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Health, Welfare and Food Bureau
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本函檔號： ( ) in HWF CR 52/581/89

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立法會法案委員會秘書
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陳女士：

《2005 年吸煙(公眾衞生)(修訂)條例草案》

在法案委員會本年七月二十日的會議上，議員要求當局提供英美煙草投資有限公司及帝國煙草公司一案([2002] EUECJ C-491/01)的判決書摘錄，當中載述歐洲法院的觀點，即沒有必要因應《關於與貿易有關的知識產權協定》第 20 條檢視有關《指令》是否有效。本函現夾附相關的段落，供議員參閱。

此外，上述函件第 2 頁第 3 段出現一項排印錯誤。在中文本末二行中，"第 54 至 56 段"應由"第 154 至 156 段"取代。英文本亦須作出相應修訂。如引起任何混淆，謹此致歉。

衞生福利及食物局局長
(區穎恩 代行)

二零零六年七月二十八日

153. In light of the foregoing, it must be held that the restrictions on the trade mark right which may be caused by Article 7 of the Directive do in fact correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing the very substance of that right.

154. With regard, finally, to the validity of the Directive in the light of Article 20 of the TRIPs Agreement, the Court has consistently held that the lawfulness of a Community measure cannot be assessed in the light of instruments of international law which, like the WTO Agreement and the TRIPs Agreement which is part of it, are not in principle, having regard to their nature and structure, among the rules in the light of which the Court is to review the lawfulness of measures adopted by the Community institutions (Case C-149/96 *Portugal* v *Council* [1999] ECR I-8395, paragraph 47; Case C-377/98 *Netherlands* v *Parliament and Council*, cited above, paragraph 52; Case C-301/97 *Netherlands* v *Council* [2001] ECR I-8853, paragraph 53, and Joined Cases C-27/00 and C-122/00 *Omega Air and Others* [2002] ECR I-2569, paragraph 93).

155. It is also clear from that case-law that it is only where the Community intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to the precise provisions of the WTO agreements, that it is for the Court to review the legality of the Community measure in question in the light of the WTO rules (see the judgments cited above, *Portugal* v *Council*, paragraph 49; *Netherlands* v *Council*, paragraph 54, and *Omega Air and Others*, paragraph 94).

156. Those conditions are not satisfied in the case of the Directive, with the result that there is no need to examine its validity in the light of Article 20 of the TRIPs Agreement.

157. It follows from the foregoing considerations concerning Question 1(d) that the Directive is not invalid by reason of infringement of Article 295 EC or the fundamental right to property.

Question 1(e)

158. By Question 1(e) the referring court asks in essence whether the Directive is invalid in whole or in part by reason of infringement of the obligation to give reasons laid down in Article 253 EC.

Observations submitted to the Court

159. The claimants in the main proceedings argue *inter alia* that, even if it were to be conceded that the Community legislature has the power to legislate afresh in respect of tar yields and labelling on the basis of Article 95 EC, when those matters have already been harmonised at Community level, such legislation must at the very least be based on new developments based on scientific facts, within the meaning of Article 95(3) EC. Accordingly, the fact that the Directive nowhere refers to any scientific facts in relation to the new provisions on tar yields and labelling in Articles 3 and 5 is, in their submission, contrary to Article 253 EC.

160. According to Japan Tobacco, the Directive does not satisfy the requirements of Article 253 EC because it does not explain the reasons of fact and law that led the Community legislature to conclude that the prohibition of the use of certain descriptors laid down in Article 7 was necessary.

161. The German Government maintains that Article 3(1) and (2) of the Directive is invalid in so far as it prohibits the manufacture for export to non-member countries of cigarettes that do not comply with the requirements relating to maximum levels of toxic substances, while the recitals in the preamble do not set out the reasons why health protection in the Community is significantly affected by illegal reimports of tobacco products manufactured in the Community.

162. The Greek Government observes in particular that the mere reference in the 11th recital in the preamble to the Directive to the need for rules to be adopted to ensure that the internal market provisions are not undermined does not satisfy the requirement to state reasons laid down in Article 253 EC, since that recital does not give a general description of the highly likely present or future danger referred to therein.

163. The Luxembourg Government submits that the Directive is vitiated by failure to give reasons since, in particular, the recitals in the preamble merely repeat the same reference to the smooth operation of the internal market, without explaining how that operation would have been jeopardised if the Directive had not been adopted.

164. According to the United Kingdom, Belgian, French, Italian and Netherlands Governments, and the Parliament and the Council, the Directive contains sufficient reasoning in the light of the requirements of Article 253 EC. In this connection they particularly observe that the Community legislature is not required to provide a specific statement of reasons for each of the technical choices made.

Findings of the Court

165. It must be borne in mind that, whilst the reasoning required by Article 253 EC must show clearly and unequivocally