1. In sectors covered by a common organization of the market, and especially when this organization is based on a common price system, Member States can no longer take action, through national provisions taken unilaterally, affecting the machinery of price formation as established under the common organization;

2. a national system which, by freezing prices and subjecting their alteration to administrative authorization, has the effect of modifying price formation as provided for within the framework of the common organizations of the market referred to, is incompatible with Regulation No 120/67 on the common oganization of the market in cereals and with Regulation No 136/66 on the establishment of a common organization of the market in oils and fats;

3. Regulations Nos 120/67 and 136/66 ensure, in the market sectors concerned, and with direct effect in favour of private persons, the free movement of goods, in particular by eliminating quantitative restrictions and all measures having equivalent effect.

Lecourt Mertens de Wilmars Mackenzie Stuart

Donner Monaco Pescatore Kutscher

Delivered in open court in Luxembourg on 23 January 1975.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 19 NOVEMBER 1974

My Lords,

For over two years, inflation has been a dominant problem in the Community. It has been the subject of successive Resolutions of the Council, of which the dates, 5 December 1972, 14 September 1973 and 17 December 1973, are significant, and of which the contents evince the growing, and understandable, anxiety of that Institution about it.

This case arises out of an attempt by one of the Member States, Italy, to contribute to the fight against inflation.

Your Lordships will remember the upsurge in prices that took place, throughout the world, in the summer of 1973. Faced with this, the Italian Government invoked emergency powers, contained in Article 77 of the Italian Constitution, enabling the Executive to enact temporary measures having statutory force.

In exercise of those powers the Government, on 24 July 1973, promulgated three decrees: Decree No 425 controlling the prices of goods produced or distributed by large-scale undertakings, Decree No 426 controlling rents of urban premises and Decree No 427 controlling the prices of important consumer goods.

Signor Galli is charged before the Pretura Unificata of Rome with having contravened certain provisions of Decree No 425. This, by Articles 1 and 2, required commercial undertakings producing or distributing goods identified according to weight, measurement or quantity, and whose turnover during the first half of 1973 exceeded five thousand million lire, to submit to the Comitato interministeriale dei prezzi (the C.I.P.) a return stating the prices that they charged for such goods on 28 June 1973. Article 3 provided that, until 30 June 1974, any change in those prices should be preceded by notification to the C.I.P. and that such change should take effect sixty days after notification, unless it was rejected in a reasoned decision by the appropriate Minister. This was subject to a right for the undertaking, during the sixty day period, to request express approval of the change. Sanctions for the breach of these provisions were contained in Article 5. Article 1 contained a proviso exempting from the obligation to submit returns undertakings exclusively producing or distributing goods whose prices were subject to another regulation.

Signor Galli faces three charges under this legislation, in that it is alleged firstly that he failed to submit a return of prices charged by his company for certain cereals, secondly that, in respect of exports of flour, he returned prices different from those he charged on 28 June 1973, and thirdly that he invoiced flour at higher prices than those shown on the return he submitted to the C.I.P.

His basic defence before the Pretura is quite simply that the goods in question were subject to price rules laid down by the EEC and so came within the proviso in Article 1 of Decree No 425. It is said on his behalf that this view accords with legal advice obtained by his trade association, upon which all Italian traders in his position acted (with the result that Decree No 425 never in fact had effect in respect of such goods) and that that view has been upheld by a number of Italian Courts, at Florence, Naples, Verona and elsewhere.

Although the defence is thus founded primarily on a point of Italian law, the Pretore at Rome has decided, before ruling on it, to refer a number of questions to this Court. Those questions seem to me to fall into four groups.

There is first a series of questions (questions (a) to (d)) designed to elucidate to what extent, if any, under Community law, Member States retain power to legislate about the prices of agricultural products for which there has been established a common organization of the market, and in particular, to legislate about the prices of cereals to which Regulation No 120/67/EEC applies and of flour derived from oil seeds to which Regulation No 136/66/EEC applies.

There is next a question in very wide terms (question (e)) asking whether the principle of the free movement of goods within the Common Market and the 'consequent ban on the isolation of national markets' create personal rights in favour of private parties which the national courts of the Member States must uphold.

Next, there is a group of questions (questions (f) (1) to (4)) about the effect of the requirement in Article 40 (3) of the Treaty that a common market organization 'shall exclude any discrimination between producers or consumers within the Community'.

