In agreement with these authors, the Federal Tribunal held that the text and the application of article 85 does not preclude national jurisdictions and arbitral tribunals from reviewing the validity of an agreement where its performance is the object of the dispute submitted to them. Even though it might create a risk of contradictory decisions with the Commission, the Federal Tribunal stated that arbitral jurisdictions were competent to review the conformity of agreements with EC law in order to avoid rendering decisions contrary to a law affecting the validity of the agreements. Consequently, the federal judges ruled that the arbitration tribunal had wrongly denied its competence to decide this issue, and the award was set aside for that reason.

Y also argued that the award was incompatible with public policy, as the enforcement of its decision would constitute a breach of EC law. The Federal Tribunal did not admit this ground, as *Y* did not claim that article 85 was wrongly applied. Instead, *Y* claimed that article 85 had not been applied at all by the arbitral tribunal. Moreover, the Federal Tribunal opined that it could not decide this question at this stage of the procedure because the arbitral tribunal itself did not examine whether the agreement was really contrary to article 85.

The Federal Tribunal's decisions will certainly result in extending the mission of arbitral tribunals seated in Switzerland. This, however, may create some difficulties in practice. First, these tribunals will not dispose of the faculty to request prejudicial opinions from the Luxembourg Court since Switzerland is not a member of the EC. Moreover, regrettably the Federal Tribunal did not clearly specify whether arbitral tribunals indeed have the obligation to review the validity of agreements under article 85—as most commentators sustain—or if they have jurisdiction to decide this question only when it is raised by one of the parties.

United Kingdom*

I. Legislation: Finance (No.2) Act 1992—Draft Regulations and Orders

As noted in the Winter 1992 issue of this publication, the Finance (No. 2) Act 1992 contained not only provisions designed to implement the EC Mergers and Parent/Subsidiary Directives, but also provisions that will help enable the aboli-

*Prepared by Clifford Chance, London.

tion of the United Kingdom's fiscal frontiers, as required by the European Community, on January 1, 1993.

Some of the law governing VAT and other indirect taxes in the United Kingdom at present takes the form of secondary legislation (that is, regulations and orders), notably the VAT (General) Regulations 1985. New draft regulations and orders have now been produced that deal with the detailed workings of the Single Market. The new regulations cover such issues as: distance sales, EC sales statements, records, the agricultural flat rate scheme for farmers, and territories to be treated as excluded from or included in EC territory. The new orders cover: input tax, the reverse charge, international services, goods, and transport, tax free shops, and the place of supply of services. Amendments to existing secondary legislation are also proposed. The draft regulations and orders became effective on January 1, 1993.

II. Cases: *Woolwich Equitable Building Society v. IRC*[1]

This was, as Lord Goff stated, "a case of considerable importance not only to the parties but also for the future of the law of restitution." It concerned the right of the taxpayers to recover from the U.K. Inland Revenue interest on tax wrongfully demanded by the Revenue, not only from the date of the judgment holding the demand to be unlawful, but from the date of payment. In this, the second case to reach the House of Lords about the same payment of tax, the Revenue resisted repayment of the interest for this earlier period.

The House of Lords held that the taxpayer was entitled to the repayment of tax wrongfully demanded as from the date of payment under the common law and that the building society was therefore entitled to interest on the payments from the dates they were made to the Revenue. In reaching this conclusion, a number of factors were taken into account, but one deciding factor was European law. Lord Goff expressly referred to the decision of the European Court of Justice in *Amministrazione delle Finanze dello Stato v San Girogio SpA*,[2] which established that a person who pays charges levied by a Member State contrary to the rules of Community law is entitled to repayment of the charge. Such right is regarded as a consequence of and adjunct to the rights conferred on individuals by the EC provisions preventing such charges.

Although the position under EC law was only one of a number of considerations taken into account by the House of Lords, and was the final deciding factor mentioned by Lord Goff, it did help to swing the balance in favor of the taxpayer. The case is, therefore, interesting because it demonstrates that the highest of the English courts is aware of the growing importance of EC law and openly draws attention to this fact.

1. July 20, 1992 (H.L.).
2. Case 199/82, 1983 E.C.R. 3595.