



Reports of Cases

Case C-273/12

**Directeur général des douanes et droits indirects and
Chef de l'agence de poursuites de la Direction nationale du renseignement et des enquêtes
douanières**

v

Harry Winston SARL

(Request for a preliminary ruling from the Cour de cassation (France))

(Community Customs Code — Regulation (EEC) No 2913/92 — Article 206 — Incurrence of a customs debt — Theft of goods placed under customs warehousing arrangements — Notion of 'irretrievable loss of goods as a result of force majeure' — Directive 2006/112/EC — Article 71 — Value added tax — Chargeable event — Chargeability of tax)

Summary — Judgment of the Court (Second Chamber), 11 July 2013

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Identification of relevant EU law*

(Art. 267 TFEU)

2. *Customs union — Creation of a customs debt on importation following the unlawful removal from customs supervision of goods liable to import duties — Concept of removal — Theft of goods placed under customs warehousing arrangements — Included*

(Council Regulation No 2913/92, Arts. 202, 203(1), 204(1)(a) and 206)

3. *Harmonisation of fiscal legislation — Common system of value added tax — Chargeable event and chargeability of tax — Importation of goods — Theft of goods placed under customs warehousing arrangements — Chargeability of tax following chargeability of customs duties*

(Council Regulation No 2913/92, Art. 20; Council Directive 2006/112, Art. 71(1), second para.)

1. See the text of the decision.

(see para. 24)

2. Article 203(1) of Regulation No 2913/92 establishing the Community Customs Code must be interpreted as meaning that a theft of goods placed under customs warehousing arrangements constitutes an unlawful removal of those goods within the meaning of that provision, giving rise to a customs debt on importation. Article 206 of that regulation is capable of applying only to situations in which a customs debt is liable to be incurred pursuant to Articles 202 and 204(1)(a) of that regulation.

The concept of unlawful removal from customs supervision, referred to in Article 203(1) of Regulation No 2913/92, must be interpreted as covering any act or omission the result of which is to prevent, if only for a short time, the competent customs authority from gaining access to goods under customs supervision and from carrying out the monitoring required by the customs regulations. Such is the case where goods, placed under a suspensive procedure, have been stolen.

(see paras 29, 30, 36, operative part 1)

3. The second subparagraph of Article 71(1) of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that the theft of goods placed under customs warehousing arrangements gives rise to the chargeable event and causes value added tax to become chargeable.

To the extent to which, in accordance with Article 203 of Regulation No 2913/92 establishing the Community Customs Code, a customs debt is incurred at the moment when the goods, placed under customs warehousing arrangements, are removed from customs supervision, that is to say, at the time of the theft of those goods, it must be held that the value added tax became chargeable at the same time, pursuant to the second subparagraph of Article 71(1) of Directive 2006/112.

(see paras 42, 45, operative part 2)