Decisions of the European Court of Justice

136/80	Community transit, free movements of goods, concept of "guarantor"
277/80	Free movement of goods, Community transit, external transit, release of guarantor
266/81	Free movement of goods, external relations, GATT, national transit
99/83	Free movement of goods, Community transit, goods moving between two points in the Community across Switzerland, uncollected charges
105/83	Free movement of goods, Art. 233 ECC Treaty, Community transit, customs union, recovery of charges
252/87	Free movement of goods, bring into and release for free circulation in the Member State goods originating in a non-member country and smuggled into another Member State
C-117/88	Free movement of goods, Community transit, means of proof limited to forms T2 and T2L alone
C-83/89	Goods in free circulation-concept, Art. 9, 10 ECC Treaty (Art. 23,24), carriage of goods not intended for commercial purposes
C-328/89	Free movement of goods, T1 document, guarantors obligations
C-367/89	Free movement of goods, principle of the freedom of Community transit, transit of goods described as strategic material
C-188/91	Free movement of goods, Convention on a Common EEC/EFTA Transit Procedure
C-237/96	Free movement of goods, Community status of goods, means of proof
C-292/96	Free movement of goods, authorised consignor status
C-61/98	Application ratione temporis, Community transit, offences or irregularities, time-limits for recovery, repayment or remission of import or export duties
C-233/98	Free movement of goods, offences or irregularities, recovery of import duty
C-310/98 and C-406/98 (joined cases)	Free movement of goods, proof of the place where an offence was committed, compensation mechanism, time-limit for a proof
C-371/99	VAT - Importation by removal of goods from customs arrangements – TIR - external Community transit-
C-78/01	Free movement of goods, proof of the place where an offence was committed, time-limit for furnishing proof
C-112/01	External Community transit - Offence or irregularity - Recovery of a customs debt – Conditions
C-222/01	External Community transit - Temporary removal of transit and transport documents - Breaking of seals and partial unloading of the goods - Removal of goods from customs supervision - Incurring of a customs debt on importation
C-60/02	Counterfeit and pirated goods - No criminal penalty for the transit of counterfeit goods - Compatibility with Regulation (EC) No 3295/94
C-238/02 and C-246/02	Community Customs Code - Extent of the obligation as to presentation of goods arriving at customs - National legislation providing for an express declaration in respect of hidden goods at the time of presentation of goods at customs - Persons having brought in the goods and being under a duty to declare them - Concept of customs debtor

C-238/02 and C-246/02	Community Customs Code - Extent of the obligation as to presentation of goods arriving at customs - National legislation providing for an express declaration in respect of hidden goods at the time of presentation of goods at customs - Persons having brought in the goods and being under a duty to declare them - Concept of customs debtor
C-238/02 and C-246/02	Community Customs Code - Extent of the obligation as to presentation of goods arriving at customs - National legislation providing for an express declaration in respect of hidden goods at the time of presentation of goods at customs - Persons having brought in the goods and being under a duty to declare them - Concept of customs debtor
C-62/05 P	Remission of import duties - Consignment of cigarettes destined for Spain - Fraud committed in a Community transit operation
C-407/05	Recovery of import rights - Proof of the regularity of the operation or of the place of the offence or irregularity - Consequence of the lack of notification to the principal of the period for furnishing such proof
C-44/06	Community transit - Proof of the regularity of a transit operation or of the place of the offence - Three-month period - Period granted subsequent to the decision to recover the import duties
C-230/06	Community transit - Recovery of a customs debt - Competent Member State - Proof of the regularity of the operation or of the place of the offence - Time-limits - Liability of the principal
C-526/06	Community transit - Offence - Proof of the regularity of the transit operation or of the place of the offence - Failure to grant a period of three months in which to furnish such proof - Repayment of customs duties - Concept of 'legally owed'
C-161/08	TIR – Notification period - Period within which proof must be furnished of the place where the offence or irregularity was committed

Case 136/80:: Community transit, free movements of goods, concept of "guarantor"

Art. 35 § 1 of Reg. No 542/69 of the Council, in the version in force on October 1976, must be interpreted as meaning that the words degene die zekerheid heeft gesteld appearing in de Dutch version do not cover the principal but mean only the person who, in the case of the joint and several guarantee referred to in Art. 27 (3) of that regulation, acts as guarantor in accordance with that regulation.

