

Question referred

1. Must spindles with the specific features as described be deemed to be part of the child safety gate?
 - If the first question is answered in the affirmative, so that the spindles are deemed to be part of the child safety gate, must the spindles then be classified under CN heading 9403 90 10 or CN heading 7326 and 4421?
 - If the first question is answered in the negative, so that the spindles are not deemed to be part of the child safety gate, must the spindles then be classified under CN heading 7318 15 90 or CN heading 7318 19 00?
2. If spindles with the specific features as described must be classified under CN heading 7318 15 90, the EU Court of Justice is requested to provide a preliminary ruling on the following question:
 - Is Council Regulation (EC) No 91/2009 of 26 January 2009 ⁽¹⁾ imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China invalid as a result of the fact that the Commission and the Council — according to the WTO's Appellate Body — based themselves on a process that linked the definition of EU industry to EU producers' willingness to be part of a sample and be inspected, resulting in a self-selecting process in the industry, which gave rise to a material risk of distortion of the investigation and the result?

⁽¹⁾ Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009 L 29, p. 1).

Action brought on 23 October 2017 — Italian Republic v Council of the European Union**(Case C-611/17)****(2017/C 424/38)***Language of the case: Italian***Parties**

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Council Regulation (EU) 2017/1398 of 25 July 2017 amending Regulation (EU) 2017/127 as regards certain fishing opportunities, published in Official Journal of the European Union No L 199 of 29 July 2017, particularly Article 1(2) where it amends Annex ID to Regulation (EU) 2017/127, the whole of paragraph [2] of the annex to the contested regulation (containing the amendment to Annex ID to Regulation (EU) 2017/127) and the whole of recitals 9, 10, 11 and 12;
- order the Council of the European Union to pay the costs.

Pleas in law and main arguments

First plea in law: infringement of Article 1 of Decision 86/238/EEC on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas.

There was no obligation to transpose the ICCAT decision to quotas for swordfish catches.

Second plea in law: failure to state reasons (second paragraph of Article 296 TFEU).

At any rate, that decision is not reasoned.

Third plea in law: infringement of Article 17 TEU and of Article 16 of Regulation No 1380/2013.

The decision is contrary to the principle of relative stability and the interests of the European Union.

Fourth plea in law: infringement of the principles of non-retroactivity, legal certainty and legitimate expectations.

In any event, the decision could not apply to the current fishing season.

Fifth plea in law: failure to state reasons (infringement of the second paragraph of Article 296 TFEU).

The decision is unjustified in so far as it adopts the four-year period 2012-2015 as the reference period for sharing the TAC quota among the Member States.

Sixth plea in law: infringement of the principle of proportionality (Article 5 TEU) and an erroneous assessment of the facts.

The exclusion of the years 2010 and 2011 from the reference period is excessive and wrong in relation to the objective of including only lawful catches in the catch data.

Seventh plea in law: infringement of Articles 258 TFEU and 260 TFEU; lack of jurisdiction.

It was not for the Council to penalise Italy with regards to the use of driftnets.

Eighth plea in law: infringement of the principle of good administration (Article 41 of the Charter of Fundamental Rights of the European Union) and of Article 16 of Regulation No 1380/2013.

The adoption of the reference period 2012-2015 has penalised Italy by reducing its capacity to fish, in breach of the principle of relative stability and without an appropriate inquiry.

Ninth plea in law: infringement of the principle of non-discrimination (Article 18 TFEU).

This reduction unfairly discriminates against Italian fishermen.

Tenth plea in law: infringement of the principles of non-retroactivity, legal certainty and legitimate expectations.

In any event, the reduction could not apply to the current fishing season.
