OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 26 JANUARY 1984 [1]

Mr President,
Members of the Court,

Reference has been made to the Court by the Finanzgericht Düsseldorf for a preliminary ruling on the validity of Article 1 of Regulation No 964/71 and on the definition of the origin of beef for the purposes of Article 5 of Regulation No 802/68.

The facts of the case are as follows:

I — In the first half of 1982, Zentrag, a cooperative society based in Frankfurt, imported from Austria a number of consignments of "beef, fresh pieces without bone" falling within tariff subheading 02.01 A II (a) 4 (bb).

The meat came from animals which had been fattened and slaughtered in Hungary, where the operations connected with slaughter — eviscerating, skinning and cutting into quarters — were also carried out.

It was then imported duty-free into Austria, where it was boned and trimmed, its sinews were drawn, and was cut into pieces and, finally, vacuum-packed.

When they were imported into the Federal Republic of Germany, the goods were first cleared through customs subject to the application of the rate of the specific levy applicable for Austria, a non-member country deemed to have a trading structure and a system of cattle production comparable to those existing in the Community [2].

Subsequently, the Hauptzollamt [Principal Customs Office] Bochum sent a revised assessment of duty to Zentrag, basing its calculation on the ordinary rate of levy applicable to non-member countries, which was much higher, since it took the view that the goods had in fact *originated* in Hungary.

Zentrag brought the matter before the Finanzgericht Düsseldorf. It relies on two arguments.

1. The last process undergone by the meat confers Austrian origin upon it for the purposes of Article 5 of Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods; [3]

2. Article 1 of Regulation (EEC) No 964/71 of the Commission of 10 May 1971 on determining the origin of the meat and offals, fresh, chilled or frozen, of certain domestic animals, [4] is not applicable to the meat in question, because that provision is inconsistent with Article 5 of Regu-

1 — Translated from the French.

2 — Article 10 (3) of Regulation (EEC) No 805/68 of the Council of 27. 6. 1968 (Official Journal, English Special Edition 1968 (I), p. 187) on the common organization of the market in beef and veal, as amended by Article 3 of Council Regulation (EEC) No 425/77 of 14. 2. 1977 (Official Journal, 1977, L 61, p. 1). That rate is fixed in accordance with Commission Regulation (EEC) No 611/77 of 18. 3. 1977 fixing the specific levy in respect of live bovine animals and beef and veal other than frozen (Official Journal 1977, L 77, p. 14), amended by Commission Regulation (EEC) No 925/77 of 29. 4. 1977 (Official Journal, 1977, L 109, p. 1).

3 — Official Journal, English Special Edition 1968 (I), p. 165: "A product in the production of which two or more countries were concerned shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture."

4 — Official Journal, English Special Edition 1971 (I), p. 253: "The slaughter of domestic animals falling within headings Nos 01.01 and 01.04 of the Common Customs Tariff shall confer on the edible meat and offals, fresh, chilled or frozen, which are thus obtained, the origin of the country or of the Community, according as the slaughter took place there, only if the animals in question have been fattened in that country or in the Community during a period of at least three months in the case of horses, asses, mules and cattle and of at least two months in the case of swine, goats and sheep."

lation No 802/68, and also with Article 110 of the EEC Treaty, which aims at the progressive abolition of restrictions on international trade.

Zentrag, and, in turn, the Finanzgericht, incline to the view that the location of the operations of boning, drawing the sinews, trimming, cutting up and vacuum-packing carried out on the meat establishes its geographical origin. At that stage, the original meat has undergone a substantial process, and a significant percentage has been added to the value of the product.

Those are the circumstances in which the national court referred to this Court, by order of 20 April 1983, the following two questions:

"1. Is Article 1 of Regulation (EEC) No 964/71 of the Commission of 10 May 1971 invalid on the ground that it infringes Regulation (EEC) No 802/68 of the Council of 27 June 1968?

2. Does the processing of meat by boning, trimming, drawing the sinews and cutting into pieces constitute a process determining origin for the purposes of Article 5 of Regulation No 802/68?"

II — I shall first observe that in my view the decision in the main action does not turn on an appraisal *in abstracto* of the validity of Regulation No 964/71 of the Commission but solely on the interpretation of Regulation No 802/68 of the Council. Only satisfaction of the conditions laid down in the latter regulation is capable of conferring origin on the goods.

It is true that the Commission's regulation defines the abstract concepts contained in the Council's regulation, but it does not deal with the conditions which must exist prior to slaughter if that operation is to confer the origin of the country where it took place upon the meat and offals thereby produced; it does not, therefore, concern processing operations subsequent to slaughter.

1. In this case, not only were the animals in question not fattened in Austria, but they were not slaughtered there. Furthermore, the cutting of the meat into quarters, [1] which follows that of evisceration and skinning, took place in Hungary. In Austria, the meat was cut into pieces before it was vacuum-packed.

Even if it is admitted that the process which the goods underwent in Austria was "carried out in an undertaking equipped for the purpose", and that the operation of boning may have altered the presentation of the product for the purposes of its use, the decisive question is whether these processes may be described as "substantial" and "as resulting in the manufacture of a new product or representing an important stage of manufacture" for the purposes of Article 5 of Regulation No 802/68.

However, the operations to which the goods were subjected in Austria constitute, with the exception of vacuum-packing, a standard process which is commonly handled by retail butchers and even in the meat departments of certain supermarkets.

They are operations which affect the presentation of the product when it is offered for retail sale, but, even if they are sometimes accompanied by the addition of a considerable profit margin,

1 — See the second recital in the preamble to Regulation No 964/71.

they do not bring about a significant change in the "specific material qualities" of the product in the sense of the Court's judgment of 26 January 1977 *Gesellschaft für Überseehandel,* in which the Court stated that:

"activities affecting the presentation of the product for the purposes of its use, but which do not bring about a significant qualitative change in its properties, are not of such a nature as to determine the origin of the said product." [1]

With reference to vacuum-packing, the national court does not consider it to be substantial in nature; indeed, that operation relates only to the requirements for marketing the product and does not affect its substantial properties. [2]

2. If the contrary view is taken, it must be considered whether these operations are "economically justified" and whether they have not been carried out in Austria precisely in order, as indicated by Article 6 of Regulation No 802/68, [3] to confer an origin upon the goods which allows them to benefit from a scheme of favoured economic treatment.

An indication that this may be so may be found in the substantial difference between the ordinary levy (fixed at DM 668 per 100 kg) and the specific basic levy (DM 25.37 per 100 kg). Thus it would be for the national court to establish, if need be, whether that presumption is justified.

However, I do not think that this inquiry is necessary if the Court gives the following ruling in reply to the questions put to it:

The processing of beef in Austria by boning, trimming, drawing the sinews, cutting into pieces and vacuum-packing, when the animals from which it comes have been slaughtered, eviscerated, skinned and cut into quarters in Hungary, does not confer upon that meat, when it is imported into the Federal Republic of Germany, an Austrian origin.

1 — Case 49/76, [1977] ECR 41 (paragraph 6 of the decision at p. 53).

2 — Ibid. (paragraph 7 of the decision).

3 — "Any process or work in respect of which it is established, or in respect of which the facts are ascertained justify the presumption, that its sole object was to circumvent the provisions applicable in the Community or the Member States to goods from specific countries shall in no case be considered, under Article 5, as conferring on the goods thus produced the origin of the country where it is carried out."