Case 277/80: Free movement of goods, Community transit, external transit, release of guarantor

Art. 35 of Reg. No. 542/69 of the Council of 18.3.1969 on Community transit, (amended by Art. 1 of Reg. No 1079/71 of 25.51971), must be interpreted as meaning that, unless the guarantor has been notified by the customs authorities of the on-discharge of the T1 declaration within the period of 12 months from the date of its registration, the guarantor is then, in the absence of any fraud of which he may be guilty, in any event released from his obligations.

Case 266/81: Free movement of goods, external relations, GATT, national transit

The existence within the Community of a customs union characterized by the free movement of goods implies freedom of transit within the community. That freedom of transit means that a member state may not apply to goods in its territory in transit to or from another member state transit duties or other charges imposed in respect of transit. However the imposition of charges or fees which represent the costs of transportation or of other services connected with transit cannot be regarded as incompatible with freedom of transit as defined above.

Art. V of the GATT which lays down the principle of freedom cannot have direct effect in the framework of Community law and individuals may not rely upon it in order to challenge the imposition of a charge. That in no way affects the Community's obligation to ensure that the provisions of GATT are observed in its relations with non-member states which are parties to GATT.

Case 99/83 Free movement of goods, Community transit, goods moving between two points in the Community across Switzerland, uncollected charges

By the virtue of Art. 1 of the agreement between the EEC and Switzerland on the application of the rules on Community transit, those rules are to apply to the movement of goods between two points situated in the Community via Swiss territory, whether the goods are consigned direct, with or without transhipment in Switzerland, or are re-consigned from Switzerland, where appropriate after storage in a customs warehouse.

Where goods coming from a member state with the symbol T2 entered by the office of departure or on which the symbol T1 is not entered the Swiss office of departure is authorised, in the case of re-consignment to a destination in a member state, to issue a new consignment note bearing the symbol T2 unless the copy No 3 of the consignment note is missing or if it bears the symbol T1.

Where, by the reason of an offence or irregularity committed in connection with a Community transit transport operation, the duties and other charges payable are not collected, recovery of those duties and charges is to be effected by the member state in which the offence or irregularity was committed, in accordance with the laws, and administrative provisions of the state.

Case 105/83: Free movement of goods, Art. 233 EEC Treaty, Community transit, customs union, recovery of charges

The aim of Art. 223 of the EEC Treaty (now Art. 296) is to prevent the application of the Community law from causing the disintegration of the regional union established between Belgium, Luxembourg and the Netherlands or from hindering its development. It therefore enables the three members states concerned to apply, in derogation from the Community rules, the rules in force within their union in so far as it further advanced than the common market.

Art. 59 of Reg. no 542/69 on Community transit must be interpreted as meaning that the Netherlands may apply to a Community transit document A Benelux agreement which provides, in derogation from Art. 36 (1)1 of that regulation, that action to recover charges must be taken by the Benelux country in which the document was issued, even if it is found that an irregularity was committed in the course of Community transit in another Benelux country.

Case 252/87: Free movement of goods, bring into and release for free circulation in the Member State goods originating in a non-member country and smuggled into another Member State

Art. 36(1) of Council Reg. No 222/77 of 13.12.1976 on Community transit must be interpreted as precluding the incurring of a customs debt on the release for free circulation in a Member State of goods from a non-member country which were first smuggled into another Member State and then transported under the internal Community transit procedure into the Member State where they were released for free circulation, since the offences or irregularities committed in the other Member State have already given rise to a customs debt in that State.

Case C-117/88: Free movement of goods, Community transit, means of proof limited to forms T2 and T2L alone

The rule that only transit documents T2 or T2L may be used to prove the Community status of goods to the customs authorities of the importing Member State (Reg. Nos 222/77 and 223/77) unless Community legislation provides otherwise, cannot be regarded as contrary to Art. 9 and 10 (now Art. 23, 24) of the Treaty.

