

European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

4 June 2020

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

Thank you for your [letter of 15 May 2020](#) responding to questions we raised in our [Fourth Report](#) of Session 2019-21 and our [letter of 23 April 2020](#) concerning a Commission Delegated Regulation which adjusts the level of retaliatory measures (in this case customs duties) to be applied to certain products imported from the United States.

The purpose of our questions was to understand how UK/US trade in these products might be affected by the Protocol on Ireland/Northern Ireland and whether Northern Ireland and Great Britain might have to apply different trade defence measures after transition.

We are disappointed that your letter does not provide the analysis we requested of Article 5 of the Protocol or it how it may be implemented in the UK. Your response suggests that Article 5(1) and (2) of the Protocol concerning “at risk” goods are relevant in deciding whether the Commission Delegated Regulation will apply in Northern Ireland after transition. However, the Commission Delegated Regulation is a retaliatory measure, intended to nullify the trade-distorting effects of the Byrd Amendment by suspending certain tariff concessions available to the United States under the General Agreement on Tariffs and Trade (GATT). Might it therefore continue to be applicable to Northern Ireland after transition under Article 5(3) and (4) of the Protocol? Or is it your view that the Commission Delegated Regulation will only apply to those goods that are “at risk” of being moved into the EU from Northern Ireland, but not to goods that are not considered to be at risk of onward movement to the EU? The application of EU law under

Article 5(3) and (4) of the Protocol is not, so far as we are aware, subject to further criteria or decisions to be taken by the Joint Committee. We would welcome your analysis.

We note your assurance that “Northern Ireland is—and will remain—part of the United Kingdom’s territory” and that the Government will pursue an independent trade policy “for the whole of the United Kingdom, including Northern Ireland”. We note also the important proviso (in Article 4 of the Protocol) that Northern Ireland’s inclusion in UK trade agreements concluded with third (non-EU) countries must not prejudice the application of the Protocol. As we indicated in our previous letter, this raises a broader concern about maintaining a unified trade policy should EU laws applicable to Northern Ireland under the Protocol create different or conflicting obligations from those applicable in the rest of the UK.

We appreciate that discussions on the implementation of the Protocol on Ireland/Northern Ireland are at an early stage. We therefore ask you to report back to us on the progress made in these discussions, particularly in understanding how Articles 4 and 5 of the Protocol will operate in practice and how they will affect the application of the Commission Delegated Regulation in the UK post-transition, at the latest by September.

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

CHAIR