



House of Commons  
European Scrutiny Committee

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# Thirty-seventh Report of Session 2019–21

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Documents considered by the Committee on 10 February 2021

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 10 February 2021*

## Notes

### Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

### Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee) *
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

### Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

### Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": [www.parliament.uk/escom](http://www.parliament.uk/escom). The website also contains the Committee's Reports.

\*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

## Staff

The current staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Joanne Dee (Deputy Counsel for European Legislation), Alistair Dillon and Leigh Gibson (Senior Committee Specialists), Nat Ireton and Apostolos Kostoulas (Committee Operations Officers), Luanne Middleton (Second Clerk), Daniel Moeller (Committee Operations Manager), Jessica Mulley (Clerk), Foeke Noppert (Senior Committee Specialist), Indira Rao (Counsel for European Legislation), Paula Saunderson (Committee Operations Assistant), Emily Unwin (Deputy Counsel for European Legislation) George Wilson (Second Clerk), Beatrice Woods (Committee Operations Officer).

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# Contents

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<b>Documents to be reported to the House as legally and/or politically important</b>		
1	DEFRA Chemicals Strategy	3
2	DIT Northern Ireland Protocol: application of EU preferential rules of origin	8
	<b>Annex</b>	<b>15</b>
	<b>Formal Minutes</b>	<b>16</b>
	<b>Standing Order and membership</b>	<b>17</b>



# 1 Chemicals Strategy<sup>1</sup>

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## This EU document is legally and politically important because:

- policy changes suggested by the Commission are likely to affect Northern Ireland under the terms of Ireland/Northern Ireland Protocol and may have consequent relevance for Great Britain;
- in their [agreement](#) on the future relationship, the UK and EU agreed on a framework for their respective regulation of chemicals, involving cooperation with each other and adherence to international standards; and
- the EU and UK also agreed to maintain at least the same environmental (including chemicals) levels of protection in place at the end of the Transition Period (the principle of “non-regression”) and agreed that either Party could adopt “rebalancing” measures in the event that material impacts on trade or investment between the Parties are arising as a result of significant divergences in environmental policies.

## Action

- Report to the House.
- Draw to the attention of the Environmental Audit Committee; the Northern Ireland Affairs Committee; the Business, Energy and Industrial Strategy Committee; and the Environment, Food and Rural Affairs Committee.

## Overview

1.1 Noting that chemicals are a fundamental part of everyday life, the vision behind the Commission’s Strategy is to deliver a toxic-free environment, better protecting citizens and the environment, and to boost innovation for safe and sustainable chemicals. The Strategy is of continued relevance to the United Kingdom post-Brexit because it involves changes to laws with which Northern Ireland must remain aligned, and it falls within areas of the EU-UK Trade and Cooperation Agreement (TCA) subject to “non-regression” and potential “rebalancing”.

## The Commission’s Strategy

1.2 The actions suggested by the Commission include:

- banning non-essential use of the most harmful chemicals—including endocrine-disrupting chemicals and PFAS (perfluoroalkyl and polyfluoroalkyl substances)—in consumer products such as toys, childcare articles, cosmetics, detergents, food contact materials and textiles;

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<sup>1</sup> Commission Communication: Chemicals Strategy for Sustainability Towards a Toxic-Free Environment; [COM\(20\) 667](#); Legal base:—; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41591.

- accounting for the cocktail effect of chemicals when assessing risks from chemicals, taking better account of the risk that is posed to human health and the environment by daily exposure to a wide mix of chemicals from different sources;
- boosting the investment and innovative capacity for production and use of chemicals that are safe and sustainable by design, and throughout their life-cycle;
- promoting the EU’s resilience of supply and sustainability of critical chemicals;
- establishing a simpler “one substance, one assessment” process for the risk and hazard assessment of chemicals; and
- playing a leading role globally by championing and promoting high standards and not exporting chemicals banned in the EU.