Articles 9 and 10 (now Art. 23, 24) are silent as to the means of proof and the burden of proof of the Community status of goods. They leave it to secondary Community legislation to settle those matters. The provision of a standard and simple means of proof, combined with the possibility of producing such proof even after the frontier has been crossed, is justified by the need to facilitate the movement of goods across the Community' s internal frontiers, which is one of the basic principles of the common market.

Case C-83/89: Goods in free circulation-concept, Art. 9, 10 ECC Treaty (Art. 23,24), carriage of goods not intended for commercial purposes

Goods imported into the Community from a non-member country are to be considered to be in free circulation when the import formalities have been complied with and the various duties paid; there is no distinction to be drawn between goods imported from a non-member country in circulation in the Member State and those which, after due completion of the import formalities and payment of the various duties in one Member State, are subsequently imported into another Member State

The rules governing Community transit (Reg. No 222/77, amended by Reg. No 983/79), mean that, in the case of the carriage of goods not intended for commercial use, a declaration by the traveler accompanying the goods or in whose luggage they are contained is sufficient for those goods to be considered to be Community goods. However, if there are any objective grounds for doubting the accuracy of that declaration, the traveler must produce an internal Community transport document.

Case C-328/89 Free movement of goods, T1 document, guarantors obligations

Art. 35 § 2 of Reg. No 222/77 on Community transit, as in force before its amendment by Reg. No 3813/81, provided that the person standing as guarantor for the regularity of transit operations is to be released from his obligations when, on the expiry of a specific period, he has not been notified by the office of departure of the non-discharge of the T1 document. That version of the provision must be interpreted as meaning that responsibility for notifying the guarantor of the non-discharge of the T1 document rested exclusively with the office of departure.

Case C-367/89 Free movement of goods, principle of the freedom of Community transit, transit of goods described as strategic material

The existence, as a consequence of the Customs Union, of a general principle of freedom of transit of goods within the Community does not, as Art. 10 of Reg. No 222/77 affirms, have the effect of precluding the Member States from verifying the nature of goods in transit, pursuant to the Treaty, in particular Art. 36 (now Art. 30). That Article authorises the Member States to impose restrictions on the transit of goods on grounds of public security, which covers both a Member State' s internal security and its external security, of which the latter manifestly requires to be taken into consideration in the case of goods capable of being used for strategic purposes. Accordingly, this regulation does not preclude the legislation of a Member State from requiring, on external security grounds, of that special authorisation for the transit through its territory of goods described as strategic material. However, the measures adopted by the Member State as a consequence of the failure to comply with that requirement must not be disproportionate to the objective pursued.

Case C-188/91 Free movement of goods, Convention on a Common EEC/EFTA Transit Procedure

The arrangements adopted for the application of the Convention on a Common EEC/EFTA Transit Procedure by the Joint Committee established under that Convention, are part of the Community legal order, so that the Court has jurisdiction to give a preliminary ruling on their interpretation. The fact that such arrangements do not have binding effect does not preclude the Court from ruling on their interpretation. Although those arrangements cannot confer upon individuals rights, which are enforceable before national courts, the national courts are obliged to take them into consideration in order to resolve disputes submitted to them.

Art. 11(4) and 15(2) of the Convention do not preclude the Joint Committee from adopting a recommendation that the identification of goods is to be ensured by sealing when the customs office of entry into the EFTA Member State is not the office of destination.

Art. 11(4) and Art. 15(2)(b) of the Convention, in conjunction with Art. 65(d) of Appendix II do not preclude a higher customs authority of a Member State from establishing the general framework within which the authority conferred upon the office of departure to dispense with the sealing obligation is to be exercised.

Under Art. 177 (now Art. 234) of the Treaty the Court does not have jurisdiction to rule on the compatibility of a national measure with Community law.

Case C-237/96: Free movement of goods, Community status of goods, means of proof

Reg. No 222/77 on Community transit and Reg. No 223/77 on provisions for the implementation of the Community transit procedure, save as otherwise provided, proof of the Community status of goods may be provided only by means of transit documents T2 or T2 L is consistent with Art. 9 and 10 (now Art. 23, 24) of the Treaty.

