JUDGMENT OF THE COURT
OF 12 DECEMBER 1973 [1]

Otto Witt KG
v Hauptzollamt Hamburg-Ericus
(preliminary ruling requested by the Finanzgericht Hamburg)

'Reindeer meat'

Case 149/73

Summary

1. *Common Customs Tariff — Description of the goods — Similarity between products — Different treatment — Possibility*
2. *Common Customs Tariff — Description of the goods — Interpretation — Explanatory Notes — Clear provisions of the tariff — Amendment — Inadmissibility*
3. *Common Customs Tariff — Description of the goods — Game within the meaning of subheading 02.04-B*

1. The absence as between two products of objective characteristics and properties which would allow one to be distinguished from the other when submitted for customs clearance is not such as to exclude treatment differentiated on the basis of other objective factors, of which evidence can be given when the products are submitted for customs clearance, for example by means of certificates of origin.
2. The Explanatory Notes to the Common Customs Tariff, although an important factor as regards interpretation in all cases where the provisions of the tariff provoke uncertainty, cannot amend those provisions, the meaning and scope of which are sufficiently clear.
3. The expression 'game' as it appears at subheading 02.04-B of the Common Customs Tariff 1970 is to be interpreted as applying to animals living in the wild state which are hunted.

In Case 149/73

Reference to the Court under Article 177 of the EEC Treaty by the Hamburg Finanzgericht for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

OTTO WITT KG, Stelle,

and

HAUPTZOLLAMT HAMBURG-ERICUS,

on the interpretation of the expression 'game' as it appears in tariff heading 02.04-B of the Common Customs Tariff,

THE COURT

composed of: R. Lecourt, President, M. Sørensen (Rapporteur), President of Chamber, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher and C. Ó Dálaigh, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

A — The facts of the case, the subject matter of the request and the views of the parties may be summarized as follows:

I — Facts and procedure

1. The Common Customs Tariff (CCT), in the version which was in force in 1970, contained the following headings:

'02.04: Other meat and edible meat offals, fresh, chilled or frozen:

A. .....

B. of game

C. other

I. .....

II. .....

III. other'

In the Explanatory Notes to the CCT, the Commission makes the following statement with regard to subheading 02.04-B:

'It should be noted that reindeer are held to be 'domestic animals'. Reindeer meat and offals do not therefore come under this subheading and are classified under subheading 02.04-C-III.'

2. Between February and October 1970 Firma Witt imported frozen caribou

meat into the Community from Greenland.

The German customs authorities decided to classify the imported goods under subheading 02.04-C-III of the CCT in force at that time, being of the opinion that the goods consisted of reindeer meat and making reference to the abovementioned Explanatory Note.
Firma Witt was of the opinion that subheading 02.04-B was applicable and instituted proceedings before the Hamburg Finanzgericht.

3. That Court decided to suspend the proceedings and to refer the following questions to the Court of Justice, pursuant to Article 177 of the EEC Treaty, for a preliminary ruling:

'(a) What are the decisive criteria to be applied in interpreting the expression "game" in tariff heading 02.04-B of the Common Customs Tariff 1970?

(b) In particular are such criteria dependent upon the classification of animals as game under the national laws for the time being in force of the country of origin or solely upon the fact that animals live in free hunting-grounds and are killed by hunting?'

4. In the grounds of the order making the reference the Finanzgericht stated in particular:

'According to the statements of the parties and in particular to the public health certificates issued by the Danish Ministry for Greenland, the meat comes from caribou living in a wild state which have been killed by hunting.

.....

Apart from the fact that the Explanatory Notes to the Common Customs Tariff of the European Communities are not binding upon the courts, the question of classifying caribou meat within the tariff would only be decided if caribou living in free hunting-grounds were equated with the reindeer mentioned in the Explanatory Notes. The doubts harboured by the Senate in this respect can, in its view, only be removed by means of an interpretation of the expression "game" in tariff heading 02.04-B of the Common Customs Tariff 1970.

