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

My Lords,

These cases come to the Court by way of references for a preliminary ruling under Article 177 of the EEC Treaty, dated 12 March 1984, by the Tribunal de commerce, Melun, in proceedings for an injunction which are pending before the Tribunal.

In those proceedings a company, a garage proprietor and a trade association are seeking injunctions to restrain two supermarkets from selling motor fuels at prices below the minimum prices fixed by French legislation, in particular Ministerial Decree No 83-58/A of 9 November 1983. The supermarkets resist the plaintiffs' claims on the grounds, *inter alia*, that the Ministerial Decree was incompatible with Community law. In order to resolve that issue, the Tribunal has referred the following questions to the Court of Justice for a preliminary ruling:

In Case 114/84,

'Must Articles 3 (f) and 5 of the (EEC Treaty) be interpreted as prohibiting the introduction in a Member State, by the adoption of laws or regulations, of minimum prices for the retail sale at petrol pumps of regular-grade and super-grade petrol?'

In Case 115/84,

'(1) Is the practice of imposing minimum prices lawful in view of the fundamental principle of free competition enunciated in Article 3 of the (EEC Treaty)?

(2) In the case of motor fuels, may legislation imposing minimum prices be regarded as justified on grounds of public policy within the meaning of Article 36 of the Treaty?'

Except in one particular, the proceedings which gave rise to the present cases 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. The only difference is that the price-cutting which gave rise to the present proceedings took place in February and March 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hence fell under Ministerial Decree No 83-58/A of 9 November 1983 and not under Ministerial Decree No 82-13/A, which it repealed and replaced with effect from 15 November 1983.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 cases, 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 Ministerial Decree No 82-13/A at issue in Cullet, the amount to be subtracted was 9 centimes per litre for

regular-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 cases. 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 these cases involve essentially the same issues of Community law as the Cullet case.

Although the questions referred by the national court in this case do not mention all the articles of the Treaty which were dealt with in the Cullet judgment, those questions are clearly intended to establish whether the national legislation in question accords with the principles and objectives of the EEC Treaty and with the particular provisions of the Treaty which implement them.

The observations submitted by the Defendant in Case 114/84, the Commission and the French Government (the latter at the hearing only) 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 answer 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 of the Commission.