Lastly (by question (f) (4)) the Pretore asks, in effect, whether price controls such as those imposed by Decree No 425 amount to quantitative restrictions on imports forbidden by Article 30 of the Treaty.

The major point at issue seems to me to be that raised in the first group of questions, relating to the powers of Member States to control prices of agricultural products that are subject to a common organization of the market, and in particular the prices of cereals and of flour derived from oil seeds.

It has been held by this Court that, in so far as Member States have assigned to the Community the power to legislate in a particular domain, they no longer have, themselves, legislative power in that domain — see for instance Case 40/69 *Hauptzollamt Hamburg v Bollmann* (Rec. 1970 at p. 80).

A kindred principle laid down in that case is that Member States may not enact provisions designed to add to or modify the effect of Community legislation. This principle was applied in three cases relied upon in argument on behalf of Signor Galli.

In the first of those cases, Case 18/72 *Granaria v Produktschap voor Veervoeder* (Rec. 1972 at p. 1172), the Court held that a Member State had no power to exempt an importer from the levy imposed by Article 14 of Regulation No 120/67/EEC. In the second, Case 131/73 *Grosoli* [1973] ECR at pp. 1566-67, it was held that the Community institutions alone were empowered to prescribe a use for goods imported under a Community tariff quota. And in the third, Case 159/73 *Hannoverische Zucker v Hauptzollamt Hannover* [1974] ECR at p. 129, it was held that the rules of the common organization of the market in sugar left no power to Member States to fill any lacuna in them.

But the Court has never gone so far as to say — as Counsel for Signor Galli would have it say — that once there has been established a common organization of the market for a particular product, the Member States lose all power to intervene, by their own legislation, in the market for that product. On the contrary, it was held in Case 2/73 *Geddo v Ente Nazionale Risi* [1973] ECR at pp. 878-880 that the existence of a common organization of the market for rice did not preclude a Member State from imposing on transactions in that product an internal tax designed to build up a fund to promote national production of it; although the Court indicated that it would have been otherwise had the tax really been a means of reducing the amount of the export refunds provided for by the Community legislation. And the Court's Judgment in Case 190/73 *Officier van Justitie v Van Haaster* (not yet reported) shows that the detailed provisions of a Regulation establishing a common market organization must be closely examined before it is held that a particular kind of national provision is thereby invalidated.

It follows, in my opinion, that the determination of the question whether the existence of common market organizations for cereals and for flour derived from oil seeds precludes legislation by Member States on prices for those products calls for a careful examination of the particular Regulations establishing those organizations.

I think it convenient to start with cereals.

The common organization of the market in cereals was established by Regulation No 120/67/EEC. As far as prices are concerned, this Regulation provides for target prices (Article 2), for basic and derived intervention prices (Articles 2 and 4), for threshold prices (Article 5) and in the case of durum wheat for, in addition, a guaranteed minimum price,

which serves in the calculation of a subsidy (Articles 2 and 10). The threshold prices serve in the calculation of import levies (Article 13) and of export refunds (Article 16). Under a general power, contained in Article 19, to take the necessary measures to meet the situation where the world price of a product is appreciably higher than the threshold price, export levies were introduced by Regulation (EEC) No 1968/73 of the Council of 19 July 1973.

The Commission points out that the purpose of all these measures is to achieve a situation in which the market price of a product is neither appreciably higher nor appreciably lower than the target price. It submits that the Court should accordingly answer the questions posed by the Pretore by saying that Member States may fix maximum prices for cereals so long as those prices are not such as to hinder the actual achievement of the target price on the market.

For my part, my Lords, I do not think that such an answer would be satisfactory.

There is a strong argument for saying that any control of cereal prices by Member States may potentially interfere with the mechanism created by Regulation No 120/67/EEC and that therefore any such control is precluded by that Regulation. But I think that this argument leads too far, for it would logically follow from it that Member States were also precluded from controlling the prices of products derived from cereals. Just as an instance, it appears from the analysis, annexed to the Commission's observations, of 'Price Legislation in force in the Member States of the EEC' that most Member States control the price of bread. The control of the price of bread may well, it seems to me, mean that there is a price above which it is uneconomic for bakers to buy wheat flour; and, if that is so, it must in turn affect millers and set a price above which it is uneconomic for them to buy wheat. So, it seems to me, it is not only the control of cereal prices themselves that may affect the level of those prices.