Art. 9 and 10 leave it to secondary Community legislation to settle means and the burden of the proof of the Community status of goods. The provision of a standard and simple means of proof, combined with the possibility of producing such proof even after the frontier has been crossed, is justified by the need to facilitate the movement of goods within the Community, which is one of the basic principles of the common market.

Art. 37(2) of Reg. No 222/77 does not allow proof of the Community status of goods to be provided by means of the findings of the competent authorities of a Member State made when inspections are carried out under the Community transit procedure. That provision cannot constitute a derogation from the rule that, save as otherwise provided, proof of the Community status of goods may be provided only by means of transit documents T2 or T2 L.

Case C-292/96: Free movement of goods, authorised consignor status

Under Art. 76(4) of Reg. No 2913/92 establishing the Community Customs Code, customs authorities may grant the status of authorised consignor only on the basis of Art. 398 to 405 of Reg. No 2454/93 laying down provisions for the implementation of Reg. No 2913/92.

Art. 398 of Reg. No 2454/93 allows customs authorities to grant the status of authorised consignor even when it is no longer possible to exempt such consignor from the obligation to present the goods at the office of departure because they have already been presented to customs.

Case C-61/98: Application ratione temporis, Community transit, offences or irregularities, time-limits for recovery, repayment or remission of import or export duties

Procedural rules are generally held to apply to all proceedings pending at the time when those rules enter into force, whereas substantive rules are usually interpreted as not applying to situations existing before their entry into force.

Community law does not impose on customs authorities who have been informed of a possible fraud in connection with external transit arrangements any obligation to warn a principal that he may incur liability for customs duty as a result of the fraud.

Art. 11(1)(c) of Reg. No 2726/90 on Community transit provides that a principal is responsible for payment of duties due "as a result of an offence or irregularity" and does not require, that the principal be shown to be at fault or that the customs authorities be obliged in any way to inform him that an investigation has been carried out.

Failure on the part of the customs authorities, when taking action for the post-clearance recovery of customs duties, to observe the time-limits laid down in Art. 3, 5 and 6(1) of Reg. No 1854/89 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt does not nullify the right of those authorities to proceed with such recovery, provided that it is carried out within the time-limit laid down in Article 2(1) of Reg. No 1697/79.

An omission on the part of the customs authorities to inform a principal of a possible fraud in which he is not implicated cannot, be classified as an error within the meaning of Art. 5(2) of Reg. No 1697/79.

Art. 13(1) of Reg. No 1430/79 (amended by Reg. No 3069/86) on the repayment or remission of import or export duties, makes repayment or remission subject to two cumulative conditions, the existence of a special situation and the absence of deception or obvious negligence on the part of the economic operator. In this connection, the list, set out in Art. 4 of Reg. No 3799/86, of special situations within the meaning of Art. 13(1) is not exhaustive. It is therefore for the customs authorities to determine whether a situation (not mentioned in that list) constitutes a "special situation".

Where the customs authority has been unable to take a decision on the remission of duties, the Member State transmits the case to the Commission (Art. 905 to 909 of Reg. No 2454/93). Commission determines, whether a special situation exists such as to justify the remission of duties. Commission includes a general fairness clause intended to cover the exceptional situation in which a declarant might find himself in comparison with other operators engaged in the same business. In that connection, the demands of an investigation conducted by the national authorities may, in the

absence of any deception or negligence on the part of the person liable, and where that person has not been informed that the investigation is being carried out, constitute a special situation within the meaning of Art. 13(1) of Reg. No 1430/79 where the fact that the national authorities have, deliberately allowed offences or irregularities to be committed, thus causing the principal to incur a customs debt, places the principal in an exceptional situation in comparison with other operators engaged in the same business.

Case C-233/98: Free movement of goods, offences or irregularities, recovery of import duty

Art. 36(3) of Reg. No 222/77 (amended by Reg. No 474/90) on Community transit abolishing lodgement of the transit advice note on crossing an internal frontier of the Community, in conjunction with Art. 11a(2) of Reg. No 1062/87 (as amended by Reg. No 1429/90) on provisions for the implementation of the Community transit procedure provides that the Member State to which the office of departure belongs may recover import duty only if it has indicated to the principal that he has three months in which to prove where the offence or irregularity was actually committed and such proof has not been provided within that period.

