JUDGMENT OF THE COURT (FIRST CHAMBER)
17 MARCH 1983 [1]

Hans Dinter GmbH v Hauptzollamt Köln-Deutz (reference for a preliminary ruling from the Finanzgericht Düsseldorf)

(Tariff classification — Seasoned meat)

Case 175/82

1. *Common Customs Tariff — Tariff headings — Classification of goods — Criteria — Objective properties*

2. *Common Customs Tariff — Tariff headings — "Other prepared or preserved meat" within the meaning of heading 16.02 — Concept — Lightly seasoned poultrymeat — Product covered by that concept*

1. The decisive criterion for the customs classification of goods under the Common Customs Tariff must generally speaking be sought in the objective characteristics and properties of the products at the time of their presentation for customs clearance.

2. Heading 16.02 of the Common Customs Tariff must be interpreted as meaning that it also includes poultrymeat to which salt and pepper have been added even if the pepper may only be detected microscopically.

In Case 175/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Düsseldorf, for a preliminary ruling in the action pending before that court between

HANS DINTER GMBH, whose registered office is in Hamburg,

and

1 — Language of the Case: German.

HAUPTZOLLAMT KÖLN-DEUTZ [Principal Customs Office, Cologne-Deutz],

on the interpretation of tariff heading 16.02 of the Common Customs Tariff governing the tariff classification of preserved meat or meat offal,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The order making the reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The company Hans Dinter GmbH, the plaintiff in the main proceedings, imported into the Federal Republic of Germany from France poultrymeat, in particular turkey escalopes and rolled turkey roast. In the course of its manufacture the meat had been seasoned with a mixture of salt and pepper so as to enable it to be sold as meat "ready to roast". At the time of their importation the rolled turkey roast and the escalopes were already packaged for sale to the consumer. They bore a label to that effect, which, in the case of the turkey roast, had the following wording . . .

"Boneless rolled turkey roast, oven-ready, seasoned: if kept frozen at -15°C and properly stored will keep until . . . produce of France, weight 700 grams."

The plaintiff considered the meat to be seasoned. Consequently, when applying for it to be released into free circulation, it classified the meat as coming under tariff heading 16.02 of the Common Customs Tariff:

"Other prepared or preserved meat or meat offal".

The customs office initially accepted that classification, merely levying import turnover tax in accordance with that tariff heading. It did not impose any monetary compensatory amounts since they are not charged on products coming within tariff heading 16.02. The customs office, however, had several samples taken of the imported merchandise. A part of those samples was examined by the Zolltechnische Prüfungs- und Lehranstalt [Customs Laboratory and Training College], Cologne. That institution came to the conclusion that the seasoning was perceptible neither organoleptically nor optically. A further examination of the remaining samples, carried out at Dinter's request by a technical expert, showed however that the escalopes and rolled turkey roast could be described as lightly-seasoned products. In fact, particles of seasoning were identifiable microscopically, "clearly" in the case of the escalopes, "slightly to clearly" in the case of the roast.

On the basis of those data, the defendant in the main proceedings, the Hauptzollamt, considered that the products could not be regarded as "prepared" meat within the meaning of tariff heading 16.02 of the Common Customs Tariff. Consequently, it classified the poultrymeat under tariff heading 02.02:

"Dead poultry (that is to say, fowls, ducks, geese, turkeys and guinea fowls) and edible offals thereof (except liver), fresh, chilled or frozen."

Since products falling within that tariff heading are subject to the charging of monetary compensatory amounts the defendant subsequently demanded payment of an amount of DM 7 041.10 under that heading.

The plaintiff failed in its objection against that reclassification. It then brought an action against the rejection of its objection before the Finanzgericht Düsseldorf before which it argued that, for meat to be described as "Other prepared . . . meat" under tariff heading 16.02 of the Common Customs Tariff, it was sufficient if the meat had in fact been seasoned and proof of such seasoning might be obtained in any manner. The defendant considers on the other hand that the simple addition of salt and pepper is not "seasoning" as that term is commonly understood.

The Finanzgericht Düsseldorf considered that the case raised problems of interpretation of Community law and, by order of 14 June 1982, decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

"1. Is heading 16.02 of the Common Customs Tariff to be interpreted in such a way that it also includes meat to which, according to the method of preparation notified, salt and pepper have been added but in which the presence of pepper may only be identified microscopically or may meat be regarded as being 'Other prepared . . . meat' only if the seasoning added may be perceived by the sense of taste?