On the other hand, for the Court to give the answer proposed by the Commission would set national Courts, and in particular minor criminal Courts, an impossible task. There is at any one time only one target price for each cereal to which Regulation No 120/67/EEC applies. This is fixed as representing the price that the Community would like to see ruling on the wholesale market at Duisburg, for a standard quality of that cereal, assuming a contract for sale on the terms 'goods delivered to warehouse, not unloaded' (see Article 2 of the Regulation). The national Court dealing with a particular case would therefore have to decide what effect the price control legislation in its own country was likely to have on the prices ruling in the wholesale market at Duisburg for cereals sold on those terms.

In truth the target price is nothing more than the starting point of the calculations that the Community authorities have to make to determine threshold prices and, more importantly for present purposes, intervention prices. The latter are fixed for all marketing centres in the Community (Article 4) and their importance lies in the fact that, under Article 7, the intervention agencies of Member States are obliged at all times to buy cereals that are offered to them — provided those cereals have been harvested in the Community and that they comply with certain conditions — at the intervention price ruling for the time being for the marketing centre where the offer is made. Plainly, in my opinion, Member States are precluded from introducing price control legislation requiring sales of cereals to be made at prices lower than the intervention prices.

Is one to conclude that that is the only limitation on Member States' powers? I think not. As Mr Advocate-General Trabucchi pointed out in the *Geddo* case ([1973] ECR at p. 887) one must distinguish between a situation where a measure adopted by a Member State can be seen to impinge directly on the rules of a common market organization and a

situation where the question whether such a measure is incompatible with those rules requires a complex economic judgment. In the former situation it is appropriate that private persons adversely affected by the measure should be entitled to seek immediate redress in their national courts, whilst in the latter it is for the Commission to act, if necessary under Article 169.

Translated into terms of the present case, this means that certain provisions of Regulation No 120/67/EEC should be regarded as conferring rights on private persons, whilst others should be regarded as binding Member States only, without conferring such rights.

It may be asked: how can this be, when Article 189 of the Treaty provides:

'A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States?'

The answer, I think, lies in this. As was pointed out by Mr J. A. Winter in an illuminating article (in 9 C.M.L.Rev. 1972, p. 425, particularly pp. 435-436) the provisions of Article 189 were the means chosen by the authors of the Treaty to ensure that every Regulation should, automatically, be incorporated into the law of each Member State. In the absence of such a provision, each Community Regulation would have had to be so incorporated by the method appropriate under the constitutional law of that State — a bewildering prospect. But it does not follow that every provision of every Regulation confers rights on the citizens of Member States that they can rely upon in their national Courts. We are all familiar with national statutes, which unquestionably form part of national law, some provisions of which impose obligations on the State or on public authorities without conferring personal rights on citizens. This must be so too in the case of Community Regulations. Their provisions can have direct effect, in the sense of conferring personal rights, capable of being upheld by national Courts, only in so far as they satisfy the familiar tests laid down by the Court, i.e. the tests of being clear and unconditional, and of requiring no further legislative action for their implementation. That this is so seems to me implicit in the Judgment of the Court in Case 31/64 *Caisse Commune d'Assurances 'La Prévoyance Sociale' v Bertholet* (Rec. 1965, pp. 117-118).

I would accordingly, so far as regards cereals, answer the questions posed by the Pretore by saying that the adoption of Regulation No 120/67/EEC has not deprived Member States of all power to legislate about their prices, but that any such legislation must be compatible with the provisions of that Regulation; adding that, in general, it is for the Commission alone to enforce this requirement of compatibility, but that, in so far as that requirement precludes Member States from prescribing maximum prices lower than the intervention prices, it confers rights on private persons which national Courts must uphold.

I turn to flour derived from oil seeds.

Such flour is one of the products comprised in the common organization of the market in oils and fats established by Regulation No 136/66/EEC. Only in the case of olive oil (Articles 4-20) and colza and rape seed, and sunflower seed (Articles 21-29) does this Regulation concern itself with prices. In the case of other products, including flour derived from oil seeds, it merely provides that the Common Customs Tariff shall be applied (Article 2), and envisages that a compensatory amount may be charged on imports where the interests of Community producers are threatened (Article 3 (6)).

There cannot therefore be any direct incompatibility between the Regulation and a national system of control of the prices for flour derived from oil seeds. There may however be indirect incompatibility, of the kind of which, in my view, the Commission must in the first instance be the judge, since control of prices for flour derived from oil seeds

may affect the prices obtainable for oil-seeds themselves.

