

Case C-61/94

Commission of the European Communities

v

Federal Republic of Germany

(Failure by a Member State to fulfil its obligations —
International Dairy Arrangement)

Opinion of Advocate General Tesauro delivered on 7 May 1996	I - 3992
Judgment of the Court, 10 September 1996	I - 4006

Summary of the Judgment

1. *Actions for failure to fulfil obligations — Commission's right to bring proceedings — Action for a declaration that an international agreement has not been complied with — Consultations within the 113 Committee — No effect*
(EC Treaty, Arts 113, 155, 169 and 228)
2. *Actions for failure to fulfil obligations — Reasoned opinion — Application initiating proceedings — Arguments and submissions must be the same — Court's consideration of the merits — Situation to be taken into account — Situation at the close of the period prescribed by the reasoned opinion*
(EC Treaty, Art. 169)
3. *Community law — Interpretation — Methods — Interpretation of secondary legislation in the light of international agreements concluded by the Community*

4. *International agreements — International Dairy Arrangement — Inward processing relief arrangements — Authorizations granted for the importation of products whose customs value is lower than the minimum prices set by the IDA — Failure to fulfil obligations — Infringement of Community rules on inward processing relief*

(*International Dairy Arrangement, Annex I, Art. 6(1)(a), Annexes II and III, Art. 6(a); Council Regulation No 1999/85; Commission Regulation No 2228/91*)

5. *Actions for failure to fulfil obligations — Proof of failure to fulfil obligations — Burden of proof on Commission — Presumptions — Not permissible*

(*EC Treaty, Art. 169*)

1. For the Commission to succeed in its task under Article 155 of the Treaty of ensuring application of the Treaty and, accordingly, compliance with international agreements concluded by the Community which, pursuant to Article 228 of the Treaty, are binding both on the Community institutions and the Member States, it must not be hindered in the exercise of its power under Article 169 of the Treaty to bring proceedings before the Court where a Member State has failed to fulfil its obligations under such an agreement. The initiation of proceedings before the Court cannot therefore depend on the outcome of consultations within the Article 113 Committee; *a fortiori*, it cannot hinge on whether a consensus between the Member States has first been found to exist within the Committee with regard to the interpretation of the Community's commitments under an international agreement.

ment must be assessed in the light of the Community legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned opinion.

3. When the wording of secondary Community legislation is open to more than one interpretation, preference should be given as far as possible to the interpretation which renders the provision consistent with the Treaty. Likewise, an implementing regulation must, if possible, be given an interpretation consistent with the basic regulation. Similarly, the primacy of international agreements concluded by the Community over provisions of secondary Community legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements.

2. An action under Article 169 of the Treaty can be based only on the arguments and submissions already set forth in the reasoned opinion. It follows that, in such proceedings, the existence of an infringe-

4. Where a Member State authorizes the importation under inward processing relief arrangements of dairy products whose customs value is lower than the

minimum prices set under the International Dairy Arrangement (IDA), which was approved on behalf of the Community by Decision 80/271 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations, it fails to fulfil its obligations under Article 6(1)(a) of Annex I and Article 6(a) of Annexes II and III to the IDA, and under Regulation No 1999/85 on inward processing relief arrangements.

the IDA are observed applies equally to imports and exports from the participating countries. So far as concerns the regulation on inward processing, its implementing regulation (No 2228/91) does not exempt from the IDA goods placed under inward processing relief arrangements, and the economic conditions laid down by the basic regulation (No 1999/85) for the granting of authorization are not satisfied where imports are effected in disregard of the minimum prices.

The IDA covers all goods imported into the Community and placed under inward processing relief arrangements and all goods exported or re-exported after processing. Furthermore, the undertaking to ensure that the minimum prices set under

5. In proceedings under Article 169 of the Treaty, the Commission is required to establish the existence of the alleged infringement and may not rely on any presumption.