1.3 The Commission indicates that delivery will require amendments to a number of existing EU legislative acts, with several of which Northern Ireland must remain aligned under the terms of the Withdrawal Agreement. These are likely to be tabled during 2022 and include the:

- Industrial Emissions Directive;<sup>2</sup>
- “REACH” Regulation;<sup>3</sup>
- Food Contact Materials Regulation;<sup>4</sup>
- Cosmetic Products Regulation;<sup>5</sup>
- Toy Safety Directive;<sup>6</sup>
- General Product Safety Directive;<sup>7</sup>
- Classification, Labelling and Packaging (CLP) Regulation;<sup>8</sup>
- Biocidal Products Regulation;<sup>9</sup>
- Food Additives Regulation;<sup>10</sup> and the
- Detergents Regulation.<sup>11</sup>

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2 Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control).

3 Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals.

4 Regulation (EC) No 1935/2004 on materials and articles intended to come into contact with food.

5 Regulation (EC) No 1223/2009 on cosmetic products.

6 Directive 2009/48/EC on the safety of toys.

7 Directive 2001/95/EC on general product safety.

8 Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures.

9 Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products.

10 Regulation (EC) No 1333/2008 on food additives.

11 Regulation (EC) No 648/2004 on detergents.

## The EU-UK Trade and Cooperation Agreement

1.4 Since the Commission published its Strategy and since the Government submitted its analysis (see below), the UK and EU have reached agreement on their future relationship. Three particular features stand out as relevant to the Strategy.

1.5 The first is an Annex on chemicals designed to: facilitate the trade of chemicals and related products; ensure high levels of protection for the environment, and human and animal health; and provide for cooperation between the EU and UK, including on the exchange of non-confidential information. It involves no commitments to regulatory harmonisation but the two Parties are committed to implement the UN “Globally Harmonized System of Classification and Labelling of Chemicals” (GHS), and to do so as comprehensively as they consider feasible within their respective systems. The GHS is implemented in EU law and in Great Britain’s “retained EU law”<sup>12</sup> through the Classification, Labelling and Packaging (CLP) Regulation.<sup>13</sup> Where either the EU or the UK intends to depart from the commonly agreed approach to classifying and labelling chemicals, they should give the other Party the opportunity to express a view.

1.6 The second element is the principle of non-regression, whereby neither the EU nor the UK should weaken or reduce, “in a manner affecting trade or investment between the Parties, its environmental levels of protection [...] below the levels that are in place at the end of the transition period.” That commitment applies to impacts “arising from the production, use, release or disposal of chemical substances.”

1.7 Finally, the EU and UK also acknowledged that significant divergences in a number of areas (including chemicals regulation) can be capable of impacting trade or investment in a manner that changes the circumstances that formed the basis for the conclusion of the TCA. Either Party may adopt “rebalancing measures” if material impacts on trade or investment between the Parties do indeed arise as a result of significant divergences between them. Such measures are not defined, but may involve tariffs or partial suspension of the TCA. They must be justified with “reliable evidence” and there is a process of consultation laid down before the measures may be applied.

## The Government’s position on the Strategy

1.8 In her [Explanatory Memorandum](#) (EM), submitted before the TCA was concluded, the Parliamentary Under-Secretary of State (Rebecca Pow MP) said that the Government agreed with the broad objectives of the EU Strategy. The Government, she explained, was developing priorities for future work on chemicals policy, for example through a new Chemicals Strategy.

1.9 The Minister acknowledged that, under the Northern Ireland Protocol, various EU chemicals regimes would continue to apply in Northern Ireland after the end of the transition period, including the EU REACH regulation. Some of the proposals in the EU Strategy, if adopted, would affect Northern Ireland.

12 [“The GB CLP Regulation”](#), Health and Safety Executive.

13 [Regulation \(EC\) No 1272/2008](#) of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006.

1.10 Authorities in the UK were working on many of the issues discussed in the EU Strategy. For example, on PFAS authorities were undertaking stakeholder engagement on possible definitions of essential use and exploring grouping approaches that could be employed to regulate these chemicals. Risk-assessment, monitoring and evidence generation was being undertaken to help inform future policy in respect of the GB market.

## Our assessment

1.11 The UK has left the European Union and has concluded a Trade and Cooperation Agreement with the EU which does not require the UK as a whole to align with the EU's chemicals policy. Under the terms of the earlier Withdrawal Agreement, though, Northern Ireland must align with EU legislation in this area. For that reason alone, we would expect the Government to monitor developments in this area of EU policy very closely.

