JUDGMENT OF THE COURT (Eighth Chamber)

24 November 2011 *

In Joined Cases C-323/10 to C-326/10,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Germany), made by decisions of 11 May 2010, received at the Court on 5 and 6 July 2010, in the proceedings

Gebr. Stolle GmbH & Co. KG (C-323/10, C-324/10 and C-326/10),

Doux Geflügel GmbH (C-325/10)

v

Hauptzollamt Hamburg-Jonas,

* Language of the case: German.

THE COURT (Eighth Chamber),

composed of A. Prechal, President of the Chamber (Rapporteur), K. Schiemann and C. Toader, Judges,

Advocate General: J. Mazák,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 8 June 2011,

after considering the observations submitted on behalf of:

— Gebr. Stolle GmbH & Co. KG, by R. Steiling and M. Niestedt, Rechtsanwälte;

— Doux Geflügel GmbH, by R. Steiling and M. Niestedt, Rechtsanwälte;

— Hauptzollamt Hamburg-Jonas (C-324/10 to C-326/10), by T. Peters,

— the European Commission, by F. Wilman and G. von Rintelen, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds (OJ 1987 L 366, p. 1).

2 The references have been made by the Finanzgericht (Finance Court) Hamburg in the context of four proceedings between, first, Gebr. Stolle GmbH & Co. KG ('Gebr. Stolle') and Hauptzollamt Hamburg-Jonas, concerning Cases C-323/10, C-324/10 and C-326/10, and, second, Doux Geflügel GmbH ('Doux Geflügel') and Hauptzollamt Hamburg-Jonas, concerning Case C-325/10, regarding export refunds for poultrymeat.

Legal context

Regulation (EEC) No 2777/75

3 Article 8 of Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat (OJ 1975 L 282, p. 77), last amended by Council Regulation (EC) No 679/2006 of 25 April 2006 (OJ 1987 L 119, p. 1, 'Regulation No 2777/75'), provided, in this sector, for the grant of export refunds to cover the difference between the prices of products on the world market and prices within the European Community.

4 Article 10(1) of Regulation No 2777/75 provides:

'The general rules for the interpretation of the combined nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.'

Regulation No 3846/87

5 Regulation No 3846/87 establishes an agricultural product nomenclature for export refunds which are set out in Annex I. While based on the combined nomenclature of general application established by Council Regulation (EEC) No 2658/87 of 23 July

1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1, the 'CN'), Regulation No 3846/87 is designed to take account of the specificity of the export refund system, and in particular the need to make sub-divisions in the CN for such products.

6 Annex I to Regulation No 3846/87 has been amended, respectively, by Commission Regulation (EC) No 2765/1999 of 16 December 1999 (OJ 1999 L 338, p. 1), at the material time in Cases C-324/10 to C-326/10, and by Commission Regulation (EC) No 2091/2005 of 15 December 2005 publishing, for 2006, the agricultural product nomenclature for export refunds introduced by Regulation (EEC) No 3846/87 (OJ 1987 L 343, p. 1), at the material time in Case C-323/10.

7 In the market for poultrymeat, concerning fresh, chilled or frozen poultrymeat, Annex I to Regulation No 3846/87 makes the following distinctions:

CN Code	Description of goods	Product code
ex 0207	Meat and edible offal, of the poultry of heading No 0105, fresh, chilled or frozen	
	— Of fowls of the species *Gallus domesticus*:	

ex 0207 12	— — Not cut in pieces, frozen	
ex 0207 12 10	— — — Plucked and gutted, without heads and feet but with necks, hearts, livers and gizzards, known as '70 % chickens'	
	— — — — With completely ossified sternum tips, femurs and tibias	
	— — — — — Other	0207 12 10 9900
ex 0207 12 90	— — — Plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as '65 % chickens'or otherwise presented:	
	— — — — '65 % chickens':	
	— — — — — With completely ossified sternum tips, femurs and tibias:	
	— — — — — Other	0207 12 90 9190

	— — — — Fowls of the species *Gallus domesticus*, plucked and drawn, without heads and feet but with necks, hearts, livers and gizzards in irregular composition:	
	— — — — — Fowls of the species *Gallus domesticus,* with completely ossified sternum tips, femurs and tibias	
	— — — — — Other	0207 12 90 9990

8 Commission Regulation (EC) No 2580/98 of 30 November 1998 amending Regulation (EEC) No 3846/87 (OJ 1998 L 322, p. 31) introduced product code 0207 12 90 9990 in Annex I to the latter. In that regard, its second recital states the following:

'Whereas presentations other than 70 % chickens and 65 % chickens have appeared on the market; whereas they should be included in the refund nomenclature with a view to the granting of refunds; whereas that nomenclature should accordingly be amended.'

9 The regulations fixing export refunds in the market for poultrymeat which were in force during the periods considered provided, inter alia, rights to export refunds for products coming under product codes 0207 12 10 9900, 0207 12 90 9190 and 0207 12 90 9990 of Annex I to Regulation No 3846/87.

Regulation No 2658/87

10 The general rules for the interpretation of the CN, which are set out in Part One of Title I A thereof, provide in particular:

'A. General rules for the interpretation of the [CN]

Classification of goods in the [CN] shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

...'

11 Pursuant to the second indent of Article 9(1)(a) and Article 10 of Regulation No 2658/87, the European Commission adopts Explanatory Notes for the CN, which are published in the *Official Journal of the European Union*.

12 The Explanatory Notes to subheading 0207 11 30, which, according to the words of the notes to subheading 0207 12 10, are to apply *mutatis mutandis* to the latter, are worded as follows:

'This subheading includes roasting chickens, which are plucked chickens without heads and feet, but with the neck, completely drawn, but inside the carcass of which the heart, liver and gizzard have been replaced.'

13 The Explanatory Notes to subheading 0207 11 90, which, according to the words of the notes to subheading 0207 12 90, are to apply *mutatis mutandis* to the latter, read as follows:

'This subheading includes roasting chickens, which are plucked chickens without heads and feet, and completely drawn. It also covers fowls presented in a form other than those mentioned under subheadings 0207 11 10 and 0207 11 30, for example, unplucked, ungutted chickens, with heads and feet.'

Regulation (EC) No 800/1999

14 Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11), defines the common detailed rules for the application of the system of export refunds on agricultural products.

15 Under the first paragraph of Article 21(1) of that regulation:

'No refund shall be granted on products which are not of sound and fair marketable quality on the date on which the export declaration is accepted.'

16 According to Article 51(1) of Regulation No 800/1999, an exporter is to have a penalty imposed on him if he 'has applied for a refund exceeding that applicable'.

Regulation (EEC) No 2913/92

17 Article 70(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) provides:

'Where only part of the goods covered by a declaration are examined, the results of the partial examination shall be taken to apply to all the goods covered by that declaration.

However, the declarant may request a further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared.'

The actions in the main proceedings and the questions referred for a preliminary ruling

Case C-323/10

18 By an export declaration which it lodged on 4 September 2006 before the competent customs office, Gebr. Stolle declared 2 163 boxes of chickens under product code 0207 12 90 9190 of the CAP Goods List for export to the United Arab Emirates and requested an export refund.

19 During the course of the customs export formalities, the competent customs office took four boxes as samples, two of which as reserve samples, and sent them to the Zolltechnische Prüfungs- und Lehranstalt (Customs laboratory and training college) of the Oberfinanzdirektion (Principal Revenue Office) Hamburg, which subsequently established that four of the poultry carcasses examined could not be classified under the code indicated, since they had not been completely drawn. In two cases, some of the guts were still attached to the carcasses and, in two other cases, the trachea was still present.

20 In a partial refusal decision of 27 March 2007, the Hauptzollamt Hamburg-Jonas (customs authority) refused an export refund for a quantity of 5 292,5 kg, which corresponded to 21 17 % of the total weight. It also imposed a fine on Gebr. Stolle of EUR 1 402,51.

21 As a result of unsuccessful objection proceedings, Gebr. Stolle brought an action on 7 May 2008 before the referring court against that decision and against the decision on the objection of 9 April 2008.

22 In those circumstances, the Finanzgericht Hamburg decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does a carcass in subheading 0207 12 90 have to be completely drawn (= without residue), so that it is prejudicial to its tariff classification if part of the guts or trachea, for example, are still attached to the carcass following a mechanical gutting process?'

Case C-324/10

23 By an export declaration which it lodged on 9 June 2000 before the competent customs office, Gebr. Stolle declared 480 boxes of chickens under product code 0207 12 90 9990 of the CAP Goods List for export to Russia and requested an export refund.

24 During the course of the customs export formalities, the competent customs office took two boxes as samples, one of which as a reserve sample, each containing twelve poultry carcasses and sent them to the Zolltechnische Prüfungs- und Lehranstalt of the Oberfinanzdirektion Hamburg, which subsequently established that four of the poultry carcasses inspected could not be classified under the code indicated, because of an unusual quantity of giblets. The customs laboratory and training college specifically established the existence of the following giblets from the chicken samples to which objection was raised:

— 1 neck, 1 liver, 1 stomach, 2 hearts,

— 2 necks, 1 heart, 1 liver, 1.5 gizzards,

— 1 neck, 1 liver, 1 stomach, 2 hearts, and

— 1 neck, 1 liver, 1 stomach, 2 hearts.