The expression "game" is not free from uncertainty. According to Brockhaus (16th edition 1957) it is a comprehensive description of mammals (furred game) and birds (feathered game) which are suitable for hunting. This definition is founded on the concept of suitability for hunting ("Jagdbarkeit"). The Explanatory Notes to the customs tariff of the European Communities also speak of animals which are suitable for hunting (Note 3). What constitutes game fit for hunting is a matter for individual States to define in their game laws... However, there seems to be some doubt whether the expression "game" as it appears in the customs tariff can be determined on the basis of the game laws operating in the importing State or in the Community. Since there are species of animals which live neither in the importing country nor in any other part of the territory of the Community, with the result that there are no laws governing the hunting of such animals in these areas, it is necessary to rely on the game laws, if any, which apply in the country of origin.

However, it is also possible, without referring to game laws, to construe "game" as meaning in general all animals living independently of man which are captured by hunting and whose meat is suitable for human consumption. If this test is applied, the imported meat, which comes from caribou living in a wild state and killed by hunting, must be assigned to tariff heading 02.04-B. It would therefore matter little whether the caribou belong to the reindeer species.'

5. This order of the Finanzgericht was registered at the Court on 11 July 1973.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 20 September 1973 on the

part of the Commission of the European Communities by its legal adviser P. Kalbe and, on 1 October 1973, on the part of Firma Otto Witt by Messrs Mielke, Mielke and Mielke, of the Hamburg Bar.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory enquiry.

II — Written observations submitted to the Court

The *Commission* states that subheading 02.04-C-III, which was in fact intended to play a 'catch-all' role, is only relevant to this case if caribou meat is not to be considered as meat 'of game' pursuant to subheading 02.04-B. The meaning which the Community legislature wished to give the word 'game' is the subject of an explanation in the Explanatory Notes to the CCT. Although these Explanatory Notes do not amount to binding rules, they nevertheless represent, as a commentary giving the authentic meaning attributed by the Community legislature to a given expression, a basis and method for the interpretation of the tariff which are both essential and 'decisive' (cf. Judgment of 8 December 1970, Case 14/70, *Bakels,* Rec. 1970, p. 1001). To attempt to interpret the expression 'game' within the meaning of subheading 02.04-B, independently of the Explanatory Notes, in favour of a concept based on other contexts and definitions displays a want of comprehension of the above attributes of the Notes. The Note with regard to subheading 02.04-B is as follows: 'This subheading includes meat and edible meat offals of furred or feathered game listed at No 01.06' (Note 3). The Commission is however of the opinion that an exhaustive definition of the expression 'game' may be dispensed with, and refers to the fact that, in the Explanatory Notes, the scope of the expression 'game' is strictly limited and defined by the Note, quoted above, on reindeer.

Accordingly, the Commission maintains that the prime meaning of the word 'game' is to be found in the definition given by the Community to the word 'reindeer'. 'Reindeer' are not held to be game, although caribou, in view of their way of life, may also be termed wild animals in common parlance. If caribou are 'reindeer' within the meaning of the Explanatory Notes, their meat is covered by subheading 02.04-C-III. The expression 'reindeer' has several possible meanings, since, on the one hand, it designates all the subdivisions of that animal species (genus Rangifer) and on the other hand, it is sometimes used merely to distinguish the European forms (Rangifer tarandus) as a subspecies of the caribou of North America (Rangifer arcticus or caribou). The question which of these two meanings is intended by the Explanatory Notes is best approached, in the Commission's view, on the basis of the fact that the choice of the term 'reindeer' has less to do with subtleties of zoological terminology than with the desire on the part of the customs authorities to form a basis for the practical application of the tariff. The statement, contained in the Explanatory Notes, to the effect that reindeer are 'domestic animals' is significant here. It is a reference to their way of life, and since, up to the present time, only the European species, unlike caribou, are sufficiently domesticated to be herded and raised for economic purposes, it could be deduced that only reindeer in the strict sense are so described, and not caribou. The Commission contends that a consideration of the possibilities of using the results thereby obtained for the practical application of the CCT considerably weakens the persuasive force of this point of view. European reindeer and caribou are so similar that frozen caribou meat cannot be distinguished from European reindeer meat when it is presented for customs clearance. The substantially higher

customs duty applicable to reindeer meat could therefore very simply be avoided, without risk, if the commodity were stated to be caribou meat.

Finally, the Commission submits that, bearing in mind the general meaning of the zoological term 'reindeer' and also the practical possiblity of making the distinction, the expression 'reindeer' in the Explanatory Notes is to be understood in its widest sense, including all species both of reindeer and of caribou.