If the Court answered the second part of the question in the affirmative:

2. According to which criteria is the existence of the taste to be ascertained?"

In the grounds of the order making the reference, the Finanzgericht states that it is inclined to take the view that, to be

described as "Other prepared ... meat" within the meaning of tariff heading 16.02, it is enough if the product has in fact been seasoned and no account need be taken of whether the seasoning may be identified by the sense of taste or not. Indeed, it accords with the generally accepted principles of tariff classification that merely the objective characteristics of the product at the time of importation are material. However, the concept of "Other prepared ... meat" is neither defined in more detail in the Common Customs Tariff nor in the Explanatory Notes thereto. The concept of "seasoning" signifies in common parlance a refinement from the point of view of the sense of taste of meat and other foods, which implies that it must be perceptible to the taste. Against that view it may however be argued that taste is a subjective criterion and that sensitivity to taste is variable from one individual to another.

The order making the reference was received at the Court Registry on 1 July 1982.

In pursuance of Article 20 of the Protocol on the Statute of the Court written observations were submitted by Hans Dinter GmbH, the plaintiff in the main proceedings, represented by U. Feldmann, Rechtsanwalt, Cologne, and by the Commission of the European Communities, represented by R. Wägenbaur, Legal Adviser, and by T. van Rijn, a member of its Legal Department, acting as Agents.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and to assign the matter to the First Chamber. However, it requested the Commission to give its views on an argument put forward by the plaintiff in the main proceedings.

II — Summary of the written observations submitted to the Court

The plaintiff in the main action considers that the concept of "Other prepared ... meat" within the meaning of tariff heading 16.02 of the Common Customs Tariff must be interpreted in such a way as to encompass the simple addition of salt and pepper to the meat, even in quantities which are discernible only microscopically. In support of that argument it essentially puts forward three arguments.

First, the plaintiff observes that it is clear from the Note to Chapter 16 of the Common Customs Tariff that meat prepared or preserved by processes other than those provided for in Chapter 02 come within heading 16.02. Therefore, it is important first to examine the processes referred to in Chapter 02. The descriptions given in that Chapter are in particular "fresh, chilled or frozen", "salted or in brine", "dried or smoked", "boiled or steamed." On examination, the plaintiff reached the conclusion that the terms used in Chapter 02 of the Common Customs Tariff are confined essentially either to describing the *condition* of a product (fresh, chilled, frozen or dried), or to mentioning methods of *preserving* products. Only three genuine methods of preparation are mentioned, namely smoking, boiling or steaming. Consequently, a preparation within the meaning of tariff heading 16.02 of the Common Customs Tariff must always be assumed whenever a product has been treated otherwise than by smoking, boiling or steaming.

Secondly, the plaintiff relies on the terms of the Explanatory Notes to the Brussels Nomenclature relating to Chapter 15.02. A section of that Note is worded as follows:

"Meat and meat offals prepared or preserved by other processes not provided for in Chapter 2, including those merely covered with batter or breadcrumbs, truffled or seasoned (e.g. with pepper and salt)".

In view of that Explanatory Note it matters little whether the seasoning was carried out with salt and pepper since it is sufficient that seasoning did take place.

Finally, the plaintiff refers to the terms of the preamble to Commission Regulation No 3092/76 of 17 December 1976 on the application of monetary compensatory amounts to certain beef and veal products (Official Journal L 348, p. 18). The second recital in the preamble to that regulation is worded as follows:

"... the simple seasoning of, or addition of other substances to, fresh, chilled or frozen meat has the consequence that such treated meat is considered as being prepared or preserved meat for the purposes of application of the Common Customs Tariff; ..."

That wording as well as the wording of Article 1 of that regulation show that for the Community legislature a simple, that is to say, light seasoning of the product is sufficient to enable it to be regarded as prepared meat within the meaning of tariff heading 16.02 of the Common Customs Tariff.

The plaintiff observes that the first question raises a second problem in addition to that of interpreting the concept of "Other prepared ... meat". In fact, the court making the reference also wishes to know whether proof of seasoning must be obtained by means of objective criteria (for example, microscopic examination) or subjective criteria (for example, by means of the sense of taste). In the plaintiff's view, only objective criteria of proof can be decisive for a tariff classification. In support of that view, it observes that the principles generally observed as regards tariff classification refer exclusively to the objective condition of products at the time of importation. That accords, moreover, with the well-established case-law of the Court. Furthermore, the plaintiff considers that the objective of Community law is to create a uniform legal system within the Community and that to rely on subjective sensitivity to taste would run counter to that objective. In fact, the use of that criterion would result in the same seasoned meat being given a different tariff classification within the Community. Finally, the plaintiff claims that other forms of preparation within the meaning of tariff heading 16.02, mentioned in the Brussels Explanatory Notes, always have to be ascertained on the basis of objective criteria.

