OPINION OF ADVOCATE GENERAL DARMON
delivered on 16 June 1994 *

Mr President,
Members of the Court,

1. What are the criteria to be taken into account for the purpose of determining, in the light of the Common Customs Tariff, whether swine meat is to be regarded as being of *domestic swine* or of *swine other than domestic swine*?

2. That, in substance, is the question which has been submitted to the Court in a dispute between Walter Stanner GmbH&Co. KG ('Stanner') and the Hauptzollamt (Principal Customs Office) Bochum in respect of the tariff classification applicable to imports of meat of swine living in the wild in Bulgaria.

3. Stanner imported from Bulgaria over the period between November 1983 and March 1985 several consignments of swine meat described as 'Type B wild swine' and declared them under tariff subheading 02.01 A III(b) applicable to meat of swine *other* than domestic swine.

4. Following inspections carried out at the request of the German authorities which, on the basis of anatomical criteria and factors relating to colour and taste, supported the conclusion that the meat in question came from animals of a primitive *domestic* species living in the wild, the authorities amended their initial tariff classification and reclassified the imported goods under tariff subheading 02.01 A III(a) applicable to meat of *domestic* swine.

5. Stanner brought the matter before the Finanzgericht Düsseldorf, which has to deal, on the one hand, with the arguments of the plaintiff, which considers that it is the *way of life* of species which needs to be taken into consideration for the purpose of their tariff classification (leading to the classification of the meat at the centre of the dispute under subheading 02.01 A III(b)) and, on the other, with the position of the German authorities, which take the view that it is the *zoological and genetic characteristics* of species which are decisive (leading to the classification of the meat under subheading 02.01 A III(a)).

* Original language: French.

6. Although inclined to go along with the point of view expressed by the German authorities, the national court has, however, expressed doubts because of an amendment to the explanatory notes of the Combined Nomenclature which provides as follows: 'the meat of animals of the swine species certified by the competent authorities in Australia as meat of swine living in the wild in Australia is considered as meat of swine *other* than of domestic swine'. [1]

7. I would first point out in that regard that subheadings 02.01 A III(a) and 02.01 A III(b) deal with meat obtained after the slaughtering of the live swine referred to in subheadings 01.03 A and 01.03 B respectively.

8. The choice with regard to classification is thus between domestic species of swine and other species of swine.

9. According to the case-law of the Court, the decisive criterion for the customs classification of goods must be sought generally in their objective characteristics and qualities, as defined in the relevant heading of the Common Customs Tariff. [2]

10. In the case of animals, reference to a *species* relates to morphological or genetic characteristics and not to a way of life or method of breeding.

11. The Court also takes the view that although the explanatory notes constitute an important means of interpretation of which account must be taken, [3] they cannot amend provisions of the Customs Tariff, the meaning and scope of which are sufficiently clear. [4]

12. In that connection, the explanatory notes on subheading 01.03 B, in the version in force at the time of the material facts, provided that the subheading covered

1 — Uniform application of the Combined Nomenclature (CN) (Classification of goods) (92/C 34/03), OJ 1992 C 34, p. 2 (emphasis added).

2 — See, in that connection, the judgments in Case 166/84 *Thomasdünger* v *Oberfinanzdirektion Frankfurt am Main* [1985] ECR 3001, paragraph 13, Case 200/84 *Daiber* v *Hauptzollamt Reutlingen* [1985] ECR 3363, paragraph 13, Case C-177/91 *Bioforce* [1993] ECR I-45, paragraph 8, and in Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 11.

3 — Judgment in *Thomasdünger*, cited above, paragraph 14.

4 — Judgment in Case 149/73 *Witt* v *Hauptzollamt Hamburg-Ericus* [1973] ECR 1587, paragraph 3.

'*only* live swine of the *non-domestic species* such as:

1. Wild boar ...;

2. Warthogs ..., river hogs or pig deer ... and the black forest pig;

3. Babiroussa ...;

4. Peccary ...'. [5]

13. I have two observations to make at this stage: first, the word 'only' — which, it must be noted, no longer features in the present text of the explanatory notes — calls for a restrictive interpretation of the wording of that subheading; second, although it is not exhaustive, that list is confined to *species* which have certain specific features from the zoological point of view and does not refer to their way of life.

5 — Emphasis added.

14. Admittedly, the Commission points out that the Court has ruled, with regard to headings 01.05 and 02.02 of the Common Customs Tariff relating to 'live poultry' and 'dead poultry' respectively, that

'considerations depending on the qualities of taste, the selling price or the zoological characteristics of the birds do not in themselves play any decisive role in this classification'. [6]

15. That case, however, concerned 'this' classification as '*poultry*', [7] that is to say animals raised, as the Court pointed out, 'in agricultural or industrial concerns', [8] their method of breeding, expressly referred to in the relevant wording, being decisive in the circumstances.

16. That is not the case where the central criterion for classification is the 'species', that is to say a category defined by its morphological and/or genetic constituents.

6 — Judgment in Case 28/70 *Witt* v *Hauptzollamt Lüneburg* [1970] ECR 1021, paragraph 6.

7 — Emphasis added.

8 — Judgment in Case 28/70 *Witt*, paragraph 5.

17. The tariff classification of meat of swine living in the wild in Australia is not, in my opinion, of such a kind as to call in question the views set out above.

18. The text of the relevant explanatory note supplements the existing notes but does not amend them. We are thus dealing with a specific case from which no criterion of a general nature can be drawn.

19. The need for a specific explanatory note to determine the tariff classification of meat of swine living in the wild in Australia can no doubt be explained by the fact that the interpretation alone of the subheadings of the Common Customs Tariff did not permit such a classification to be made.

20. In any event, no text of that kind has been adopted in respect of swine from Bulgaria. These must for that reason be classified by reference to the general provisions of the Common Customs Tariff and not by analogy to Australian swine.

21. For those reasons, I propose that the Court rule as follows:

In the absence of any express provision to the contrary, only meat of swine which cannot, in the light of their morphological and/or genetic characteristics, be regarded as belonging to domestic species, leaving aside their way of life or method of breeding, can be classified under tariff subheading 02.01 A III(b) of the Common Customs Tariff.