Art. 36(3) of Reg. No 222/77 (amended by Reg. No 474/90) does not apply to a case in which the Member State to which the office of departure belongs has recovered duty in respect of goods cleared for the Community transit procedure even though the principal has not been set a time-limit for furnishing proof of the place where the offence or irregularity was actually committed, in accordance with Art. 11a(2) of Reg. No 1062/87 (amended by Reg. No 1429/90), and in such a case the refund of the duty irregularly recovered is not subject to the condition that the duty due from the principal have been paid in the Member State where the offence was committed.

Case C-310/98 and C-406/98 (joined cases) Free movement of goods, proof of the place where an offence was committed, compensation mechanism, time-limit for a proof

Art. 454(3) of Commission Reg. No 2454/93 (1. subparagraph) provides that proof of the place where an offence or irregularity was committed, does not have to be adduced solely by means of documentary evidence showing that the competent authorities of another Member State have established that the offence or irregularity was committed in that State.

Art. 454(3) of Reg. No 2454/93 (3. and 4. subparagraph) means that the compensation mechanism provided for in that regulation also applies where the duties and other charges were levied by the Member State where the offence was detected even though satisfactory proof had been furnished that the place where the offence was actually committed was located in another Member State.

Art. 454(3) (1. Subparagraph) and Art. 455(1) of Reg. No 2454/93 means that the customs authorities of the Member State where the offence or irregularity was detected cannot impose on a TIR carnet holder a time-limit of three months for furnishing satisfactory proof of the place where the offence or irregularity was actually committed. The time-limit laid down in the first subparagraph of Art. 454(3) of Reg. No 2454/93 for furnishing proof of the place where the offence or irregularity was committed is one year.

Case C-371/99: VAT - Importation by removal of goods from customs arrangements – Community transit

Where goods, transported by road under the external Community transit arrangements, are placed on the Community market after a number of irregularities have been committed in respect of those goods in various Member States, the goods cease to be covered by those arrangements within the meaning of Article 7(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, as amended by Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax, on the territory of the Member State where the first operation which can be regarded as a removal of the goods from customs supervision was carried out.

Any act or omission which prevents, 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 by the Community customs provisions must be regarded as a removal of the goods in question from customs supervision.

Removal of goods from customs supervision does not require intent, but, instead, only that certain objective conditions be met

Case C-78/01 Free movement of goods, proof of the place where an offence was committed, time-limit for furnishing proof

The first subparagraph of 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 does not preclude a guaranteeing association against which proceedings are brought by a Member State for payment of customs duties on the basis of the guarantee contract it has concluded with that State in accordance with the Customs Convention on the International Transport of Goods under cover of TIR Carnets from being able to furnish proof of the place where the offence or irregularity was committed, provided that that proof is furnished within the period laid down in that provision, that timelimit being peremptory.

The first paragraph of Article 454(3) and Article 455 of Regulation No 2454/93 must be interpreted as meaning that the guaranteeing association has available, to furnish proof of the place where the offence or irregularity was actually committed, a period of two years running from the date of the claim for payment made to it.

Articles 454 and 455 of Regulation No 2454/93 do not require the Member State which detects an offence or irregularity in connection with a transport operation under cover of a TIR carnet, in addition to making the notifications prescribed in Article 455(1) of that regulation and an enquiry to the office of destination, to investigate the actual place where the offence or irregularity was committed and the identity of the customs debtors, by seeking the administrative assistance of another Member State for elucidation of the facts.

C-112/01 External Community transit - Offence or irregularity - Recovery of a customs debt – Conditions

Article 379(1) 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, read in conjunction with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, should be interpreted as meaning that a customs debt arising by reason of an offence or irregularity committed in connection with a consignment placed under the external Community transit procedure can be recovered from the principal by the office of departure even if it did not notify the principal before the end of the 11th month following the date of registration of the Community transit declaration that the consignment had not been presented at the office of destination and that the place of the offence or irregularity could not be established.

The same applies if the office of departure did not follow an administrative procedure for the transmission of information, such as the early warning system, or if the failure to comply with the time-limit was due to error or negligence on the part of that office.

