



European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash MP

22 October 2018

Rt Hon Mel Stride MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
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Dispute over undervaluation fraud at UK ports

Thank you for your letter dated 9 October 2018 with respect to the on-going dispute between the Government and the European Commission about allegations of customs duty loss due to undervaluation fraud at UK ports.¹ The Committee considered your letter at its meeting on 17 October, noting that the Commission on 24 September issued a formal Reasoned Opinion requesting the repayment of €2.1 billion in lost duty which it argues is due to the EU budget.

The Committee remains seriously concerned that the Government has not provided any substantive rebuttal of the underlying facts that resulted in the alleged duty loss, especially in relation to the large increase in Chinese textile imports being cleared at UK ports from less than 600,000 tonnes in 2011 to more than 900,000 tonnes in 2016 (while such volumes were mostly decreasing in other audited EU Member States) and the allegation by the European Court of Auditors that such imports were regularly cleared by customs at impossibly low declared values (sometimes lower than the price of raw cotton at the same weight).

Given the apparent lack of a common understanding between the Government and the Commission on the factual background to the dispute, it seems to us there is a real risk the case could get referred to the Court of Justice of the

¹ Our concerns were first raised by the European Commission's 2016 anti-fraud report, document (38939), 11503/17 + ADD1-6, COM(2017) 383.

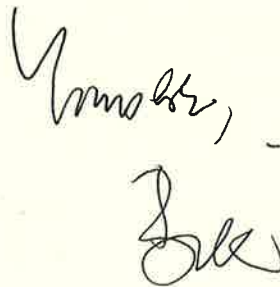
European Union (CJEU) if no solution is found during the 'Reasoned Opinion' stage of the infringement procedure.

In the latest public version of the UK's draft Agreement on withdrawal from the EU, the European Commission suggested that the Court of Justice could retain jurisdiction to pass binding judgements on the UK for any infringement procedures initiated before the end of the post-Brexit transitional period² (or afterwards, in relation to facts that occurred before that date). Should the case be referred to the Court, the UK would be legally required to implement its judgement if it found that HM Revenue & Customs had breached EU customs legislation and the Own Resources Decision, and compensate the EU budget for the lost customs duty.

As we have noted previously, there is also a wider political context given that the Government wants to negotiate a new, and unprecedented, customs arrangement with the EU following withdrawal. The dispute about the alleged failure to correctly apply EU customs legislation has been explicitly referred to by the EU Chief Negotiator (Michel Barnier) as one of the reasons why the Government's proposals in this area were not favourably received in Brussels.

While the Committee appreciates the sensitive nature of your discussions with the Commission, the potential financial and political implications of this case are so significant that we are unwilling to let this matter rest. As such, should the dispute be referred to the CJEU, we may want to take evidence from you in person about the repercussions for the UK taxpayer and the Government's negotiations for a new customs arrangement with the EU.

I have today also written separately to the Chair of the Treasury Committee setting out our concerns about the alleged failures at HM Revenue & Customs, which that Committee may wish to raise with yourself or the relevant officials as part of its departmental scrutiny work. I am copying this letter to Lord Boswell and Christopher Johnson in the Lords; to Les Saunders at the Department for Exiting the EU; and to Barbara Armstrong at your Department.



CHAIR

² The transitional period is currently scheduled to end on 31 December 2020. However, the Prime Minister recently confirmed the Government was considering whether to accept a mechanism to extend it.