OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 10 March 1987 *

Mr President,
Members of the Court,

I — 1. The wording of the question referred to the Court by the Cour d'appel (Court of Appeal), Paris, calls for some preliminary observations.

2. In proceedings under Article 177 of the EEC Treaty, it is not for the Court to give a ruling on the compatibility of the national rules referred to by the Cour d'appel with Community law. The question referred for a preliminary ruling by the French court must therefore be examined from the point of view of interpretation of the relevant Community rules so as to enable the national court to determine itself the question of compatibility. [1]

3. In the present case, the question to be determined is whether the provisions of Articles 30 and 85 of the EEC Treaty referred to by the Cour d'appel preclude a Member State from fixing certain components of the retail selling price of beef and veal.

4. In order to supply the national court with all relevant criteria for interpretation, the scope of that question must be extended to encompass the interpretation of the limits arising in such matters from Regulation No 805/68 on the common organization of the market in beef and veal. On this point the Court has held that:

'where the compatibility of national price control measures relating to products subject to a common organization of the agricultural markets is in question, the assessment must take into account the particular features of that organization'. [2]

5. The question is therefore whether the abovementioned Community rules prohibit the national authorities from requiring retailers to observe a price limit for the retail sale of beef and veal, calculated on the basis of the wholesale price, to which must be added the costs of transportation to the butcher's shop, calculated at a flat rate, a fixed gross profit margin and certain duties which are listed exhaustively.

II — 6. First, as regards the question of the scope to be attributed in this regard to Article 85 of the EEC Treaty, which is designed to achieve the objective stated in Article 3 (f), it must be observed, as was held by the Court in the *Cullet* judgment, that rules such as those concerned in this case which

'are not intended to compel suppliers and retailers to conclude agreements or to take any other action of the kind referred to in Article 85 (1) of the Treaty'

but which,

'on the contrary, ... entrust responsibility for fixing prices to the public authorities'

cannot be caught by that article. [3]

* Translated from the French.

1 — Joined Cases 95 and 96/79 *Kefer and Delmelle* [1980] ECR 103, paragraph 5 at p. 112.

2 — Joined Cases 16 to 20/79 *Joseph Danis* [1979] ECR 3327, paragraph 8 at p. 3339.

3 — Case 231/83 *Cullet* v *Leclerc* [1985] ECR 305, paragraph 17 at p. 320.

III — 7. However, intervention by the national authorities at the retail price stage of products covered by a common market organization is, in certain circumstances, the existence of which must be established by the national court, likely to impede the normal marketing of those products and thus to jeopardize the free movement of those goods, guaranteed by Article 30 of the EEC Treaty and Article 22 of Regulation No 805/68, as well as the objectives and functioning of the common organization of the market in beef and veal.

8. The case-law of the Court has set out the limits to which the Member States are subject in this regard. As a general rule, the fixing by a Member State of a retailer's maximum gross profit margin on his selling price interferes with the application of the aforesaid Community rules if

'the purchase prices taken into consideration do not take into account marketing and importation costs which the retailer has in fact borne both at the supply stage and at that of sale to consumers or where the gross profit margin itself is fixed at a level which, taking into account the detailed rules for the calculation of purchase prices, is not capable of ensuring that the retailer obtains fair remuneration for his activity'. [4]

9. In the present case it must first be determined whether under the contested rules, which impose a fixed profit margin on retailers, the purchase price of the products in question takes into account the actual costs of transportation — whether these are merely the costs of obtaining supplies on the domestic market or the costs of importation — or, on the contrary, incorporates them on a flat-rate basis in the maximum gross profit margin.

4 — *Kefer and Delmelle*, cited above, paragraph 10 at p. 114.

IV — 10. As regards importation costs, it is stated in the Court's judgment of 5 June 1985 in *Roelstraete* that if that profit margin

'is fixed so as to incorporate import costs which the retailer may have incurred', [5]

the national system of price control may be regarded as constituting a measure having an effect equivalent to a quantitative restriction on imports prohibited by Article 30 of the EEC Treaty.

11. Such is the case in particular where a fixed profit margin is applicable irrespective of the supply market — whether the domestic market or the market in another Member State. Unlike retailers who obtain their supplies of meat, including meat imported from the Community, from a national wholesaler, the retailer who imports his goods directly from another Member State will find in such circumstances that his net profit is reduced by an amount corresponding to the costs of importation, which might ultimately discourage such transactions. [6]

12. Where the profit margin incorporates the costs of obtaining supplies on the national market, there is also 'a risk, or at least a potential risk, [that this] may have an effect' on the mechanisms of price formation introduced by Regulation No 805/68 inasmuch as those costs

'may vary according to, *inter alia*, the distance between the centres of supply and the place where each retailer carries on his business'.

5 — Case 116/84 *Roelstraete* [1985] ECR 1705, paragraph 21 at p. 1718.

6 — *Roelstraete*, paragraphs 21 and 22 at pp. 1718 and 1719.

In other words, their incorporation in the profit margin may reduce the latter to such an extent that the distribution network for the products is affected 'in the regions which are furthest away from the centres of supply'. [7]

13. It is true that in the present case the costs of transportation are specifically taken into account. That fact alone is not sufficient evidence of conformity with Community law if, as in this case, they are calculated on a flat-rate basis. It appears from the documents relating to the case that the prescribed figure is intended to cover only the costs incurred by a retailer who obtains his supplies exclusively from the national market. More generally, that amount would appear to be considerably lower than the costs usually incurred by butchers running a single shop. In the result, the difference between the actual amount and the estimated amount of the costs of transportation will therefore diminish the prescribed maximum gross profit margin.

14. From that point of view, a system of the type described therefore appears to be contrary to the provisions of Article 30 of the EEC Treaty and Article 22 of Regulation No 805/68 in so far as it might discourage imports. It is also incompatible with that regulation if the incorporation in the maximum gross profit margin of the actual costs of obtaining supplies, which are higher than the estimated costs, affects the distribution network of the products in question in certain regions. It may be observed, moreover, that, after the events of the present case, the national rules were amended so as to allow retailers to furnish proof of their actual costs.

15. As regards the taxes paid by retailers which they can pass on only at the cost of reducing their profit margin, it is for the national court to determine whether the system thus laid down allows the retailers to obtain a fair remuneration for their activity. [4]

V — 16. The question submitted by the Cour d'appel, Paris, should therefore be answered as follows:

(1) Article 3 (f) and Article 85 of the EEC Treaty do not prohibit Member States from fixing a maximum price for the retail sale of beef and veal.

(2) National rules regulating the retail prices of beef and veal which require retailers not to sell their products at a price exceeding the wholesale price plus a flat-rate amount representing the costs of transportation and a fixed gross profit margin:

(i) constitute a measure having an effect equivalent to a quantitative restriction contrary to Article 30 of the EEC Treaty and to Article 22 of Regulation No 805/68 on the common organization of the market in beef

7 - *Roelstraete*, paragraph 24 at p. 1719.

4 — *Kefer and Delmelle*, cited above, paragraph 10 at p. 114.

and veal if that profit margin includes, *inter alia*, the actual costs of importation which may have been incurred by retailers over and above the estimated flat-rate amount;

(ii) are incompatible with Regulation No 805/68 if the incorporation in that profit margin of the actual costs of obtaining supplies which are higher than the estimated costs affects the distribution network in certain regions for the products governed by the common organization;

(iii) affect that organization when the maximum permitted gross profit margin may no longer assure retailers a fair remuneration for their activity because certain taxes reduce that margin.