25 In a partial refusal notice of 8 January 2001, the Hauptzollamt Hamburg-Jonas refused an export refund for a quantity of 1741,9 kg, which corresponded to 33 6% of the total weight. It also imposed a fine on Gebr. Stolle of EUR 600.96.

26 As a result of unsuccessful objection proceedings, Gebr. Stolle brought an action on 30 April 2003 before the referring court against that decision and against the decision on the objection of 3 April 2003.

27 In those circumstances, the Finanzgericht Hamburg decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is an "irregular composition" within the meaning of product code 0207 12 90 9990 to be interpreted as meaning that that code allows for the addition to the carcass of a maximum of only four giblets from those which it lists, of one or more than one type, provided that the total of four is adhered to?

2. In the event that the first question is answered in the affirmative, does subheading 0207 12 10 also cover carcasses inside which one of the giblets listed in that subheading is added more than once?'

Case C-325/10

28 By an export declaration which it lodged on 8 November 2000 before the competent customs office, Gebr. Stolle declared 66 060 boxes of chickens under product code 0207 12 10 9900 of the CAP Goods List for export to Russia and requested an export refund.

29 During the course of the customs export formalities, the competent customs office took 4 boxes as samples, 2 of which as reserve samples, each containing 10 poultry carcasses and sent them to the Zolltechnische Prüfungs- und Lehranstalt of the Oberfinanzdirektion Hamburg, which subsequently established that 17 of the poultry

carcasses inspected could not be classified under the code indicated, because 14 of those poultry carcasses inspected had not been completely plucked, or, in 3 cases, because they either contained too many viscera or none at all or showed signs of bone breakage.

30 In a partial refusal notice of 30 March 2001, the Hauptzollamt Hamburg-Jonas refused an export refund for a quantity of 369 508,50 kg, which corresponded to a proportion of 43.49 % of the total weight. It also imposed a fine on Doux Geflügel.

31 The Hauptzollamt Hamburg-Jonas subsequently increased the proportion of the export consignment eligible for a refund to 58.89 % because, in the light of the case-law of the Court (Case C-353/04 *Nowaco Germany* [2006] ECR I-7357) and of the Bundesfinanzhof (Federal Finance Court) (judgment of 16 January 2007, VII R 19/03), it now considered that the poultry carcass with clear bone breakage to which objection was raised when the samples were inspected was eligible for a refund.

32 As a result of unsuccessful objection proceedings, Doux Geflügel brought an action on 30 March 2001 before the referring court against that decision and against the decision on the objection of 15 June 2001. The parties were in dispute as to whether Doux Geflügel was entitled to an export refund for the remainder of the amount of 331 019,74 kg.

33 In those circumstances, the Finanzgericht Hamburg decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do chickens under subheading 0207 12 10 of the CN have to be plucked without any residue or may some small quill feathers, plumage feathers, quill ends and hairs still be attached after going through a mechanical plucking process?'

Case C-326/10

34 By an export declaration which it lodged on 20 October 2000 before the competent customs office, Gebr. Stolle declared 405 boxes of chickens under product code 0207 12 90 9990 of the CAP Goods List for export to Russia and requested an export refund.

35 During the course of the customs export formalities, the competent customs office took two boxes as samples, one of which as a reserve sample, each containing ten poultry carcasses and sent them to the Zolltechnische Prüfungs- und Lehranstalt of the Oberfinanzdirektion Hamburg, which subsequently established that one of the ten poultry carcasses inspected could not be classified under the code indicated, because, in the case of the chicken in question to which giblets had been added, the neck had not been freed from the trachea.

36 In a partial refusal notice of 25 July 2001, the Hauptzollamt Hamburg-Jonas refused Gebr. Stolle an export refund for a quantity of 543.20 kg, which corresponded to 9.58 % of the total weight. It also imposed a fine of EUR 73.33 on Gebr. Stolle.

37 As a result of unsuccessful objection proceedings, Gebr. Stolle brought an action on 7 May 2008 before the referring court against that decision and against the decision on the objection of 10 April 2008.

38 In those circumstances, the Finanzgericht Hamburg decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does a poultry carcass in which part of the poultry which is not permitted is attached to one of the giblets permitted by product code 0207 12 90 9990 come under that heading of the CAP Goods List?

2. If the answer to the first question is in the negative, when a customs office seeks to determine whether goods presented for export comply with the CAP Goods List heading stated in the export declaration, is a margin of error to be allowed, so that an anomaly is not prejudicial to a refund?’

39 By order of 23 September 2010, the President of the Court joined Cases C-323/10, C-324/10, C-325/10 and C-326/10 for the purposes of the oral procedure and the judgment.

Consideration of the questions referred

Case C-323/10

40 In this case, the national court asks, in essence, whether subheading 0207 12 90 of Annex I to Regulation No 3846/87, as amended by Regulation No 2091/2005, is to be interpreted as meaning that a poultry carcass under that subheading has to be completely drawn, so that it is prejudicial to its tariff classification if part of the guts or trachea, for example, are still attached to the carcass following a mechanical gutting process.

