quota for frozen beef and veal falling within subheading 02.01 A II (b) of the Common Customs Tariff (1979), are compatible with those provisions, even if they result in a corresponding reduction in other importers' shares in the allocation of the quota in question.

Touffait Pescatore Due

Delivered in open court in Luxembourg on 13 March 1980.

The Registrar by order

H. A. Rühl

Principal Administrator

A. Touffait

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 28 FEBRUARY 1980

My Lords,

I would not think it right in this case to ask Your Lordships for time to consider my opinion — for two reasons.

The first is the urgent nature of the case itself. This reference was ordered by the President of the College van Beroep voor het Bedrijfsleven in proceedings before him for interim relief. He granted that relief, with the result that the allocation of the Dutch share of the "GATT quota" in question is suspended. We have therefore been asked, by the College, for a speedy decision.

Secondly it seems to me, despite the courageous submission of Counsel for the plaintiff this afternoon, that the answer to the question referred to the Court by the President of the College is to be found in the judgment of the Court in Case 35/79, the second *Grosoli* case, which was delivered on 23 January 1980, that is after the Order for Reference in this case was made and indeed after the written procedure in it had been completed.

The only difficulty I can see is due to the wording of the question referred to the Court by the President of the College. It speaks of the system of allocation adopted by the defendant Board as one whereunder part of the quota is "reserved to the processing industry". That makes it look as though there might possibly be a breach of the rule laid down by the Court in Case 131/73 the first *Grosoli* case [1979] 2 ECR 1555. In fact, so it was explained to us, the system in question is simply one under which the Dutch share of the quota is allocated to traders on the basis of their average importations in the three previous years, excluding importations effected entirely free of levy unless so effected under the GATT quota itself. This means that importations effected by or for the processing industry at a reduced rate of levy under Article 14 (1) (b) of *Council Regulation (EEC) No 805/68* (as amended by *Council Regulation (EEC) No 425/77)* are taken into account. Obviously that involves no arbitrary discrimination against traders in the position of the plaintiff. Indeed the processors might conceivably complain of discrimination of their importations under Article 14 (1) (b) were ignored.

In the result I think that Your Lordships should, following so far as apposite the Court's ruling in the second *Grosoli* case, answer the question referred to the Court by the President of the College by saying that neither Article 3 (1) of *Council Regulation (EEC) No 3063/78,* nor any other rule or provision of Community law, precludes a national authority that is entrusted with the duty of allocating a share of the quota opened by that Regulation from doing so on the basis of the importations effected by the traders concerned in previous years, including importations effected pursuant to Article 14 (1) (b) of *Regulation No 805/68* (as amended), so long as the system adopted by that authority does not entail the application of arbitrary criteria as between those traders.