



Rt. Hon. Peter Mandelson
Commissioner for External Trade
European Commission
Rue de la Loi 200
B-1049 Brussels

**INFORMATION TECHNOLOGY AGREEMENT (ITA) AND PROPOSED EU CUSTOMS
CLASSIFICATION ON SET-TOP BOXES**

Brussels, September 22, 2006

Dear Commissioner,

First of all, as we have already stated publicly on various occasions in the past few weeks, we deeply regret the breakdown of the WTO DDA round of trade liberalisation talks, and we offer our total support to the European Commission in any way appropriate to persuade our main trading partners that a return to the negotiating table is essential to future global growth and prosperity.

We commend you and your services for the leadership and dynamism that the EU team contributed to the negotiations, and we comment the strong and consistent defence of European economic interests.

As you will be aware, the industry we represent regards the Information Technology Agreement (ITA) as a great success but we have also cautioned that the intended scope of the ITA is being eroded by a series of decisions taken by the European Commission which classify innovative products, such as digital camcorders, LCD monitors, etc., as dutiable. The recent (draft) proposal from DG TAXUD to reclassify certain products, namely digital television set-top boxes (STBs), which have been treated as ITA products since at least 1999 (under the classification heading 8528 12 91), into dutiable categories is a matter of great concern to our industry. The implications of such a decision are immense; not only for EU ICT manufacturers, importers and digital TV platform operators, but also for European consumers. It would also severely hinder the achievement of our common goals to build a dynamic European information society that will stimulate future jobs and economic growth. Whilst EICTA recognises that new, convergent products create challenges for the interpretation of the ITA, the same issues cannot arise for products, such as STBs, which have existed since the implementation of the ITA.

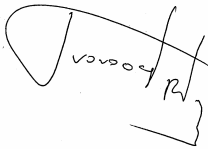
EICTA is working with other sectors of the digital technology industry in an ad hoc coalition on the STB issue and we would be grateful for your support in resisting the proposed reclassification of STBs. The draft Explanatory Note (EN) prepared by DG TAXUD remains in inter-service consultation following views expressed by other Directorate Generals. Thus, there is an opportunity to prevent the reclassification from happening.

The industry group we represent has robust legal advice which supports our arguments. This has been made available to DG TAXUD who would appear to dispute it. There is, therefore, a risk that if the Commission proceeds with reclassifying these STBs under a dutiable heading, then the matter will end up as a WTO Dispute or an ECJ case.

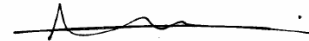
If the Commission intends to make a proposal to reclassify STBs, then as suggested by officials within DGs Trade and Infosoc we would ask you to take the necessary steps to secure an immediate suspension of duty and to invite the ITA Committee to agree on the appropriate classification of STBs. Furthermore, such a reclassification of STBs could expose European companies – including many SMEs – to the major financial burden of retroactive duty claims, as far back as three years.

We have summarised in annex why the industry group believes that the technical specifications proposed by DG TAXUD for STBs to continue to be exempt from duty are unreasonable and contrary to European law. We would appreciate the opportunity to discuss this case with you at your earliest opportunity.

Yours faithfully,



Rudy Provoost
EICTA President
Executive Vice President
Member Board of Management
Royal Philips Electronics
CEO, Philips Consumer Electronics



Mark MacGann
Director General

Cc:

Gunther Verheugen, Vice President, Commissioner for Enterprise and Industry
Viviane Reding, Commissioner for Information Society and Media
Lazlo Kovacs, Commissioner for Taxation and Customs Union

James Murdoch, CEO, BskyB
Sir Alan Sugar, Chairman and CEO, Amstrad
Stephen A. Burch, CEO, ntl:telewest
Tom Mockridge, CEO, Sky Italia
Neil Gaydon, CEO, Pace Micro Technology
Duco Sickinghe, CEO, Telenet
Gene Musselman, President & COO, UPC Broadband