41 Subheading 0207 12 90 concerns the following products: fowl of the species *Gallus domesticus* not cut in pieces, frozen, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as '65 % chickens'.

42 In the absence of a definition of the concept of 'drawn' in Regulation No 3846/87, reference should be made, in accordance with Article 10(1) of Regulation No 2777/75, to the general rules for the interpretation of the CN and the special rules for its application.

43 Under general rule 1, set out in Part I, Title I A of the CN, classification of goods is to be determined first of all according to the terms of the headings and section or chapter notes, the titles of sections, chapters and sub-chapters being provided for ease of reference only.

44 According to settled case-law, the decisive criterion for the classification of goods in the CN is in general to be sought in their objective characteristics and properties as defined in the wording of headings and in section or chapter notes (see, inter alia, Case C-142/06 *Olicom* [2007] ECR I-6675, paragraph 16, and Case C-370/08 *Data I/O* [2010] ECR I-4401, paragraph 29).

45 In addition, the Harmonised System Explanatory Notes drawn up by the World Customs Organization are, as such, useful aids to the interpretation of the CN. The same applies to the Explanatory Notes for the CN drawn up by the Commission (see, in particular, Case C-379/02 *Imexpo Trading* [2004] ECR I-9273, paragraph 16).

46 The Explanatory Notes for the CN concerning subheading 0207 11 90, which, as set out in the notes to subheading 0207 12 90, apply *mutatis mutandis* to the latter, indicate that this subheading 'includes roasting chickens, which are plucked chickens without heads and feet, and completely drawn'.

47 The referring court notes that the wording of the German version of that note differs from the French and English version of it as regards the definition of the concept of 'drawn'. In particular, although the French and English versions state that, in order for a poultry carcass to be classified under subheading 0207 12 90, the carcass must be 'completely drawn', the German version states that all of the giblets must be removed ('sämtliche Innereien entfernt sind'). Consequently, the referring court wonders whether the German version of those notes correctly reproduces the intention of the European legislature.

48 According to the applicants in the main proceedings, the use of the word 'sämtliche' (all) in the German version of that note means solely that all of the organs must be removed, so that no entire organ is to remain in the carcass, and residues of giblets may therefore exceptionally be present without that adversely affecting their classification

under subheading 0207 12 90. Moreover, it is clear from the wording of that note and, in particular, from the use of the word 'includes', that it is non-exhaustive and confines itself to mentioning examples.

49 In that regard, it must be noted that the linguistic differences between that version as compared with the French and English versions do not allow the concept 'drawn' in subheading 0207 12 90 to be interpreted differently according to the version used. Although the expression 'sämtliche Innereien entfernt sind' in German does not constitute a literal translation of the words 'complètement vidés' in French and 'completely drawn' in English, the specification in the German version that all the organs of a carcass coming under subheading 0207 12 90 must be removed is not really different in meaning from that of the French and English versions specifying that the carcass must be completely drawn.

50 As for the use of the word 'includes', set out in the Explanatory Notes to that subheading, even if, thereby, those notes are not exhaustive, it cannot be held that they also include an implicit reference to goods whose characteristics are contrary to those of the goods explicitly listed in those notes; otherwise the interpretative value of those notes would be adversely affected.

51 The applicants in the main proceedings also claim that the application of general rule 2(a), set out in Part I, Title I A on the interpretation of the CN, according to which any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that it presents, in an unaltered state, the essential characteristics of the complete or finished article, makes it possible to conclude that the presence of residues of giblets does not adversely affect the classification of a carcass under subheading 0207 12 90.

52 In that regard, it should be noted at the outset that the commentary regarding that rule, made in the context of the general rules for the interpretation of the combined nomenclature of the World Customs Organization, states that that rule does not normally apply to products of Sections I to VI, namely to Chapters 1 to 38.

53 Although the Court of Justice acknowledged, in its judgments in Case C-318/90 *Boehringer Mannheim* [1992] ECR I-3495, paragraph 18, and in Case C-290/97 *Bruner* [1998] ECR I-8333, paragraph 30, that the wording 'not normally' means that it cannot altogether be ruled out that that rule of interpretation applies to tariff headings in chapters, it did however point out that the purpose of that rule is to enable two products which are extremely close to one another, to the extent that they are in substance identical from the user's point of view, to be deemed to be the same notwithstanding differences relating only to their presentation (*Bruner*, paragraph 32). However, a poultry carcass from which all the giblets have been removed so that it is completely drawn is not in substance identical from the user's point of view to a carcass in which the residues of giblets are still present following the gutting process.

