INFORMATION ON UNPUBLISHED DECISIONS

Reports of Cases

Order of the Court (Sixth Chamber) of 8 March 2012 — Febetra

(Case C-333/11)

(Article 104(3), first subparagraph, of the Rules of Procedure — TIR Convention — Community Customs Code — Excise duties — Transport carried out under cover of a TIR carnet — Unlawful unloading — Determination of the place of the offence — Recovery of customs and excise duties — Jurisdiction)

1. *Free movement of goods — External Community transit — Transport of goods under cover of a TIR carnet — Offences or irregularities — Determining the place of that offence of irregularity — Presumption in favour of the place at which the finding was made — Rebutted on the basis of evidence produced by a guaranteeing association (Commission Regulation No 2454/93, Art. 454(3)) (see para. 38, operative part 1)*

2. *Customs union — Customs debt — Value added tax — Excise duties — Directive 92/12 — Member State with competence for recovery (Council Directive 92/12, Art. 6(1) and 7(1) (see para. 43, operative part 2)*

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 454(3), second subparagraph, of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1992 L 253, p. 1), of Articles 6(1) and 7(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) and of Article 37 of the Customs Convention on the International Transport of Goods under cover of TIR carnets (TIR Convention) — Offences or irregularities — Place of the offence or irregularity — Place deemed to be where the offence or irregularity is detected, when it is impossible to determine the place where it was committed.

Operative part

1. Article 454(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1662/1999 of 28 July 1999, must be interpreted as meaning that a guaranteeing association may prove the place where an offence or irregularity was committed by relying on the place where the TIR carnet was accepted and/or where the seals were affixed. If that association succeeds in rebutting the presumption that the customs authorities of the Member State in whose territory an offence or irregularity was detected in the course of transport under cover of a TIR carnet are competent in favour of those of the Member State in whose territory that offence or irregularity was in fact committed, which it is for the referring court to determine, the customs authorities of that latter State become competent to recover the customs debt.

2. Articles 6(1) and 7(1) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, as amended by Council Directive 96/99/EC of 30 December 1996, must be interpreted as meaning that the customs authorities of the Member State in whose territory the goods were discovered, seized and confiscated are competent to recover the excise duty, even if those goods were introduced into the territory of the European Union in another Member State, in so far as those goods are held for commercial purposes, which it is for the referring court to establish.