

Case 231/83

Henri Cullet
and Chambre syndicale des réparateurs automobiles
et détaillants de produits pétroliers

v

Centre Leclerc Toulouse
and Centre Leclerc Saint-Orens-de-Gameville

(reference for a preliminary ruling
from the Tribunal de Commerce, Toulouse)

‘National rules on fuel prices’

Summary

1. *Competition — Community rules — Obligations of the Member States*
(EEC Treaty, Art. 5, second para, and Art. 85 (1))
2. *Competition — Community rules — National rules on fuel prices — Compatibility*
(EEC Treaty, Arts 3 (f), 5, 85 and 86)
3. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Price control — Permissibility — Conditions*
(EEC Treaty, Art. 30)
4. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Rules on fuel prices — Prohibition — Criteria*
(EEC Treaty, Art. 30)

1. Although the rules laid down in Article 85 (1) of the Treaty are concerned with the conduct of undertakings and not with the national legislation of Member States, the latter are none the less obliged

under the second paragraph of Article 5 of the Treaty not to detract, by means of national legislation, from the full and uniform application of Community law or from the effectiveness of its

implementing measures; nor may they introduce or maintain in force measures, even of a legislative nature, which may render ineffective the competition rules applicable to undertakings.

2. 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.
3. Systems of price control which apply to domestic products and imported products alike do not in themselves constitute measures having an effect equivalent to a quantitative restriction but may have such an effect when the prices are fixed at a level such that imported products are placed at a disadvantage compared to identical domestic products, either because they cannot profitably be marketed on the conditions laid down or because the competitive advantage conferred by lower cost prices is cancelled out.
4. 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 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.

OPINION OF MR ADVOCATE GENERAL
VERLOREN VAN THEMAAT
delivered on 23 October 1984 *

*Mr President,
Members of the Court,*

1. The preliminary question

By order of 1 August 1983 the President of the Tribunal de Commerce [Commercial Court], Toulouse, submitted to the Court the following question:

‘Must Articles 3 (f) and 5 of the Treaty of 25 March 1957 establishing the EEC be interpreted as prohibiting the fixing in a Member State by law or by regulation of

minimum prices for the sale to consumers, at the pump, of “regular” and “super” petrol and diesel oil, a system which compels any retailer who is a national of a Member State to conform to the fixed minimum prices?’

At first sight, that question displays a strong resemblance to the question on which Mr Advocate General Darmon delivered his opinion on 3 October 1984 in Case 229/83, *Leclerc and Others v Sàrl ‘Au blé vert’ and Others*. It will nevertheless be apparent from my examination of the facts, and especially

* Translated from the Dutch.