

**Judgment of the Court (Second Chamber) of 14 April 2011 (references for a preliminary ruling from the First-tier Tribunal (Tax Chamber) (United Kingdom)) — British Sky Broadcasting Group plc (C-288/09), Pace plc (C-289/09) v The Commissioners for Her Majesty's Revenue & Customs**

(Joined Cases C-288/09 and C-289/09) <sup>(1)</sup>

**(Common Customs Tariff — Tariff classification — Combined Nomenclature — Digital satellite television receivers and decoders with a recording function — Community Customs Code — Article 12(5)(a)(i) and (6) — Period of validity of a binding tariff information)**

(2011/C 179/03)

Language of the case: English

**Referring court**

First-tier Tribunal (Tax Chamber)

**Parties to the main proceedings**

Applicants: British Sky Broadcasting Group plc (C-288/09), Pace plc (C-289/09)

Defendant: The Commissioners for Her Majesty's Revenue & Customs

**Re:**

Reference for a preliminary ruling — First-tier Tribunal (Tax Chamber) — Interpretation of the Combined Nomenclature — Subheadings No 8528 71 13 ('Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange, capable of receiving television signals ("set-top boxes with communication function")' and No 8521 90 00 ('Other', comprising 'apparatus without a screen capable of receiving television signals, so-called "set-top boxes", which incorporate a device performing a recording or reproducing function (for example, a hard disk or DVD drive)' — 'Set-top boxes' ('STBs'), designed to receive and to decode digital television signals by satellite, having a function of communication and which incorporate a hard disk

**Operative part of the judgment**

1. The Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 and Commission Regulation (EC) No 1214/2007

of 20 September 2007, must be interpreted as meaning that set-top boxes with a communication function and a hard disk drive, such as the Sky+ box, model DRX 280, are to be classified under subheading 8528 71 13 despite the Explanatory Notes to the Combined Nomenclature.

2. Article 12(5)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, and Article 12(1) and (2)(a), third indent, of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 12/97 of 18 December 1996, must be interpreted as meaning that customs authorities are obliged to issue binding tariff informations that are in conformity with the Explanatory Notes to the Combined Nomenclature. If a disagreement arises between those authorities and economic operators as to whether those notes are in conformity with the Combined Nomenclature and on the classification of goods, it is for the economic operators to bring proceedings before the competent authority pursuant to Article 243 of Regulation No 2913/92, as amended. The court seized shall rule on the classification of the product, if necessary after making a preliminary reference to the Court of Justice as provided in Article 267 TFEU. Furthermore, the Member State to which those authorities belong may call upon the committee provided for in Article 247 of Regulation No 2913/92, as amended, in accordance with the procedure referred to in Article 8 of Regulation No 2658/87, as amended by Council Regulation (EC) No 254/2000 of 31 January 2000.

3. Article 12(5)(a)(i) of Regulation 2913/92, as amended by Regulation No 82/97, is to be interpreted as meaning that Regulation No 1549/2006 must be considered a regulation within the meaning of that provision. A binding tariff information which no longer conformed to the Combined Nomenclature because of the entry into force of Regulation No 1549/2006 ceased to be valid after that date of entry into force.

4. Article 12(6) of Regulation No 2913/92, as amended by Regulation No 82/97, is to be interpreted as meaning that, where, pursuant to Article 12 of Regulation No 2658/87, as amended by Regulation No 254/2000, a regulation updating the Combined Nomenclature is adopted and that regulation does not set a time-period during which the holder of a binding tariff information which has ceased to be valid can none the less continue to rely on it, that holder is not entitled to continue relying on that binding tariff information.

<sup>(1)</sup> OJ C 256, 24.10.2009.