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 6 July 1984, by the Tribunal de grande instance, Versailles, in criminal proceedings pending before the Tribunal.

In those proceedings Mrs Marie-Hélène Ferey, née Héricotte, together with the company of which she is Managing Director, were charged with infringing the French legislation fixing minimum prices for the retail sale of petrol. She was charged on one count of infringing Ministerial Decree No 82-13/A of 29 April 1982 in respect of cutting prices in August 1983, and on two counts of infringing Ministerial Decree No 83-58/A of 9 November 1983 by cutting prices in December 1983. In addition, two trade associations and seven individual fuel distributors were admitted to the proceedings as civil parties against Mrs Ferey and her company. Mrs Ferey pleaded by way of defence that the French minimum price legislation was contrary to the provisions of the EEC Treaty. In order to resolve that issue the Tribunal referred the following question to the Court for a preliminary ruling:

'Whether Articles 3 (f), 5, 30, 85 and 86 of the EEC Treaty must be interpreted as prohibiting the adoption by a Member State of legislation or rules introducing a minimum price system for the retail sale of "regular" and "super" petrol?'

It is apparent from the body of the reference that the national court also intended to mention Article 36 in its question. It thus raises all the Community provisions which were considered by the Court in Case 231/83 *Cullet* v *Centre Leclerc*, in which the Court gave judgment on 29 January 1985. The national legislation at issue in the Cullet case was Ministerial Decree No 82-13/A of 29 April 1982: the proceedings which give rise to the present reference contain one count under that Decree and two counts under Ministerial Decree No 83-58/A of 9 November 1983, which repealed and replaced Decree No 82-13/A with effect from 15 November 1983. It must therefore be considered to what extent, if any, this change of national legislation alters the issues of Community law involved.

Under the French legislation in force both during the period of application of Decree No 82-13/A and during the period of application of Decreee No 83-58/A, 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 Decree No 82-13/A, the amount to be subtracted was 9 centimes per litre for normal-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. 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 the present case involves the same issues of Community law as the Cullet case. There is no doubt that the question referred by the Tribunal addresses those issues.

In written observations submitted to the Court, on of the civil parties, the Syndicat National des Gérants Libres, pointed out that Mrs Ferey and her company are only retailers and under French national law are not allowed to import. The trade association argues that since the defendants cannot carry out imports, they are unable to establish that the national price-fixing legislation constitutes an obstacle to trade with other Member States 'at their level', and are therefore not entitled to invoke the provisions of the EEC Treaty. This argument must be rejected, because the ambit of the Community rules on free movement of goods depends not on the status of the person invoking them but on the effect on trade between Member States of the national measures in question. Mrs Ferey and the company of which she is Managing Director are facing a criminal prosecution under national legislation alleged to be contrary to Community law, and are plainly entitled to rely upon relevant Community law in their defence.

Apart from this point the observations submitted by the Syndicat National des Gérants Libres and 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 question referred by the Tribunal should be as follows:

'(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.

(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.