

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT TRADE BARRIERS (REVOCATION)
(EU EXIT) REGULATIONS 2018

Tuesday 27 November 2018

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The Committee consisted of the following Members:

Chair: SIR DAVID CRAUSBY

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| † Bardell, Hannah (<i>Livingston</i>) (SNP) | † Letwin, Sir Oliver (<i>West Dorset</i>) (Con) |
| † Benyon, Richard (<i>Newbury</i>) (Con) | † Menzies, Mark (<i>Fylde</i>) (Con) |
| Bradshaw, Mr Ben (<i>Exeter</i>) (Lab) | † Moore, Damien (<i>Southport</i>) (Con) |
| † Bryant, Chris (<i>Rhondda</i>) (Lab) | † Morris, Grahame (<i>Easington</i>) (Lab) |
| † Churchill, Jo (<i>Bury St Edmunds</i>) (Con) | † Peacock, Stephanie (<i>Barnsley East</i>) (Lab) |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | † Spelman, Dame Caroline (<i>Meriden</i>) (Con) |
| † Grant, Bill (<i>Ayr, Carrick and Cumnock</i>) (Con) | † Zeichner, Daniel (<i>Cambridge</i>) (Lab) |
| † Hayes, Helen (<i>Dulwich and West Norwood</i>) (Lab) | Ian Bradshaw, <i>Committee Clerk</i> |
| † Hollingbery, George (<i>Minister for Trade Policy</i>) | |
| † Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) | † attended the Committee |

Second Delegated Legislation Committee

Tuesday 27 November 2018

[SIR DAVID CRAUSBY *in the Chair*]

Draft Trade Barriers (Revocation) (EU Exit) Regulations 2018

2.30 pm

The Minister for Trade Policy (George Hollingbery): I beg to move,

That the Committee has considered the draft Trade Barriers (Revocation) (EU Exit) Regulations 2018.

This statutory instrument revokes the European Union's trade barriers regulation, which sets out a process by which businesses, trade associations and member states can report trade barriers to the European Commission. If a request passes a particular threshold, the regulation obliges the Commission to make a report. It can then take appropriate action, such as raising it in bilateral discussion or at the World Trade Organisation, but it is not obliged to do so. It should be noted that this applies only to unlawful barriers outside the EU.

After we leave the EU, tackling trade barriers will become the UK's own responsibility, and it is important that we get this right. Trade barriers cost our economy billions of pounds every year, so it is crucial that businesses can continue to report them after Brexit, but that only makes it more crucial that the system for reporting them works as effectively as possible. The current EU system has a number of issues: it is complex and time-consuming and, in practice, has already been superseded. Those issues cannot be resolved without making policy changes to the regulations, which would take them outside the scope of our powers under the European Union (Withdrawal) Act 2018. The only course available to us in this circumstance is to revoke the regulation.

The Government have decided not to replicate the EU's trade barriers regulation, but to use an alternative, non-statutory system instead. Why is that? First, the process in the regulation is drawn-out and complex. There are five steps: a complaint is submitted; the Commission has 45 days to decide whether to investigate; the Commission announces the decision in the *Official Journal of the European Union*; the Commission investigates; and a report is submitted to the trade barriers committee. Unsurprisingly, that process takes a long time, during which businesses could be losing exports, thanks to unfair rules. In addition, businesses are required to submit lengthy reports involving complex and often expensive economic and legal analysis. That is a barrier for any business, but particularly for small businesses. I will give an example. In the EU's own evaluation of the regulation, one organisation said that it had wanted to bring a case but decided not to do so simply because of the amount of information that the Commission had requested—and that was only at the pre-initiation phase.

Secondly, the current process is superfluous. All the regulation does is commit the Commission to writing a report; there is no requirement for the Commission

actually to take any action. Unsurprisingly, businesses are already voting with their feet. About 70 new barriers were reported to the EU last year. In only one case did the business involved choose to use the statutory process; the rest of the complaints were submitted informally. There is no evidence that the informal complaints were any less likely to be resolved than those submitted through the regulation. Therefore, in practice, the regulation has been almost entirely superseded. In fact, the process has been used only 28 times in the 25 years for which it has existed, and the majority of those cases were in the first three years. The number declined rapidly thereafter, which speaks volumes about the experience of the process for business. Only one case has been brought in the past 10 years.

Our new, non-statutory process will be an improvement. It will be accessible and user-friendly, with a simple online form at gov.uk for businesses to fill in. The process is already well under way and will be ready for 29 March. Because the process is non-statutory, it will also be flexible. Businesses will be able to tell the Government about the full range of barriers that they face, whether they breach the letter or the spirit of an international agreement. The Government will use the full range of tools available to tackle those barriers—tools ranging from economic diplomacy, to regulatory dialogues, to WTO dispute settlement and committees.

This will be a two-way process: as well as being easier for businesses to use, the new approach has been designed to let the Government better understand the barriers faced by businesses, so that we can target our resources more effectively. Much of this happens already. The Department for International Trade and its posts, our network overseas, are already extensively involved in that sort of activity. The new system is designed to improve on the existing network and formalise it.

We will of course provide reports to businesses and to Parliament, within the bounds of confidentiality. The Government will in due course be able to share information with businesses on where barriers exist or have been removed, to help inform business decisions.

Hannah Bardell (Livingston) (SNP): The position of the Scottish National party is clear—we want to stay in the EU—but, having said that, we recognise that if we are to leave, having regulation is important. Will the Minister speak a little about how the devolved nations and the businesses there will be represented and resourced appropriately so that the interests of all parts of the UK will be properly represented?

George Hollingbery: Clearly, under the auspices of the draft regulations, we are looking at trade barriers. The Scottish Government have their own trade policy and trade exporting teams, and I have no doubt that they have a network overseas. Indeed, that network works closely with the UK network. There will therefore be avenues into this process for anyone from any devolved nation who wants to make a representation on any issue about a trade barrier. I hope that satisfies the hon. Lady.

Furthermore, we are expanding the market access team at the Department for International Trade to support that work. Our new Her Majesty's trade commissioners overseas will spearhead and champion

action on market access across our nine overseas regions. We are upgrading our capability to deal with market access barriers, including our IT infrastructure, better to enable collaboration and work not only within DIT and across posts but across all Departments, for which many trade barriers will be relevant.

As the UK delivers an independent trade policy for the first time in 40 years, the Department for International Trade is here to ensure that our businesses have as many exporting opportunities as possible. Part of that is to resolve trade barriers as effectively as possible. I am confident that the Government's approach is the right one.

2.36 pm

Bill Esterson (Sefton Central) (Lab): It is always a pleasure to serve under your chairmanship, Sir David.

What is the objective of the trade barrier system that we should have? Surely it must be to ensure that we have a robust system in place to support our businesses and workers as necessary and as they might expect. Given the new world order in which might is right, where protections and tariffs are rife and we verge on the prospect of very dangerous trade wars, it must be appropriate for UK businesses to expect the absolute best from their Government. What, therefore, have we been presented with?

At present, we are part of the European Commission trade barriers scheme, which operates as a statutory system. Businesses, trade associations and states may complain to the European Commission if they find evidence of a trade barrier in a non-EU state, as is currently the case with United States tariffs. After leaving the European Union, we will not be part of the TBR scheme—that much has been made clear by the Minister—and it will be replaced by a non-statutory system.

I am surprised that the Government did not automatically debate the issue in a Delegated Legislation Committee. Instead, it took the sifting committee to challenge the Government's decision, and I am glad that it did so. When the Minister said that the system is drawn-out and complex, he rather let the cat out of the bag about how important it is for us to get it right and for Members of Parliament to be able to debate and scrutinise what is happening.

The sifting committee said that the House might wish to explore further with the Minister the Department's plan for the new non-statutory reporting mechanism. Opposition Members certainly want to do so. As the explanatory memorandum notes, it is correct to say that other avenues are used for complaints to the Commission about trade barriers, but more trade barriers are being created in the new world order. In 2017, 70 new barriers affected EU businesses, and that number appears to be growing. It is true that of those 70 new barriers, only one was reported to the Commission, and the Government think that that proves that there is no need for a statutory system. The Government plan to replace the current system, but what is it about the new scheme that gives the Minister confidence that it will deliver what business needs?

If we examine the examples, we start to see a bit of a pattern. The Confederation of European Paper Industries lodged a complaint that measures imposed by Turkey on the imports of certain varieties of paper were inconsistent

with both the WTO and the EU-Turkey customs arrangement rules. Turkey immediately withdrew the unfair measures because the possibility of action through the statutory system was enough. How does the Minister know that his new system will be as effective as the current one, without the back-up of either the Commission itself and the system it operates or a similar UK version? Previously, the threat of the procedure being used has been sufficient, as the paper industry example demonstrates. Did the Government consider that the reason the procedure is so rarely used is precisely that the threat alone is sufficient? Did the Minister consider that soft power is, in fact, extremely effective? Are the Government missing the point that the current system works very well indeed?

I also understand that a number of industry groups involving both UK businesses and those from the rest of the EU, including in ceramics, are at different levels of raising complaints through the existing trade barriers mechanism, so I put it to the Minister that the existing system is used more than might appear at first glance and, perhaps, more than he indicated in his opening remarks. Perhaps the Minister could advise those currently engaged in actions using the existing system as to whether they should continue their complaints using that system or switch to the UK's new procedure.

The explanatory memorandum claims that there will be no impact on UK businesses. That seems unlikely, given that some may be involved in existing complaints and that others, including through relationships with other EU businesses, are likely to be in the future. I suggest that the Minister should confirm that the change in procedure will have an impact on UK businesses.

The Department has said that feedback on the effectiveness of the trade barriers regulatory system has been mixed? What does "mixed" mean? What was said in the informal consultation, and should there not be a more detailed consultation on the system that will be adopted? If the Minister wants to intervene to explain the rather quizzical look on his face, I will be delighted to give way. He is choosing not to. What is his plan for the new system? Will it involve the Trade Remedies Authority? How might that work? If the Trade Remedies Authority is to be involved, does that mean that the Trade Bill is to reappear and conclude its remaining stages? It seems to have disappeared mysteriously into the ether.

The hon. Member for Livingston made the point about the nations and regions. We have debated that at length, and the lack of engagement with and involvement of the nations and regions was one of a number of our concerns about the Trade Remedies Authority. The hon. Lady made a good point about that and it applies in this case, too.

Hannah Bardell: I know there is support among Opposition Members for having officers for trade remedies, as we discussed in relation to the Trade Bill. Perhaps we could consider that alongside the issues under discussion. I hope we can work together to pursue that.

Bill Esterson: I certainly agree that the need for regional engagement and for the nations of the UK to be involved in addressing trade barriers is incredibly important—as it is for large and small individual businesses across the country.

[Bill Esterson]

What will the procedure be during the proposed transition period set out in the withdrawal agreement and the political declaration, in the unlikely event of the Prime Minister's deal surviving? What will happen if, as seems inevitable, the deal is defeated? If, God forbid, there is no deal, what will happen then?

Paragraph 2.3 of the explanatory memorandum states:

"In the EU, the vast majority of trade barriers are raised via the Market Access Advisory Committee".

Does the Minister propose to replace that committee, which is a non-statutory part of the current arrangements?

To move on to the Minister's points about the digital service, there are great concerns among smaller firms, and the organisations that represent them, about the Government's moving to the use of digital systems in a number of places in government. How will the use of the digital route ensure that smaller firms are not disadvantaged? That is of great concern to many small businesses. Should not the arrangement have been sorted out before the revocation of the existing legislation? I note that the Minister said it would be in place by the end of March. Will he confirm whether that digital system has been tested, whether there is awareness of it, particularly among smaller firms, and how he envisages greater access to and use of it by the smaller firms that might be interested in using it at some time in the future, if not today? That is a wider issue, but it is directly relevant.

Paragraph 10.5 of the explanatory memorandum states:

"Stakeholders from across sectors advocated a forum akin to the EU's Market Access Advisory Committee in which industry associations and government departments can discuss avenues for resolution before initiating enforcement mechanisms."

That relates to my earlier question, and I want to ask the Minister why it has not been developed yet—or has progress been made towards achieving such a mechanism?

The trade barrier regulation is only one area of the EU legislation that deals with dumping. The SI before the Committee is part of the process of revoking the EU legislation. What is happening to other pieces of EU legislation that deal with dumping? Specifically, what will happen to EU regulation 2016/1036 on protection against dumped imports, and EU regulation 2016/1037 on protection against subsidised imports?

To return to my main points, we have a system—the Minister made the point that there has been a decline in its use over 25 years—in which trade barriers have been addressed through our membership of the EU. It appears that there has not been an evidence-based approach to considering how effective that system has been, and whether something similar would work. May I suggest to the Minister that, rather than revoking the regulation, it might have been a good idea to make a greater effort to investigate whether the current system was effective and whether the fact that its statutory element was not used very often was a sign that it was working successfully, rather than the opposite? I need to hear from him how the alternatives that he proposes will deliver the same level of protection for UK businesses that we have seen under the current system.

2.50 pm

Sir Oliver Letwin (West Dorset) (Con): I remember trying desperately, in our long years of opposition, to manufacture questions to ask from the Opposition Benches

in Committees like this one. There was a strong sense of that today, but the shadow Minister did raise one interesting and important question about timing, on which it would be helpful to hear the Minister's comments.

The Opposition spokesman said that he would like to know what will happen if we leave without an agreement. I do not actually find that situation puzzling, because I take it that if we leave without an agreement, the draft regulations will need to be revoked on exit day—they will be meaningless because we will no longer be part of the show and no longer have any connection with the Commission. I am more interested in the other side of his question.

What if there is a withdrawal agreement, either because the Prime Minister's deal remains intact or because a variant deal is eventually agreed on, and we assume, from the current text of the withdrawal agreement, the existence of a transitional period? The significance of this point goes considerably wider than the draft regulations, but are the Government assuming that during the transition period—when we will be bound by all the rules of the single market, all the customs arrangements of the customs union and so forth—the Commission will not speak on behalf of UK businesses in relation to ongoing operational issues such as trade barriers? If that is the presumption, where is it specified in the withdrawal agreement? I read it as specifying the opposite.

Secondly, if during the transition period the Government are approached through the new digital and formal system, which sounds admirable in conception at least, will they co-operate with the Commission in taking forward these issues with foreign jurisdictions, given that we will still be part of all the arrangements, or will they act alone? If so, will they be given a locus by other jurisdictions, given that we are still bound to all the customs and single market operations during the transition period? I cannot say that that question is of the greatest possible importance with respect to the draft regulations, because I doubt that there will be many such cases, but it would be interesting to get an indication of how the Government are thinking about that relationship in general during the transition period. I am somewhat mystified about how it will operate.

2.53 pm

George Hollingbery: I will start by addressing the point made by my right hon. Friend the Member for West Dorset and by the shadow Minister. Given the rather complex circumstances, and to ensure that I get this right, I think it only wise for the Department to back up what I say by writing to the Committee. However, my understanding is that we need to pick between trade remedies and trade barriers. As far as trade remedies are concerned, we will be named as a co-sponsor or co-worker—whatever we call it—when any complaint is brought by the European Union during the implementation period. I will need my officials to write to the Committee to confirm that point absolutely, because I do not wish to mislead the Committee.

As far as trade barriers are concerned, I see no reason why we would need to work particularly with the EU on that front. We will have our own independent trade policy and we will be able to move forward and make the sorts of approaches that we need to make. We will have established our WTO schedules, both for goods

and for services, and should therefore be in a position to make our own complaints on that basis. Indeed, we will absolutely be able to make our own representations to individual Governments and bilateral partners, as we do already.

I am not sufficiently confident in my answer about the trade remedies side to assert my righteousness today, but I will clear that up. On trade barriers, I believe that we will be able to carry on with our new regulations, or rather lack of regulation, under our non-statutory system. If I am incorrect about that point, I will make it clear in my note to the Committee.

Bill Esterson: I am grateful for the Minister's comments on both trade remedies and trade barriers. He spoke about the confidence he has in our ability to lay our own schedules at the WTO. He will know, as will other Members, that there are countries that are suggesting that they may object. It only takes one country to do so. What sort of indications and discussions have been had in very recent times—in the last few days—that suggest that those objections have been removed? Without that, this would be very difficult to achieve.

George Hollingbery: I absolutely would not agree. We have laid our schedules at the WTO. The EU has been operating on uncertified schedules since 1995. It is in the midst of dealing with that non-certification, with up to 25 members, not 28. It is absolutely the case that, at the moment, the EU is operating on uncertified schedules.

We are quite clear that, from a WTO point of view, it is entirely proper for a nation to lay its schedules and then operate on them, and in the meantime negotiate with anybody who may have problems with those schedules. That is exactly what we are engaged in doing. The Secretary of State has talked about operating an article 28 procedure, in which the statutory route in WTO law is dealt with, and there is a very well understood path through which one then negotiates with bilateral partners on the objections they have to the schedules. That does not mean that a country cannot work at the WTO or have representation at the WTO on those schedules. They are there and they are laid.

I will answer one or two of the other questions asked by the hon. Member for Sefton Central. As I hope I have reasonably demonstrated in the debate, the current regulation is complex, inaccessible and, in particular, locks out small business. Is it a success? No, we can say absolutely without any question that it is not a success. There have been 70 complaints this year, despite the fact that there is a trade barrier regulation within the European Union. That demonstrates to me that there are still issues and barriers.

There is not this magical soft power idea that the hon. Gentleman suggests—that somehow because the trade barrier regulation exists, people are not contravening trade barriers. They plainly are: 70 complaints have had to be dealt with. We see plenty in the Department for International Trade from the UK point of view; I have been involved in several. I absolutely do not take his point that this is somehow a piece of soft power that prevents trade barriers arising.

Bill Esterson: It is important to clarify exactly what I said. I did not say that they were not arising; I said that they were resolved, without the need for recourse to the

statutory part of the procedure. That is a very different point to the one the Minister appears to have answered. I accept that he may have misinterpreted my words, but that is not what I was saying.

George Hollingbery: Quite plainly, all I can tell the hon. Gentleman is that we deal with a great many of these issues outwith the UK and outwith the EU; we have issues with trade barriers with third-party countries that are nothing to do with the EU. They arise; we solve them. That says to me that the regulation is not required and, in fact, what exists at the moment is pretty much what we intend to do in the future. We intend to improve upon it, systematise it and make sure that there is an easily accessible route into it, and an easily accessible stream of information coming out of it to both small and large businesses, so that their business decisions can be informed by the information we have received and/or the information about what has been achieved in terms of getting rid of the trade barrier. I do not accept his contention at all. Dealing with such issues informally seems to work perfectly well for us already. I think it can work better, the Department thinks it can work better and we are progressing to make it work better.

The hon. Gentleman asked about the financial impact on UK businesses. To be absolutely clear, the explanatory memorandum attempts to estimate what the regulation would cost UK business, not what non-compliance is and how it operates and whether somebody is already complaining through it. In essence, if one is repealing a regulation, it is unlikely to put any particular cost directly on business because of the legislation.

We consulted widely with stakeholders who have engaged with us on trade barrier issues. There was no great enthusiasm among them for retaining the regulation. One of our correspondents said that they had used it in the past and it had worked for them, but my experience of this user is that they use the non-statutory route far, far more often and had not used this route in a long time. They seem to us to be sanguine about the fact that we chose to do this through a non-statutory route and improved the way that we were doing it.

The hon. Gentleman asked what the TRA might do in this regard, to take over the TBR regulatory powers. The answer is that the Trade Remedies Authority is there to deal with trade remedies and not trade barriers. It is there to deal with subsidies, dumping and safeguarding. Likewise, he asked about the progress of statutory instruments that are required on subsidies, dumping and safeguarding, which are clearly to do with the Trade Remedies Authority, rather than trade barriers. They will come to the House in due course.

Regarding the non-statutory route that we currently operate, we have extremely good relationships with business about the way we represent them overseas, in all theatres and on all issues. In the admittedly short time that I have been in post, I have found nothing but praise for our network overseas and how it represents businesses. Every time I meet with businesses out in the field, they say to me that they have excellent relationships with the staff on the ground in different countries and that if they raise an issue about trade barriers, it is dealt with. Of course, it is not always solved, but out in post and indeed here in London, in DIT, we follow up every one of those issues. We address the third-party country, we attempt to resolve the issues, and in rare cases where

[George Hollingbery]

we do not manage to solve the issue, we take further action. Currently, that is done through the Commission, but later it will be through our own seat at the WTO.

The hon. Gentleman asked about industry associations and an appetite for feeding into Government on this issue. We believe there is a case for consulting with industry. Clearly, it would be strange if we did not, particularly in steel and ceramics where there are lots of issues to be dealt with. There are a lot of resources across Government, where forums already exist, and we are looking at using those more as a Department. As yet, how we will do that is undefined and not scoped, but we recognise that there is a resource there and the appetite of industry to contribute.

There is a narrow point to make on the devolved authorities, which will have access to the Department for International Trade's database on all of these ongoing issues and all the actions that are being taken to try to resolve all the potential barriers.

I promise to write to the Committee to clarify the position on what we will do with trade remedies and trade barriers post-exit, but before the end of the implementation period.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Trade Barriers (Revocation) (EU Exit) Regulations 2018.

3.3 pm

Committee rose.