

OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 28 February 1989 *

*Mr President,
Members of the Court,*

1. The new hearing held in Case 246/88 on 14 February 1989 did not bring to light any fresh information such as to prompt me to change the first Opinion which I delivered in this case on 5 May 1988. I therefore now confirm the reasoning set out in that Opinion and the conclusion which I reached.

2. I should merely like to make one clarification regarding the problem of the effect on trade between Member States. For the reasons given in my first Opinion, I am

convinced that there has been such an effect in the present case.

3. But I do not share the opinion that in the case of a purely national agreement it is permissible to conclude that trade between Member States has been affected solely because the structure of competition within that Member State has been changed in such a way that imports encounter conditions different from those which would have prevailed in the absence of the agreement. It seems to me that if such a principle were upheld, the great majority of purely national agreements would be deemed to affect trade between the Member States and would be caught by Article 85. I do not think that such a result is in conformity with the spirit of that provision.

* Original language: French.