54 In that regard, it must in particular be noted that the Explantory Notes on subheading 0207 12 90, in the French and English versions as well as in the German version, concern, in particular, roasting chickens. As the Commission points out, roasting chickens are characterised by the fact that they are drawn in such as way as to no longer require any gutting process by the user in order to be ready for roasting.

55 In any event, and in the light of the fact that the wording of that note expressly specifies that all of the giblets must be removed for a carcass to be classified under subheading 0207 12 90, the applicants in the main proceedings have not shown the existence of any special circumstances which would require the application of that general rule in the present case.

56 As regards, finally, the argument of the applicants in the main proceedings that not classifying a poultry carcass under subheading 0207 12 90 of the CN on the basis of the presence of some residue of an organ is contrary to the principle of proportionality, in so far as it leads to not only the refusal, in part, of export refunds but includes a penalty, it is enough to state that the question of classification of goods precedes that of the proportionality of any financial consequences in the case of failure to respect that classification. The answer to that last question cannot therefore determine the answer to the first question.

57 In the light of the foregoing considerations, the answer to the question referred in Case C-323/10 is that subheading 0207 12 90 of Annex I to Regulation No 3846/87, as amended by Regulation No 2091/2005, must be interpreted as meaning that a poultry carcass under that subheading has to be completely drawn, so that it is prejudicial to its tariff classification if part of the guts or trachea, for example, are still attached to the carcass following a mechanical gutting process.

Case C-324/10

The first question in Case C-324/10

58 In this case, the referring court asks, first, whether the product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that the concept of 'irregular composition' set out in that code allows for the presence in the carcass of a maximum of only four giblets from

those which it lists, namely the neck, heart, liver and gizzard, of one or more than one type, provided that the total of four is adhered to.

59 Product code 0207 12 90 9990 concerns the following products: fowls of the species *Gallus domesticus*, plucked and drawn, without heads and feet but with the neck, heart, liver and gizzard in irregular composition.

60 That product code was inserted in Annex I to Regulation No 3846/87 in the poultrymeat sector, by Regulation No 2580/98, according to its second recital, in order to include in the export refund nomenclature presentations other than chickens known as '65 % chickens' and chickens known as '70 % chickens' which have appeared on the market.

61 In that regard, it should be recalled that chickens known as '65 % chickens' coming under subheading 0207 12 90 are offered without giblets. As for chickens known as '70 % chickens' coming under subheading 0207 12 10, it is apparent from the Explanatory Notes to subheading 0207 11 30 which, according to the words of the notes to subheading 0207 12 10, apply *mutatis mutandis* to the latter, that, after a gutting process to remove all of their giblets, the heart, liver and gizzard are put back inside the carcass.

62 Accordingly, chickens coming under product code 0207 12 90 9990, differ from chickens coming under subheading 0207 12 10 by the fact that, in the first case, the neck, heart, liver and gizzard may be present 'in irregular composition'.

63 It must be noted that neither Regulation No 3846/87 nor the wording of the product code 0207 12 90 9990, nor the Explanatory Notes relating to it contain a definition of the concept of 'irregular composition'.

64 According to the referring court and the applicants in the main proceedings, given the origin of the product code concerned and the second recital of Regulation No 2580/98, that notion must also include carcasses containing more than four giblets from those listed, of one or more than one type. In particular, they point out that the Federal Republic of Germany proposed, at the 661st meeting on 14 October 1998 of the Management Committee for Poultrymeat and Eggs, an amendment to the export refunds nomenclature by the insertion of product code 0207 12 90 9990 in order to prevent a refund not being granted for goods whose composition of giblets present minor anomalies due to defects in the production process. Given that the presence of more than four giblets in the carcass may also be due to such deficiencies, that situation ought to be also covered by the product code in question. Product code 0207 12 90 9990 therefore constitutes a residual heading available for products which, taking account of giblets present in the carcass, cannot be classified in any of the forms of presentation described in subheadings 0207 12 10 (70% chickens) and 0207 12 90 (65% chickens).

65 In contrast, the Hauptzollamt Hamburg-Jonas does not consider product code 0207 12 90 9990 to be a residual heading. As was stated at the 662nd meeting of the Management Committee for Poultrymeat and Eggs on 17 November 1998, its introduction did not lead to the creation of a new product heading. Consequently, it states, the irregular composition to which that product code refers must be confined to the margin of 5% which differentiates a chicken known as a '65% chicken' from a chicken known as a '70% chicken', as otherwise the weighted ratio would no longer be natural.

66 As regards the information set out at the 661st and 662nd meetings of the Committee for Poultrymeat and Eggs, it is settled case-law that neither individual statements of position nor joint declarations of the Member States may be used for the purpose of interpreting a Community provision where, as in the present case, their content is not

reflected in its wording and therefore has no legal significance (see, in particular, Case 143/83 *Commission* v *Denmark* [1985] ECR 427, paragraph 13, and Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18).

