OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 9 MARCH 1978

My Lords,

In this case I would not feel justified in asking Your Lordships to adjourn while I consider my Opinion. The question Your Lordships have to decide is too simple and the answer to it too clear.

In paragraph 5 of its Judgment in Case 1/77 ([1977]) ECR 1473) the Court said:

"By only mentioning patented inventions in accordance with which goods are manufactured, Article 3" that is Article 3 of the Regulation "seems to exclude patented inventions which relate to the process of use of the article. However, this distinction loses its meaning in cases in which the manufactured article and the process of use thereof are so closely linked that the manufactured article and the process of use are embodied in one and the same article. In fact the result of an interpretation of Article 3 in accordance with the objectives of the basic provision laid down by Article 1 of the regulation is that a patented process, the carrying out of which constitutes the only economically viable use of the goods and which is only put into effect by the use of those goods, is regarded as embodied in the imported goods."

That accorded with what I had myself said on the matter in my Opinion (see [1977] ECR at pp. 1490-91).

The difficulty has arisen because the words "and which is only put into effect by the use of those goods" were not reproduced in the operative part of the Judgment.

In my opinion however the operative part of a Judgment of this Court should always be interpreted in the light of the reasoning that precedes it.

I am accordingly, like the Commission, of the opinion that the question now referred to the Court by the Finanzgericht should be answered in the sense contended for by the Plaintiff.