Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

18 May 2017 (*)

(Reference for a preliminary ruling — Community Customs Code — Regulation (EEC) No 2913/92 — Article 94(1) and Article 96 — External Community transit procedure — Liability of the principal — Articles 203, 204 and Article 206(1) — Incurrence of a customs debt — Unlawful removal from customs supervision — Non-fulfilment of one of the obligations flowing from the use of a customs procedure — Total destruction or irretrievable loss of the goods as a result of the actual nature of the goods or unforeseeable circumstances or force majeure — Article 213 — Payment of the customs debt under joint and several liability — Directive 2006/112/EC — Value added tax (VAT) — Article 2(1), Articles 70 and 71 — Chargeable event and chargeability of the tax — Articles 201, 202 and 205 — Persons liable for payment of the tax — Finding by the customs office at the destination of a freight deficit — Lower unloading device of a wagon-tank incorrectly closed or damaged)

In Case C?154/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augst?k?s tiesas Administrat?vo lietu departaments (Supreme Court, Administrative Cases Department, Latvia), made by decision of 9 March 2016, received at the Court on 15 March 2016, in the proceedings

‘Latvijas Dzelzce?š’ VAS

v

Valsts ienemumu dienests,

THE COURT (Eighth Chamber),

composed of M. Vilaras, President of the Chamber, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Latvian Government, by G. Bamb?ne and D. Pelše, and by I. Kalni?š, acting as Agents,

– the European Commission, by L. Grønfeldt and by M. Wasmeier and A. Sauka, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 94(1), Articles 96, 203, 204, Article 206(1) and Article 213 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 13) (‘the Customs Code’), of Article 2(1)(d), and of Articles 70, 71, 201, 202 and 205 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) (‘the VAT Directive’).

2 The request has been made in proceedings between ‘Latvijas Dzelzce?š’ VAS (‘the LDz’), a public limited company acting as the principal within the meaning of the Customs Code, and Valsts ie??mumu dienests (Latvian Tax Authority) (‘the VID’) concerning the payment of a customs debt and VAT rights on importation.

Legal context

European Union law

The Customs Code

3 Under Article 4, points 9, 10, 12 to 14, 19 and 21 of the Customs Code:

‘For the purposes of this Code, the following definitions shall apply:

…

(9) “Customs debt” means the obligation on a person to pay the amount of the import duties (customs debt on importation) … which apply to specific goods under the Community provisions in force.

(10) “Import duties” means:

– customs duties and charges having an effect equivalent to customs duties payable on the importation of goods,

…

…

(12) “Debtor” means any person liable for payment of a customs debt.

(13) “Supervision by the customs authorities” means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed.

(14) “Customs controls” means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts.

…

(19) “Presentation of goods to customs” means the notification to the customs authorities, in the manner laid down, of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities.

…

(21) “Holder of the procedure” means the person on whose behalf the customs declaration was made or the person to whom the rights and obligations of the abovementioned person in respect of a customs procedure have been transferred.’

4 Article 37 of that code provides:

‘1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to customs control in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-Community goods and without prejudice to Article 82(1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.’

5 Article 38(1)(a) of the Code provides:

‘Goods brought into the customs territory of the Community shall be conveyed by the person bringing them into the Community without delay, by the route specified by the customs authorities and in accordance with their instructions, if any:

(a) to the customs office designated by the customs authorities or to any other place designated or approved by those authorities.’

6 Article 40 of the Customs Code is worded as follows:

‘Goods entering the customs territory of the Community shall be presented to customs by the person who brings them into that territory or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry …’.

7 Article 59(2) of the Customs Code provides:

‘Community goods declared for an export, outward processing, transit or customs warehousing procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Community or are destroyed or the customs declaration is invalidated.’

8 Article 91(1)(a) of the code provides:

‘The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures.’

9 Under Article 92 of the Customs Code:

‘1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.’

10 Article 94(1) of the Customs Code states:

‘The principal shall provide a guarantee in order to ensure payment of any customs debt or other charges which may be incurred in respect of the goods. ’

11 In accordance with Article 96 of the Customs Code:

‘1. The principal shall be the [holder of the procedure] under the external Community transit procedure. He shall be responsible for:

(a) production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.

2. Notwithstanding the principal’s obligations under paragraph 1, a carrier or recipient of goods who accepts goods knowing that they are moving under Community transit shall also be responsible for production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification.’

12 Article 202(1)(a) of the code provides:

‘A customs debt on importation shall be incurred through:

(a) the unlawful introduction into the customs territory of the Community of goods liable to import duties

…’.