I would therefore, as regards such flour, give to the Pretore an answer on the same lines as that relating to cereals, but omitting any reference to intervention prices.

I realize that a possible consequence of the adoption of my view is that people in the Member States may find themselves prosecuted and convicted under national price legislation that is subsequently shown, as the result of action taken by the Commission, to have been invalid. But the answer, I think, to this apparent criticism, is that, in the field of price control, people can flout their national laws, in reliance on Community law, only at their own risk. The suggestion was thrown out by Counsel for the Commission, at the hearing, that, in such a case, the conviction itself would constitute a breach of the Treaty in respect of which proceedings could be taken by the Commission against the Member State concerned under Article 169. My Lords, I do not doubt that that is right, but of course the usefulness of such proceedings to the person convicted would depend very much on the circumstances.

On behalf of Signor Galli it was submitted at the hearing that Member States should, before introducing price control legislation, seek clearance from the Community Institutions. My Lords, Member States are, I think, always free to consult the Commission or the Council, or both, and, within the limits of what is practicable, it may in certain instances be desirable that they should. But I can see no warrant for saying that they are under a legal obligation to do so in the case of proposed price control legislation. Indeed, in the case of such legislation, the time factor alone, not to mention the intricacy of the subject-matter, must often render such consultation impracticable.

Another submission made on behalf of Signor Galli was that the Court should reconsider the familiar division of provisions of Community law into those that do and those that do not have direct effect in the sense of creating private rights which national Courts must uphold. The submission was that the Court should recognize the existence of an intermediate category of provisions of Community law which, whilst not being in sufficiently precise terms to have direct effect in that sense, are nonetheless of so general a scope that a criminal Court in a Member State should have regard to them, particularly in deciding upon sentence. My Lords, I do not think that this submission should be accepted. Community law has nothing to do with sentencing for offences against national laws. Indeed it is noteworthy that much of the argument of Counsel for Signor Galli on this point was based on provisions of Italian law. It is not, in my opinion, for this Court to tell the Pretore how to apply that law.

I shall not take up quite so much of Your Lordships' time on question (e) in the Order for Reference. But I think that it may be helpful if I remind Your Lordships of its full terms:

'Are the principle of the free movement of goods within the Common Market and the consequent ban on the isolation of national markets, so as to impede the realization of a single market in Europe, as provided for in Articles 2 and 3 (f) of the Treaty, basic principles of the Community giving rise to personal rights in favour of individuals which, if infringed, even by Member States, can, under Article 5 of the Treaty, be upheld by national Courts?'

As Your Lordships see, this question is in the same terms as the first question that was asked by the Tribunale of Biella in Case 155/73 *Sacchi* [1974] ECR at p. 412. In that case Your Lordship did not find it necessary to answer it, because Your Lordships there held that television signals were not goods, but that their transmission should be regarded as the provision of a service. Mr Advocate-General Reischl, however, dealt with the

question (ibid. at pp. 435-436). I need not repeat what he said, except perhaps to add a reference to the Judgment in the *Geddo* case ([1973] ECR at pp. 878-879) in which the Court followed its Judgment in Case 73/70 the *Deutsche Grammophon* case (Rec. 1971 at p. 498) which was cited by Mr Advocate-General Reischl.

My conclusion accords entirely with that of Mr Advocate-General Reischl, and incidentally with the submissions of the Commission: the principle of the free movement of goods, whilst it is a basic principle of the Community, does not, by itself, confer on private persons rights that national Courts are called upon to uphold; and Article 5 of the Treaty goes no further than to impose a general obligation on Member States, the precise import of which, in any particular case, depends on the actual provisions of Community law applicable to that case.

The third group of questions posed by the Pretore seems to me to raise an important problem of interpretation of Article 40 (3) of the Treaty. That paragraph, Your Lordships remember, lays down what are to be the characteristics of a common market organization. It includes a provision, which is that in issue here, to the effect that 'The common organization ... shall exclude any discrimination between producers or consumers within the Community.'

The Commission submits that Article 40 (3) as a whole, and that provision in particular, are concerned primarily with the contents of Community legislation establishing a common market organization and that they can apply to national legislation only in so far as such legislation is enacted, pursuant to the Community legislation itself, in order to implement it in some particular respect or respects. On this view, the provision against discrimination contained in Article 40 (3) has no possible application to national price control legislation enacted independently of any common market organization, and is therefore irrelevant in this case.

