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Lord Jay of Ewelme
Chair of the Protocol on
Ireland/Northern Ireland Sub-
Committee
House of Lords
London SW1A 0PW

22 March 2022

Dear Michael,

SUBSIDY CONTROL BILL

Thank you for your further letter of 10 March on the interaction of the Subsidy Control Bill and Article 10 of the Protocol on Ireland and Northern Ireland (the Protocol).

You asked whether the recent High Court Judgement in the Judicial Review brought by British Sugar plc of the Autonomous Tariff Quota (ATQ) on raw cane sugar settled the question of when Article 10 applies in relation to subsidy given in Great Britain. The Judgment is fact specific, but the Government considers that the Judgment clarifies two important matters. Firstly, it makes clear that the Commission's Unilateral Declaration of 18 December 2020 (the Unilateral Declaration)¹ has interpretative effect. This is important as the Unilateral Declaration states that there must be a genuine and direct link back to Northern Ireland before Article 10 can be engaged. In the case in question, this test was not met simply by virtue of sugar refined in Great Britain being sold and consumed in Northern Ireland. Secondly, the Court found that the Commission's Notice to Stakeholders of 18 January 2021, does not have interpretative effect.

You ask about the impact on Northern Ireland and the UK Internal Market of having two different regimes – particularly in relation to inward investment. I first of all make clear, that the Government recognises the problems and confusion this could cause. This is why we are still negotiating with the European Union to seek changes to the operation of Article 10, aiming to ensure that the whole of the UK can benefit from the flexibilities of the domestic regime.

¹ https://ec.europa.eu/info/publications/unilateral-declarations-eu-and-uk-application-unions-state-aid-rules-under-article-10-ie-ni-protocol_en

As I said in Committee on 7th February, under the proposed domestic regime any Public Authority giving subsidy must consider the effect on the UK Internal Market – this would include the effect on Northern Ireland – before giving the subsidy. The Government considers that this should minimise disadvantage to companies in Northern Ireland. However, we recognise that in some cases a more flexible approach will be available in Great Britain than in Northern Ireland and that this could affect all subsidies relating to trade in goods.

Turning now to your question on the Withdrawal Agreement Joint Committee meeting held on the 21 February 2022, as you are aware, discussions within the Withdrawal Agreement Joint Committee and its Specialised Committees remain confidential as per the provisions within the Treaty. Resolving issues with Article 10 remains an important aspect of achieving a durable settlement to the Protocol.

I trust that this information will be helpful to your Committee.

I am copying this letter to Baroness Drake, Chair of the Constitution Committee, Sir William Cash MP, Chair of the Commons European Scrutiny Committee, George Wilson, Clerk of the Commons European Scrutiny Committee, Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee, Les Saunders and Donald Harris, Cabinet Office, Graeme Winchester, Department for Business, Energy and Industrial Strategy; and Dr Caoimhe Archibald MLA, Chair of the Northern Ireland Assembly Committee for the Economy

A handwritten signature in blue ink, appearing to read 'Martin Callinan', with a long horizontal flourish extending to the right.

Lord Callanan