

# Customs (under) Valuation

## Lessons for Brexit

ACITA National Meeting – 10th July 2018

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Brussels claims €2bn from UK after customs fraud

## EU trade

### Brussels claims €2bn from UK after customs fraud

Penalty for failing to collect duties on cheap Chinese imports



Undervalued Chinese clothing and footwear were at the heart of the probe © Reuters  
Rochelle Toplensky in Brussels MARCH 8, 2018

Brussels is seeking to recover around €2bn from the UK for failing to crack down on customs fraud over six years by Chinese clothing importers.

The European Commission sent a formal notice on Thursday that Britain infringed EU law and needs to pay customs duties that it failed to collect on undervalued textiles and footwear.



## European Commission - Fact Sheet

### March infringements package: key decisions

Brussels, 8 March 2018

#### Overview by policy area

In its monthly package of infringement decisions, the European Commission ('Commission') is pursuing legal action against Member States for failing to comply with their obligations under EU law. These decisions, covering various sectors and EU policy areas, aim to ensure the proper application of EU law for the benefit of citizens and businesses.

The key decisions taken by the Commission are presented below and grouped by policy area. The Commission is also closing 161 cases in which the issues with the Member States concerned have been solved without the Commission needing to pursue the procedure further.

For more information on the EU infringement procedure, see the full [MEMO/12/12](#). For more detail on all decisions taken, consult the [infringement decisions' register](#).

#### 1. Budget and Human Resources

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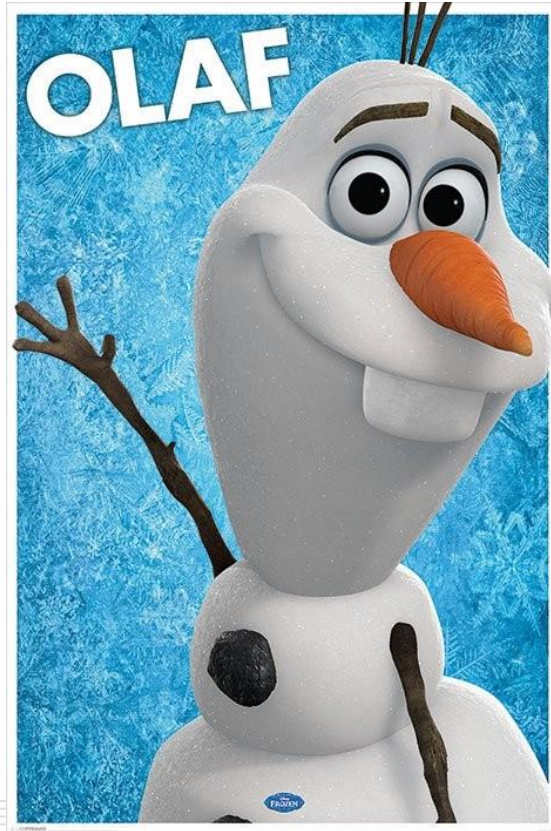
##### A letter of formal notice

##### **EU budget: Commission urges UNITED KINGDOM to make customs duties available to the EU budget**

Today, the European Commission decided to send a letter of formal notice to the **United Kingdom** because it refuses to make customs duties available to the EU budget, as required by EU law. A 2017 OLAF report found that importers in the United Kingdom evaded a large amount of customs duties by using fictitious and false invoices and incorrect customs value declarations at importation. Further Commission inspections brought to light a dramatic increase of the scale of that undervaluation fraud scheme operating through the hub in the United Kingdom between 2011 and 2017. Despite having been informed of the risks of fraud relating to the importation of textiles and footwear originating in the People's Republic of China since 2007, and despite having been asked to take appropriate risk control measures, the United Kingdom failed to take action to prevent the fraud. The Commission calculates that the infringement of EU legislation by the United Kingdom resulted in losses to the EU budget amounting to EUR 2,7 billion (minus collection costs) during the period November 2011 until December 2017. In addition, the United Kingdom also infringed EU Value Added Tax legislation, leading to potential losses to the EU budget. The United Kingdom is liable for the financial consequences of its infringements of EU legislation.

- Infringement proceedings:
  - the Commission threatens Member States with legal action (before the Court of Justice of the EU)
  - for failure to comply with their obligations under EU law
- Letter of formal notice sent to the UK on 8 March 2018: the UK “refuses to make customs duties available to the EU budget”
- Based on a 2017 OLAF report
- Importers used “fictitious and false invoices and incorrect customs value declarations”

# Who is OLAF?



# Who is OLAF?

- OLAF is the institutional body within the European Commission mandated to detect, investigate and work towards stopping **fraud involving EU funds or resources**.
- OLAF's investigative competences over all matters affect EU financial interests:
  - EU revenue, mainly **customs and anti-dumping duties**;
  - EU expenditure: Structural Funds, agricultural policy and rural development funds, direct expenditure and external aid;
  - suspicions of serious misconduct by EU staff and members of the EU institutions.
- At the end of affirmative investigation, recommendation by OLAF to EU institutions or member state authorities for financial recovery

In millions EUR	2012	2013	2014	2015	2016	2017
Amounts recommended	284	403	901	888	631	3095

# How does a duty become a Member State's debt to the EU budget?

- Customs duties are the **EU's own resources**: 16% of the EU's total budget in 2017
- Customs duties are **collected by the Member State's customs authorities**
- The Commission **inspects** the Member State's customs every year
- The European Commission can hold a **Member State liable** in cases of **administrative errors** (Case C-392/02 European Commission v Kingdom of Denmark, Case C-60/13 European Commission v United Kingdom)
- Growing tendency for the customs to do **less controls**, to avoid making administrative mistakes
- As a reaction, the **Commission is taking a more active role in investigating customs fraud**, through OLAF
- OLAF's target: the biggest frauds

- Case C-291/15, EURO 2004. Hungary Kft. of 16 June 2016
  - Imports of “various goods” from China
  - All **supporting documents** were verified and found to be accurate. Customs authorities in Hungary verified that the commercial invoice, the importer’s accounting records, the proofs of payment and the bank certificate **all match the customs declaration**.
  - The customs values of the imported goods by weight was exceptionally low in relation to the **statistical average values for comparable goods**
  - Customs asks for additional information, to **demonstrate** that the customs value of the goods concerned was correct
  - Importer refuses
  - Hungarian customs use the average value for similar goods
  - The Court of Justice says it’s fine

# OLAF's investigation into undervaluation

- OLAF's interpretation: when goods are significantly less than the average value for similar goods (less than 50%) , customs authorities must ask importers to demonstrate that the value was correct
- In the absence of this demonstration: the average value for similar goods should be used
- If the Member State's customs fail to ask for this demonstration, they make a mistake → the Member State must pay the duty that was not collected



- Customs are under pressure from the Commission
- Most member states do comply with OLAF's instructions
- Post-clearance examination procedure
  - Customs value declared can be rejected for imports made in the **past three years**, longer when there is criminal intent
  - Importers are sitting on a huge customs debt, unknown to them → increase of the value **20 X**
- Costs for operators
  - Difficulties to have goods released, even against deposits guarantee
  - Increasing storage costs and time consuming communications with customs

- If the UK is to be in a customs union with the EU, all this must continue
  - OLAF investigations
  - Infringement proceedings
  - Full jurisdiction of the Court of Justice of the EU
- Or something like this
- What cannot happen: a system solely based on trust

# Thank you!

- **Questions?**



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