It should be noted, also, that the implementing regulation must be given, if possible, an interpretation consistent with the provisions of the basic regulation.

C-222/01 Free movement of goods - External Community transit - Temporary removal of transit and transport documents - Breaking of seals and partial unloading of the goods - Removal of goods from customs supervision - Incurring of a customs debt on importation

In so far as the temporary removal of the T 1 transit document from the goods to which it relates prevents the presentation of that document at any possible requisition by the customs service, such a removal constitutes a removal of those goods from customs supervision within the meaning of Article 2(1)(c) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt even if the customs authorities have not demanded presentation of the document or established that it could not have been presented to them without considerable delay

The fact that infringements of the Community transit system originate in the conduct of an undercover agent belonging to the customs services constitutes a special situation within the meaning of Article 13(1) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties, as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986, which may, in appropriate cases, justify the remission or repayment of duties paid by the principal, provided no deception or obvious negligence may be attributed to him.

Deception or obvious negligence on the part of persons whom the principal has engaged to carry out obligations contracted under the Community external transit system does not, in itself, exclude repayment to the principal of duties incurred as a result of the removal of goods placed under that system from customs supervision, provided no deception or obvious negligence is attributable to the principal.

C-60/02 Counterfeit and pirated goods - No criminal penalty for the transit of counterfeit goods - Compatibility with Regulation (EC) No 3295/94

Articles 2 and 11 of Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures concerning the entry into the Community and the export and reexport from the Community of goods infringing certain intellectual property rights, as amended by Council Regulation (EC) No 241/1999 of 25 January 1999, are applicable to situations in which goods in transit between two countries not belonging to the European Community are temporarily detained in a Member State by the customs authorities of that State.

The duty to interpret national law so as to be compatible with Community law, in the light of its wording and purpose, in order to attain the aim pursued by the latter, cannot, of itself and independently of a law adopted by a Member State, have the effect of determining or aggravating the liability in criminal law of an entity which has failed to meet the requirements of Regulation No 3295/94.

C-238/02 and C-246/02 Community Customs Code - Extent of the obligation as to presentation of goods arriving at customs - National legislation providing for an express declaration in respect of hidden goods at the time of presentation of goods at customs - Persons having brought in the goods and being under a duty to declare them - Concept of customs debtor

The presentation to customs of goods introduced into the Community, in terms of Article 4(19) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code concerns all goods, including those hidden in a secret compartment specially made for that purpose. The obligation to present goods as set out in Article 38 of that Code rests, as provided by Article 40 of the Code, with the driver and co-driver of a lorry who introduced the goods, even though the goods were hidden in the vehicle without their knowledge.

The person who has introduced goods into the customs territory of the Community without mentioning them in the notification of presentation to customs is a customs debtor within the meaning of the first indent of Article 202(3) of the Community Customs Code.

C-62/05 P: Remission of import duties - Consignment of cigarettes destined for Spain - Fraud committed in a Community transit operation

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 14 December 2004, in Case T-332/02 *Nordspedizionieri di Danielis Livio and Others* v *Commission* dismissing an action for the annulment of the Commission decision (REM 14/01) of 28 June 2002 informing the Italian authorities that there is no ground for the remission of import duties on a cargo of cigarettes destined for Spain on the ground that a fraud committed by third parties in the course of a Community transit operation does not constitute a special situation justifying the remission of import duties
Operative part of the judgment: The Court: Dismisses the appeal.

C-407/05Recovery of import rights - Proof of the regularity of the operation or of the place of the offence or irregularity - Consequence of the lack of notification to the principal of the period for furnishing such proof

Article 36(2 of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit, as amended by Council Regulation (EEC) No 474/90 of 22 February 1990, with a view to abolishing lodgement of the transit advice note on crossing an internal frontier of the Community, read in conjunction with Article 11a of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, as amended by Commission Regulation (EEC) No 1429/90 of 29 May 1990, and Article 34 of Council Regulation (EEC) No 2726/90 of 17 September 1990 on Community transit, read in conjunction with Article 49 of Commission Regulation (EEC) No 1214/92 of 21 April 1992 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, must be interpreted as meaning that the office of departure must notify to the declarer the period of three months in which proof of the regularity of the transit operation or of the place where the offence or the irregularity was actually committed may be furnished to that office, to the satisfaction of the competent authorities, so that the competent authority can proceed with recovery only after having expressly indicated to the declarer that the latter has three months in which to furnish that proof, and that that proof has not been furnished within that period.