1.12 At this stage, the EU and UK remain largely aligned in chemicals policy. As with most EU law, the UK has incorporated EU chemicals regulation into domestic law and has developed what is known as “UK REACH”.<sup>14</sup> That has created its own challenges as the EU and UK failed to reach an agreement on the sharing of chemicals data, meaning that products need to be registered on the UK REACH database with a new set of data. There is a transition period for that registration process, with a basic amount of information required within 120 days after the end of the transition period, and full information following for up to six years afterwards, depending on the scale of the chemical's production or use. In oral evidence to the House of Lords EU Energy and Environment Sub-Committee on 3 February 2021, the Secretary of State (Rt Hon. George Eustice MP) expressed disappointment that the EU was unable to agree on data-sharing arrangements.<sup>15</sup> He acknowledged that the amount of products registered on UK REACH would be relatively small in the first instance but considered that, over time, it was likely to be similar to the volume of products on EU REACH.

1.13 While the EU and UK are currently largely aligned, it is clear from the Commission's Strategy and from the Minister's EM that the status quo will fall away at some stage, leaving some very important issues to be addressed. The ultimate effect of divergence between the two regulatory systems is that a chemical—or “cocktail” of chemicals—could be deemed safe in GB, but unsafe in the EU and Northern Ireland, and vice versa. That has real implications for the manufacture and sale of products including those substances. As Northern Ireland must remain aligned with EU chemicals policy, the impacts could well affect not only GB-EU trade but also the UK internal market.

1.14 The principle of non-regression and the re-balancing mechanism incorporated in the TCA will both contribute to the respective debates in the EU and UK about future chemicals policy. Non-regression ought to ensure that neither party weakens their chemical regulation compared to the status quo in place at the end of the transition period. It strikes us that chemicals policy is an area where the re-balancing mechanism may well be significant as it is plausible that changes in chemical policy could have a material impact on trade or investment between the EU and UK.

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14 [“UK Registration, Evaluation and Authorisation of Chemicals \(REACH\)”](#), Health and Safety Executive.

15 [Excerpt](#) from oral evidence given by Rt Hon. George Eustice MP to the House of Lords EU Energy and Environment Sub-Committee, 3 February 2021, Parliament TV.

## Action

1.15 We have no issues to raise with the Minister at this stage, but consider this Strategy document to be of political importance given the potential implications of GB divergence from the EU and Northern Ireland in this area and, consequently, the relevance of the non-regression and re-balancing mechanisms incorporated into the Trade and Cooperation Agreement. We will monitor with interest the extent to which the re-balancing mechanism in particular becomes a factor in defining the respective EU and UK chemicals policies.

1.16 In the short term, we will also monitor the progress of UK REACH in the light of the failure of the EU and UK to reach a data-sharing agreement which would have facilitated the registration of substances on UK REACH.

1.17 We draw the document and this chapter to the attention of: the Environmental Audit Committee; the Northern Ireland Affairs Committee; the Business, Energy and Industrial Strategy Committee; and the Environment, Food and Rural Affairs Committee.

## 2 Northern Ireland Protocol: application of EU preferential rules of origin<sup>16</sup>

**This Commission Implementing Regulation is legally and politically important because:**

- it applies to Northern Ireland under the Protocol on Ireland/Northern Ireland;
- it seeks to clarify whether goods imported into Northern Ireland qualify for a preferential (lower) EU tariff under the EU’s trading arrangements with third countries or the (higher) EU Most Favoured Nation (MFN) tariff;
- it must be read alongside a Decision taken by the Withdrawal Agreement Joint Committee in December 2020 setting out the criteria for determining which goods brought into Northern Ireland are to be considered “at risk” of entering the EU Single Market and subject to EU rather than UK customs duties/tariffs; and
- it highlights the complexity of the rules applicable to goods brought into Northern Ireland and the difficulties traders are likely to face in interpreting and applying them in practice.

### Action

- Write to the Minister for Trade Policy (Rt. Hon. Greg Hands MP) requesting further information on the practical implications of the Commission Implementing Regulation for those importing goods into Northern Ireland and seeking to determine which customs duties/tariffs apply.
- Draw to the attention of the International Trade Committee and the Northern Ireland Affairs Committee.

