and therefore does not have to be refuted in the decision. Similarly there is no need, in an individual decision, to go into criticisms relating to principles established by general decisions. The High Authority therefore fixes the sum to be paid by Feram, after deducting sums already paid and the corresponding interest credited, at 105 899 634 lire.

Feram devotes only a few lines of its application to the decision of 11 February 1965. You will recall that you refused to grant yet another extension of time for the production of a reply after it had allowed the previous extension to expire.

It simply maintains that the declarations which it addressed to Campsider amount to 31 394 metric tons, the details of which it gives by reference to each accounting period. This discloses a discrepancy to its detriment of 1 411 metric tons which ought to be deducted from the quantity calculated by the High Authority. It therefore complains that the decision of 11 February 1965, allegedly based on its declarations, obviously fails to give an adequate statement of the reasons on which it is based.

This argument cannot succeed. It may well be that the monthly declarations which the company sent to Campsider are as it has indicated. It must be added, however, that as the result of checks carried out at its premises it admitted that the figures adopted in the contested decision were correct, as is apparent from the documents which the High Authority annexed to its statement of defence. I also refer to a letter from the CPFI of 4 April 1960, which was the sequel to an earlier discussion and which communicated to Feram a table determining the amended basic tonnage at 35 279 metric tons,

the exemption for steel castings at 2 774 metric tons and the tonnage subject to contribution at 32 805 metric tons, that is to say, the figure which appears in the contested decision. Feram confirmed these figures by letter of the following 20 April for the periods between 1 April 1954 and 30 November 1958, that is to say, for the whole duration of the equalization scheme. It is logical, therefore, that the decision should have been drawn up on the basis of these figures.

However, when the date for the oral proceedings had already been fixed, the applicant produced in support of its claims a number of documents only two of which can concern the contested individual decision.

The first is a letter from Campsider of 4 September 1956, communicating the 'final state of affairs' established by the CPFI, according to which, in respect of the period from 1 April 1954 to 31 March 1955 and of an assessable tonnage of 10 588 metric tons, there only remained due the sum of 948 018 lire, which was paid immediately. From this the applicant concludes that the whole of the period must be deleted from the disputed statement of account. But, as is stated in your judgment of 21 January 1965 in Case 108/63, *Merlini,* ([1965] ECR 11), 'it follows from the nature of the equalization scheme that the fixing of contributions remains essentially provisional until the final closure of accounts'. You came to the same conclusion in your judgment of 15 March 1966 in Case 30/65, *Macchiorlati,* (Rec. 1966, p. 78). For so long as the accounts are not closed there can be no final state of affairs, even for a given period, and an undertaking must be prepared for a possible review of its situation according to the development of the scheme. Feram was well aware of this and therefore gave its approval in 1960 to the table sent to it by the CPFI which once again embraced the period from 1 April 1954 to 31 March 1955.

As for the other document, this is described as a 'final statement of account' showing Feram's debt to be 80 847 708 lire. It must be said that this document, which immediately follows the letters from Campsider and the CPFI but gives no indication of its origin, was drawn up by the applicant itself. It should be added that it wholly ignores Feram's debt for the period from 1 April 1954 to 31 March 1955 and that the tonnages notified monthly which it mentions do not agree with those which appear in the application. This document therefore is not worthy of any further consideration.

Having concluded my observations I come to the following opinion:

— Application 25/65 of Simet is both admissible and well-founded. The decision of 11 February 1965 fixing that company's liabilities under the equalization scheme must be annulled. The High Authority must bear the costs relating to this application.

— Application 26/65 of Feram, which is both inadmissible and unfounded, must be dismissed and the applicant must bear the costs relating to this application.