13 Article 203 of the Customs Code provides:

‘1. A customs debt on importation shall be incurred through:

– the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

3. The debtors shall be:

– the person who removed the goods from customs supervision,

– any persons who participated in such removal and who were aware or should reasonably have been aware that the goods were being removed from customs supervision,

– any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision,

and

– where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.’

14 In accordance with Article 204 of the Customs Code:

‘1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed,

…

in cases other than those referred to in Article 203, unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3. The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure.’

15 Article 206(1) of that code provides:

‘By way of derogation from Articles 202 and 204(1)(a), no customs debt on importation shall be

deemed to be incurred in respect of specific goods where the person concerned proves that the non-fulfilment of the obligations which arise from:

– the provisions of Articles 38 to 41 and the second indent of Article 177, or

– keeping the goods in question in temporary storage, or

– the use of the customs procedure under which the goods have been placed,

results from the total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of authorisation by the customs authorities.

For the purposes of this paragraph, goods shall be irretrievably lost when they are rendered unusable by any person.'

16 Under Article 213 of the Customs Code:

'Where several persons are liable for payment of one customs debt, they shall be jointly and severally liable for such debt. '

Regulation (EEC) No 2454/93

17 Article 360(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 414/2009 of 30 April 2009 (OJ 2009 L 125, p.6), provides:

'The carrier shall be required to make the necessary entries in the Transit accompanying document — Transit/security accompanying document and present it with the consignment to the customs authorities of the Member State in whose territory the means of transport is located:

…

(e) in the event of any incident or accident capable of affecting the ability of the principal or the carrier to comply with his obligations.'

The VAT Directive

18 Under Article 2(1) of the VAT Directive:

'The following transactions shall be subject to VAT:

…

(d) the importation of goods.'

19 Article 60 of that directive states:

'The place of importation of goods shall be the Member State within whose territory the goods are located when they enter the Community.'

20 Article 61, first paragraph, of that directive provides:

'By way of derogation from Article 60, where, on entry into the Community, goods which are not in

free circulation are placed under one of the arrangements or situations referred to in Article 156, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.'

21 Article 70 of the directive provides:

'The chargeable event shall occur and VAT shall become chargeable when the goods are imported.'

22 Article 71 of the VAT Directive provides as follows:

'1. Where, on entry into the Community, goods are placed … under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.

2. Where imported goods are not subject to any of the duties referred to in the second subparagraph of paragraph 1, Member States shall, as regards the chargeable event and the moment when VAT becomes chargeable, apply the provisions in force governing customs duties.'

23 According to Article 201 of that directive:

'On importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation. '

24 Article 202 of that directive provides as follows:

'VAT shall be payable by any person who causes goods to cease to be covered by the arrangements or situations listed in Articles 156, 157, 158, 160 and 161.'

25 Article 205 of the directive is worded as follows:

'In the situations referred to in Articles 193 to 200 and Articles 202, 203 and 204, Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.'

Latvian law

26 Article 2, paragraph 2.2, of the likums par pievienot?s v?rt?bas nodokli (Law on VAT) of 9 March 1995 (*Latvijas V?stnesis*, 1995, No 49), in force until 31 December 2012, provided:

'The tax shall apply to any importation of goods, unless otherwise provided in this law.'

27 Article 12(2) of that Law stated that:

'When goods are imported, the tax shall be payable by any person who releases the goods for free circulation. The tax on imported goods shall be chargeable as soon as the customs duties are chargeable …'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

28 The order for reference states that on 25 February 2011, the LDz, acting as principal, placed a group of tank wagons under the external Community transit procedure, within the meaning of Article 91 of the Customs Code, by producing a rail freight waybill. The cargo in transit, namely solvent, was to be transported by its carrier, Baltijas Tranz?ta Serviss, to the customs office at its destination, which was the border control post at the port of Ventspils (Latvia).

29 During the transportation of that cargo on Latvian territory, a leak from the lower unloading device was found in one of the tank wagons. On 28 February and 1 March 2011, standard reports, namely an inspection report and a technical assessment report, on the defects of the tank concerned and the measures taken to prevent damage were drawn up. On 1 March 2011, it was also recorded in a report of loss that 2 448 kilograms (kg) of cargo was missing from the tank concerned.

30 On 10 March 2011, the Customs office of destination found a loss of cargo of 2 488 kg due to the fact that the lower unloading device of one of the wagon tanks in question had not been correctly closed or had been damaged. As the documents relating to the presentation of missing cargo and to completion of the transit procedure without irregularity had not been presented to the customs office and in the absence of evidence that the cargo deficit resulted from an act by the sender, the VID adopted a decision by which it calculated the LDz's customs debt in the sum of Latvian Lats (LVL) 63.26 (about EUR 90.01) and its VAT debt in the sum of LVL 228.01 (about EUR 324.44). The LDz challenged that decision. The Director General upheld that decision by a decision of 16 September 2011.

