refineries when the European fuel rates are more than 8% above or below those prices.

3. Legislation fixing a minimum price for fuel cannot be regarded as meeting an objective of public policy for the purposes of Article 36 of the EEC Treaty.

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 13 June 1984, by the Cour d'appel, Rennes, in an appeal pending before it against a judgment delivered on 6 December 1983 by the Tribunal correctionnel, Saint-Nazaire.

In those proceedings Jacques Binet and two other persons, all managers of 'Leclerc' filling stations, were charged with infringing the French legislation fixing minimum prices for the retail sale of petrol, in particular Ministerial Decree No 82-13/A of 29 April 1982. The defendants asked to be acquitted on the ground that the national rules under which they were prosecuted were incompatible with the provisions of the EEC Treaty. In order to resolve that question, the Cour d'appel, Rennes, referred the following questions to the Court for a preliminary ruling:

'(1) Is it compatible with Articles 3, 5 and 30 of the Treaty establishing the European Economic Community for one of the Member States to introduce rules imposing maximum discounts for the sale of motor fuels to the consumer?

(2) Does Article 36 of the EEC Treaty allow a Member State to introduce such rules concerning the production, distribution and consumption of motor fuels on grounds of public policy?'

The same national legislation was at issue in Case 231/83 *Cullet* v *Centre Leclerc* in which the Court gave judgment on 29 January 1985. Apart from the fact that Cullet arose from civil proceedings for an order restraining breach of that legislation whereas the present case arises from criminal proceedings thereunder, the cases involve essentially the same issues of Community law. Although the questions referred by the national court in this case do not mention 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 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 answer to the questions referred by the Cour d'appel, Rennes, 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 Commission.