OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 14 May 1985

My Lords,

This case comes to the Court by way of reference for a preliminary ruling under Article 177 of the EEC Treaty, dated 27 June 1984, by the Tribunal de grande instance, Orléans, in criminal proceedings pending before the Tribunal.

In those proceedings Jean-Pierre Gontier, as the person in charge of a 'Leclerc' supermarket, is charged with infringing the French Ministerial Decree No 83-58/A of 9 November 1983 laying down minimum prices for the retail sale of petrol. Mr Gontier pleaded by way of defence that that Decree was incompatible with Community law, and in order to resolve that issue the Tribunal referred the following questions to the Court for a preliminary ruling:

'Must Articles 3 (f) and 5 of the Treaty of 25 March 1957 establishing the European Economic Community be interpreted as prohibiting the introduction in a Member State, by the adoption of laws or regulations, of minimum sale prices for regular-grade and super-grade petrol?

Can the fixing of such minimum prices constitute a quantitative restriction on imports or a measure having equivalent effect within the meaning of Article 30 of the Treaty and may it be regarded as justified on grounds of public policy within the meaning of Article 36 of the Treaty?'

The events which gave rise to the present case are similar to those which gave rise to Case 231/83 *Cullet* v *Centre Leclerc*, in which the Court gave judgment on 29 January 1985. However, the events in the present case took place in May 1984 and hence fell under Ministerial Decree No 83-58/A of 9 November 1983 and not under Ministerial Decree No 82-13/A, which it repealed and replaced with effect from 15 November 1983. It must therefore be considered to what extent, if any, this changes the issues of Community law involved.

Under the French legislation in force both at the time of the events in Cullet and at the time of the events in the present case, the minimum retail selling price was fixed simply by subtracting a certain number of francs per litre from the maximum selling price per litre, which was fixed by means of a complicated series of calculations described in the Opinion and judgment in Cullet. Under Decree No 82-13/A, at issue in Cullet, the amount to be subtracted was 9 centimes per litre for normal grade petrol and 10 centimes per litre for super-grade petrol. As from 15 November 1983 the reductions were changed to 16 centimes and 17 centimes respectively by Ministerial Decree No 83-58/A, at issue in the present

case. Apart from this change, the system for fixing the minimum retail price of petrol in France remained in all material respects unchanged. It follows that this case involves essentially the same issues of Community law as the Cullet case.

Those issues are accurately identified in the questions referred by the national court. Although those questions do not cite Articles 85 and 86 of the EEC Treaty, paragraphs 15 to 18 of the Court's judgment in Cullet have already established that those articles do not apply as such to a case like this.

The observations submitted by the defendant, the French Government and the Commission add nothing of substance to the arguments put to the Court in the Cullet case. The Court's judgment in that case covered all the issues involved which concern Articles 3, 5 and 30. It has not been shown in this case, any more than it was shown in the Cullet case (paragraphs 32 and 33) that any of the provisions of Article 36 apply so as to justify the restrictions on imports and thereby exclude the prohibition on measures of equivalent effect contained in Article 30.

In my view, for the reasons given in the judgment of 29 January 1985 in Cullet, the answers to the questions referred by the Tribunal should be as follows:

'(1) Articles 3 (f) and 5 of the EEC Treaty do not prohibit national rules providing for a minimum price to be fixed by the national authorities for the retail sale of fuel.

(2) Article 30 of the EEC Treaty prohibits such rules where the minimum price is fixed on the basis solely of the ex-refinery prices of the national refineries and where those ex-refinery prices are in turn linked to the ceiling price which is calculated on the basis solely of the cost prices of national refineries when the European fuel rates are more than 8% above or below those prices.

(3) None of the provisions of Article 36 of the EEC Treaty has been shown to apply so as to relieve such rules from the prohibition contained in Article 30 thereof.'

The costs of the parties to the main proceedings fall to be dealt with by the national court. No order should be made as to the costs of the French Republic and the Commission.