OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 3 MAY 1979

My Lords,

You have heard the last exchange of questions and answers between Judge O'Keeffe and myself on the one hand and the learned Agent for the Commission on the other hand. You have heard a very full argument. I do not think that any useful purpose would be served by my asking Your Lordships for time to consider my opinion.

I think the whole answer to the case is disclosed in that last interchange of questions and answers. It brought out the fact that there is no Community text whatsover that requires or empowers a customs authority to adjust or not to adjust the MCA in the three different cases to which I referred, that is, as the Commission would have it, to charge an extra MCA in a case like the present, to decide not to charge an extra MCA in a case of *force majeure*, and to decide, in the case of an importation into a depreciated currency country, not to grant an additional MCA. Article 20 of each of the Regulations in question, No 1259/72 and No 232/75, is perfectly neutral on that matter. It merely says that the MCA shall be affected by a coefficient of 0.3.

The argument of the Commission that, in a case where the use of the product has not been that prescribed by Regulation No 1259/72 or No 232/75, that fact takes the case out of the exception in Article 20 and brings it into the general rule contained in the Regulations of the Commission fixing the MCA's generally for the relevant period, I can quite understand. But it proves too much, because, if it is right, there should be an adjustment in all cases. The Regulations of the Commission possibly ought to provide for an adjustment in a case like the present. But in fact they do not prescribe any such adjustment. They leave the matter undealt with and this Court cannot, in my opinion, read into those Regulations provisions that are not there.

For that reason I am of the opinion that the answer to the first question asked by the Finanzgericht in each case should be that Article 20 of Regulation No 1259/72 or (as it may be) of Regulation No 232/75 is to be interpreted as meaning that the reduction of the monetary compensatory amount is subject only to the condition that the product has been marketed in accordance with Articles 1 to 19 of the Regulation and that there is no further condition that it should be used in the manner prescribed by the Regulation. On that footing the second question does not arise.