31 The LDz then brought an action before the administrat?v? rajona tiesa (District Administrative Court, Latvia) seeking annulment of that decision submitting that, in the instant case, many persons could be jointly liable for the customs debt, in particular those responsible for the technical operation of the carriage and the correct drawing up of the damage report. Furthermore, the LDz submitted that the VID had not taken into account the fact that the cargo deficit found had resulted from the total destruction or irretrievable loss of the goods concerned as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*.

32 By judgment of 6 August 2013, that court dismissed the LDz's action.

33 By a judgment of 8 December 2014 the Administrat?v? apgabaltiesa (Regional Administrative Court, Latvia) dismissed the appeal brought by the LDz against the first instance judgment.

34 During its examination of the appeal in cassation brought by the LDz, the Augst?k?s tiesas Administrat?vo lietu departaments (Supreme Court, Administrative Cases Department, Latvia) entertained doubts, first of all, as to whether the VID and the lower courts were correct in law to have applied, in the present case, Article 203(1) of the customs code concerning the unlawful removal of goods from customs supervision. That court states in that regard that, on the one hand, the VID considers that paragraph 2.2 of the 'Transit manual' of the Commission's Directorate General 'Taxation and Customs Union' (Working Document Taxud/2033/2008-LV Rev. 4) of 15 September 2009 applies in all cases where a deficit in goods is found by the customs office of destination, whilst, on the other hand, the LDz emphasises the findings establishing, in the present case, that there was a leak of solvent from the tank concerned for a technical reason and refers to the measures taken to repair that damage.

35 In that context, the referring court questions whether, in circumstances such as those at

issue in the main proceedings, it would not be more appropriate to apply Article 204(1)(a) of the Customs Code, read in combination with the derogation laid down in Article 206(1) of that code, which permits the customs debt on importation not to be calculated if it is proved that the goods have been totally destroyed, which precludes the entry of those goods into EU economy.

36 Next, the referring court recalls that the question of exoneration from the payment of duties on importation is linked to that of exoneration from VAT. In that regard, it takes as its starting point the principle that, because the application of the Customs Code does not require the calculation of customs duties on importation for goods which were destroyed while they were under the external Community transit procedure, and which, for that reason, did not enter the EU economy, VAT should also not be paid.

37 Finally, that court notes that, even if it is sufficiently clear from Article 94(1) and Article 96(1) of the Customs Code that the principal is liable for the payment of the customs debt and even though the Court has emphasised in its case-law the importance of the liability of the principal in the context of safeguarding the financial interests of the European Union and the Member States, questions remain as to the meaning of the provisions of the Customs Code which provide for the liability of other persons as regards both the performance of the obligations under the external Community transit procedure and payment of the customs debt. Pursuant to both Article 203 of the Customs Code and Article 204 thereof, the circle of persons whose liability could be engaged as a result of the leak concerned may be wider than the principal alone.

38 In those circumstances, the Augst?k?s tiesas Administrat?vo lietu departaments (Supreme Court, Administrative Cases Division) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 203(1) of [the Customs Code] be interpreted as meaning that it is applicable provided that the complete cargo is not presented at the customs office of destination of the external Community transit procedure, even if it is proven to a satisfactory standard that the goods have been destroyed or irretrievably lost?

(2) If the reply to the first question is in the negative, may sufficient proof of the destruction of the goods and, consequently, the fact that the goods are excluded from entering the economic channels of the Member State, justify application of Article 204(1)(a) and Article 206 of [the Customs Code], so that the amount of the goods destroyed during external transit is not included in the calculation of the customs debt?

(3) If Article 203(1), Article 204(1)(a) and Article 206 of [the Customs Code] must be interpreted as meaning that customs duty on importation is payable on the amount of goods destroyed during external transit, must Article 2(1)(d), Article 70 and Article 71 of [the VAT Directive] be interpreted as meaning that [VAT] must be paid together with import duties, even if actual entry of the goods into the economic network of the Member State is excluded?

(4) Must Article 96 of [the Customs Code] be interpreted as meaning that the principal is always liable for payment of that customs debt, as stated in the external Community transit procedure, irrespective of whether the carrier has fulfilled its obligations under Article 96(2)?

(5) Must Article 94(1), Article 96(1) and Article 213 of [the Customs Code] be interpreted as meaning that the customs authority of the Member State is required to declare jointly and severally liable all those persons who, in the specific circumstances, may be regarded as liable for the customs debt together with the principal, in accordance with the provisions of the Customs Code?