My Lords, I confess that I was at first attracted by that view, but I have come to the conclusion, after some hesitation, that it is too narrow.

Article 40 (3) is ambiguous in that it does not say whether it is the provisions of the common organization, or its existence, that 'shall exclude' the discrimination in question. If it is the former, the Commission is right. But I prefer the alternative view that it is the latter, because otherwise Member States would be left free to discriminate in circumstances in which the Community itself was forbidden to do so. I therefore think that Article 40 (3) not only precludes any discrimination, between producers or consumers within the Community, by the legislation establishing a common market organization, but also precludes Member States, once such an organization has been established for a particular product, from discriminating, whether by legislation or otherwise, between producers or consumers of that product.

But that is not to say that I go all the way with the argument that was put forward, on this aspect of the case, on behalf of Signor Galli. That argument, which is reflected in the questions asked by the Pretore, may be summarized by saying that Decree No 425 discriminated between sellers on the Italian market and exporters from Italy, between Italian undertakings and undertakings established in other Member States, and between large and small Italian undertakings.

I would, for my part, reject those criticisms of the Decree. It is in the nature of national price control legislation that it should affect only sales in the home market of the State concerned and bind only undertakings trading in that State. Moreover it is often a characteristic of such legislation that it should apply only to large-scale undertakings, partly because of the excessive administrative burden involved in applying it to every firm, however small, and partly because, in many trades, the behaviour of the larger

undertakings determines the behaviour of the market. Thus the *Counter-Inflation (Notices of Increases in Prices and Charges) Order 1973* (S.I. 1973/664) of the United Kingdom, which is roughly the equivalent there of Decree No 425, made notification of prices applicable only to manufacturers having sales in the United Kingdom market exceeding £50 million a year and to service undertakings having sales in that market exceeding £20 million a year. This makes the limit of, in effect, 10 000 million lire a year set by Decree No 425 seem low. Nor is it only in national legislation that criteria of financial size are used in modern economic management. Such a criterion appears in the Resolution of the Council of 14 September 1973 to which I have referred 'on further measures to be taken against inflation'. Section VI of this Resolution provides that 'the short-term Economic Policy Committee shall give priority to examining both the possibility of setting up in all Member States a system requiring enterprises exceeding a certain size to notify price increases in advance and the possibility of increasing State supervision of price trends in order to prevent abuses on important markets.' Article 14 of the Second Council Directive of 11 April 1967 on Value Added Tax (OJ Sp. Ed. 1967, p. 16) provides that each Member State may apply to small undertakings, where subjection to the normal system of Value Added Tax would meet with difficulties, the special system best suited to national requirements and possibilities.

Of course, if in any particular instance, it were shown that the financial criterion was pitched at a level calculated to affect only certain specific undertakings, without giving wide market coverage, the conclusion might be drawn that objectionable discrimination was intended. But there is no indication that that was so in the present case.

I come to the final question, which asks in substance whether the promulgation of Decree No 425 constituted a breach of Article 30 of the Treaty. That Article, Your Lordships remember, prohibits quantitative restrictions on imports, and all measures having equivalent effect, as between Member States. I may add that both Regulation No 120/67/EEC (in Article 21 (1)) and Regulation No 136/66/EEC (in Article 3 (1)) expressly prohibit the application of any quantitative restriction or measure having equivalent effect in trade between Member States. As was pointed out on behalf of Signor Galli, there can be no doubt that all three of those provisions of Community law have direct effect, so that national Courts are precluded from enforcing national statutes that conflict with them.

It was also pointed out on behalf of Signor Galli that Regulation No 120/67/EEC (in Article 18 (2)) and Regulation No 136/66/EEC (in Article 3 (2)) both expressly prohibit the application of any quantitative restriction or measure having equivalent effect in trade with third countries; and certain arguments were addressed to the Court on his behalf based on those provisions. But, my Lords, no question is referred to the Court by the Pretore of Rome about those provisions. I accordingly refrain from saying anything about them.

Price controls are not, of course, quantitative restrictions in the strict sense. The question is to what extent they may constitute measures having equivalent effect to such restrictions.

In Case 8/74 *Procureur du Roi v Dassonville* (in para. 5 of the Judgment, which is not yet reported) the Court laid down that:

'All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.'

