JUDGMENT OF THE COURT (SECOND CHAMBER) OF 28 JUNE 1979 [1]

Intercontinentale Fleischhandelsgesellschaft mbH & Co. KG v Hauptzollamt München-West (Preliminary ruling requested by the Finanzgericht München)

"Common Customs Tariff"

Case 160/78

Common Customs Tariff — Tariff headings — Meat within the meaning of subheadings 16.02 B III (a) 1, 2 and 3 — Concept

It follows from the definitions contained in heading 1602 of the Common Customs Tariff, in the version brought into force by Regulation No 3000/75 of the Council — in particular in subheadings 16.02 B I (a) and (b), 16.02 B III (a) and 16.02 B III (b) 1 — that whenever the authors of the Common Customs Tariff intended to refer to meat of a particular kind they did so expressly.
Consequently the argument that the term "of any kind" used in tariff subheadings 16.02 B III (a) 1, 2 and 3 relates only to offal so that the percentage of meat to be taken into account for classification under the said subheading is solely that of meat of "domestic swine" cannot be upheld.

The term "meat" in subheadings 16.02 B III (a) 1, 2 and 3 of the Common Customs Tariff in the version brought into force by Regulation No 3000/75 relates therefore to meat of all kinds, including in particular beef and veal.

In Case 160/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht München [Finance Court, Munich] (IIIrd Senate) for a preliminary ruling in the action pending before that court between

INTERCONTINENTALE FLEISCHHANDELSGESELLSCHAFT MBH & CO. KG, Großgerau,

1 — Language of the Case: German.

and

HAUPTZOLLAMT MÜNCHEN-WEST [Principal Customs Office, Munich-West]

on the interpretation of subheading 16.02 B III (a) in the version of the Common Customs Tariff resulting from Regulation No 3000/75 of the Council of 17 November 1975 (Official Journal L 304, p. 1),

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, P. Pescatore and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the present

JUDGMENT

Facts and Issues

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and procedure

1. Tariff heading 16.02 of the Common Customs Tariff includes *"other* prepared or preserved meat or meat offal" that is, products other than those mentioned in Chapter 2 and the preceding tariff heading 16.01.

In the version of the Common Customs Tariff in force at the time of the facts giving rise to the dispute in the main action (May 1976) (cf. Regulation No 3000/75 of the Council of 17 November 1975, Official Journal L 304, p. 1) that heading contained the following sub-headings:

"A. Liver:

...

B. Other:

I. Poultrymeat or offal:

...

II. Game or rabbit-meat or offal

...

III. Other:

(a) Containing meat or offal of domestic swine and containing by weight:

1. 80% or more of meat or offal, of any kind, including fats of any kind or origin:

(aa) Hams, fillets and loins; pieces thereof

(bb) Shoulders and pieces thereof

(cc) Other

2. 40% or more but less than 80% of meat or offal, of any kind, including fats of any kind or origin.

3. Less than 40% of meat or offal, of any kind, including fats of any kind or origin.

(b) Other:

1. Containing bovine meat or offal.

2. Other:

...".

Of the above products those falling in subheading 16.02 B III (b) are subject to the common organization of the market in beef and veal (Regulation No 805/68 of the Council, Article 1 (c)) whilst all the products falling in subheading 16.02 B III (a) are subject to the common organization of the market in pigmeat (Regulation No 2759/75 of the Council, Article 1 (1) (c)).

2. The plaintiff in the main action, Intercontinentale Fleischhandelsgesellschaft mbH & Co. KG, caused to be cleared for free sale on 4 and 5 May 1976 at the Hauptzollamt München-West a total of 82 324.5 kilograms of minced meat imported from Romania and composed according to the said declaration and the invoice of pigmeat (10%) and beef and veal (90%), in frozen blocks and seasoned. On the basis of the result of the inspection for the purposes of tariff classification the goods were assigned to tariff subheading 16.02 B III (a) 1 (cc) of the 1976 Common Customs Tariff, the rate of levy being DM 133.45 per 100 kilograms and the rate of the monetary compensatory amount being DM 41.24 per 100 kilograms.

The plaintiff in the main action challenged that classification decision arguing that the term "meat" contained in the definition of subheading 16.02 B III (a) referred solely to pigmeat and that consequently mixtures containing by weight less than 40% of pigmeat (as in this instance) should be classified under subheading 16.02 B III (a) 3.

The objection filed by the plaintiff with the Hauptzollamt was unsuccessful and the plaintiff therefore brought an action before the Finanzgericht München.

