

Reference for a preliminary ruling from the Tribunal d'instance du VII^{ème} arrondissement de Paris (France), lodged on 2 August 2007 — Kip Europe SA, KIP UK Ltd, Caretrex Logistiek BV, Utax GmbH v Administration des douanes — Direction générale des douanes et droits indirects

(Case C-362/07)

(2007/C 269/42)

Language of the case: French

Referring court

Tribunal d'instance du VII^{ème} arrondissement de Paris

Parties to the main proceedings

Applicants: Kip Europe SA, Kip UK Ltd, Caretrex Logistiek BV, Utax GmbH

Defendant: Administration des douanes — Direction générale des douanes et droits indirects

Questions referred

1. Does the copy function of a multifunction apparatus of the kind described in these proceedings, designed to operate through a direct connection or a network with one or more computers, but capable, as regards the copying function only, of operating autonomously, constitute a 'specific function other than data processing' within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature?
2. In the event of an affirmative answer to the first question, does the existence of that specific function, which is expressly acknowledged not to give the product its essential character, mean that classification in Chapter 84, pursuant to Note 5(E), is to be excluded, despite the existence of printing and scanner functions associated with data processing?
3. If that is the case, and in relation to equipment made up of three materially distinct modules (printer, scanner and computer), should the classification not be made on the basis of General Rule 3(b)?
4. More generally, on a correct interpretation of the Harmonised System and of the Combined Nomenclature, must printers of the kind described in this procedure be classified under heading 8471 60 or 9009 12 00?
5. Is it not the case that Commission Regulation (EC) No 400/2006 of 8 March 2006 ⁽¹⁾ is invalid, in particular because it is contrary to the Harmonised System, to the Combined Nomenclature and to Rules 1 and 3(b) of the General Rules for the Interpretation of the Harmonised System and the Combined Nomenclature, in so far as it relies on the concept of a 'function that gives the apparatus its

essential character' and its effect would be to classify printers of the kind described under heading 9009 12 00?

⁽¹⁾ Commission Regulation (EC) No 400/2006 of 8 March 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 70, p. 9).

Reference for a preliminary ruling from the Tribunal d'instance du VII^{ème} arrondissement de Paris (France), lodged on 2 August 2007 — Hewlett Packard International SARL v Administration des douanes — Direction générale des douanes et droits indirects

(Case C-363/07)

(2007/C 269/43)

Language of the case: French

Referring court

Tribunal d'instance du VII^{ème} arrondissement de Paris

Parties to the main proceedings

Applicant: Hewlett Packard International SARL

Defendant: Administration des douanes — Direction générale des douanes et droits indirects,

Questions referred

1. Does the copy function of a multifunction apparatus of the kind described in these proceedings, designed to operate through a direct connection or a network with one or more computers, but capable, as regards the copying function only, of operating autonomously, constitute a 'specific function other than data processing' within the meaning of Note 5(E) to Chapter 84 of the Combined Nomenclature?
2. In the event of an affirmative answer to the first question, does the existence of that specific function, which is expressly acknowledged not to give the product its essential character, mean that classification in Chapter 84, pursuant to Note 5(E), is to be excluded despite the existence of printing and scanner functions associated with data processing?
3. If that is the case, and in relation to equipment made up of two materially distinct modules (printer and scanner), should the classification not be made on the basis of General Rule 3(b)?

4. More generally, on a correct interpretation of the Harmonised System and of the Combined Nomenclature, must printers of the kind described in this procedure be classified under heading 8471 60 or 9009 12 00?
5. Is it not the case that Commission Regulation (EC) No 400/2006 of 8 March 2006 ⁽¹⁾ is invalid, in particular because it is contrary to the Harmonised System, to the Combined Nomenclature and to Rules 1 and 3(b) of the General Rules for the Interpretation of the Harmonised System and the Combined Nomenclature, in so far as it relies on the concept of a 'function that gives the apparatus its essential character' and its effect would be to classify printers of the kind described under heading 9009 12 00?

⁽¹⁾ Commission Regulation (EC) No 400/2006 of 8 March 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 70, p. 9).

Action brought on 3 August 2007 — Commission of the European Communities v Hellenic Republic

(Case C-369/07)

(2007/C 269/44)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: E. Righini and I. Khatziyiannis)

Defendant: Hellenic Republic

Form of order sought

- Declare that by not having taken the necessary measures to comply with the judgment of the Court of 12 May 2005 in Case C-415/03, relating to the failure of the Hellenic Republic to fulfil its obligations under Article 3 of the decision of 2002 on aid granted by Greece to Olympic Airways, the Hellenic Republic has failed to fulfil its obligations under that decision and Article 228(1) EC;
- Order the Hellenic Republic to pay to the Commission the proposed penalty payment of EUR 53 611 for each day of delay in compliance with the judgment in Case C-415/03 relating to the decision of 2002, running from the date of

delivery of the judgment in the present case until the date upon which the judgment in Case C-415/03 has been complied with;

- Order the Hellenic Republic to make a lump sum payment to the Commission, the amount of which is calculated by multiplying a daily amount by the number of days over which the failure to fulfil obligations continues, running from the date of delivery of the judgment in Case C-415/03 until the date of delivery of the judgment in the present case in relation to the decision of 2002;
- Order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. In the judgment of 12 May 2005 in Case C-415/03 the Court held that, by failing to take within the prescribed period all the measures necessary for repayment of the aid found to be unlawful and incompatible with the common market — except that relating to the contributions to the national social security institution (IKA) —, in accordance with Article 3 of Commission Decision 2003/372 of 11 December 2002, the Hellenic Republic had failed to fulfil its obligations under that article.
2. Given that the Hellenic Republic has not notified the Commission of any measure to comply with the judgment of the Court in Case C-415/03, despite assurances to the contrary from the Greek authorities, and that the Hellenic Republic has not yet recovered the aid held to be incompatible with the decision of 2002, the Commission has decided to bring the case before the Court of Justice under Article 228 EC.
3. In accordance with Article 228 EC and the relevant case-law of the Court, where the Commission brings proceedings before the Court of Justice because a Member State has not taken the measures necessary to comply with a judgment of the Court within the time limit laid down by the Commission, the Commission is to specify the amount of the lump sum and/or penalty payment to be paid by the Member State and which the Commission considers appropriate in the circumstances. The final decision as to the financial penalties to be imposed, as provided for by Article 228 EC, is taken by the Court, which in this case has unlimited jurisdiction.
4. Both the amount of the penalty payment and the amount of the lump sum proposed by the Commission to the Court in the present action are calculated according to the method established in the Communication of the Commission of 13 December 2005 on the application of Article 228 EC.