Annexes

Technical Annex

a) Access to the Internet

The latest draft EN prepared by DG Taxud would disqualify STBs which do give access to the Internet but not to all possible applications on the Internet. Many STBs allow access to a subset of applications and services on the internet in order to ensure quality of service to its consumers (e.g., many internet sites cannot be displayed to an adequate level of quality on a TV) and for regulatory and policy reasons. Many other devices, e.g., WAP phones and Blackberrys, perform in the same way. We are unaware of any STBs which would meet the proposed DG Taxud criteria. Therefore, DG Taxud's interpretation is a shift from the way in which the ITA has been applied until today (by the EU and other WTO Members), to a situation in which no STB can qualify under the ITA. Clearly, reducing the STB category in the ITA to a nullity cannot constitute a correct interpretation.

b) Set Top Boxes with A Hard Disk and Communication Function

The industry group considers that it has not had an opportunity to discuss this with DG Taxud and an opportunity for this to occur should be given. STBs with a communication function containing a hard disk are still set top boxes: there is no fundamental change in nature. The time-shifting/recording capability provided by the hard drive is simply an enhancement to the existing product. To take the approach that they are no longer STBs with a communication function and they are included under video recorders category – thereby, attracting duty of 14% - is wrong.

Rules on interpretation of the CN state that “machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.” When this criterion is applied to STBs with a communication function and with a hard disk, it should be clear that such devices are principally used to receive digital TV signals in combination with interactive services, including Internet access, and must fall into 8528 12 91.

Legal Annex

Please refer to the attached PDF file:



Set top box legal
assessment V2.pdf



EICTA MEMBERSHIP

About EICTA:

EICTA, founded in 1999 is the voice of the European digital technology industry, which includes large and small companies in the Information and Communications Technology and Consumer Electronics Industry sectors. It is composed of 56 major multinational companies and 37 national associations from 27 European countries. In all, EICTA represents more than 10,000 companies all over Europe with more than 2 million employees and over EUR 1,000 billion in revenues.

The membership of EICTA:

Company Members:

Accenture, Adobe, Agilent, Alcatel, Apple, Bang & Olufsen, Blaupunkt, BenQ, Brother, Bull, Canon, Cisco Systems, Corning, Dell, EADS, Elcoteq, Epson, Ericsson, Fujitsu, Hitachi, HP, IBM, Infineon, Intel, JVC, Kenwood, Kodak, Konica Minolta, Lexmark, LG Electronics, Loewe, Lucent, Microsoft, Motorola, NEC, Nokia, Nortel, Océ, Panasonic, Philips, Pioneer, Qualcomm, Samsung, Sanyo, SAP, Sharp, Siemens, Sony, Sony Ericsson, Sun Microsystems, Symantec, Texas Instruments, Thales, Thomson, Toshiba, Xerox.

National Trade Associations:

Austria: FEEI; **Belgium:** AGORIA; **Bulgaria:** BAIT; **Czech Republic:** SPIS; **Denmark:** ITEK, IT-Branchen; **Estonia:** ITL; **Finland:** TIF, FFII; **France:** ALLIANCE TICS, SIMAVELEC; **Germany:** BITKOM, ZVEI; **Greece:** SEPE; **Hungary:** IVSZ; **Ireland:** ICT Ireland; **Italy:** ANIE, AITech-ASSINFORM; **Latvia:** LIKTA; **Lithuania:** INFOBALT; **Malta:** ITTS; **Netherlands:** ICT-Office; **Norway:** ABELIA, IKT Norge; **Poland:** KIGEiT, PIIT; **Slovakia:** ITAS; **Slovenia:** GZS; **Spain:** AETIC, ASIMELEC; **Sweden:** IT Företagen; **Switzerland:** SWICO, SWISSMEM; **Turkey:** ECID, TESID; **Ukraine:** IT Ukraine; **United Kingdom:** INTELLECT.