### Overview

2.1 This [Commission Implementing Regulation](#) (“the Regulation”) concerns the rules applicable to goods imported into Northern Ireland from the EU’s trading partners. It seeks to clarify whether and how these goods may qualify for preferential tariffs under the EU’s preferential trading arrangements with third countries.

2.2 The Regulation is necessary for two reasons. First, the Protocol on Ireland/Northern Ireland (“the Protocol”, itself part of the EU/UK Withdrawal Agreement) confirms that Northern Ireland remains part of the UK’s customs territory, but also requires Northern Ireland to apply the EU’s customs laws and common customs tariff. The EU’s common customs tariff includes preferential tariff measures contained in the EU’s trade agreements with third countries or adopted unilaterally by the EU (for example, under the EU’s Generalised Scheme of Preferences for developing countries). To qualify for

16 Commission Implementing Regulation (EU) 2020/2163 on the implementation in the United Kingdom in respect of Northern Ireland of the rules of origin laid down in Union preferential trade arrangements; Legal base: Article 66(a) of [Regulation \(EU\) No 952/2013](#) laying down the Union Customs Code; Dept: International Trade; Devolved Administrations: consulted; ESC number 41759.

the EU’s preferential tariffs, goods must also comply with EU rules of origin.<sup>17</sup> Second, the arrangements set out in the Protocol operate bilaterally between the EU and the UK—they do not give rise to rights and obligations for third countries. The Regulation therefore clarifies when and how goods imported into Northern Ireland may qualify for a preferential EU tariff, rather than the EU’s standard most favoured nation (MFN) tariff.

2.3 The Regulation was adopted the day after the EU/UK Withdrawal Agreement Joint Committee reached agreement on a [Decision](#) setting out the criteria for determining whether goods brought into Northern Ireland from outside the EU are to be considered at risk of onward movement to the EU.<sup>18</sup> These at risk criteria are relevant in determining whether EU or UK customs duties/tariffs are payable on goods imported into Northern Ireland. Under Article 5(1) and (2) of the Protocol, EU customs duties/tariffs are payable on goods imported into Northern Ireland which are at risk of entering the EU’s Single Market. The UK’s Global Tariff will apply to goods imported into Northern Ireland from the UK’s non-EU trading partners which are not at risk of entering the EU Single Market. The purpose of the “at risk” criteria is to prevent traders diverting goods intended for the EU market through Northern Ireland to exploit differences in EU and UK tariffs.

2.4 Under the Joint Committee Decision, goods moved from Great Britain (GB) to Northern Ireland are not considered to be at risk of entering the EU’s Single Market if the goods are not considered to be subject to commercial processing in Northern Ireland and *either* no duty would be payable on them under the EU’s common customs tariff *or* the importer is an authorised trader under the [UK Trader Scheme](#). This scheme, established in December 2020, allows businesses trading in Northern Ireland to declare that their goods are not at risk of moving to the EU and that they have systems in place to ensure they will remain in Northern Ireland.

2.5 In the case of goods imported into Northern Ireland from outside the EU and GB (Rest of the World goods), the Joint Committee Decision provides that they are not considered to be at risk of entering the EU’s Single Market if the goods are not considered to be subject to commercial processing in Northern Ireland and *either* the duty that would be payable on them under the EU’s common customs tariff duty is equal to or less than the UK’s external tariff *or* the importer participates in the UK Trader Scheme *and* the differential between the EU and UK tariff for the goods concerned is less than three per cent.

2.6 Having established in the Joint Committee Decision the relevant criteria for determining which goods entering Northern Ireland from elsewhere in the UK or from the UK’s non-EU trading partners are at risk of entering the EU market and so are subject to EU customs duties/tariffs, the Commission Implementing Regulation sets out whether EU preferential tariffs will be available and, if so, the necessary conditions for the goods to qualify for these rather than the EU’s MFN tariff.<sup>19</sup> In some cases, determining whether goods would qualify for the EU’s preferential or MFN tariff will be a necessary step to ascertain whether or not a good is to be considered at risk of entering the EU.

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17 See Articles 4 and 5 of the Protocol on Ireland/Northern Ireland. The inclusion of Northern Ireland within the territorial scope of the UK’s agreements with third countries is subject to the important proviso that the agreements do not prejudice the application of the Protocol.