(6) If the reply to the previous question is in the affirmative and if the laws of the Member State

link the obligation to pay value added tax on importation of goods, in general, to the procedure under which goods may be released for free circulation, are Articles 201, 202 and 205 of [the VAT Directive] to be interpreted as meaning that the Member State is required to declare jointly and severally liable for payment of value added tax all those persons who, in the specific circumstances, may be regarded as liable for the customs debt under [the Customs Code]?

(7) If the reply to questions 5 or 6 is in the affirmative, may Article 96(1) and Article 213 of [the Customs Code], and Articles 201, 202 and 205 of [the VAT Directive] be interpreted as meaning that if the customs authority of the Member State has, because of error, failed to hold any of the persons responsible together with the principal jointly and severally liable for the customs debt, this fact alone may justify releasing the principal from liability for the customs debt?'

Consideration of the questions referred

The first question

39 By its first question, the referring court asks, in essence, whether Article 203(1) of the Customs Code must be interpreted as applying where the total volume of the goods placed under the external Community transit procedure has not been presented to the customs office of destination provided for in that procedure, owing to the total destruction or irretrievable loss of some of the goods, proven to a satisfactory standard.

40 In that regard, it must be recalled that, under Article 203(1) of the Customs Code, a customs debt on importation is incurred on the unlawful removal from customs supervision of goods liable to import duties.

41 In accordance with the Court's case-law, the concept of 'unlawful removal from customs supervision', appearing in Article 203(1) of the Customs Code, must be understood as encompassing 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 monitoring them as provided for in Article 37(1) of the Customs Code (see judgments of 1 February 2001, *D. Wandel*, C?66/99, EU:C:2001:69, paragraph 47, and of 12 June 2014, *SEK Zollagentur*, C?75/13, EU:C:2014:1759, paragraph 28 and the case-law cited).

42 Hence, any withdrawal from authorised storage of goods subject to customs supervision — whether intentional or not intentional, such as a theft — without the authorisation of the customs authority constitutes unlawful removal from customs supervision for the purposes of Article 203(1) of the Customs Code and thus gives rise under that provision to a customs debt on importation (see, to that effect, the judgments of 1 February 2001, *D. Wandel*, C?66/99, EU:C:2001:69, paragraphs 48 and 50; of 12 February 2004, *Hamann International*, C?337/01, EU:C:2004:90, paragraph 36; and of 11 July 2013, *Harry Winston*, C?273/12, EU:C:2013:466, paragraphs 30 and 33). Similarly, the Court has held that an article left for temporary storage must be deemed to have been removed from customs supervision if it is declared for an external Community transit procedure, but it does not in fact leave the storage facility and is not presented to the customs office at the place of destination, although the transit documents have been presented there (judgment of 12 June 2014, *SEK Zollagentur*, C?75/13, EU:C:2014:1759, paragraph 33).

43 In the present case, the order for reference states that the customs office of destination found a loss of cargo, namely solvent, of 2 488 kg due to the fact that the lower unloading device of one of the wagon tanks in question had not been correctly closed or had been damaged. In that regard, according to the referring court, the Administrat?v? apgabaltiesa (Regional Administrative Court) did not determine in more detail the circumstances of that loss of freight.

44 In any event, the referring court proceeds on the hypothesis of the total destruction or irretrievable loss of the goods.

45 In that regard, in accordance with Article 37(1) of the Customs Code, goods subject to customs supervision may be subject to customs controls.

46 The purpose of such controls, pursuant to point 14 of Article 4 of the Customs Code, is to ensure the correct application of customs rules and may include, inter alia, examining goods, verifying declaration data and the existence and authenticity of the documents, and inspecting the means of transport.

47 In accordance with the case-law of the Court cited in paragraphs 41 and 42 above, the disappearance of some of the goods placed under the external Community transit procedure may, in principle, constitute unlawful removal of those goods from customs supervision, within the meaning of Article 203(1) of the Customs Code, to the extent that, on that hypothesis, the customs authorities are effectively prevented from gaining access to some of the goods and from monitoring them as provided for in Article 37(1) of the Customs Code.

48 However, the application of Article 203(1) of the Customs Code is justified where the disappearance of the goods presents a risk that they have entered the economic networks of the European Union without clearing customs (see, to that effect, the judgments of 20 January 2005, *Honeywell Aerospace*, C?300/03, EU:C:2005:43, paragraph 20, and of 15 May 2014, *X*, C?480/12, EU:C:2014:329, paragraphs 35 and 36).

49 However, that is not the case when the goods disappear due to their total destruction or irretrievable loss — such loss being defined under Article 206(1), second paragraph, of the Customs Code as when the goods are unusable by any person — in the case of the leak of a liquid, such as the solvent at issue in the main proceedings, from a tank during its transportation. Goods which no longer exist or are unusable by any person cannot, for that sole reason, enter the economic networks of the European Union.

