OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 26 June 1986

My Lords,

This is a reference for a preliminary ruling by the tribunal de police de Martigues in France in criminal proceedings pending before that court against two supermarket managers, Mr Darras and Mr Tostain, who are charged with selling books at prices below those allowed by French Law 81-766 of 10 August 1981.

There was an appeal against the order for reference, which was initially made on 29 March 1984, but that appeal was dismissed and so the reference now comes before the Court.

The questions posed are these:

'1. Does the legislation on the price of books, in particular the fixing of an actual minimum retail price, as enacted in Law 81-766 of 10 August 1981 and Decree 82-1176 of 29 December 1982, constitute a measure having an effect equivalent to quantitative restrictions on intra-Community trade?

2. If so, is that legislation capable of falling within the exceptions laid down in Article 36 of the Treaty of Rome?

3. If not, may it be justified on the grounds of the protection of certain national interests, for instance that of bookshops threatened by competition from other forms of distribution?

4. If so, are the measures adopted the most appropriate for protecting those interests and the least limitative of freedom of trade?'

Mr Darras was represented by counsel before the Court this morning and adopted the written submissions put in on behalf of the Commission.

The legislation in this case is identical with that in issue in the Court's decision in Case 229/83 *Association des centres distributeurs Edouard Leclerc* v *SARL Au blé vert* (judgment of 10 January 1985) (*Leclerc Books*); the facts and issues of law are broadly the same. The only difference, which is a non-material difference, is that these are criminal rather than civil proceedings.

The only questions which arise are those concerned with the free movement of goods, questions relating to Articles 3(f) and 85 not having been raised in this case. It seems to me that those questions are fully answered by paragraphs 21 to 30 and point 2 of the operative part of the Court's judgment in the *Leclerc Books* case.

As to Question 1 in the present reference, paragraphs 24 to 27 and point 2 of the operative part of *Leclerc Books* established that the price restrictions in question do constitute measures having equivalent effect

to quantitative restrictions on imports, contrary to Article 30 of the Treaty, subject to the proviso: 'unless it is established that those books were exported for the sole purpose of re-importation in order to circumvent the legislation in question'.

That proviso has been commented on by many writers. It does not seem to me to arise or to call for any comment in this case. I merely point out that the proviso has been adopted subsequently in the Court's judgment in Case 299/83 *Saint Herblain distribution* v *Syndicat des libraires de Loire-Océan* (judgment of 11 July 1985).

Questions 2 to 4 in the case again are covered by paragraphs 28 to 30 of the decision in the *Leclerc Books* case. The legislation in question can only be justified on the grounds set out in Article 36, an Article which must be interpreted strictly, and as the Court has said, is not to be extended to cover objectives which are not specified therein.

In my view, it follows that what are described here as 'national interests', such as that of bookshops threatened by competition from other forms of distribution, cannot be accepted as a justification for such national legislation though I do not see why the interests of such bookshops are described in the reference as 'national interests'.

If that is right, then Question 4 does not fall for consideration.

I propose, accordingly, that the questions referred by the national court should be answered as follows:

1. In the context of national legislation whereby the retail price of books must be fixed by the publisher or the importer and is binding on all retailers, the following constitute measures equivalent in effect to quantitative restrictions on imports, contrary to Article 30 of the EEC Treaty:

   (a) provisions whereby the importer responsible for complying with the statutory requirement to deposit one copy of each imported book with the authorities, that is to say the principal distributor, is responsible for fixing the retail price;

   (b) provisions requiring the retail price fixed by the publisher to be applied to books published in the Member State concerned and re-imported following exportation to another Member State, unless it is established that those books were exported for the sole purpose of re-importation in order to circumvent the legislation in question.

2. Such national legislation can be justified solely on the grounds set out in Article 36 of the Treaty.

3. Such national legislation cannot be justified on the grounds of the protection of interests, such as that of bookshops, threatened by competition from other forms of distribution.

The fourth question, as I have said, does not fall to be answered in those circumstances.

The costs of the Commission in this case are not recoverable. The costs of the parties to the main action fall to be dealt with by the national court.