67 In the absence of a definition of the concept of 'irregular composition' in Regulation No 3846/87, account should be taken, for its interpretation, of the overall scheme and objectives of the system of export refunds of which it forms part.

68 In that respect, it should be pointed out that, in the context of poultrymeat exports, the amount of export refund duties for products coming under headings 0207 12 10 9900, 0207 12 90 9190 and 0207 12 90 9990 is determined on the basis of the total weight of the exported carcasses. In order to ensure the effectiveness of the refund system on the basis of total weight and to avoid abuse consisting in regularly adding more than four giblets to carcasses in such a way as to artificially increase the reference weight for the refund of exported carcasses, the notion of 'irregular composition' should be interpreted as meaning that giblets designated in product code 0207 12 90 9990 may be accidentally present in the carcass twice or more, provided that the maximum of four is respected and that, even though neither the wording of Regulation No 2580/98 nor its preamble state that the European legislature intended, for product code 0207 12 90 9990, a minimum or maximum quantity of giblets added to the carcass of an irregular composition.

69 Consequently, the answer to the first question in Case C-324/10 is that product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that an 'irregular composition' allows for the presence in a carcass of a maximum of only four giblets from those which it lists, of one or more than one type, provided that the total of four is adhered to.

The second question referred in Case C-324/10

70 By its second question, the referring court asks, in essence, if the answer to the first question is in the affirmative, whether subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, is to be interpreted as meaning that that subheading also covers poultry carcasses inside which one of the giblets stated in that subheading is present more than once.

71 In that regard, it must be recalled that subheading 0207 12 10 relates to the following products: fowls of the species *Gallus domesticus*, not cut in pieces, frozen, plucked and gutted, without heads and feet but with necks, hearts, livers and gizzards, known as '70 % chickens'.

72 As pointed out in paragraph 62 of this judgment, chickens coming under subheading 0207 12 10 differ from chickens coming under product code 0207 12 90 9990 by the fact that, in the first case, following the gutting process of all of their giblets, one type of each of the giblets listed in that subheading is present, whereas, in the latter case, those giblets may be present 'in irregular composition'.

73 It follows that subheading 0207 12 10 can include only poultry carcasses which present a single type of each of the giblets mentioned, namely, the neck, heart, liver and gizzard.

74 Therefore, the answer to the second question referred in Case C-324/10 is that subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that a poultry carcass in which one

of the giblets listed in that subheading, namely the neck, heart, liver and gizzard, is present more than once, does not come under that subheading.

Case C-325/10

75 In this case, the referring court asks, in essence, whether subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that poultry carcasses to which some small quill feathers, plumage feathers, quill ends and hairs may still be attached after going through a mechanical plucking process come under that subheading.

76 As has been pointed out at paragraph 71 of this judgment, subheading 0207 12 10 relates to the following products: fowls of the species *Gallus domesticus*, not cut in pieces, frozen, plucked and gutted, without heads and feet but with necks, hearts, livers and gizzards, known as '70 % chickens'.

77 In the absence of a definition of the concept of 'plucked' in Regulation No 3846/87, reference should be made, in accordance with Article 10(1) of Regulation No 2777/75, to the general rules for the interpretation of the CN and the special rules for its application.

78 Taking account of the case-law referred to at paragraph 44 of this judgment, it is necessary to examine the objective characteristics and properties of the goods, as defined in the wording of CN headings and in section notes.

79 In that regard, it should be pointed out that it is apparent from the Explanatory Notes to subheading 0207 11 30, which, according to the wording of the notes on subheading 0207 12 10, apply *mutatis mutandis* to the latter, indicate that this subheading 'includes roasting chickens, which are plucked chickens …'. Consequently, for the tariff classification of those carcasses in question, it is important to assess whether the presence of small quill feathers, plumage feathers, quill ends and hairs is such as to affect the characteristic of the chicken in question of being ready 'for roasting'.

80 The referring court, the applicants in the main proceedings and the Commission refer, in that regard, to the quality requirements set out in Articles 6 and 7 of Commission Regulation (EEC) No 1538/91 of 5 June 1991 introducing detailed rules for implementing Council Regulation (EEC) No 1906/90 on certain marketing standards for poultry (OJ 1991 L 143, p. 11).

81 They submit that, in accordance with the second indent of Article 6(2) of that regulation, the presence of some small feathers, stubs (quill ends) and hairs (filoplumes) on the breast, thighs, rump, foot joints and wing tips following the plucking process would not preclude a carcass being included in product class A for placing on the Community market. Furthermore, chickens in class B may also be placed on the market, but in accordance with Article 7(5) of that regulation, the rules which apply to them are less exacting than those for chickens in class A. It would therefore be illogical to refuse to pay export refunds for carcasses which may be placed on the market in the EU and in non-EU countries because the goods do not come under a product code of the export refund nomenclature.