50 In the light of the foregoing considerations, the answer to the first question is that Article 203(1) of the Customs Code must be interpreted as not applying where the total volume of the goods placed under the external Community transit procedure has not been presented to the customs office of destination provided for in that procedure, owing to the total destruction or irretrievable loss of some of the goods, proven to a satisfactory standard.

The second question

51 By its second question, asked in the event of a negative answer to the first question, the referring court asks, in essence, whether Article 204(1) and Article 206 of the Customs Code must be interpreted as applying where the total volume of the goods placed under the external Community transit procedure has not been presented to the customs office of destination laid down in that procedure, owing to the total destruction or irretrievable loss of some of the goods, which is proven to a satisfactory standard.

52 In that regard, it is appropriate to observe, as a preliminary point, that Articles 203 and 204 of the Customs Code have different spheres of application. It is clear from the wording of Article 204 of the Customs Code that it applies only to situations which do not fall within the scope of Article 203, the applicability of which to the situation in question must be examined first (judgments of 12 February 2004, *Hamann International*, C?337/01, EU:C:2004:90, paragraphs 28 to 30, and of 29 October 2015, *B & S Global Transit Center*, C?319/14, EU:C:2015:734, paragraphs 25 to

27).

53 Since, in accordance with the answer given to the first question, Article 203(1) of the Customs Code is not applicable in the present case, it is necessary to consider whether the situation at issue in the main proceedings falls within the scope of Article 204(1)(a) of the Customs Code.

54 Under the latter provision, a customs debt on importation is incurred upon the non-fulfilment, in cases other than those covered by Article 203 of the Customs Code, of one of the obligations arising in respect of goods liable to import duties from the use of the customs procedure under which they are placed.

55 As regards the external Community transit procedure, one of the obligations, in particular, under Article 96(1)(a) of the Customs Code, is to produce the goods intact to customs, at the customs office of destination.

56 It must be held that, in that regard, in situations such as those in the case in the main proceedings, production at the customs office of destination of a volume of goods less than that declared under the external Community transit procedure at the customs office of departure, as a result of the total destruction or irretrievable loss of some of the goods, cannot be regarded as the production of goods intact, within the meaning of Article 96(1)(a) of the Customs Code.

57 It follows that the production of goods in that way must be regarded, for the purposes of Article 204(1)(a) of the Customs Code, as non-fulfilment of one of the obligations under the external Community transit procedure which gives rise, in principle, to a customs debt on importation for the party whose goods were not produced to the customs office of destination.

58 However, it must be observed that Article 206(1) of the Customs Code provides that, by way of derogation from Article 204(1)(a) of the Customs Code, no customs debt on importation is deemed to be incurred in respect of specific goods, where the person concerned proves that the non-fulfilment of the obligations which arise from the use of the customs procedure under which the goods have been placed results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods, unforeseeable circumstances or *force majeure*.

59 Consequently, it must be ascertained whether the leak of a liquid, such as a solvent, from a tank, due to the fact that the lower unloading device of one of the wagon tanks in question had not been correctly closed or had been damaged, may be regarded as an unforeseeable circumstance or *force majeure*.

60 In that regard, it should be recalled that the Court has consistently held that, since the concept of '*force majeure*' does not have the same scope in the various spheres of application of EU law, its meaning must be determined by reference to the legal context in which it is to operate (see judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C?314/06, EU:C:2007:817, paragraph 25, and of 14 June 2012, *CIVAD*, C?533/10, EU:C:2012:347, paragraph 26).

61 In the context of customs legislation, the concepts of '*force majeure*' and 'unforeseeable circumstances' both contain an objective element relating to abnormal circumstances extraneous to the trader and a subjective element involving the obligation, on that person's part, to guard against the consequences of an abnormal event by taking appropriate steps without making unreasonable sacrifices (see, to that effect, the judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C?314/06, EU:C:2007:817, paragraph 24; of 14 June 2012, *CIVAD*, C?533/10, EU:C:2012:347, paragraph 28; the order of 21 September 2012, *Noscira* v *OHIM*,

C?69/12 P, not published, EU:C:2012:589, paragraph 39; the order of the President of the Court of 30 September 2014, *Faktor B. i W. G?sina* v *Commission*, C?138/14 P, not published, EU:C:2014:2256, paragraph 19; and the judgment of 4 February 2016, *C & J Clark International and Puma*, C?659/13 and C?34/14, EU:C:2016:74, paragraph 192).