3. By order of 11 July 1978 the Finanzgericht München (IIIrd Senate) referred the following question to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty:

"Is the term 'meat' in tariff subheadings 16.02 B III (a) 1, 2 and 3 of the 1976 Common Customs Tariff to be interpreted as meaning only pigmeat or also as meaning meat other than pigmeat (for example beef and veal)?"

The order referring the matter to the Court was lodged at the Court Registry on 27 July 1978.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the plaintiff in the main action, represented by G. Breit and R. Grosse of the Frankfurt Bar, and by the Commission of the European Communities, represented by its Legal Adviser P. Kalbe, acting as Agent.

The Court, on hearing the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

By order of 14 February 1979 the Court, in application of Article 95 (1) of its Rules of Procedure, decided to assign the case to the Second Chamber.

II — Written observations

In its written observations the *plaintiff in the main action* maintains the arguments which it put forward before the national court and which it now develops as set out below:

1. Wording of the tariff subheading

The term *"meat or offal, of any kind,"* (tariff subheading 16.02 B III (a) 1) should be interpreted in conjunction with the more general concept in subheading (a) preceding it according to which the subheading in question must relate to *"meat or offal of domestic swine"*. It is only for *fats* ("of any *kind or origin"*) that the wording of the tariff subheading in question refers to the constituents of products other than those of domestic swine.

2. Interpretation in the light of the Explanatory Notes to the Common Customs Tariff

According to the notes relating to subheading 16.02 B III, the calculation of the percentages referred to under subheadings (a) 1 to 3 take account only of what is meat, offal or fat. If the concept of meat or offal contained in subheadings 1 to 3 were not confined to pigmeat there would logically be no products which could be classified in subheadings 2 (40 to 80%) and 3 (less than 40%).

3. Interpretation having regard to the position and purpose of the tariff subheading within the structure of the Common Customs Tariff

In support of its arguments on this point the plaintiff refers to the expert opinion lodged by it, prepared by Erich Dittmar, former Finanzpräsident and director of the Oberfinanzdirektion [Principal Finance Office], Bremen.

The starting-point for the central argument of that report is the basic regulation for pigmeat, No 2759/75, from which the legal origins of tariff subheading 16.02 B III (a) derive (cf. Article 17 (1)) and which, for *pigmeat*, laid down commercial rules linked to the imposition of levies on imports from non-member countries. Thus in Article 10 (2) it is provided that the amount of each levy must reflect factors based solely on the price of pigs. If the breakdown of tariff subheading 16.02 B III (a) is intended to enable the rates of levy to be calculated more precisely it should none the less be in conformity with Article 10 (2) of the regulation, that is to say it should retain the connexion *solely with the prices of domestic swine*. In reliance on

that argument Mr Dittmar defends the plaintiff's verbal interpretation of the provision, summarized under heading 1.

4. The historical development of the tariff classification also leads to the conclusion that "meat" within the meaning of tariff subheadings 16.02 B III (a) 1 to 3 of the 1976 Common Customs Tariff should be understood to mean solely pigmeat.

According to the *Commission* it is clear from the wording of the heading that while subheadings 1 to 3 establish a distinction based on the quantity of "meat or offal, of any kind," in the prepared product in question it relates in fact to percentages by weight of *all* kinds of meat or offal. That interpretation enables the mixtures in question to be classified as such under tariff subheading 16.02 B III (a) 1 (cc).

This literal interpretation is necessary for the nomenclature of subheading 16.02 B III to be able to carry out the function which it was intended to be given in the context of the common organizations of the market in pigmeat and in beef and veal. In fact the prepared products containing the two types of meat were made subject exclusively to the import rules laid down for pigmeat intentionally in order to avoid practical difficulties and they fall within tariff subheading 16.02 B III (a). In spite of that formal classification it was not possible to determine the levies charged, taking account of the aims they serve relating to equalization of prices, on the basis of the pigmeat content alone but it was necessary to fix them taking into consideration the total meat content in order to obtain a valid result from both the economic point of view and that of the policy of the organization of the markets.

Both the explanatory notes relating to the subheading in question and the record of the development of that subheading confirm the Commission's view. The Commission therefore concludes "that in the wording of the description of goods falling within tariff subheadings 16.02 B III (a) 1 to 3 the percentage of 'meat ... of any kind' to be taken into consideration includes not only the pigmeat content but rather the total meat content of the prepared product in question".

III — Oral procedure

The plaintiff in the main action, represented by G. Breit of the Frankfurt Bar, and the Commission of the European Communities, represented by M. Beschel, acting as Agent, presented oral argument at the hearing on 10 May 1979.

The Advocate General delivered his opinion at the hearing on 7 June 1979.

