



HARMONIZED SYSTEM  
COMMITTEE

-  
29<sup>th</sup> Session  
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(+ Annex)

O. Eng.

Brussels, 25 February 2002.

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

(Item IX.11 on Agenda)

I. BACKGROUND

1. On 31 January 2002, the **European Community** sent a note to the Secretariat pointing out that the **EC** cannot apply a certain part of the Explanatory Note to heading 85.36, since the Court of Justice of the **European Communities** has stated that that particular part is contrary to the actual wording of the heading. The Secretariat has numbered the paragraphs to facilitate the reading of the note, which is reproduced below.

II. NOTE BY THE **EC**

“BACKGROUND

2. In the context, and in the spirit of the CCC Recommendation of 30 June 2001 on the implementation of HSC decisions, the **European Community** wishes to communicate to the Harmonized System Committee the Judgment handed down by the **Court of Justice of the European Communities** on 9 February 1999 in Case **C-280/97**, which has revealed a contradiction between part of the Explanatory Notes and the text of HS heading 85.36.
3. The second sentence of Part (III) (C) - “Junction boxes”, in the Explanatory Note to heading 85.36, page 1688, states that :  
  
“Junction boxes not fitted with means of electrical connection, but used solely as a protective cover or to hold an insulating compound over a joint made independently, are not covered here, but are classified according to their constituent material.”
4. The above-mentioned Judgment states, in paragraph 24, that these parts of the Explanatory Note to heading 85.36 “are contrary to the actual wording of heading 85.36 and alter its meaning”.

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5. Consequently, the EC is not currently disposed to apply the parts of Explanatory Note 85.36 which are quoted above.

6. A copy of this Judgment is appended hereto.<sup>1)</sup>

#### PROPOSAL

7. Considering that within the European Union, the Court of Justice of the European Communities is the only body which is competent to give a legal interpretation of the Nomenclature appended to the HS Convention,

8. Given that the Explanatory Notes to, and the text of, heading 85.36 remain unchanged in the 2002 version of this Nomenclature,

9. Bearing in mind that the decision of the Court of Justice is binding and is applicable, directly and in its entirety, throughout the EC,

10. Bearing in mind that the EC would like to be in a position to apply the Explanatory Notes to the HS Nomenclature, and implement the decisions of the HS Committee,

11. The EC requests that the HS Committee kindly undertake a review of the offending Explanatory Note, with a view to :

- deleting it, or
- declaring that “junction boxes not fitted with means of electrical connection, but used solely as a protective cover or to hold an insulating compound over a joint made independently, remain classified in heading 85.36”, or
- redrafting it to make it consistent with the above-mentioned Judgment of the Court of Justice.”

#### III. SECRETARIAT COMMENTS

12. To facilitate discussions, the Secretariat has reproduced below the description of the disputed commodity (paragraph 2 of the Judgment) :

“[. . .] The article in question is a rectangular container (approximately 21.7 cm long, 8 cm high and 11.7 cm wide) with a lid of coated die-cast aluminium (aluminium/silicon alloy with aluminium content predominant by weight). In the lid, in which a plastic insulation has been inset, there are four steel connecting bolts. The article is intended to receive electrical terminals (series terminals) of various types and dimensions and, in addition to holes for screw connections, it also has holes for fastening. In addition, it has four threaded holes designed for earthing bolts of copper-plated steel. Those bolts are packed loose in the product. There are no other connecting devices.”

13. The Court of Justice classified the above article in heading 85.36, by application of General Interpretative Rule (GIR) 2 (a). This Rule was apparently applied because of the article at issue was (i) incomplete (i.e., lacking the terminals), and (ii) not assembled. The Secretariat would like to stress, however, that the EC has not requested the Committee to classify the product at issue or to give its opinion vis-à-vis the classification rationale.

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<sup>1)</sup> The text of the Judgment is available for consultation by the delegates during the session.