My Lords, it seems to me that, implicit in that formulation of the principle, in so far as it relates to imports, is the notion of discrimination against imports or against particular imports. No one could

suggest, for instance, that a Member State which sought to control inflation by means of monetary and budgetary measures, as recommended by the Resolutions of the Council, was thereby introducing measures having an effect equivalent to quantitative restrictions, although those measures would be, unquestionably, designed to reduce demand and therefore potentially imports.

It was argued on behalf of Signor Galli that the effect of Decree No 425, having regard to conditions in the world market for cereals, would have been, had its provisions been observed by the leading Italian importers, to compel them to cease to trade, unless they were prepared to trade at a loss. This would inevitably have reduced Italian imports. But this argument seems to me to miss the point, because it does not grapple with the question whether there would have been a similar inhibition of trade in home-produced goods.

Of little more pertinence, I think, are the references made, both on behalf of Signor Galli and by the Commission, to the latter's Directive No 70/50/EEC of 22 December 1969. This was aimed at the abolition of measures having an effect equivalent to quantitative restrictions on imports not covered by other provisions adopted in pursuance of the Treaty. By Article 2 (3) of this Directive there were expressly included among the measures referred to those which —

'(d) preclude any increase in the price of the imported product corresponding to the supplementary costs and charges inherent in importation;

(e) fix the prices of products solely on the basis of the cost price or the quality of domestic products at such a level as to create a hindrance to importation.'

It is to be observed in the first place that the terms of those paragraphs, in themselves, are not apt to cover provisions such as those of Decree No 425, which merely forbade each undertaking from increasing the prices that it charged on a particular date without the approval of the appropriate Minister. Secondly it is to be observed that all the paragraphs of Article 2 (3) are introduced by a general provision, in Article 2 (1), making it clear that they apply only to 'measures, other than those applicable equally to domestic or imported products'.

In the result I am of the opinion that the introduction of price control legislation of the kind here in question does not involve the imposition of measures having equivalent effect to quantitative restrictions on imports, unless it should happen that that legislation in some way discriminates against imports either on the face of it or in its practical operation.

At the hearing, an argument was put forward on behalf of Signor Galli, based on Article 85 of the Treaty. The argument was to the effect that for a Member State to introduce price control legislation was in breach of that Article, because undertakings engaged in trade in any particular field would naturally tend to charge the maximum price allowed under such legislation, so that the legislation would yield the same result as would a price ring. My Lords, that may be so, but I think it enough for me to say, first, that Article 85 is concerned only with agreements between private undertakings and not with State legislation and, second, that no question about Article 85 is asked by the Pretore of Rome in the Order for Reference. The argument was therefore, in my view, with all respect to Counsel, doubly irrelevant.

I am therefore of the opinion that the questions asked in the Order for Reference should be answered as follows:

(1) The adoption by the Council of the European Communities of Regulation No 120/67/EEC has not deprived Member States of all power to legislate about the prices of cereals, but any such legislation must be compatible with the provisions of that Regulation. In general it is for the Commission of the European Communities alone to ensure the observance of this requirement of compatibility. In so far, however, as that requirement precludes Member States from prescribing, for products for which intervention prices exist, maximum prices lower than the intervention prices, the Regulation confers rights on private persons which national Courts must uphold.

(2) The adoption by the Council of the European Communities of Regulation No 136/66/EEC has not deprived Member States of all power to legislate about the prices of flour derived from oil seeds, but any such legislation must be compatible with the provisions of that Regulation. It is for the Commission of the European Communities alone to ensure the observance of this requirement of compatibility.

(3) The principle of the free movement of goods within the Common Market, whilst it is one of the basic principles of the Community, does not by itself confer on private persons rights that national Courts are called upon to uphold. Article 5 of the EEC Treaty, in requiring Member States to take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaty and to abstain from any measure which could jeopardize the attainment of its objectives, imposes a general obligation on Member States, the precise import of which depends, in each particular case, on the actual provisions of Community law applicable to that case.

(4) The prohibition of discrimination between producers and consumers within the Community contained in Article 40 (3) of the EEC Treaty is not infringed merely because a Member State introduces, in respect of a product covered by a common organization of the market, price control legislation that applies only to sales in the home market of that State and binds only large-scale undertakings trading in that State.

(5) The introduction by a Member State of legislation forbidding traders to increase the prices that they respectively charged on a given date without ministerial permission does not involve the imposition by that State of measures having equivalent effect to quantitative restrictions on imports of the products affected unless that legislation discriminates against imports, either on the face of it or in its practical operation.