62 Furthermore, since Article 206(1) of the Customs Code is a derogation from the rule laid down in Article 204(1)(a) thereof, the concepts of '*force majeure*' and 'unforeseeable circumstances', within the meaning of the first of those provisions, must be interpreted strictly (see, by analogy, the judgments of 14 June 2012, *CIVAD*, C?533/10, EU:C:2012:347, paragraph 24; of 4 February 2016, *C & J Clark International and Puma*, C?659/13 and C?34/14, EU:C:2016:74, paragraphs 190 and 191; and of 25 January 2017, *Vilkas*, C?640/15, EU:C:2017:39, paragraph 56).

63 In the light of the criteria set out in paragraph 61 above, it must be held that a leak of solvent, such as that at issue in the main proceedings, on the hypothesis that it was caused by the incorrect closure of an unloading device, is not to be regarded as an abnormal circumstance extraneous to a trader in the business of the transportation of liquid substances, but rather as a consequence of failure to exercise the care ordinarily due in the context of the business of that trader, with the result that neither the objective nor the subjective elements of the concepts of '*force majeure*' and 'unforeseeable circumstances', referred to in that paragraph, are met in the present case.

64 As regards the hypothesis of damage to one of the unloading devices, it is not wholly inconceivable that that circumstance may be capable of satisfying the criteria set out in paragraph 61 of this judgment if it proved to be abnormal and extraneous to the trader and if the consequences could not have been avoided even if all due care had been exercised. However, it is for the national court to determine whether those criteria are met. In the context of that determination, that court must, in particular, take into account compliance, by operators such as the principal and the carrier, with the rules and obligations in force regarding the technical condition of tanks and the safety of transportation of liquid substances such as a solvent.

65 Having regard to the foregoing considerations, the answer to the second question is that Article 204(1)(a) of the Customs Code must be interpreted as meaning that where the total volume of goods placed under the external Community transit procedure has not been produced at the customs office of destination provided for in that procedure owing to the total destruction or irretrievable loss of some of the goods, proven to a satisfactory standard, that situation, which constitutes non-fulfilment of one of the obligations under that procedure, namely, to produce goods intact at the customs office of destination, gives rise, in principle, to a customs debt on importation for the part of the goods which was not produced at that customs office. It is for the national court to determine whether a circumstance such as damage to an unloading device meets, in the present case, the criteria of '*force majeure*' or an 'unforeseeable circumstance', within the meaning of Article 206(1) of the Customs Code, namely, whether it is an abnormal circumstance for a trader in the business of the transportation of liquid substances and extraneous to that trader, and whether the consequences could not have been avoided even if all due care had been exercised. In the context of that determination, that court must, in particular, take into account compliance, by operators such as the principal and the carrier, with the rules and obligations in force regarding the technical condition of tanks and the safety of transportation of liquid substances such as a solvent.

The third question

66 By its third question, the referring court asks, in essence, whether Article 2(1)(d) and Articles 70 and 71 of the VAT Directive must be interpreted as meaning that VAT is due on the totally destroyed or irretrievably lost part of the goods placed under the external Community transit

procedure.

67 Under Article 2(1)(d) of the VAT Directive, the importation of goods is subject to VAT. Article 70 of the VAT Directive lays down the principle that the chargeable event occurs and the tax becomes chargeable at the moment when the goods are imported. Thus, Article 71(1) of the VAT Directive provides, in its first subparagraph, that, where, on entry into the European Union, goods are placed under the external Community transit procedure, the chargeable event occurs and the tax becomes chargeable only when the goods cease to be covered by that procedure (see, to that effect, the judgment of 11 July 2013, *Harry Winston*, C?273/12, EU:C:2013:466, paragraph 40).

68 It follows from those provisions that the total destruction or the irretrievable loss of goods placed under the external Community transit procedure is capable of giving rise to the chargeable event and causing VAT to become chargeable only if those goods can be placed on the same footing as goods that have ceased to be subject to that procedure.

69 In that regard, it must be held that, VAT being a tax on consumption, it applies to goods and services that enter the economic network of the European Union and may be the object of consumption (see, to that effect, the judgments of 7 November 2013, *Tulic? and Plavo?in*, C?249/12 and C?250/12, EU:C:2013:722, paragraph 35, and of 2 June 2016, *Eurogate Distribution* and *DHL Hub Leipzig*, C?226/14 and C?228/14, EU:C:2016:405, paragraph 65).

70 Therefore, the exit of goods from the external Community transit procedure, which gives rise to the chargeable event and causes VAT to become chargeable, must be regarded as referring to the integration of those goods into the economic network of the European Union, which is excluded for goods that are non-existent or unusable by any person (see, to that effect, the judgment of 29 April 2010, *Dansk Transport og Logistik*, C?230/08, EU:C:2010:231, paragraphs 93 and 96).