Firma Witt states that the solution of this matter is of great importance to it, since the German authorities have forbidden the company to import caribou meat. The main reason given for this prohibition is that caribou are reindeer and cannot therefore be considered as game; according to the Law for the control of meat, game alone is not subject to the specific provisions of this Law as regards imports.

As regards the present case, the company claims that neither the basic hypothesis nor the grounds put forward in support of the argument proposed by the German Customs Authorities can withstand close examination.

The company is of the opinion that the first supposition made by the Hauptzollamt is in itself inexact. Taking a scientifically zoological point of view, it cannot be said that caribou are identical to domestic reindeer. On the contrary, in scientific terms, various subspecies of the species 'Rangifer tarandus' are discernable within the genus 'Rangifer'. These include, *inter alia,* the northern European reindeer (Rangifer tarandus tarandus), the western Canadian reindeer or caribou (Rangifer tarandus caribou) and the caribou species of the Arctic (Rangifer tarandus arcticus). Of all the subspecies of the species Rangifer tarandus, the northern European reindeer alone has been domesticated. In zoological terms therefore the domestic reindeer and the caribou are different subspecies of the genus Rangifer.

As regards the Explanatory Notes to the CCT, the company claims that they amount only to administrative guidelines intended for the federal administration of customs, and have no binding effect with regard to third parties or institutions. Moreover, to apply these guidelines for national use, in their form as interpreted by the defendant, would be to infringe the Common Customs Tariff and fundamental general provisions of interpretation. The defendant's arguments display a failure to appreciate the fact that the concept 'game' within the meaning of tariff heading 02.04-B must not be interpreted strictly or arbitrarily by means of administrative guidelines for purely national use. In this connexion the company adds that in the Explanatory Notes it is not intended that domesticated reindeer alone be termed domestic animals. It may well be supposed that the compilers of the Explanatory Notes did not regard the reindeer as the only domestic animal.

In the company's opinion, the decisive question in this case is that of knowing the correct interpretation of the expression 'game' within the meaning of tariff heading 02.04-B; account must firstly be taken of what constitutes the characteristic of life in the wild state. This has the same meaning in common parlance, signifiying the opposing concept to that conveyed by the words 'domestic animal'. All animals which enjoy their natural freedom, and are not dominated by man are, in this sense, living in the wild state. It is also wise to take into account whether the meat of an animal living in a wild state has been killed by hunting or not. This criterion allows a precise distinction to be made between game and livestock raised for slaughter.

On the other hand, the characteristic of an animal's suitability for hunting ('Jagdbarkeit') appears to the company to be less relevant to a definition of the expression game.

Moreover, the company refers to the law amending the Law of 3 March 1972 on

the control of meat, which makes the distinction between 'furred game, living in herds or otherwise under the supervision of man' and 'furred game which is killed in the wild state'. In the company's opinion, caribou living in the wild state and hunted are clearly described in that Law as game. Only domesticated reindeer of the subspecies 'Rangifer tarandus tarandus', whose meat is obtained by slaughter, should be classified under tariff heading 02.04-C-III, whilst all other reindeer, and in particular caribou, should be considered as game within the meaning of tariff heading 02.04-B.

The company further calls attention to the fact that, according to Nos 3 and 6 of the general rules for the interpretation of the nomenclature of the Common Customs Tariff, the most specific heading is to be used in preference to headings having a wider scope. There can be no doubt that 'meat of game' is a more specific designation than 'other meats'.

Finally, the company draws attention to the following argument:

If the expression 'reindeer' which appears in the Explanatory Notes must be interpreted as covering all reindeer of the species 'Rangifer tarandus' without distinction, as the defendant maintains, this interpretation is not in accordance with the clear wording of tariff heading 02.04-B since, in principle, all subspecies of the species 'Rangifer tarandus' must be considered as game if account is taken of the abovementioned characteristics. The only exception is the domestic reindeer of northern Europe. Accordingly, the expression 'reindeer' in the Explanatory Notes can refer only to the subspecies 'Rangifer tarandus tarandus' of the northern European reindeer, which has become a domestic animal.

B — Firma Witt and the Commission submitted oral observations at the hearing on 14 November 1973.

During the course of the oral procedure counsel for *Firma Witt* claimed, in opposition to the arguments of the Commission, that a sufficiently certain basis for forming a distinction between caribou meat and domestic reindeer meat could be obtained by the use of certificates as to the origin of the meat. Certificates of origin are commonly used for the control of imports of goods in many other fields.