82 On the other hand, according to the Hauptzollamt Hamburg-Jonas, Regulation No 1538/91 does not apply to poultrymeat for export outside of the EU and its provisions are not relevant under the tariff assessment of products or the interpretation

of tariff law. Those provisions are to be taken into account only in the context of the assessment of the sound, fair and marketable quality of the products in the context of the right to a refund.

83 So far as concerns the applicability of Regulation No 1538/91, in a case such as that in the main proceedings, it should be recalled at the outset that its purpose is to define the detailed rules for implementing Regulation No 1906/90, which expressly provides, in the first indent of Article 1(3), that it does not apply to poultrymeat for export from the Community.

84 However, the Court of Justice held, at paragraph 39 of its judgment in *Nowaco Germany*, that the provisions of Regulation No 1538/91 which lay down minimum quality requirements and tolerance margins for the placing of poultrymeat on the Community market, in particular Articles 6 and 7, apply equally for the purpose of establishing the 'sound and fair marketable quality' of goods in respect of which an export refund is sought.

85 In that regard, it should be noted that the requirement for sound and fair marketable quality of a product, required by Article 21(1) of Regulation No 800/1999, and the classification of a product under a tariff heading of the export refund nomenclature provided for by Regulation No 3846/87 constitute, as a general rule, two essentially distinct requirements for the grant of export refunds.

86 In this case, however, it should be noted that the said conditions, namely, the characteristic of a plucked chicken ready for roasting referred to in subheading 0207 12 10, and the requirement for sound and fair marketable quality tend to converge.

87 Therefore, the answer to the question in Case C-325/10 is that subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that, for the purposes of the export refund classification, a poultry carcass to which some small quill feathers, plumage feathers, quill ends and hairs are still attached after going through a mechanical plucking process comes under that subheading, provided that those remaining feathers are compatible with the characteristic of a chicken ready for roasting and with sound and fair marketable quality.

Case C-326/10

The first question in Case C-326/10

88 By its first question in this case, the referring court asks, in essence, whether product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that a poultry carcass in which a giblet which is not permitted, in this case the trachea, is still attached to one of the giblets permitted by that product code, in this case, the neck, comes under that product code.

89 In order to answer this question, taking account of the case-law referred to at paragraph 44 of this judgment, it is necessary to examine the objective characteristics and properties of the goods, as defined in the wording of CN headings and in section notes.

90 Product code 0207 12 90 9990 relates to the following products: fowls of the species *Gallus domesticus*, plucked and drawn, without heads and feet but with necks, hearts, livers and gizzards in irregular composition.

91 It is apparent, therefore, from the very wording of that product code that a poultry carcass cannot be classified under that code if it contains giblets other than those expressly referred to in that product code. In particular the wording '… drawn, without heads and feet but with necks, hearts, livers and gizzards in irregular composition' precludes that another organ, such as the trachea, can be present in goods coming under product code 0207 12 90 9990 in addition to or in the place of the designated giblets.

92 As regards the reference by the referring court and the applicants in the main proceedings to the tolerance margins under Regulation No 1538/91 as regards the quality requirements applicable to poultry carcasses, it should be noted, in any event, that the provision to which they refer, namely Article 2(4) of Regulation No 1538/91, does not give any further clarification as to whether the trachea may still be attached to the neck.

93 Therefore, the answer to the first question in Case C-326/10 is that product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that a poultry carcass in which the trachea is still attached to the neck does not come under that product code.

The second question referred in Case C-326/10

94 By its second question, the referring court asks, in essence, whether when a customs office seeks to determine if goods presented for export comply with the tariff heading stated in the export declaration, a margin of error is to be allowed so that an anomaly is not prejudicial to a refund.

95 In that regard, it must be recalled that in the present case, the competent customs office took two boxes as samples, one of which as a reserve sample, each of which contained ten poultry carcasses. The examination of one of those boxes showed that nine carcasses complied with the tariff heading declared in the refund application and that one of them did not.

96 According to the referring court and the applicants in the main proceedings, taking account of the reduction in the amount of the export refund and the potential penalty which could be imposed on the basis of Article 51(1) of Regulation No 800/1999, the inspection of goods intended to determine whether they comply with the provisions of the declared tariff heading must be based on a representative sample, which cannot be the case where the customs authorities restrict themselves to a sole sample and only one inspected product is found to not comply.

97 In that regard, the referring court and the applicants in the main proceedings refer to Commission Regulation (EC) No 2457/97 of 10 December 1997 on the collection of samples in connection with physical checks of boneless beef cuts qualifying for export refunds (OJ 1997 L 340, p. 29), in which the Community legislature expressly recognised a margin for error in the right to export refunds.

