



HARMONIZED SYSTEM  
COMMITTEE

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29<sup>th</sup> Session  
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NC0586E1

O. Fr.

Brussels, 6 May 2002.

POSSIBLE CONTRADICTION BETWEEN THE EXPLANATORY NOTES TO  
AND LEGAL TEXT OF HEADING 85.36

(Item IX.11 on Agenda)

Reference documents :

NC0561E1  
NC0568B1

I. BACKGROUND

1. On 25 April 2002, the Secretariat received the following note from the EC with regard to this Agenda item.

II. NOTE FROM THE EC

2. "In paragraph 16 of the above-mentioned document (NC0561E1), the WCO Secretariat indicates that it is not in a position to determine whether the contradiction between the legal text of, and the Explanatory Note to heading 85.36, revealed by the Court of Justice of the European Communities in its Judgment of 9 February 1999, concerns the official language versions of the HS Convention (i.e., the English and French versions) or the (translated) German version only.
3. The EC would like to inform you that the Court used German as the language of the proceedings in this particular case. However, the Judgment of the Court was handed down in the 11 official languages of the EC. All the language versions are equally valid, and all are considered authentic. Consequently, it is quite clear that the contradiction referred to in the Judgment exists in all the eleven official languages of the EC, including the French and English versions, given that it is a matter of substance.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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4. The EC has some difficulty in understanding the reasoning followed by the Secretariat in the working document. The Court noted a contradiction in substance between the contents of the Explanatory Note to heading 85.36 and the legal text of that heading, and in so doing the Court made no distinction whatsoever between the various language versions (we would point out in passing that the original language of the Advocate-General's conclusions was in fact English). The Secretariat document does not show that the translation of the texts into German could have had any bearing on the Court's findings in this case.
5. From this standpoint, the EC fears that the WCO Secretariat's alternative proposal would not solve the problem raised by the Court of Justice of the European Communities. I am sure you are aware that this Judgment forms part of the "acquis communautaire", or Community patrimony, which will also be applied by the European Union candidate countries."

### III. CONCLUSION

6. The Committee is invited to take the note of the EC into account when discussing this Agenda item.
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