The *Commission* replied that to require such certificates always involves a risk of fraud, which should be avoided.

C — The Advocate-General presented his opinion at the hearing on 28 November 1973.

Grounds of judgment

1 By order of 18 June 1973, registered at the Court on 11 July 1973, the Hamburg Finanzgericht referred two questions, pursuant to Article 177 of the EEC Treaty, on the interpretation of the expression 'game' as it appears at subheading 02.04-B of the Common Customs Tariff 1970.

It appears from the order making the reference that these questions were raised in connexion with the import into the Community of frozen meat of animals which had lived in the wild state and had been killed by hunting.

The national customs authorities, being of the opinion that this was reindeer meat, classified it, not under subheading 02.04-B (meat of game) of the Common Customs Tariff of the EEC in force at that time, but under subheading 02.04-C-III (other meats, other).

In this matter the customs authorities referred to the Explanatory Notes to the Common Customs Tariff, published by the Commission, according to which reindeer are held to be domestic animals, with the result that their meat is not classified under subheading 02.04-B and must be classified under subheading 02.04-C-III.

2 The arguments put forward by the Commission to justify the classification of all reindeer meat under the same subheading in this way, leaving no possibility for a different treatment of the meat of wild reindeer as compared with that of domestic reindeer, consist in the absence as between the two products of objective characteristics and properties which would allow one to be distinguished from the other when submitted for customs clearance.

However, this similarity between the products is not such as to exclude treatment differentiated on the basis of other objective factors, of which evidence can be given when the products are submitted for customs clearance, for example by means of certificates of origin.

3 The Explanatory Notes to the Common Customs Tariff, although an important factor as regards interpretation in all cases where the provisions of the tariff provoke uncertainty, cannot amend those provisions, the meaning and scope of which are sufficiently clear.

The expression 'game' in its ordinary meaning designates those categories of animal living in the wild state which are hunted.

Although the customs authorities can legitimately require conclusive evidence that the animals whose meat is declared by the importer as being covered by subheading 02.04-B are game animals, the Explanatory Notes cannot, in contradiction to the text of the Common Customs Tariff, eliminate all differences of classification as between the meat of wild and domestic animals of the same species.

4 Accordingly, the answer to the questions referred is that the expression 'game' as it appears at subheading 02.04-B of the Common Customs Tariff 1970 is to be interpreted as applying to animals living in the wild state which are hunted.

Costs

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

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities and Firma Witt;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation (EEC) No 950/68, concerning the Common Customs Tariff;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Hamburg Finanzgericht by order of that court dated 18 June 1973, hereby rules:

The expression 'game' as it appears at subheading 02.04-B of the Common Customs Tariff 1970 is to be interpreted as applying to animals living in the wild state which are hunted.

Lecourt	Sørensen	Monaco	
Mertens de Wilmars	Pescatore	Kutscher	Ó Dálaigh

Delivered in open court in Luxembourg on 12 December 1973.

A. Van Houtte	R. Lecourt
Registrar	President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 28 NOVEMBER 1973 [1]

Mr President,
Members of the Court,

At one time animals were divided into those which could and those which could not be the subject of lawful seizure; the former were the *'ferae'*, wild animals, as opposed to domestic animals which, even if given their freedom, *'abire et redire solent'* and consequently become part of the property of anyone who has them under his control.

Making use of this distinction for the purpose for which it was designed, the wisdom, of the ancients applied it to concrete cases, with the result that, within the same category of domestic animals, chickens, perhaps, or ducks, *'quorum non est fera natura'* a distinction was drawn between those which lived under the family roof in inhabited places and those which *'in naturalem libertatem se receperint'* and, as such, could be hunted. These may now appear to be dim and distant distinctions belonging to a way of life which has been superseded, but they can be valid even today as a starting point or point of reference, even though the lawyer, reared on examples from the classics, must be sensitive and responsive to the world around him; they can also apply to such unromantic subjects as the customs categories in the Brussels nomenclature or the Common Customs Tariff when used to differentiate between game and other animals whose meat is suitable for consumption.

Arising from a dispute over the customs classification of caribou meat from Greenland, the Finanzgericht of Hamburg asks what is to be understood

1 — Translated from the Italian.