18 Decision No 4/2020 of the Joint Committee on the determination of goods not at risk (adopted on 17 December 2020).

19 For further detail on the application of EU rules in the field of customs, including preferential origin, following the UK’s withdrawal from the EU, see the [European Commission’s guidance note](#) issued on 23 December 2020.

2.7 The Regulation first establishes that third countries exporting goods to Northern Ireland must be able to satisfy the European Commission that they comply with EU rules of origin, provide a documentary proof of origin which indicates that the goods are destined for Northern Ireland, and have systems in place to verify proof of origin if asked to do so by UK customs authorities. The European Commission will publish on its website a list of the third countries which meet these requirements. Only goods imported into Northern Ireland from these listed countries will be able to make use of the EU's preferential tariffs.

2.8 Second, if there is evidence of fraud, irregularities or a systematic failure to comply with EU rules and procedures on the origin of goods imported into Northern Ireland, the Commission will publish a notice in the EU's Official Journal. If the deficiencies are not addressed within six months, the EU's preferential tariffs will cease to apply from the date specified by the Commission on its website. The Commission will determine whether and when the preferential tariffs should be restored. Meanwhile, the EU's standard MFN tariff will apply.

2.9 Finally, if goods entering Northern Ireland include content originating in Northern Ireland (for example, materials sourced in or processing operations undertaken in Northern Ireland), then the Northern Ireland content will not count as EU content in determining whether the goods satisfy the rules of origin requirements in the EU's preferential trade arrangement with third countries. Discounting Northern Ireland content may make it harder for traders in Northern Ireland to take advantage of the EU's preferential trading arrangements when importing goods into Northern Ireland.

2.10 In his [Explanatory Memorandum of 13 January 2021](#), the Minister for Trade Policy (Rt Hon. Greg Hands MP) says that the Commission Implementing Regulation “reaffirms the rules of origin required for EU trade partners to obtain EU preferential rates for their imports into Northern Ireland” and that the procedures for ensuring compliance with the rules of origin are essentially the same as for imports into the EU. He confirms that the Regulation will apply in Northern Ireland as it forms part of the EU customs laws made applicable by the Protocol on Ireland/Northern Ireland.

2.11 What this means in practice, according to the Minister, is that traders importing goods directly into Northern Ireland from the UK's continuity FTA partners<sup>20</sup>—that is, third countries with whom the UK has concluded trade agreements which broadly replicate those that applied when the UK was a member of the EU—will need to provide evidence that they meet both EU *and* UK rules of origins. This is because documentary proof of the origin of the goods is needed to determine whether there is a difference in the customs duties payable under the EU's Common Customs Tariff and the UK's Global Tariff which, in turn, determines whether the goods are to be considered as at risk, or not at risk, of entering the EU Single Market under the Northern Ireland Protocol.

2.12 The Minister goes on to explain that, under the Joint Committee Decision agreed in December, goods imported into Northern Ireland which satisfy the EU's rules of origin requirements but not the UK's will be considered as “not at risk” of entering the EU Single

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20 See the [Government's guidance on UK trade agreements with non-EU countries](#) for an up-to-date list of the UK's continuity trade agreements.

Market because (in most if not all cases) the UK tariff on these goods will be higher.<sup>21</sup> As such, diverting trade in these goods through Northern Ireland to reach the EU market would serve no purpose. In the case of goods which have the origin documentation needed to qualify for the UK’s preferential tariffs but not the EU’s, the Joint Commission Decision requires a comparison of the applicable EU and UK tariff to consider whether the goods may be considered as not at risk of entering the EU market. The Minister expects that, in many cases, the goods will be considered at risk of entering the EU market and will be subject to the EU’s standard MFN tariff rather than a preferential tariff. He says that the Government will establish a reimbursement scheme for goods which pay the higher EU tariff but can subsequently be shown to have remained in the UK’s customs territory. However, according to [Government guidance](#), reimbursement cannot currently be claimed on goods entering Northern Ireland from non-EU third countries once they have cleared customs.<sup>22</sup> As customs duty waivers operate as a trade subsidy, there are also limits on the amount of aid that traders can claim.

2.13 The Minister says that, “with a few exceptions such as imports under the UK-Turkey Trade Agreement”, the processes outlined above will amount to “a very minor administrative change” as all the information will already be available. He adds that there is a 12-month “grace period” available to traders importing goods from the EU under the EU/UK Trade and Cooperation Agreement or from the Rest of the World under the UK’s trade agreements with third countries to gather the documentary evidence they need to prove the origin of their goods and claim a preferential tariff rate.<sup>23</sup>

2.14 Finally, the Minister says that the Commission Implementing Regulation “confirms that NI inputs in EU (primarily Irish) finished products would not be considered ‘originating’ when exported to EU FTA partners”, meaning that some EU exports may not benefit from preferential tariffs under the EU’s trading arrangements with third country trading partners because they do not satisfy the rules of origin requirements. He adds:

Producers may change where they export their products to, or change their supply chains, in order to avoid breaching rules of origin thresholds for FTAs they currently access.

He says also that Government guidance on the movement of goods will be updated to reflect the requirements set out in the Commission Implementing Regulation.

## Our assessment

2.15 As our efforts to describe the Commission Implementing Regulation and the EU/UK Joint Committee Decision on at risk goods (which should be read alongside it) illustrate, these are highly complex and technical documents. We imagine that many of the traders who are expected to make sense of them will encounter similar difficulties. We note that the Government has not consulted stakeholders who will be affected by the Regulation.

21 See Article 3(1)(b)(i) of [Joint Committee Decision No 4/2020](#). The goods would also, we assume, have to satisfy the requirement in Article 2 of the Joint Committee Decision that they are not considered to be subject to commercial processing.

22 See the [Government’s guidance on customs declaration completion requirements for the Northern Ireland Protocol](#).

23 See the Government’s [Guidance on origin procedures: providing originating status and claiming preferential treatment](#).

Guidance issued separately by the European Commission and the Government helps to shed some light on how the rules are intended to work but necessarily provides a general overview which may be far harder to apply in practice.

## Action

2.16 Our aim in writing to the Minister is to have a better grasp of the practical implications of the Commission Implementing Regulation for those importing goods into Northern Ireland and seeking to determine which customs duties/tariffs apply. In this spirit, we ask the Minister to provide further information on:

- the role of the European Commission in determining whether the EU's preferential tariffs are available for goods imported into Northern Ireland and when they cease to apply; and
- the impact on traders affected by the Regulation, as well as their supply chains and export patterns.

### *Letter to the Minister of State for Trade Policy (Rt. Hon. Greg Hands MP) at the Department for International Trade*

We have considered your [Explanatory Memorandum](#) on this [Commission Implementing Regulation](#) which seeks to clarify whether goods imported into Northern Ireland and considered to be at risk of entering the EU Single Market qualify for an EU preferential tariff. As you note, the Regulation has to be read alongside [Decision No 4/2020](#) of the Withdrawal Agreement Joint Committee which establishes the criteria for determining which goods are to be considered at risk.

We are struck by the complexity of both documents and the difficulty we have had in making sense of them. Our questions are aimed at understanding how they will affect traders importing goods into Northern Ireland who, we fear, may face similar difficulties understanding the processes envisaged.

### *The role of the European Commission*

Only goods from third countries which the European Commission considers have taken the necessary measures to comply with EU rules and procedures on preferential origin and are listed on its website can be imported into Northern Ireland using the EU's tariff preferences. You state that "the procedures for meeting the rules of origin in order to obtain EU preferences in Northern Ireland remain the same as in the EU". **Does this mean that the same listing requirement applies for goods being imported into the EU under the EU's preferential trading arrangements and, if not, why is it necessary for imports into Northern Ireland? Please tell us how many of the EU's preferential trading partners have been listed on the Commission's website so far. Do you consider it likely that some third countries will choose *not* to be listed because the requirements on proofs of origin and verification of origin are too onerous, given their volume of trade with Northern Ireland?**