Decision

1 By order of 11 July 1978, lodged at the Court Registry on 27 July 1978, the Finanzgericht München submitted to the Court in pursuance of Article 177 of the EEC Treaty a question relating to the interpretation of subheading 16.02 B III (a) of the Common Customs Tariff in the version in force in 1976.

2 The question was raised in the context of an action pending between the Hauptzollamt München-West (hereinafter referred to as "the Hauptzollamt"), the defendant in the main action, and the plaintiff in the main action, an undertaking which in May 1976 imported from Romania a quantity of minced meat, 10% of which was pigmeat and 90% of which was beef or veal. The product was classified by the Hauptzollamt under tariff subheading 16.02 B III (a) 1 (cc) of the Common Customs Tariff. The plaintiff in the main action however challenged that classification decision on the grounds that the term "meat" contained in the definition of subheading 16.02 B III (a) referred solely to pigmeat and that consequently mixtures containing less than 40% by weight of pigmeat — which is the case as regards the mixtures imported in this instance — should be classified under subheading 16.02 B III (a) 3. The objection filed by the plaintiff with the Hauptzollamt was unsuccessful and the plaintiff therefore brought an action before the national court.

3 In order to resolve the question of interpretation the national court decided to refer the following question to the Court of Justice:

"Is the term 'meat' in tariff subheadings 16.02 B III (a) 1, 2 and 3 of the 1976 Common Customs Tariff to be interpreted as meaning only pigmeat or also as meaning meat other than pigmeat (for example beef and veal)?"

4 The tariff heading in question, No 16.02, which is headed "Other prepared or preserved meat or meat offal" contains various subheadings including subheading 16.02 B III (a) covering "Other [prepared meats] ... Containing meat or offal of domestic swine ...". In its turn that subheading is divided into three subheadings depending on the percentage of "meat or offal, of any kind, including fats of any kind or origin" contained in the prepared or preserved meat in question namely 80% or more (16.02 B III (a) 1); 40% or more but less than 80% (16.02 B III (a) 2); less than 40% (16.02 B III (a) 3).

5 The argument put forward by the plaintiff in the main action that the term "of any kind" used in tariff subheadings 16.02 B III (a) 1, 2 and 3 relates only to offal so that the percentage of meat to be taken into account for classification under the said subheading is solely that of meat of "domestic swine" cannot be upheld.

6 It is difficult to reconcile that argument with the observation that, in the definition of tariff heading No 16.02, whenever the authors of the tariff intended to refer to meat of a particular kind they did so expressly. So for example in tariff subheadings 16.02 B I (a) and (b), where the classification also depends on the percentage of meat contained in the prepared meat in question, it is expressly provided that the percentage of meat to be taken into consideration is exclusively that of "poultry-meat". Similarly the kind of meat in question is expressly mentioned in subheading 16.02 B III (a) (meat or offal of domestic swine) and in subheading 16.02 B III (b) 1 (bovine meat or offal). If the authors of the tariff had actually intended to make classification within subheading 16.02 B III (a) conditional merely on the percentage of pigmeat contained in the prepared meat their drafting practice shows that they would have used other wording and would have inserted the words "of domestic swine" after the word "meat".

7 This conclusion is strengthened by the fact that the words "of meat or offal" are followed by the expression "of any kind" the express purpose of which is to emphasize that the subheading relates to all kinds of meat and offal. The fact that in all the official versions of the Common Customs Tariff, with the exception of the German and Danish versions, the expression "of any kind" is separated by a comma from the words "meat or offal", to which it refers, in fact confirms that the latter expression relates to the meat as well as to the offal.

8 Contrary to the allegation of the plaintiff in the main action, the Explanatory Notes to the Customs Tariff of the European Communities published by the Commission contain nothing to rule out the interpretation set out above. As regards the tariff heading in question the Explanatory Notes give only details regarding the way in which the percentage of meat or offal contained in the prepared meat is to be calculated. It is not possible to base on that any argument supporting a restrictive interpretation of the word "meat" contained in tariff subheading 16.02 B III (a), which would be incompatible with the wording and the purpose of that subheading in the context of the Common Customs Tariff.

9 The answer to the question raised should therefore be that the term "meat" in subheadings 16.02 B III (a) 1, 2 and 3 of the Common Customs Tariff in force in 1976 relates to meat of all kinds, including in particular beef and veal.

Costs

10 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

11 As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Finanzgericht München by order of 11 July 1978, hereby rules:

The term "meat" in subheadings 16.02 B III (a) 1, 2 and 3 of the Common Customs Tariff in force in 1976 relates to meat of all kinds, including in particular beef and veal.

Mackenzie Stuart Pescatore Touffait

Delivered in open court in Luxembourg on 28 June 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber