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Sir William Cash MP
European Scrutiny Committee
House of Commons
London
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Our ref:

17th August 2018

Dear Bill,

COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724

I am writing in response to your further questions in the ESC's 36th report of 18 July 2018 regarding the Explanatory Memorandum (EM) in relation to the above-captioned Commission Implementing Regulation (EU). I am grateful to you and the committee for clearing the EM from scrutiny and I acknowledge your continued interest in this area.

In response to your question on the legality of the countermeasures, the EU and a number of other WTO members have characterised the US tariffs as safeguards (in contrast to the US whose stance is that the tariffs are national security measures, rather than safeguards, hence the invocation of Section 232 of the US Trade Expansion Act 1962).

The WTO Agreement on Safeguards allows countermeasures to be imposed in certain circumstances (and provided that certain procedural criteria are followed). The UK's view is that the EU's characterisation of the measures as safeguards allows for the imposition of countermeasures under WTO rules. The US is entitled to bring a case against the EU via the WTO dispute settlement process if it disagrees with the basis of the countermeasures and as of 19 July 2018 the US initiated dispute settlement proceedings by requesting consultations with the EU on these measures.

The possible impact of the UK rolling over, diverging from or not continuing to apply countermeasures would depend on the precise trade circumstances and countermeasures in place at the time. Any decision to continue to impose countermeasures in the event of a no-deal scenario or post-transition period would be taken following an analysis of the legal, economic and political implications for the UK at that time. If the UK did decide to "roll-over" the EU's countermeasures in a no-deal or post-IP scenario, or impose its own countermeasures in the future, this would require secondary legislation, and we would provide analysis of the impact on the UK at that stage. Parliamentary scrutiny in these scenarios would be in accordance with the negative procedure.

The UK's proposed facilitated customs arrangement, if agreed, would enable the UK to set its own countermeasures independently of any countermeasures the EU applies. The UK would

apply the EU's tariffs and any countermeasures, for goods intended for the EU. The UK would also apply its own tariffs and any countermeasures, for goods intended for the UK. Where the importer would need to pay the higher tariff and reclaim the difference, processes would be as smooth and efficient as possible.

I note the Committee's request for deposit of, and timely updates on, any related documents dealing with the EU's response to US steel and aluminium tariffs (for example, on steel safeguard measures) and in relation to potential US tariffs in other areas. We will keep the committee updated on any further relevant documents.

This letter is copied to The Lord Boswell, Chair of the House of Lords EU Select Committee, the clerks of both committees, Les Saunders (DExEU Scrutiny Coordinator) and Edwina Osborne (Department for International Trade EU Scrutiny Coordinator).

A handwritten signature in blue ink, appearing to read 'Mr. George Hollingbery', with a stylized flourish at the end.

GEORGE HOLLINGBERY MP

Minister of State for Trade Policy
Department for International Trade