If there is evidence of non-compliance with EU rules on preferential origin, the EU's preferential tariffs will no longer be available when importing goods into Northern Ireland

after a six-month notice period. The Commission will determine the date on which the EU's preferential tariffs cease to apply and the date on which they are to be restored. **Do you share our concern that these provisions, in effect, make the European Commission the gatekeeper for the application of the EU's preferential tariffs in Northern Ireland, even though the Protocol on Ireland/Northern Ireland makes clear that UK customs authorities are responsible for implementing and applying relevant EU customs law in Northern Ireland?**

### *The practical implications of the Commission Implementing Regulation*

We note that Northern Ireland content (for example, materials sourced in or processing operations undertaken in Northern Ireland) which is included in goods imported into Northern Ireland from one of the EU's preferential trade partners will not count as EU content, making it less likely that these goods will qualify for the EU's preferential tariffs. **What assessment has the Government made of: (i) the product categories or sectors most likely to be affected; (ii) the supply chains that may be interrupted or diverted to exclude Northern Ireland content; and (iii) the economic impact on Northern Ireland businesses and traders?**

You state that traders importing goods directly into Northern Ireland from the UK's continuity trade partners—that is, third countries with whom the UK has concluded trade agreements which broadly replicate those that applied when the UK was a member of the EU—will need to prove that they comply with EU *and* UK rules of origin. **What evidence is there so far that traders are willing and able to do so? What feedback have you received from those affected?**

You expect that most of these goods will, in any event be considered at risk of entering the EU market and subject, as a result, to the EU's standard MFN tariff rather than the EU's preferential tariff. **Why, in that case, has the Government not yet established a reimbursement scheme for these goods? When do you expect to do so and, once up and running, will the scheme reimburse tariffs already paid? Please also explain how the condition on non-commercial processing (in Article 2 of the Joint Committee Decision) will apply in establishing whether goods imported into Northern Ireland are to be considered at risk of entering the EU market.**

You indicate that implementation of the Regulation should not be onerous in practice as traders will already have most of the information required and that any administrative changes will be “very minor”. You cite the EU-Turkey Trade Agreement as one of “a few exceptions”. **We would welcome further information on the exceptions and how they will affect traders importing goods into Northern Ireland.**

Turning to circumstances in which goods imported into Northern Ireland do *not* qualify for a preferential EU tariff under the Regulation or for a UK preferential tariff under the UK's trade arrangements (because, for example, the goods do not satisfy EU or UK rules of origin), we would be interested in your view on how the at risk criteria in the Joint Committee Decision will apply. **In particular, if (as we understand is generally the case) the UK's MFN tariff is lower than the EU's MFN tariff, how would this affect the “at risk status” of the goods in question and the tariffs that would apply?**

Finally, we would be grateful if you could point us to the relevant gov.uk guidance which explains how the Commission Implementing Regulation, read alongside the Joint Committee Decision on at risk goods, will work in practice. We would also be interested to hear what systems are in place to monitor the take-up of EU preferences under the Commission Implementing Regulation and its impact on businesses importing goods into Northern Ireland.

We request a response to this letter by the end of February.

# Annex

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## *Documents drawn to the attention of select committees:*

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

**Business, Energy and Industrial Strategy Committee:** Chemicals Strategy [Commission Communication (SC)]

**Environment, Food and Rural Affairs Committee:** Chemicals Strategy [Commission Communication (SC)]

**Environmental Audit Committee:** Chemicals Strategy [Commission Communication (SC)]

**International Trade Committee:** Northern Ireland Protocol: application of EU preferential rules of origin [Commission Implementing Regulation (SNC)]

**Northern Ireland Affairs Committee:** Northern Ireland Protocol: application of EU preferential rules of origin [Commission Implementing Regulation (SNC)]; Chemicals Strategy [Commission Communication (SC)]

# Formal Minutes

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**Wednesday 10 February 2021**

Members present:

Sir William Cash, in the Chair

Jon Cruddas	Mr David Jones
Allan Dorans	Craig Mackinlay
Richard Drax	Anne Marie Morris
Margaret Ferrier	Greg Smith

## **Scrutiny Report**

Draft Report, proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 2 read and agreed to.

*Resolved*, That the Report be the Thirty-seventh Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

[Adjourned till Wednesday 24 February at 1.45 p.m.]

## Standing Order and membership

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The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

**Current membership**

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Greg Smith MP](#) (*Conservative, Buckingham*)