

# European Scrutiny Committee

House of Commons, London, SW1A 0AA

Tel (020) 7219 3292 Email [escom@parliament.uk](mailto:escom@parliament.uk) Website [www.parliament.uk/escom](http://www.parliament.uk/escom)

From: Sir William Cash MP

26 March 2020

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

## **Enforcement of international trade rules (Council documents 15088/19 and 15090/19) (40998 and 40999)**

We have considered your [Explanatory Memorandum](#) on a proposed Regulation that would allow the EU to take unilateral action to enforce or safeguard its rights under international trade agreements if a trading partner blocks the resolution of a trade dispute. The [proposal](#) is a response to the current paralysis of the WTO's Appellate Body. We would be grateful for further information on the following matters.

### The UK's position and role in negotiations before exit

You state that the changes proposed by the European Commission "would only insert new triggers for use of the [2014] Regulation with respect to the emergency arising in the WTO".<sup>1</sup> Our understanding is that the amended Regulation would also apply to *any* dispute resolution mechanism provided for in the EU's bilateral or regional trade agreements with third countries, including a future free trade agreement with the UK. We ask:

- whether you support the changes proposed and accept the case made by the Commission for enhancing the EU's power to take counter-measures if a trading partner obstructs a dispute settlement procedure within the WTO or under a bilateral or regional trade agreement with the EU;

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<sup>1</sup> See paragraph 34 of his Explanatory Memorandum.

- whether you consider that the new wording proposed adequately describes (or circumscribes) the point at which the EU would be entitled to act;<sup>2</sup> and
- what involvement the UK had in negotiations on the proposed Regulation before its exit from the EU on 31 January 2020, including whether the UK attended any Council Working Group discussions, what (if any) changes it sought to the proposal and whether other Members States were receptive.

#### Application of the amended Regulation during a post-exit transition period

You expect the amended Regulation to take effect and apply to the UK during the post-exit transition period provided for in the EU/UK Withdrawal Agreement.<sup>3</sup> You also say that "on exit, the UK will operate an independent trade disputes function and retaliatory measures will be applied in accordance [with] domestic law, under section 15 of the [Taxation \(Cross-border Trade\) Act 2018](#)".

We note that section 15 of the 2018 Act is not yet in force. Under section 57 of the Act, it will be for the Secretary of State to determine the commencement date by Statutory Instrument. We ask you to confirm that the commencement date for section 15 will have to be the first day following transition to ensure that there is no conflict between the UK's domestic law and EU law on trade remedies and to avoid a breach of the EU/UK Withdrawal Agreement.

#### Application of the amended Regulation in Northern Ireland after transition

The 2014 Regulation, as amended, will continue to apply "to and in the UK in respect of Northern Ireland" after transition under Article 5(4) of the Protocol on Ireland/Northern Ireland. Article 4 of the Protocol recognises that Northern Ireland is part of the UK's customs territory and further provides (our emphasis) that:

[...] nothing in this Protocol shall prevent the UK from including Northern Ireland in the territorial scope of any agreements it may conclude with third countries, provided that those agreements do not prejudice the application of this Protocol.

We understand this to mean that any counter-measures introduced by the UK, such as increased tariffs on an imported good or restrictions on the volume of

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<sup>2</sup> The proposal would allow the EU to take counter-measures "if adjudication is not possible because the third country is not taking the steps that are necessary for a dispute settlement procedure to function" (Article 3(bb)).

<sup>3</sup> See Article 127 of the EU/UK Withdrawal Agreement.

imports from a trading partner, to counteract a breach in the terms of its trade agreement with the UK, would apply throughout the UK, including in Northern Ireland, unless they would in some way prejudice the application of the Protocol. We ask you to explain how this proviso would apply if, for example, the EU is not applying any counter-measures, or different ones from the UK, in its trading relationship with the same trading partner. In particular:

- which counter-measures would Northern Ireland be required to apply, those authorised under domestic law or under EU law; and
- what means would be available to the EU and the UK to prevent any diversion of trade designed to circumvent EU or UK counter-measures?

#### *Wider Brexit implications after transition*

The 2014 EU Trade Enforcement Regulation and any counter-measures taken under it will cease to apply to the UK as a whole at the end of the post-exit transition period. Section 15 of the Taxation (Cross-border Trade) Act 2018 only gives the Secretary of State powers to make regulations varying the amount of duty applicable to imported goods, whereas the counter-measures available to the EU under the EU's 2014 Trade Enforcement Regulation are broader in scope. Do you agree that further domestic law provision will be needed to match the trade enforcement powers available to the EU under the 2014 Trade Enforcement Regulation and, if so, when and how does the Government intend to legislate to this end?

You state that the changes to the 2014 Regulation would "not have a direct economic, social or environmental impact and UK businesses are not impacted by being required to alter working practices". Whilst this remains the case during transition, we note that the amended 2014 Regulation would give the EU the authority to take counter-measures against the UK after transition if it considers that the UK is obstructing the resolution of a dispute within the WTO or under the terms of a future trade agreement with the EU. The impact on businesses and other stakeholders in the UK could be substantial. We ask you to set out the Government's approach to consultation and the preparation of impact assessments on EU proposals whose impact, as in this case, may only be felt after the post-exit transition period has ended.

Finally, the EU has agreed an interim arrangement with Canada and Norway to ensure that any WTO-related dispute between them will be resolved by binding arbitration if it proceeds beyond the panel stage. The EU is also developing a multi-party interim appeal arrangement which will be open to any WTO

member willing to join it.<sup>4</sup> We ask you whether the Government intends, as a contingency, to agree a similar interim arrangement with the EU to take effect immediately after transition or to participate in the proposed multi-party arrangement.

As well as providing the information we have requested, we ask you also to update us on the progress of negotiations, including any changes made to the final agreed text which may affect the UK and/or the operation of the Protocol on Ireland/Northern Ireland.

We look forward to receiving your response by the end of March 2020.

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; Hilary Benn, Chair of the Exiting the European Union Committee and Gordon Clarke, Clerk of the Exiting the European Union 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**

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<sup>4</sup> See the [Statement](#) by Ministers meeting in Davos, Switzerland, on 24 January 2020.