98 As regards the goods covered by that regulation, the first paragraph of Article 3(1) obliges the customs authorities to check that each cut of boneless beef and veal in the first carton is individually wrapped and that each package does not contain more than one cut, and, if those conditions are not observed, to conduct the same checks on the reserve sample. The second paragraph of that provision states that where, taking the two cartons together, at most one cut turns out not to have been wrapped individually or if one package contains more than one cut, no irregularity is deemed to have occurred and the refund is to be granted.

99 The referring court and the applicants in the main proceedings acknowledge that the said regulation concerns only the export of cuts of boneless beef and veal individually packaged, but they see in these provisions the manifestation of the principle of proportionality enshrined by Community law, which ought to be applied to this case. In their view, the fact that the reserve sample was not examined in the case in the main proceedings must not adversely affect the applicants.

100 In that regard, it should be pointed out that the extrapolation made by the Hauptzollamt Hamburg-Jonas is laid down in the first subparagraph of Article 70(1) of Regulation No 2913/92. Under that provision, where only part of the goods covered by a declaration are examined, the results of that examination shall be taken to apply to all the goods covered by that declaration.

101 That fiction relating to uniform quality does not apply solely to examinations carried out on the basis of the customs legislation, Article 70 being one of the general customs provisions which apply to all export declarations relating to goods qualifying for export refunds, without prejudice to special rules (see, to that effect, *Nowaco Germany*, paragraphs 47, 49 and 56).

102 The application of the first subparagraph of Article 70(1) of Regulation No 2913/92 is therefore relevant to the control of the nature of goods carried out by the customs authorities in order to ensure that the goods presented for export comply with the tariff heading indicated in the export declaration.

103 Furthermore, contrary to the provisions of Regulation No 2457/97 with respect to beef and veal, in the context of the inspections of poultry carcasses, there are no provisions which lay down a specific representative relationship between the number of poultry carcasses not permitted and the number of carcasses examined.

104 In any event, the legal effect which follows from the application of Article 70(1) of Regulation No 2913/92 in the context of checking tariff headings indicated in the export declaration is compatible with the principle of proportionality.

105 The scheme of export refunds being based on voluntary declarations, where the exporter has decided on his own initiative to obtain a refund, he must provide the relevant information necessary to establish his entitlement to the refund and to determine its amount. By declaring a product in the context of the procedure for export refunds, the exporter implies that the product satisfies all of the conditions necessary for the refund.

106 Moreover, the second subparagraph of Article 70(1) of Regulation No 2913/92 provides for the opportunity for the declarant to request a further examination of the goods if he considers that the results of the partial examination are not valid as regards

the remainder of those goods. That provision itself makes it possible to ensure that the result of the partial examination does not have disproportionate consequences.

107 In view of the foregoing, the answer to the second question in Case C-326/10 is that, when a customs office seeks to determine whether goods presented for export comply with the tariff heading stated in the export declaration, the results of a partial examination of declared goods are valid for all the goods declared, in accordance with Article 70(1) of Regulation No 2913/92. A margin of error does not have to be allowed within which it may be found that an anomaly is not prejudicial to a refund.

Costs

108 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

1. **Subheading 0207 12 90 of Annex I to Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds, as amended by Commission Regulation (EC) No 2091/2005 of 15 December 2005 publishing, for 2006, the agricultural product nomenclature for export refunds, must be interpreted as meaning**

that a poultry carcass under that subheading has to be completely drawn, so that it is prejudicial to its tariff classification if part of the guts or trachea, for example, are still attached to the carcass following a mechanical gutting process.

2. **Product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Commission Regulation (EC) No 2765/1999 of 16 December 1999, must be interpreted as meaning that an 'irregular composition' allows for the presence in a carcass of a maximum of only four giblets from those which it lists, of one or more than one type, provided that the total of four is adhered to.**

3. **Subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that a poultry carcass in which one of the giblets listed in that subheading, namely the neck, heart, liver and gizzard, is present more than once, does not come under that subheading.**

4. **Subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that, for the purposes of the export refund classification, a poultry carcass to which some small quill feathers, plumage feathers, quill ends and hairs are still attached after going through a mechanical plucking process comes under that subheading, provided that those remaining feathers are compatible with the characteristic of a chicken ready for roasting and with sound and fair marketable quality.**

5. Product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that a poultry carcass in which the trachea is still attached to the neck does not come under that product code.

6. When a customs office seeks to determine whether goods presented for export comply with the tariff heading stated in the export declaration, the results of a partial examination of declared goods are valid for all the goods declared, in accordance with Article 70(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. A margin of error does not have to be allowed within which it may be found that an anomaly is not prejudicial to a refund.

[Signatures]