JUDGMENT OF THE COURT (Eighth Chamber)

27 October 2011 *

In Case C-559/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the rechtbank van eerste aanleg te Antwerpen (Belgium), made by decision of 17 November 2010, received at the Court on 29 November 2010, in the proceedings

Deli Ostrich NV

v

Belgische Staat,

THE COURT (Eighth Chamber),

composed of K. Schiemann, acting for the President of the Eighth Chamber, L. Bay Larsen and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: P. Mengozzi,
Registrar: A. Calot Escobar,

* Language of the case: Dutch.

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Deli Ostrich NV, by K. Spagnoli, advocaat,

— the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents,

— the European Commission, by L. Bouyon and B. Burggraaf, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the Combined Nomenclature in Annex I to 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), as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) ('the CN'), in particular subheadings 0208 90 40 and 0208 90 95.

2 The reference has been made in the course of proceedings between Deli Ostrich NV ('Deli Ostrich') and the Belgische Staat (Belgian State), represented by the Federale Overheidsdienst Financiën, Douane en Accijnzen (Federal Finance, Customs and Excise Authority), concerning the tariff classification of frozen camel meat from Australia.

Legal context

The CN

3 The customs classification of goods imported into the European Union is governed by the CN set out in Annex I to Regulation No 2658/87. The version of the CN in force at the material time is that resulting from Regulation No 1549/2006.

4 The CN is based on the Harmonised Commodity Description and Coding System drawn up by the Customs Cooperation Council, now the World Customs Organisation, and established by the International Convention on the Harmonised Commodity Description and Coding System concluded at Brussels on 14 June 1983, which, together with the Protocol of Amendment thereto of 24 June 1986, was approved on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1).

5 Part One of the CN contains preliminary provisions. In Part One, Section I, which contains general rules, subsection A, headed 'General rules for the interpretation of the [CN]', states:

'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.

…

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.'

6 Part Two of the CN contains a classification of goods in sections, chapters, headings and subheadings.

7 In Part Two of the CN, Section I, entitled 'Live animals; animal products', includes Chapter 2, which is entitled 'Meat and edible meat offal'. That chapter includes heading 0208, which is worded as follows:

'0208	Other meat and edible meat offal, fresh, chilled or frozen.
…	
0208 90	– Other:
0208 90 10	– – Of domestic pigeons
	– – Of game, other than of rabbits or hares:
0208 90 20	– – – Of quails
0208 90 40	– – – Other
0208 90 55	– – Seal meat
0208 90 60	– – Of reindeer
0208 90 70	– – Frogs' legs
0208 90 95	– – Other'.

8 Pursuant to the second indent of Article 9(1)(a) and Article 10 of Regulation No 2658/87, the European Commission draws up explanatory notes to the CN, which are published in the *Official Journal of the European Union*.

9 The explanatory notes in force at the material time are those which were published in the *Official Journal of the European Union* of 28 February 2006 (OJ 2006 C 50, p. 1). As regards subheading 0208 90 40, the explanatory notes are worded as follows:

'This subheading includes the meat and edible meat offal of:

1. furred game: fallow deer, roe-deer, chamois or izard (*Rupicapra rupicapra*), moose or elk, goat-antelope, antelopes, gazelles, bears and kangaroos;

2. feathered game: wild pigeons, wild geese, wild duck, partridges, pheasants, woodcock, snipe, grouse, ortolans and ostriches.

The meat and edible meat offal of animals generally the object of hunting and shooting (pheasants, fallow deer, ostriches, etc.) remain classified as meat and edible meat offal of game even when such animals have been raised in captivity.

The meat and edible meat offal of reindeer is excluded from this subheading (subheading 0208 90 60). However, the meat and edible meat offal of certain species of reindeer (e.g., caribou) are classified in this subheading provided that proof is furnished that such meat and edible meat offal come from animals which lived in the wild and which were hunted.

This subheading does not cover the meat and edible meat offal of wild rabbits (*Oryctolagus cuniculus*) or hares, which fall in subheading 0208 10 90.'

The dispute in the main proceedings and the question referred for a preliminary ruling

10 On 22 October 2007, the company DHL Global Forwarding NV ('DHL') lodged at the kantoor der douane en accijnzen te Antwerpen (Customs and Excise Office, Antwerp) a declaration for release for consumption of 660 cartons of boneless pieces of frozen camel meat. Deli Ostrich was referred to in the declaration as the recipient of those goods. The camel meat was declared under subheading 0208 90 95 of the CN.

11 DHL attached to the declaration a veterinary certificate from the competent Australian authority, dated 10 September 2007, which stated that the camel meat in question came from animals which lived in the wild and had been slaughtered.

12 On 12 December 2007, DHL, on the instructions of Deli Ostrich, submitted an application for reimbursement of a certain amount of import duty, on the ground that those goods should have been declared under subheading 0208 90 40 of the CN. Since that application and the administrative appeal brought by Deli Ostrich were both rejected, Deli Ostrich brought the matter before the rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp).

13 The referring court points out that neither party to the main proceedings disputes that the meat at issue comes from camels which are not farm-raised. However, Deli Ostrich submits that the issue is whether the animals in question are wild animals, whereas the Federale Overheidsdienst Financiën, Douane en Accijnzen takes the

view that the pertinent test for the tariff classification must be whether the animals in question are generally hunted, a category into which camels do not fall.