71 Consequently, to the extent that goods totally destroyed or irretrievably lost while they are placed under the external Community transit procedure cannot be integrated into the economic network of the European Union and, hence, cannot exit that procedure, they cannot be regarded as ‘imported’, within the meaning of Article 2(1)(d) of the VAT Directive, nor subject to VAT under provision.

72 In view of the foregoing considerations, the answer to the third question is that Article 2(1)(d) and Articles 70 and 71 of the VAT Directive must be interpreted as meaning that VAT is not due on the totally destroyed or irretrievably lost part of the goods placed under the external Community transit procedure.

The fourth question

73 By its fourth question, the referring court asks, in essence, whether Article 96(1)(a) in conjunction with Article 204(1)(a) and (3) of the Customs Code must be interpreted as meaning that the principal is liable for the payment of the customs debt incurred in relation to goods placed under the external Community transit procedure, even if the carrier did not comply with the obligations to which he was subject under Article 96(2) of the Customs Code, in particular the requirement to produce those goods intact at the customs office of destination within the prescribed period.

74 Pursuant to Article 96(1)(a) in conjunction with Article 204(1)(a) of the Customs Code, a customs debt on importation is incurred upon failure to produce goods intact at the customs office of destination. Under Article 204(3) of the code, the debtor in respect of the customs debt is the person who must fulfil the obligations arising from the use of that procedure.

75 Thus, under Article 96(1) of the Customs Code, it is for the principal to produce those goods intact at the customs office of destination. According to Article 96(2) of that code, notwithstanding the principal's obligations, the carrier of the goods is also responsible for their production intact to the customs office of destination.

76 In that regard, the Court has previously held that Article 204 of the code is intended to ensure that the customs legislation is correctly applied. Under Articles 96(1) and 204(1) of that code, the principal — in his capacity as holder in the external Community transit procedure — is the debtor of the customs debt incurred due to the failure to observe the provisions governing that procedure. The liability thus imposed upon the principal is intended to ensure the diligent and uniform application of the provisions relating to that procedure and the proper functioning of transit operations in order to protect the financial interests of the European Union and its Member States (judgment of 15 July 2010, *DSV Road*, C?234/09, EU:C:2010:435, paragraph 30 and the case-law cited).

77 Similarly, that liability is independent of the principal's good faith and the fact that the breach of the external Community transit procedure was extraneous to him (see, to that effect, the judgment of 3 April 2008, *Militzer & Münch*, C?230/06, EU:C:2008:186, paragraph 49 and the case-law cited).

78 Furthermore, that liability is not called into question by the fact that it extends, under Article 96(2) of the Customs Code, to other persons also, such as the carrier of the goods, given that the provisions of the code governing the external Community transit procedure do not on this ground provide for any exemption for the principal. It follows from the wording of Article 96(2) of the code that the responsibility of the carrier of goods for their production intact at the customs office of destination remains '[n]otwithstanding the principal's obligations' in that respect.

79 It follows that the principal is liable for payment of the customs debt arising in relation to goods placed under the external Community transit procedure, even if the carrier did not fulfil the obligations to which he was subject under Article 96(2) of the Customs Code.

80 Nevertheless, that conclusion does not necessarily mean that the principal is the only person liable for the payment of that customs debt.

81 As follows from paragraphs 74 and 75 above, if the carrier has failed to fulfil his obligation to produce, intact, goods placed under the external Community transit procedure, he must also be regarded, by the same token, as being the debtor in respect of the customs debt, which means that under Article 213 of the Customs Code he, together with the principal, is jointly and severally liable for payment of the debt.

82 Having regard to the foregoing considerations, the answer to the fourth question is that Article 96(1)(a) in conjunction with Article 204(1)(a) and (3) of the Customs Code must be interpreted as meaning that the principal is liable for the payment of the customs debt arising in relation to goods placed under the external Community transit procedure, even if the carrier did not fulfil the obligations to which he was subject under Article 96(2) of the Customs Code, in particular the requirement to produce those goods intact at the customs office of destination within the prescribed period.

The fifth question

83 By its fifth question, the referring court asks, in essence, whether Article 96(1)(a) and (2), Article 204(1)(a) and (3) and Article 213 of the Customs Code must be interpreted as meaning that the customs authority of a Member State is obliged to declare the joint and several liability of the carrier who, together with the principal, must be regarded as liable for payment of the customs debt.

84 In that regard, it must be noted that Article 213 of the Customs Code confirms the principle of joint and several liability in cases where there are several debtors in respect of the same customs debt, without a more specific rule for the implementation of that liability being laid down in other provisions of the code or the provisions for its implementation (see, to that effect, the judgment of 17 February 2011, *Berel and Others*, C?78/10, EU:C:2011:93, paragraphs 42 and 43).

