

With regard to a possible justification of the present infringement, it should be noted that Germany has presented no overriding reason in the public interest in the course of the pre-litigation procedure which would be capable of justifying the contested tax system.

(<sup>1</sup>) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6).

**Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 24 July 2009 — British Sky Broadcasting Group plc v The Commissioners for Her Majesty's Revenue & Customs**

**(Case C-288/09)**

(2009/C 256/16)

*Language of the case: English*

**Referring court**

First-tier Tribunal (Tax Chamber)

**Parties to the main proceedings**

*Applicant:* British Sky Broadcasting Group plc

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

**Questions referred**

1. Is a set-top box with the specifications of the Sky+ set-top box model DRX 280 to be classified under subheading 8528 71 13, as set out in Commission Regulation 1214/2007 (<sup>1</sup>) amending Annex I to Council Regulation 2658/87, despite the Explanatory Notes to the CN adopted by the Commission on 7 May 2008 (2008/C 112/03) concerning subheading 8521 90 00 and subheading 8528 71 13?
2. Does Article 12(5)(a) of Council Regulation (EEC) No 2913 (<sup>2</sup>) of 12 October 1992 establishing the Community Customs Code, as amended, oblige a national customs authority to issue binding tariff informations that accord with the explanatory notes to the CN, unless and until those explanatory notes have been declared to be in conflict with the wording of the relevant provisions of the CN, including the General Rules for the Interpretation of the CN, or may the national customs authorities form their own individual view of the matter and disregard the explanatory note in the event they consider there to be such a conflict?

3. In the event that a set-top box with the specifications of the Sky+ set-top box model DRX 280 were to be classified under CN subheading 8521 90 00, would the application of a positive rate of customs duty be unlawful as a matter of Community law, as a consequence of violating the Community's obligations under the Information Technology Agreement ('ITA') and Article II: 1(b) of the General Agreement on Tariffs and Trade 1994 or does classification under heading 8521 entail a conclusion that the product in question falls outside the scope of the relevant part of the ITA?

(<sup>1</sup>) Commission Regulation (EC) No 1214/2007 of 20 September 2007 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

OJ L 286, p. 1

(<sup>2</sup>) OJ L 302, p. 1

**Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 24 July 2009 — Pace plc v The Commissioners for Her Majesty's Revenue & Customs**

**(Case C-289/09)**

(2009/C 256/17)

*Language of the case: English*

**Referring court**

First-tier Tribunal (Tax Chamber)

**Parties to the main proceedings**

*Applicant:* Pace plc

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

**Questions referred**

1. Is a set top box with a communication function ('STB') and a hard disk drive ('HDD') to be classified under Combined Nomenclature ('CN') subheading 8528 71 13, as set out in Commission Regulation 1549/2006 (<sup>1</sup>) and Commission Regulation 1214/2007 (<sup>2</sup>) amending Annex 1 to Council Regulation 2658/87, despite the Explanatory Notes to the CN ('CNEN') adopted by the European Commission on 7 May 2008 (2008/C113/02) concerning CN subheading 8521 90 00 and subheading 8528 71 13?