C-44/06: Community transit - Proof of the regularity of a transit operation or of the place of the offence - Three-month period - Period granted subsequent to the decision to recover the import duties

Article 11a(2) of Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure, as amended by Commission Regulation (EEC) No 1429/90 of 29 May 1990, must be interpreted as meaning that the Member State to which the office of departure belongs

cannot grant to the principal the three-month period to enable it to provide proof of the regularity of the transit operation or proof of the place where the offence or irregularity was actually committed after the decision has been taken to proceed to recovery of the import duties, during the proceedings relating to a complaint lodged against that decision.

C-230/06: Recovery of a customs debt - Competent Member State - Proof of the regularity of the operation or of the place of the offence - Time-limits - Liability of the principal

In order to verify whether the Member State which recovered customs duties has jurisdiction, it is for the referring court to determine whether, at the time when it came to light that the consignment had not been presented at the office of destination, it was possible to establish the place where the offence or irregularity occurred. If that is the case, the Member State in which the first offence or irregularity capable of being classified as a removal from customs surveillance was committed can be identified as the State with jurisdiction to recover the customs debt, pursuant to Articles 203(1) and 215(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. On the other hand, if the place where the offence or irregularity was committed cannot be thus established, the Member State to which the office of departure belongs has jurisdiction to recover the customs duties, in accordance with Articles 378 and 379 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92.
Where a consignment has not been presented at the office of destination and the place of the offence or irregularity cannot be established, it is for the office of departure alone to make the notification required within the 11-month and 3-month time-limits laid down by Article 379(1) and (2) of Regulation No 2454/93.
3. It is not contrary to the principle of proportionality to hold a customs clearance agent, in his capacity as principal, liable for a customs debt.

C-526/06: Community transit - Offence - Proof of the regularity of the transit operation or of the place of the offence - Failure to grant a period of three months in which to furnish such proof - Repayment of customs duties - Concept of 'legally owed'

Article 236(1), first subparagraph, of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted to mean that the failure of the national customs authorities to determine, in accordance with Article 379 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92, the place where the customs debt was incurred does not have the effect of rendering the amount of customs duties not legally owed.
Nevertheless, the Member State to which the office of departure belongs can proceed to recovery of import duties only if, pursuant to Article 379(2) of Regulation No 2454/93, it has first informed the principal that it has a period of three months in which to furnish proof of the place where the infringement or the irregularity was actually committed and such proof has not been provided within that period.

C-161/08: TIR – Notification period - Period within which proof must be furnished of the place where the offence or irregularity was committed

1. Article 2(1) of Commission Regulation (EEC) No 1593/91 of 12 June 1991 providing for the implementation of Council Regulation (EEC) No 719/91 on the use in the Community of TIR carnets and ATA carnets as transit documents, read in conjunction with Article 11(1) of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva on 14 November 1975, must be interpreted as meaning that failure to comply with the period within which the holder of a TIR carnet is to be notified of its non-discharge does not have the consequence that the competent customs authorities forfeit the right to recover the duties and taxes due in respect of the international transport of goods made under cover of that carnet.

2. Article 2(2) and (3) of Regulation No 1593/91, read in conjunction with Article 11(1) and (2) of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva on 14 November 1975, must be interpreted as determining only the period within which proof is to be furnished of the regularity of the transport operation, and not the period within which proof must be provided as to the place where the offence or irregularity was committed. It is for the national court to determine, according to the principles of national law on evidence, whether, in the specific case before it and in the light of all the circumstances, that proof was furnished within the period prescribed. However, the national court must determine that period in compliance with Community law and, in particular, must take account of the fact, first, that the period must not be so long as to make it legally and materially impossible to recover the amounts due in another Member State, and, second, that that period must not make it materially impossible for the TIR carnet holder to furnish that proof.