85 However, it follows from the very nature of joint and several liability that each debtor is liable for the total amount of the debt and the creditor remains, in principle, free to request the payment of that debt by one or several debtors as he chooses.

86 As is clear from paragraphs 76 to 79 and 82 above, under Article 96(1)(a), Article 204(1)(a) and (3) of Customs Code the principal is responsible for the payment of the customs debt arising in relation to goods placed under the external Community transit procedure, even if the carrier has not fulfilled the obligations to which he was subject under Article 96(2) of the Customs Code.

87 It follows that the Customs Code, by imposing that objective liability upon the principal establishes a basic legal mechanism that facilitates, in particular, the proper functioning of transit operations in order to protect the financial interests of the European Union and its Member States (judgment of 15 July 2010, *DSV Road*, C?234/09, EU:C:2010:435, paragraph 30 and the case-law cited).

88 In that regard, the Court has stated that the mechanism of joint and several liability provided for in Article 213 of the code constitutes an additional legal device made available to the national authorities to strengthen the effectiveness of the action they take for the recovery of customs debts and the protection of the EU’s own resources (judgment of 17 February 2011, *Berel and Others*, C?78/10, EU:C:2011:93, paragraph 48).

89 Consequently, it must be held that, in circumstances such as those in the case in the main proceedings, the customs authority of a Member State is indeed required to declare the liability of the principal. However, it follows from the nature of the mechanism of the joint and several liability referred to in paragraph 85 above that that authority may, but is not obliged to, declare the joint and several liability of the carrier.

90 It is appropriate to clarify, in that regard, that the fact that the customs authority of a Member State does not ask, pursuant to that joint liability, the carrier to pay the customs debt in no way prejudices the right of the principal to bring an action for damages against the carrier.

91 Having regard to the foregoing considerations, the answer to the fifth question is that Article 96(1)(a) and (2), Article 204(1)(a) and (3) and Article 213 of the Customs Code must be interpreted as meaning that the customs authority of a Member State is not obliged to declare the joint and several liability of the carrier who, together with the principal, must be regarded as liable for payment of the customs debt.

The sixth and seventh questions

92 Having regard to the answer to the fifth question, there is no need to answer the sixth and seventh questions.

Costs

93 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

1. Article 203(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 must be interpreted as meaning that it does not apply where the total volume of the goods placed under the external Community transit procedure has not been presented to the customs office of destination provided for in that procedure, owing to the total destruction or irretrievable loss of some of the goods, which is proven to a satisfactory standard.

2. Article 204(1)(a) of Regulation No 2913/92 of 12 October 1992, as amended by Regulation No 648/2005 must be interpreted as meaning that where the total volume of goods placed under the external Community transit procedure has not been produced at the customs office of destination laid down in that procedure owing to the total destruction or irretrievable loss of some of the goods, proven to a satisfactory standard, that situation, which constitutes the non-fulfilment of one of the obligations under that procedure, namely to produce goods intact at the customs office of destination, gives rise, in principle, to a customs debt on importation for the part of the goods which was not produced at that customs office. It is for the national court to determine whether a circumstance such as damage to an unloading device meets, in the present case, the criteria of '*force majeure*' or an 'unforeseeable circumstance', within the meaning of Article 206(1) of Regulation No 2913/92, as amended by Regulation No 648/2005, namely, whether it is an abnormal circumstance for a trader in the business of the transportation of liquid substances and extraneous to that trader, and whether the consequences could not have been avoided even if all due care had been exercised. In the context of that determination, that court must, in particular, take into account compliance, by operators such as the principal and the carrier, with the rules and obligations in force regarding the technical condition of tanks and the safety of transportation of liquid substances such as a solvent.

3. Article 2(1)(d) and Articles 70 and 71 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that VAT is not due on the totally destroyed or irretrievably lost part of goods placed under the external

Community transit procedure.

4. Article 96(1)(a) in conjunction with Article 204(1)(a) and (3) of Regulation No 2913/92, as amended by Regulation No 648/2005, must be interpreted as meaning that the principal is liable for the payment of the customs debt arising in relation to goods placed under the external Community transit procedure, even if the carrier did not fulfil the obligations to which he was subject under Article 96(2) of that regulation, in particular the requirement to produce those goods intact at the customs office of destination within the prescribed period.

5. Article 96(1)(a) and (2), Article 204(1)(a) and (3) and Article 213 of Regulation No 2913/92, as amended by Regulation No 648/2005, must be interpreted as meaning that the customs authority of a Member State is not obliged to declare the joint and several liability of the carrier who, together with the principal, must be regarded as liable for payment of the customs debt.

[Signatures]

* Language of the case: Latvian.