14. In the same Judgment, the Court stated that “In the present case, inasmuch as those notes [*the Explanatory Note to heading 85.36 – Secr.*] require a junction box to be fitted internally with devices for connecting together electrical wires and provide, in particular, that a box used solely as a protective cover or to hold an insulating compound over a joint made independently is to be classified according to its constituent material, they are contrary to the actual wording of heading 85.36 and alter its meaning”. The pertinent part of the Explanatory Note (Part (III), Item (C), of the Explanatory Note to heading 85.36, on page 1688), reads as follows :
- “(C) **Junction boxes.** These consist of boxes fitted internally with terminals or other devices for connecting together electrical wires. Junction boxes not fitted with means of electrical connection, but used solely as a protective cover or to hold an insulating compound over a joint made independently, are not covered here, but are classified according to their constituent material.”
15. This paragraph formed part of the Explanatory Note to CCCN heading 85.19 from the very beginning (1955) and was transferred to the Harmonized System Explanatory Note to heading 85.36. The documentation available to the Secretariat does not reveal the intention of having the second sentence, so the Secretariat can only guess that it might have been introduced to clarify that boxes having neither electrical connections nor provisions for such electrical connections, did not belong to that heading, but were classifiable according to the constituent material. The Secretariat does not believe that it was introduced as an example of the non-application of GIR 2 (a).
16. The Secretariat has noted that the procedure at issue was held in the **German** language, and it assumes that the quoted texts of the GIRs, the legal texts and the Explanatory Notes, were taken from the **German** translation of the corresponding provisions. This assumption is based on the fact that the **Spanish** version of the Judgment uses the corresponding texts in **Spanish**. Since the **EC** did not send a copy of the Judgment in its original language version (i.e., the **German** version), and since the Court in its Judgment has not indicated whether it was referring (i) to the original WCO texts (i.e., either the French or the English version, or maybe both) or (ii) to the translated version (which was apparently used during the Court procedures), the Secretariat is not in a position to comment on the question whether the contradiction between the wording of the Explanatory Note referenced in paragraph 14 above concerns the official language versions (i.e., the English and French versions) or the (translated) **German** version.
17. Notwithstanding the above, the Secretariat has noted a slightly different approach in the presentation of the last sentence between the English and French versions with respect to the actual text of Item (III) (C) of the Explanatory Note to heading 85.36. Whereas the English version refers to “junction boxes not fitted with means of electrical connection”, the French version refers to “les boîtes démunies de moyens de connexion”, which could be translated as “boxes stripped of connecting material”. Furthermore, the French version does not qualify the word “boîtes” (boxes), whereas the English versions refers to “junction boxes” (emphasis added).
18. According to the text of heading 85.36, the apparatus classifiable in that heading should be “electrical” (emphasis added), which would exclude from that heading such apparatus having no (or having no provisions for) electric terminals. The junction boxes referred to in the list of examples in the text of heading 85.36 can, therefore, only refer to those which have electrical connectors. Junction boxes having provisions for electrical connectors, but actually lacking them, are classifiable in that heading by application of GIR 2 (a).

19. As indicated in paragraph 15 above, the Secretariat believes that the intention of the wording of Part (III) (C) is twofold : (i) to describe in a positive way the junction boxes which have electrical connecting points or provisions therefor (i.e., the first sentence of that Item), and (ii) to exclude from heading 85.36 (and by analogy from heading 85.35) those boxes which do not have such provisions.
20. To facilitate the discussions, the Secretariat has reproduced below as a typical example a picture of a junction box classifiable in heading 85.36, since it has provisions for electrical connections.



21. Boxes having protuberances to connect one or more (plastic or metal) tubes (conduit), but having no electrical connectors or provisions therefor, are, unfortunately, also sometimes referred to as “junction boxes”. Such boxes, which are fixed into or onto the wall or the ceiling, serve as a container in which two or more leads are connected to each other. Pictures of two typical examples of these boxes are reproduced below. A lid can be fixed on the box, which has threaded provisions to that end.



22. The Secretariat believes that the junction boxes referred to in paragraph 21 above, are of the type addressed by the second sentence of Part (III) (C) of the Explanatory Note to heading 85.36. If the Committee agrees with this view, the Secretariat suggests amending the pertinent part of the Explanatory Note to clarify the classification of the commodities referred to in paragraph 21 and to address the request forwarded by the EC.
23. With respect to the three options suggested by the EC to solve the problem of currently not being able to apply the disputed part of the Explanatory Note to heading 85.36 (see paragraph 11 above), the Secretariat would like to offer the following observations.
24. The first suggestion (i.e., deleting the second sentence of Item (C)) looks attractive, but might not necessarily result in a uniform classification among Contracting Parties, since the EC will classify the products described in that sentence in heading 85.36 (because of the Judgment), whereas other Contracting Parties may continue to classify them according to the product’s constituent material (as the EC apparently did before the Judgment).

25. The second option as suggested by the **EC** (i.e., amending the second sentence of Item (C) to read : “Junction boxes not fitted with means of electrical connection, but used solely as a protective cover or to hold an insulating compound over a joint made independently, remain classified in heading 85.36.”) may have the effect of transferring certain commodities to heading 85.36 for those Contracting Parties which are not bound to the Judgment at issue. In addition, the wording suggested by the **EC** may, in the view of the Secretariat, also cover the junction boxes pictured in paragraph 21 above, since they meet the description “junction boxes not fitted with means of electrical connection, but used solely as a protective cover”. The Secretariat, however, is of the view that (junction) boxes having no electrical connections or provisions therefor, are not covered by heading 85.36, since they lack any electrical function, and are, *ipso facto*, not electrical apparatus. (Similarly, plastic or metal tubing and fittings therefor used as electrical conduit, are also not considered to be electrical apparatus, and are also classified in accordance with their constituent material.)
26. The third option suggested by the **EC** to redraft the Explanatory Note concerned to make it consistent with the Judgment may have the same effect as the first one, i.e., it might also result in a non-uniform application of the HS. The **EC** did, however, not present a text proposal for this option.
27. In conclusion, the Secretariat, taking into account its view expressed above, would suggest the following text to replace the current second sentence of Part (III), Item (C), of the Explanatory Note to heading 85.36, on page 1688 :
- “Boxes not fitted with means of electrical connection or provisions therefor, are **excluded** and are classified according to their constituent material.”
- (French version : “Les boîtes non munies de moyens de connexion électrique ou d’aménagements à cet effet, sont **exclus** et suivent le régime de la matière constitutive.”)
28. The **EC** suggestions, together with the Secretariat’s alternative proposal, are reproduced in the Annex to this document.

#### IV. CONCLUSION

29. The Committee is invited to examine the **EC** proposal to amend the Explanatory Note to heading 85.36, taking into account the observations of the Secretariat set out in paragraphs 12 to 28 above, and its alternative proposal.

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