

Case C-62/88

Hellenic Republic

v

Council of the European Communities

(Importation of agricultural products — Accident
at Chernobyl nuclear power-station)

Report for the Hearing	1528
Opinion of Mr Advocate General Darmon delivered on 14 February 1990	1536
Judgment of the Court, 29 March 1990	1545

Summary of the Judgment

- 1. Action for annulment — Action against a measure based on the EEC Treaty — Submissions — Infringement of the EAEC or ECSC Treaties — Admissibility (EEC Treaty, Art. 173, first paragraph)*
- 2. Measures adopted by institutions — Choice of legal basis — Criteria*
- 3. Measures adopted by institutions — Statement of the reasons on which they are based — Obligation — Scope (EEC Treaty, Art. 190)*
- 4. Common commercial policy — Scope — Importation of agricultural products — Determination of maximum permitted levels of radioactive contamination — Inclusion (EEC Treaty, Art. 113; Council Regulation No 3955/87)*

1. The need for a complete and consistent review of legality requires the first paragraph of Article 173 to be construed as not depriving the Court of jurisdiction to consider, in proceedings for the annulment of a measure based on a provision of the EEC Treaty, a submission concerning the infringement of a rule of the EAEC or ECSC Treaties.
2. In the context of the organization of the powers of the Community, the choice of the legal basis for a measure, which may influence its content in so far as it determines the procedure to be followed for its adoption, must be based on objective factors which are amenable to judicial review.

3. Although Article 190 of the Treaty compels a reference to the Commission's proposal in measures which may be adopted only on a proposal from the Commission, it does not thereby impose the obligation to indicate whether or not the measure in question is in conformity with that proposal.
4. By subjecting the release for free circulation of certain agricultural products originating in non-member countries to compliance with maximum permitted levels of radioactive contamination, Regulation No 3955/87 pursues the aim of ensuring that agricultural products and processed agricultural products

intended for human consumption and likely to be contaminated are introduced into the Community only according to common arrangements which safeguard the health of consumers, maintain, without having unduly adverse effects on trade between the Community and non-member countries, the unified nature of the market and prevent deflections of trade. It follows that, according to its objective and its content, the regulation seeks to regulate trade between the Community and non-member countries; accordingly it comes within the common commercial policy within the meaning of Article 113 of the EEC Treaty.

REPORT FOR THE HEARING delivered in Case C-62/88 *

I — The facts

1. In the present action the annulment is sought of Council Regulation No 3955/87 of 22 December 1987 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station (Official Journal 1987, L 371, p. 14).

2. That regulation was adopted on the basis of Article 113 of the EEC Treaty by a qualified majority.

3. Pursuant to Article 2 of the regulation, the release for free circulation of the

products from non-member countries covered by it is subject to compliance with certain maximum permitted radioactive levels. Those levels are determined in Article 3 in the following terms:

'the accumulated maximum radioactive level in terms of caesium 134 and 137 shall be:

- (i) 370 Bq/kg for milk falling within Headings 04.01 and 04.02 of the Common Customs Tariff and for food-stuffs intended for the special feeding of infants during the first four to six months of life, which meet, in themselves, the nutritional requirements of this category of person and are put up for retail sale in packages which are

* Language of the case: Greek.