14 As it took the view that the outcome of the proceedings before it hinged on the interpretation of the provisions of the CN relating to animal products, the rechtbank van eerste aanleg te Antwerpen decided to stay those proceedings and to refer the following question to the Court for a preliminary ruling:

'[W]hich tariff subheading should be applied, as at the date of the declaration of 22 October 2007, in respect of import duties on meat from camels which, indisputably, have not been raised in captivity?'

Consideration of the question referred

Admissibility

15 In its written observations, Deli Ostrich questions the admissibility of the reference for a preliminary ruling. According to Deli Ostrich, the question submitted does not concern an interpretation of European Union law, but an assessment of the facts in the main proceedings, which is a matter for the national court.

16 In that regard, it is to be observed that the procedure laid down in Article 267 TFEU is based on a clear separation of functions between the national courts and the Court of Justice. It is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the question submitted concerns the interpretation of Community law, the Court is in principle bound to give a ruling (see Joined Cases C-290/05 and C-333/05 *Nádasdi and Németh* [2006] ECR I-10115, paragraph 28 and the case-law cited).

17 When the Court is requested to give a preliminary ruling on a matter of tariff classification, its task is to provide the national court with guidance on the criteria the implementation of which will enable the latter to classify the products correctly in the CN, rather than to effect that classification itself, particularly since the Court does not necessarily have available to it all the information which is essential in that regard (see Case C-56/08 *Pärlitigu* [2009] ECR I-6719, paragraph 23, and Case C-370/08 *Data I/O* [2010] ECR I-4401, paragraph 24).

18 In the present case, it is apparent from the file that, by its question, the referring court seeks an interpretation of the CN and, more precisely, clarification of the criteria enabling goods to be classified in one of the subheadings under heading 0208 of the CN, in order to resolve the dispute before it.

19 Consequently, the reference for a preliminary ruling must be held admissible.

Substance

20 By its question, the referring court asks, in essence, if meat from camels which have not been raised in captivity must be classified under subheading 0208 90 40 of the CN ('other game meat') or under subheading 0208 90 95 of the CN ('other').

21 According to Deli Ostrich and the Commission, the CN must be interpreted as meaning that the camel meat in question must be classified under subheading 0208 90 40 of the CN, concerning 'other game meat'. By contrast, the Belgian Government claims, in its written observations, that that meat must be classified under subheading 0208 90 95 of the CN.

22 In that regard, it should be recalled that the Court has consistently held that, in the interests of legal certainty and for ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the CN and the section or chapter notes (see Case C-196/10 *Paderborner Brauerei Haus Cramer* [2011] ECR I-6201, paragraph 31 and the case-law cited).

23 The explanatory notes to the CN drawn up by the Commission are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (see Case C-123/09 *Roeckl Sporthandschuhe* [2010] ECR I-4065, paragraph 37, and Case C-423/09 *X* [2010] ECR I-10821, paragraph 16).

24 By contrast, a letter from a head of unit of the Commission, such as that of 29 April 1997 from the Head of the Directorate-General for Customs and Indirect Taxation (DG XXI) of the Commission, responding to a question from the Federale Overheidsdienst Financiën, Douane en Accijnzen on the classification of camel meat, which was relied upon by the Belgian Government in its written observations, has none of the import of the explanatory notes.

25 In the present case, it must be noted that camel meat is not explicitly covered by the wording of the headings and subheadings of the CN or by its section or chapter notes, or by the explanatory notes concerning subheading 0208 90 40 of the CN.

26 Indeed, the explanatory note specifies that '[t]he meat and edible meat offal of animals generally the object of hunting and shooting … remain classified as meat and edible meat offal of game even when such animals have been raised in captivity'. However, it does not follow from that explanation that only the meat and offal of animals which are generally the object of hunting or shooting can be classified under that subheading.

27 In that regard, it is to be recalled that, at paragraph 3 of the judgment in Case 149/73 *Witt* [1973] ECR 1587, the Court observed, in relation to reindeer meat, which can come from wild or domesticated animals, that the word 'game', in its ordinary meaning, designates those categories of animals which live in the wild and are hunted.

28 In the same paragraph of the judgment in *Witt*, the Court, in essence, stated that the customs authorities can legitimately require conclusive evidence that the animals whose meat is declared by the importer as being covered by the subheading relating to other game meat are game, thus allowing meat to be classified differently according to whether it comes from wild or domesticated animals of the same species.

29 As regards the objective characteristics and properties enabling camel meat to be classified under subheading 0208 90 40 of the CN as 'other game meat', the criterion to be taken into consideration is thus whether the meat whose classification is in issue comes from animals that lived in the wild and were hunted, which is a matter for the national court before which the dispute has been brought to ascertain.

30 In the present case, it is apparent from the decision of the referring court that the parties to the main proceedings do not dispute that the meat at issue comes from camels which are not farm-raised. Furthermore, the Commission provided, in its written observations, factual details which confirm that a large proportion of the camel population in Australia has returned to the wild and that those wild camels are indeed regularly harvested, in particular for processing into food and feed, facts from which it can, if appropriate, be inferred that the meat at issue comes from camels which were hunted.

31 Consequently, the answer to the question referred is that the CN must be interpreted as meaning that camel meat must be classified under subheading 0208 90 40 as 'other game meat' if the camels from which that meat comes lived in the wild and were hunted.

Costs

32 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:

The Combined Nomenclature constituting Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006, must be interpreted as meaning that camel meat must be classified under subheading 0208 90 40 as 'other game meat' if the camels from which that meat comes lived in the wild and were hunted.

[Signatures]