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

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling under Article 177 of the EEC Treaty, dated 26 July 1984, by the Tribunal de grande instance, Avignon, in criminal proceedings pending before the Tribunal.

In those proceedings Bernard Girault, as manager of an 'Auchan' hypermarket, together with the company Samu Auchan, are charged with infringing the French legislation fixing minimum prices for the retail sale of petrol, in particular Ministerial Decree No 83-58/A of 9 November 1983. Mr. Girault pleaded by way of defence that that Decree is contrary to Community law. In order to resolve that issue, the Tribunal referred the following questions to the Court for a preliminary ruling:

'(1) In Community law and having regard in particular to Article 30 of the Treaty of Rome, can the fixing of a minimum retail price for motor fuels on the French domestic market be regarded as a measure having an effect equivalent to a quantitative restriction on imports?

(2) Do the arguments advanced by the Administration de la Concurrence et de la Consommation (Office of Competition and Consumption) on pages 13, 14 and 15 of its observations, in particular the desire to protect the interests of consumers at the national level by maintaining effective competition within the national territory in order to ensure that small retailers survive in the face of competition from large groups, constitute grounds of public policy or public security for the purposes of Article 36 of the Treaty of Rome?'

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 material events in the present case took place in December 1983 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hence fell under Ministerial Decree No 83-58/A of 9 November 1983 and not under Ministerial Decree No 82-13/A, which it repealed and replaced with effect from 15 November 1983.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 those 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.

The questions referred by the national court in this case address some of those issues.

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. In particular, at paragraphs 30 and 31 of its Decision, the Court rejected the argument, canvassed in the national court's second question in this case, that consumer protection might be invoked as a justification for the French legislation. Moreover 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 answer to the questions referred by the Tribunal should be as follows:

'(1) Article 30 of the EEC Treaty prohibits national rules providing for a minimum price to be fixed by the national authorities for the retail sale of fuel where such 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.

(2) Such rules have not been shown to be justified on grounds of the protection of the interests of consumers.

(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 of the Commission.