As far as the second question is concerned, the plaintiff states that, in its view, a reply is not necessary, regard being had to the view set out above. Moreover, the question as posed is scarcely comprehensible: consumers in the Member States of the European Community are not accustomed to eating raw meat and it is therefore difficult to imagine that the turkey-meat in question would be consumed in the condition in which it is at the time of importation. The use of taste as a criterion thus implies in practice that the customs authorities would be obliged, for example, to cook or roast the samples taken for inspection purposes. That procedure would however conflict with

the rule of tariff classification that goods must be appraised in the state in which they are at the time of importation.

The plaintiff also considers that it would be questionable to rely on the particular sensitivity to taste of the customs official responsible for the tariff classification. That would lead to discrepancies in the tariff classification of the same goods by different customs officers. In fact it must be borne in mind that within the Community the customs officials of different countries have a differing sensitivity to taste.

In the light of the foregoing considerations, the plaintiff considers that gustatory proof of a product's having undergone another kind of preparation within the meaning of tariff heading 16.02 of the Common Customs Tariff can only be obtained from a product which is ready to be consumed. It adds that, if organoleptic proof is held by the Court to be the correct one, a tasting would have to be carried out by an independent group of persons, who were not capable of being influenced and were representative of the different nationalities and peoples of the Community. Only in that way would that method of tariff classification be reconcilable with the principles of legal certainty and clarity which require that individuals must always be able to know without ambiguity their rights and duties.

The *Commission of the European Communities* suggests that the reply to be given to the national court's first question should be that heading 16.02 of the Common Customs Tariff must be interpreted in such a way that meat to which salt and pepper have been added may be regarded as "Other prepared . . . meat" only if that addition amounts to a seasoning which is perceptible to the taste. In support of that interpretation, it puts forward, in essence, two arguments.

First, the Commission argues that, in order to pass from Chapter 02 to Chapter 16 of the Common Customs Tariff, the meat must have undergone a true preparation changing the condition of the product. The Commission's argument on that point stems from the distinction between tariff headings 02.02 and 16.02. In fact, Chapter 02 comprises edible poultrymeat, which is either fresh, chilled, frozen, salted, in brine, dried or smoked. Products having undergone a more advanced treatment are to be regarded as prepared and classified accordingly in Chapter 16. That is the case if they are processed into sausages, for example, or if they are prepared in ways not mentioned in Chapter 02 such as pâtés, meat sauce, marinades, etc.

Secondly, the Commission emphasizes that there is a direct relationship between seasoning and taste. Even if the seasoning by means of salt and pepper were to be considered a preparation not falling within Chapter 02, the question would arise at what point it might be regarded as "seasoned". In the Commission's view, seasoning in common parlance signifies the addition to food of spices to bring out its flavour. Consequently, whether a product is seasoned or not can only be ascertained by resorting to organoleptic criteria. Therefore, if the seasoning is not perceptible to the taste, the product cannot be regarded as "Other prepared . . . meat" within the meaning of heading 16.02 of the Common Customs Tariff.

As to the second question, the Commission considers that the customs authorities are perfectly able to ascertain with a sufficient degree of objectivity, whether a product has been seasoned. In a doubtful case, it is always possible to call upon an expert in the matter. Consequently, the Commission suggests that the Court reply that organoleptic proof must be obtained by relying upon the perceptive capacity of the average customs official.

III — Oral procedure

At the sitting on 13 January 1983 the applicant, represented by U. Feldmann, and the Commission of the European Communities represented by R. Wägenbaur, presented oral argument.

The Advocate General delivered his Opinion at the sitting on 3 February 1983.

Decision

1 By an order of 14 June 1982, which was registered at the Court on 1 July 1982, the Finanzgericht [Finance Court] Düsseldorf referred two preliminary questions to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty relating to the interpretation of heading 16.02 of the Common Customs Tariff.

2 The main proceedings concern the question whether the importation of certain poultrymeat, described as rolled turkey roast, were subject to the application of monetary compensatory amounts. That would be the case if, as the responsible customs office considered, the imported merchandise fell within heading 02.02 of the Common Customs Tariff ("Dead poultry . . . and edible offals thereof . . . fresh, chilled or frozen"). The importing company, which is the plaintiff in the main proceedings, argued that the turkey roast in question fell within heading 16.02 ("Other prepared or preserved meat or meat offal").

