

European Scrutiny Committee

House of Commons, London, SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

23 April 2020

Rt Hon Conor Burns MP
Minister for Trade Policy
Department for International Trade
3 Whitehall Place
London SW1A 2AW

EU retaliatory duties on imports from the US (Byrd amendment WTO dispute) (Council document 6308/20) (41093)

Thank you for your [Explanatory Memorandum](#) on the [Commission Delegated Regulation](#) which adjusts the level of retaliatory measures — in this case, additional duties — to be applied from 1 May 2020 on a range of products imported from the United States, in line with a World Trade Organisation ruling dating back to 2003.

You make clear that the Commission Delegated Regulation “will be binding on the UK as well as all EU Member States” during the post-exit transition provided for in the EU/UK Withdrawal Agreement, but add that you will “not transition” the Regulation at the end of the transition period. We take this to mean that the UK will not continue to collect the additional duties beyond 31 December 2020 (the date on which the transition period is expected to end). You nonetheless indicate that the additional duties “*may* continue to apply subject to the interpretation of the Northern Ireland Protocol” (our emphasis) and refer us to Articles 5(1)-(4) of the Protocol.

Article 5(3) of the Protocol on Ireland/Northern Ireland specifies the customs legislation that will apply to Northern Ireland. It includes the EU Customs Code and “the provisions supplementing or implementing it adopted at Union or national level”. Articles 5(1) and (2) provide that EU customs duties will apply to goods considered to be “at risk” of subsequent onward movement to the EU after entering Northern Ireland from Great Britain or another (non-EU) third country. Article 5(4) and Annex 2 list the additional provisions of EU law that will

continue to apply to Northern Ireland (but not the rest of the UK) after the post-exit transition period has ended, including various EU trade defence instruments.¹

Your Explanatory Memorandum suggests that there is room for doubt about the continued application of the Commission Delegated Regulation in Northern Ireland after the end of the post-exit transition period. We would welcome a more detailed analysis of the provisions you cite in Article 5 of the Protocol on Ireland/Northern Ireland, including your reasons for considering that the application of the Commission Delegated Regulation in Northern Ireland after transition turns on the interpretation of the Protocol, and where the ambiguity lies. We also ask you to explain what systems would need to be put in place to distinguish between products entering the UK after transition which would attract the additional duties and those which would not, how long this is likely to take to set up, and your assessment of the costs involved.

One of the tasks of the Joint Committee established by the [EU/UK Withdrawal Agreement](#) is to consider “any issue relating to the implementation, application and interpretation” of the Agreement (including the Protocols) referred to it by the EU or the UK.² The first meeting of the Joint Committee took place on 30 March. We would like to know whether issues relating to the implementation, application and interpretation of the Protocol on Ireland/Northern Ireland were discussed at the meeting or whether the intention is to address any issues, in the first instance, in the Specialised Committee on the Protocol on Ireland/Northern Ireland or in the Joint Consultative Working Group. We also ask you to explain how the Government intends to update Parliament on the issues discussed at these meetings, particularly where they concern differences in the EU and UK positions on the implementation, application and interpretation of the Protocol.

Finally, we recognise that the sums involved in applying the specific retaliatory measures set out in the Commission Delegated Regulation are negligible and, as such, are unlikely in themselves to undermine the Government’s goal of negotiating “an ambitious and comprehensive” Free Trade Agreement with the United States. We wonder, nonetheless, whether a broader issue might be at stake if it is indeed the case that Northern Ireland and Great Britain might (after transition) apply different trade defence measures in their trading relationships with third (non-EU) countries. What assessment has the Government made of the magnitude of the risk, how disruptive it may be when negotiating trade agreements with third countries, and how it could be mitigated.

We expect to receive your response by 15 May 2020.

¹ [Regulation \(EU\) No 2018/196](#) on additional customs duties on imports of certain products originating in the United States of America.

² See Article 164 of the EU/UK Withdrawal Agreement.

We are copying this letter to Simon Hoare, Chair of the Northern Ireland Affairs and Nick Beech, Clerk of the Northern Ireland Affairs Committee; Angus MacNeil, Chair of the International Trade Committee and Joanna Welham, Clerk of the International Trade Committee; the Earl of Kinnoull, Chair of the EU Select Committee in the House of Lords and Christopher Johnson, Clerk of the Lords EU Select Committee; Edwina Osborne and Stephen Booth, your Departmental Scrutiny Coordinators; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR