OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 15 June 1988 *

Mr President,
Members of the Court,

1. By an order for reference of 6 April 1987, the Tariefcommissie asked the Court to say under which heading of the Common Customs Tariff milled soya-bean covers are to be classified. The goods concerned are the coats, that is to say the husks — or yet again the skins — which surround the kernels, as opposed to the tegument properly so called.

2. In the course of the written procedure and the oral proceedings before the Court, it was explained that two techniques were used to separate the covers from the beans: an older method, which facilitates separation after the oil extraction ('tail-end dehulling') and a modern method in which the husks are removed before commencement of the extraction process ('head-end dehulling').

3. Four tariff classifications were mentioned by the national court as possibly covering the goods in question.

4. Firstly, subheading 23.02 B, which refers to the following products:

'Bran, sharps and other residues derived from the sifting, milling or working of cereals or of leguminous vegetables:

A. ...

B. Of leguminous vegetables',

does not seem to me to be applicable here. Soya beans are neither seeds nor leguminous vegetables.

5. Heading 23.07 likewise does not seem capable of covering the goods in question because it refers to sweetened forage, and soya covers do not fall into that category.

6. Two subheadings remain: 23.04 B and 23.06 B. The first refers to 'Oil-cake and other residues (except dregs) resulting from the extraction of vegetable oils'.

7. The difficulty to be resolved is embodied in the question whether soya husks can be regarded as 'residues ... resulting from ... extraction'. Must that expression be taken to include 'waste' deriving from extraction or the *specific* result of the extraction of oil?

8. I am inclined to favour the second solution: it must be considered — the view taken by the Commission — that the only products coming under subheading 23.04 B are those resulting from the extraction of oil *strictu sensu*. By contrast, residues from the *whole* process of treating soya beans are to be excluded from that subheading. Furthermore, in its judgment in *Fancon*,[1] the Court stated in relation to that subheading:

* Translated from the French.

1 — Judgment of 11 March 1982 in Case 129/81 [1982] ECR 967, paragraph 14.

'the term "residue" is not to be confused with that of "waste"'.

9. Moreover, no doubt can arise where the technique known as 'head-end dehulling' is used since it involves separation *before* extraction of the oil. But the technique of 'tail-end dehulling' does not raise any obstacles to that solution. In any event, as the Commission points out, the covers exist *before* the oil extraction and a *distinct* process must be undertaken after extraction in order to remove the coats. It should therefore be noted that there is a very clear difference between the latter and the *necessary* residues of the oil extraction 'produced' by that operation itself, such as oil-cake or olive husks. Finally, it should be noted that the soya teguments could in theory be obtained independently from the extraction process, which is not the case as far as oil-cake is concerned.

10. Consequently, it is inappropriate, contrary to the view put forward by the plaintiff in the main proceedings, to undertake complex estimations according to the technique used: whatever the circumstances, milled soya-bean covers do not fall within subheading 23.04 B.

11. The foregoing considerations thus prompt me to propose that the Court rule that those products fall within subheading 23.06 B which corresponds to

'Products of vegetable origin of a kind used for animal food, not elsewhere specified or included:

A. . . .

B. Other.'