OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 12 December 1985

My Lords,

These six joined cases have all been referred to the Court for a preliminary ruling by the tribunal de grande instance, Roche-sur-Yon. Four of them (Cases 271/84 *Chiron*, 272/84 *Perouse*, 274/84 *Jaud*, and 6/85 *Byrotheau*), arise from criminal proceedings under French Ministerial Order 82-12 and 82-13/A fixing a minimum retail price for petrol. The same legislation was at issue in Case 231/83 *Cullet*, in which the Court gave judgment on 29 January 1985, and Case 11/84 *Gratiot*, in which the Court gave judgment on 25 September 1985. The other two cases (273/84 *Jaud and Prouteau* and 7/85 *Vincendeau*), arise from criminal proceedings under the later Ministerial Order 83-58/A also fixing a minimum retail price for petrol which was at issue in Cases 114 and 115/84 *Piszko*, 201/84 *Gontier* and 202/84 *Girault*, in which the Court gave judgments again on 25 September 1985.

The judgments in those cases have established that, as far as the application of Community law is concerned, this difference in the national legislation under which these prosecutions arise, is not such as to pose problems different from those already resolved by the judgment in the *Cullet* case.

The present cases all ask the Court the same two questions, i.e.:

(1) Must Articles 3 (f) and 5 of the Treaty of 25 March 1957, establishing the European Economic Community, be interpreted as prohibiting the establishment, in a Member State, by means of laws or regulations, of minimum selling prices of 'regular' and 'super' petrol?

(2) 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?

These questions are identical, word for word, with the questions referred to the Court in Case 11/84 *Gratiot*. The written arguments to the Court in the present cases do not add to the arguments in the earlier cases, and at the oral hearing, the parties have not been represented, the Commission merely referring the Court to its earlier decision.

I am, accordingly, of the opinion that the questions in the present case should be answered in the same terms and on the same grounds as the questions in *Gratiot*, namely:

(1) Articles 3 (f), 5, 85 and 86 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.

It was of course perfectly justified to refer the questions in these cases to the Court in the first place. Once, however, the precise questions were answered definitively, in the *Gratiot* case, I regret that the national court, having been informed, did not find it possible because of domestic law rules to withdraw these references. For the future, it is right to make it clear that such a course is, as a matter of the procedure of this Court, open to the national court. When the precise questions posed in a reference, are answered in a judgment which comes after the reference has been made, it is clearly desirable that the reference be withdrawn.