

Dame Meg Hillier MP
Chair, Committee of Public Accounts
House of Commons
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By email

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30 June 2022

Dear Dame Meg,

Customs Undervaluation Infraction - CASE C-213/19

We are writing to you, further to our letter of 14 April 2022, and following the Written Ministerial Statement laid by HMT Ministers today, to provide additional updates concerning the ongoing CJEU case C-213/19, regarding the undervaluation of Chinese textile imports over the period of 2011-17.

As set out in our letter of 14 April, the CJEU published its judgment on 8 March, finding against the UK on almost all liability points. However, whilst the European Commission ('the Commission') had originally claimed that €2.7 billion of customs duty was owed (with interest due in addition), the judgment did not agree with this amount, instead instructing the Commission to recalculate the figure owed. The UK awaits the Commission's recalculation.

However, with significant interest accruing on the principal amount (potentially running at 16% plus Bank of England base rate in some instances), HMT Ministers decided, based particularly on value for money considerations, to make a payment, stopping interest accruing on this amount. On the 10 June, the UK made a payment to the European Commission of the amount the UK considers due at this time, in light of the CJEU judgment, for €678,372,885.63 (equivalent to £578,903,408.60¹), protecting UK taxpayers from continued interest accrual on this amount.

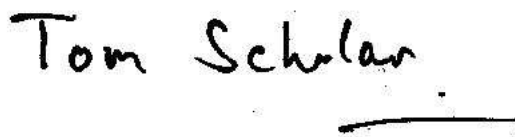
In line with the European Union (Withdrawal Agreement) Act 2020, amounts owed as part of this infraction case (both principal and interest) will be paid out of the Consolidated Fund (CF). This is because the legislation above makes clear that there is a standing service from the CF (or from the National Loans Fund if the Treasury decides) for '*sums required to be paid in respect of Traditional Own Resources of the EU*'.

¹ based on the spot exchange rate achieved by the Bank of England as part of the payment process.

Your previous letter asked how the liability of the infraction will be reflected in the accounts. We can confirm this will be accounted for in the CF account. The CF account is prepared on a cash basis and therefore does not include a Statement of Financial Position, but disclosure of the liability will be made within a series of accruals-based notes (included to assist preparation of Whole of Government Accounts). For the last three years the liability has been treated as a contingent liability due to the uncertainty surrounding its value. Following the Court's judgment and payment detailed above this accounting judgement will be subject to reconsideration as part of the preparation of the CF accounts for 2021-22, which are due to be published in Autumn 2022. In addition, as policy owner of customs and related infractions, HMRC will include a separate narrative-based disclosure in its 2021-22 Annual Report and Accounts.

At the Public Accounts Committee session on 8 June, you asked about the possibility of further legal proceedings. Now the Court has published its judgment the UK has no further legal recourse to challenge this case in the Courts. On the other hand, should the European Commission not be content by the UK's response then it can launch further legal proceedings. We do not currently find ourselves in this position however and the UK continues to engage with the Commission as we look to bring this matter to a close.

The payment made on 10 June is of the amount the UK considers due at this time, in light of the CJEU judgment. The European Commission have said that they will provide their own calculation of the amount due and UK officials will continue to engage with their Commission counterparts on this. We will continue to keep you updated.

A handwritten signature in black ink that reads "Tom Scholar". The signature is written in a cursive style with a horizontal line underneath the name.

Tom Scholar
Permanent Secretary
HM Treasury

A handwritten signature in black ink that reads "Jim Harra". The signature is written in a cursive style.

Jim Harra
First Permanent Secretary
HM Revenue and Customs