3 According to the information supplied by the plaintiff in the main action, the turkey-meat in question was, at the time of its preparation, lightly seasoned with a mixture of pepper and salt as it passed on a conveyor belt. The Zolltechnische Prüfungs- und Lehranstalt [Customs Laboratory and Training College], Cologne, found however that the seasoning was perceptible neither organoleptically nor optically and that the particles of seasoning were identifiable only microscopically.

4 The Finanzgericht Düsseldorf, before which the case came, considered that the interpretation of the concept "Other prepared ... meat" within the meaning of heading 16.02 of the Common Customs Tariff was not free from doubt and therefore referred the two following questions to the Court of Justice for a preliminary ruling:

"1. Is heading 16.02 of the Common Customs Tariff to be interpreted in such a way that it also includes meat to which, according to the method of preparation notified, salt and pepper have been added but in which the presence of pepper may only be identified microscopically or may meat be regarded as being 'Other prepared ... meat' only if the seasoning added may be perceived by the sense of taste?

If the Court answers the second part of the question in the affirmative:

2. According to which criteria is the existence of the taste to be ascertained?"

5 It appears from the Explanatory Notes to Chapter 16 of the Common Customs Tariff that meat prepared or preserved otherwise than as provided for in Chapter 02 falls to be classified under heading 16.02.

6 Chapter 02 comprises poultrymeat which has undergone a preserving process. Thus that chapter refers to frozen, chilled or salted meat or meat in brine and dried or smoked meat. Seasoning which is not intended as a preservative of meat does not appear among those processes.

7 The Explanatory Notes of the Customs Cooperation Council relating to heading 16.02 confirm that meat seasoned for example by pepper and salt falls within heading 16.02 and not within Chapter 02.

8 The Commission claimed in the observations which it submitted to the Court that only an organoleptically perceptible seasoning could enable meat to which salt and pepper has been added to be regarded as "Other prepared ... meat" within the meaning of heading 16.02. In fact there is a direct relationship between seasoning and taste since seasoning implies the addition to foodstuffs of spices intended to bring out their taste.

9 That argument cannot be accepted. To have recourse to a criterion as subjective as taste would have the effect of jeopardizing the uniform application of the Common Customs Tariff throughout the Community. The fact that seasoning is intended to affect the taste of meat does not preclude the use, if need be, of the usual methods of customs classification such as laboratory analysis.

10 In accordance with the Court's well-established case-law, it should be recalled that the decisive criterion for the customs classification of goods under the Common Customs Tariff must generally speaking be sought in the objective characteristics and properties of the products at the time of their presentation for customs clearance.

11 Therefore the reply to be given to the first question is that heading 16.02 of the Common Customs Tariff must be interpreted as meaning that it also includes poultrymeat to which salt and pepper have been added even if the pepper may only be detected microscopically.

12 In view of that reply the second question has become devoid of purpose.

Costs

13 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in reply to the questions referred to it by the Finanzgericht Düsseldorf by order of 14 June 1982, hereby rules:

Heading 16.02 of the Common Customs Tariff must be interpreted as meaning that it also includes poultrymeat to which salt and pepper have been added even if the pepper can be detected only microscopically.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 17 May 1983.

P. Heim
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 3 FEBRUARY 1983 [1]

Mr President,
Members of the Court,

1. The preliminary questions referred to the Court in this case concern the meaning of the expression "Other prepared ... meat" contained in heading 16.02 of the Common Customs Tariff. The Finanzgericht [Finance Court] Düsseldorf requests the Court to determine the scope of those words in order to enable it to resolve a dispute between a customs office of the Federal Republic of Germany and the company Hans Dinter GmbH (hereinafter referred to as "Dinter") whose registered office is in Hamburg.

Dinter imports from France frozen escalopes and rolled turkey roast. During the manufacturing process that meat runs along a conveyor belt and is sprinkled with salt and pepper in such a way as to enable it to be sold ready for cooking. According to Dinter meat processed in that way must be considered "seasoned" and thus come within the concept of "Other prepared ... meat" and, at the moment of release into free circulation, must be classified under heading 16.02 of the Common Customs Tariff. The principal customs office at Cologne-Deutz at first accepted that classification, consequently levying import turnover tax. It however had several samples of the imported goods taken, a part of which was examined by the "Zolltechnische Prüfungs- und Lehranstalt" [Customs Laboratory and Training College], Cologne. The conclusion reached was that "the

1 — Translated from the Italian.