



Press and Information

Court of Justice of the European Union

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Luxembourg, 8 March 2022

Judgment in Case C-213/19
Commission v United Kingdom

The United Kingdom has failed to fulfil its obligations in relation to customs control and the availability of EU own resources by failing to adopt the measures necessary to combat fraud with regards to undervalued imports of textiles and footwear from China

The United Kingdom should have taken account of the risk profiles and the types of customs control recommended to it by OLAF and the Commission

The European Union has abolished all quotas on imports of textiles and clothing including from China since 1 January 2005.

In 2007, 2009 and 2015, the European Anti-Fraud Office (OLAF) sent mutual assistance messages to Member States, informing them in particular of the risk of extreme undervaluation of imports of textiles and footwear from China by shell companies registered for the sole purpose of giving fraudulent transactions the appearance of legitimacy. OLAF asked all Member States to monitor their imports of such products, to carry out appropriate customs checks and to take adequate safeguard measures if there was any suspicion of artificially low invoiced prices.

To that end, OLAF developed a risk assessment tool based on EU-wide data. That tool, involving the calculation of an average derived from 'cleaned average prices', produces a 'lowest acceptable price' that is used as a risk profile or threshold enabling Member States' customs authorities to detect values declared on importation that are particularly low, and thus imports presenting a significant risk of undervaluation.

In 2011 and 2014, the United Kingdom participated in monitoring operations conducted by the Commission and OLAF to counteract certain risks of undervaluation fraud, without however applying the lowest acceptable prices calculated in accordance with OLAF's method or enforcing the additional payment demands issued by the United Kingdom authorities following such operations.

In several bilateral meetings, OLAF recommended that the competent United Kingdom authorities use EU-wide risk indicators, namely the lowest acceptable prices. According to OLAF, fraudulent imports were increasing significantly in the United Kingdom on account of the inadequate nature of the checks carried out by the United Kingdom customs authorities, encouraging the shift of fraudulent operations from other Member States to the United Kingdom. However, according to OLAF, the United Kingdom did not follow its recommendations, instead releasing the products concerned for free circulation in the internal market without conducting appropriate customs controls, with the result that a substantial proportion of the customs duties due were not collected or made available to the European Commission.

Consequently, taking the view that the United Kingdom had failed to enter in the accounts the correct amounts of customs duties and to make available to the Commission the correct amount of traditional own resources and own resources accruing from value added tax ('VAT') in respect of certain imports of textiles and footwear from China, the Commission brought an action for a declaration that the United Kingdom had failed to fulfil its obligations under EU legislation on control and supervision in relation to the recovery of own resources and under EU legislation on customs duty and on VAT.

By its judgment, the Grand Chamber of the Court of Justice upholds the Commission's action in part, ruling, in essence, that **the United Kingdom has failed to fulfil its obligations under EU law by failing to apply effective customs control measures or to enter in the accounts the correct amounts of customs duties and accordingly to make available to the Commission the correct amount of traditional own resources in respect of certain imports of textiles and footwear from China,**¹ and by failing to provide the Commission with all the information necessary to calculate the amounts of duty and own resources remaining due.²

Regarding the quantification of own resources losses, claimed by the Commission in its application, i.e. a specified amount for each year covered by the infringement period, that is a total of € 2 679 637 088.86, the Court makes clear that where the fact that it is impossible to carry out checks is the consequence of the failure of the customs authorities to carry out checks to verify the actual value of the goods, a method based on statistical data, rather than a method intended to determine the customs value of the goods concerned on the basis of direct evidence, is permitted.

The Court's examination in the present proceedings must essentially aim to verify, first, that that method was justified in the light of the particular circumstances of the case and, secondly, that it was sufficiently precise and reliable.

In that regard, the Court partly rejects the Commission's calculation, finding that, because of an inconsistency between the form of order sought in the application and the grounds set out in it, as well as the considerable uncertainty, as a result, regarding the accuracy of the amounts of own resources claimed by the Commission, the Commission has not established the full amounts to the requisite legal standard.

In the light of the particular circumstances of the case, the Court approves, however, the method used by the Commission to estimate the amount of traditional own resources losses for part of the infringement period, since that method has proved to be sufficiently precise and reliable to ensure that it does not lead to a clear overestimate of the amount of those losses.

The Court also makes clear that it is not for the Court to take the place of the Commission by calculating the precise amounts of traditional own resources payable by the United Kingdom. It can either grant or reject, in whole or in part, the claims set out in the form of order sought in the Commission's application, without modifying the scope of those claims. It is, however, for the Commission to recalculate the losses of EU own resources remaining due by taking account of the findings of the Court regarding the quantum of the losses and the value to be attributed to them.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ This failure to fulfil obligations concerns the United Kingdom's obligations under, in particular, Article 310(6) and Article 325 TFEU, Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1), Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), and Council Directive 2006/112/EC of 28 November 2006 on the common system of [VAT] (OJ 2006 L 347, p. 1, and corrigendum OJ 2007 L 335, p. 60).

² Specifically, the United Kingdom has failed to fulfil its obligations under Article 4(3) TEU (principle of sincere cooperation) by failing to provide the Commission with all the information necessary to determine the amount of traditional own resources losses and by not providing as requested the reasons for the decisions cancelling the customs debts established.

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.