On those grounds,

THE COURT,

in answer to the questions referred to it by the Højesteret on 28 June 1978, hereby rules:

Article 1 of Regulation (EEC) No 741/75 of the Council of 18 March 1975 laying down special rules for the purchase of sugar beet is intended to empower Member States, having regard to impediments which might result from Community powers, to proceed in conformity with their national law to allocate delivery rights for beet within the basic quota limits of the sugar manufacturer concerned when the condition set out in Article 1 of the regulation is fulfilled.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 16 January 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 5 DECEMBER 1978

My Lords,

In this case the Court has before it very full and clear Judgments of the Østre Landsret and of the Højesteret and it has had the further advantage of thorough and careful argument on behalf of the parties and of the Commission. The questions referred to the Court by the Højesteret are, in essence, simple. In those circumstances I do not think that any useful purpose would be served by my asking Your Lordships to adjourn while I consider my Opinion and I do not think that it would be right for me to do so.

I can be quite brief, but in view of the breadth of the argument we have heard, I must, I think, remind Your Lordships of the actual terms of the questions referred to the Court by the Højesteret.

Question A reads as follows:

"Where agreement cannot be reached between shareholders in a sugar factory organized as a co-operative undertaking and other traditional sellers of beet to the factory, as to the allocation of the quantities which may be supplied within the factory's basic quota, and where there is no agreement on this point within the trade, is it in accordance with the Community Regulations on sugar, in particular Regulation (EEC) No 741/75 of the Council of 18 March 1975, for a Member State to determine the allocation, or is it a requirement of the Regulation that a Member State can only determine the allocation where conditions other than those expressly stated in the preamble to Regulation No 741 and in Article 1 (1) thereof are met?"

In my opinion, the answer to that question is that Regulation No 741/75 means precisely what it says. In other words, the discretion of the Member State concerned to lay down rules for the allocation of the quantity of beet which a manufacturer offers to buy before sowing arises in the absence of agreement as to such allocation within the trade. There is no other prerequisite.

Question B reads as follows:

"If the conditions on which a Member State can lay down rules for allocating the basic quota are met, and an unfair basis for such allocation has not been adopted, is it in accordance with the Community Regulations on sugar, in particular Regulation No 741/75, for the Member State to make provision for an allocation between the members and other traditional suppliers to the undertaking in question, even though such allocation means that the beet which the members of the cooperative are obliged and entitled under the undertaking's statutes to deliver to the factory cannot entirely be supplied within the basic quota alone."

It seems to me that the answer to that question must be "Yes".

There was much discussion as to the meaning of the second paragraph of Article 1 of the Regulation. To my mind, what it means is that the rules made by the Member State may confer on growers rights to deliver that they would not otherwise have unless they were members of the co-operative. Be that as it may, one thing is clear. It is that that paragraph does not narrow the discretion conferred on the Member State by the first paragraph. It starts with the words "These rules may also grant . . .", so that it can only widen the discretion. I can see nothing in the Regulation that can be interpreted as limiting that discretion in the way contended for by the Appellant.

The burden of the Appellant's argument seemed to me to be that the interpretation of the Regulation contended for by the Respondent and by the Commission would entail the diminution, without compensation, of the rights conferred on the members of the co-operative by its constitution. That depends on precisely what the nature and scope of those rights are, and that is a matter of Danish law. There is disagreement between the parties about it and the Højesteret has very properly framed its question in such a way that this Court need not consider it. I, accordingly, refrain from hazarding any view on it.