UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LUIS MANUEL RODRIGUEZ, *et al*., Plaintiffs, v. IMPERIAL BRANDS PLC, *et al*., Defendants.	Case No.: 1:20-cv-23287-DPG

DEFENDANT IMPERIAL BRANDS PLC'S FOURTH STATUS REPORT

Defendant Imperial Brands plc ("Imperial") respectfully submits this status report pursuant to the Court's September 23, 2020 Order [D.E. 49] granting Imperial's motion for a limited stay of proceedings and directing Imperial to submit monthly status reports on its application for authorization to defend this lawsuit or, at a minimum, to file and litigate a motion to dismiss. By way of update, Imperial states as follows:

1. As Imperial previously advised the Court [D.E. 14, D.E. 15-1], on August 27, 2020, Imperial submitted an application to the European Commission (the "Commission") under Article 5 paragraph 2 of Council Regulation (EC) No. 2271/96, Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third County, and Actions Based Thereon or Resulting Therefrom, 1996 O.J. (L. 309) 1 (EC) ("Regulation 2271/96"), for authorization to defend this lawsuit or, at a minimum, authorization in the first instance to file and litigate a motion to dismiss (the "Application").

2. As Imperial advised the Court in its status reports filed in October, November, and December 2020 [D.E. 51, 52, 59], the Commission (a) acknowledged receipt of Imperial's Application, (b) cautioned Imperial that unless and until the Commission provided authorization,

Imperial was prohibited from appearing before this Court pursuant to the summons in this action under Title III of the Helms-Burton Act, and (c) informed Imperial that, despite the challenges caused by the pandemic, the Commission was assessing Imperial's Application, including by consulting extensively internally and with European Union Member States' authorities, and was doing its utmost to ensure that a decision on Imperial's application was made in due course.

3. As anticipated in Imperial's motion for a limited stay [D.E. 14], the "Brexit" transition period ended on December 31, 2020. *Id.* ¶ 13. As set forth in Imperial's December 2020 status report [D.E. 59], the Commission's December update to Imperial noted that if the Commission did not take a decision on Imperial's Application by December 31, 2020, then the Application would become moot. *Id.* ¶ 6. Imperial did not receive notice of a decision on its Application by December 31, 2020. On January 15, 2021, the Commission notified Imperial that the Application had become moot due to the expiration of the "Brexit" transition period and that the Commission therefore would not be issuing a decision.

4. As also anticipated in Imperial's motion for a limited stay [D.E. 14], on December 31, 2020, the United Kingdom incorporated Regulation 2271/96 into U.K. law as "retained EU law," by implementing a statutory instrument, a draft of which was exhibited to Imperial's motion for a limited stay. *Id.* Ex. G. *See* Ex. A (Statutory Instrument 2020 No. 1660, Exiting the European Union, Protection of Trading Interests, Trade, the Protection against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020). As set forth in Imperial's motion for a limited stay [D.E. 14], with effect from January 1, 2021, a U.K. Secretary of State has authority to adjudicate requests from U.K. companies for authorization under Article 5 paragraph 2 of the "retained" Regulation 2271/96. *Id.* ¶ 13; *see* Ex. A.

5. Accordingly, on January 10, 2021, Imperial submitted an application to the U.K. Department for International Trade ("DIT") for authorization from the Secretary of State for International Trade to defend against this litigation, or at a minimum, for authorization to file and litigate a motion to dismiss the Complaint. DIT acknowledged receipt of the application and of the February 9, 2021 expiration of the stay ordered by this Court, and undertook to respond as soon as possible.

6. On January 19, 2021, Imperial requested that DIT provide an update prior to the deadline for this status report. On January 22, 2021, DIT informed Imperial that DIT is considering the application and that it will notify Imperial of the Secretary of State for International Trade's decision in due course.

7. Imperial will file a further status report with the Court on or before February 9, 2021.

Dated: January 25, 2021
Miami, Florida

Respectfully submitted,

/s/ *Mark F. Raymond*

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STATUTORY INSTRUMENTS

2020 No. 1660

EXITING THE EUROPEAN UNION

PROTECTION OF TRADING INTERESTS

TRADE

The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020

Made - - - -	*31st December 2020*
Coming into force - -	*1st January 2021*

The Secretary of State, in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**), makes the following Regulations.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 and come into force on the day after the day on which they are made.

(**a**) 2018 c. 16.

PART 2

Amendment of subordinate legislation

Amendment of the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996

2.—(1) The Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996(**a**) is amended as follows.

(2) In article 1(2)(a) insert, at the end, "and the Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020(**b**)."

(3) In article 2—

(a) in paragraph (1)—

(i) omit "Subject to paragraph (2) below,";

(ii) omit "(that is to say";

(iii) omit sub-paragraphs (i) to (v);

(b) omit paragraph (2).

PART 3

Amendment of retained direct EU legislation

Amendment of Council Regulation (EC) No 2271/96

3.—(1) Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, is amended as follows.

(2) In Article 1—

(a) in the first paragraph—

(i) for "Community", substitute "United Kingdom";

(ii) for "third", substitute "other";

(b) in the second paragraph—

(i) for the words from "Commission" to "Regulation", substitute "Secretary of State may by regulations made by statutory instrument amend the Annex to this Regulation to add";

(ii) for "third", substitute "other";

(iii) omit "on the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union".

(3) In Article 2—

(a) in the first and second paragraphs for "Commission", in each place that it occurs, substitute "Secretary of State";

(b) omit the third paragraph.

(4) In Article 3, for "Commission", in each place that it occurs, substitute "Secretary of State".

(5) In Article 4, for "Community", substitute "United Kingdom".

(6) In Article 5, for the second paragraph, substitute—

(**a**) S.I. 1996/3171, amended by S.I. 2018/1357; there is another amending instrument but it is not relevant.
(**b**) S.I. 2020/1660.

"The Secretary of State may by regulations made by statutory instrument—

(a) authorise persons to comply fully or partially with any requirement or prohibition referred to in the first paragraph of this Article to the extent that non-compliance would seriously damage their interests or those of the United Kingdom;

(b) make provision in connection with the making and consideration of applications to be so authorised.".

(7) In Article 6—

(a) omit the third paragraph;

(b) in the fourth paragraph, for "Community", in both places that it occurs, substitute "United Kingdom".

(8) In Article 7—

(a) for "Commission", substitute "Secretary of State";

(b) for point (a), substitute—

(c) "(a) as regards the effects of the laws, regulations and other legislative instruments and ensuing actions mentioned in Article 1, and on the basis of the information obtained under this Regulation, make regularly a full public report thereon.";

(d) omit points (b) to (e).

(9) Omit Article 8.

(10) Omit Article 9.

(11) Omit Article 10.

(12) In Article 11—

(a) in point 1—

(i) for "being a resident in the Community", substitute "who is resident in the United Kingdom";

(ii) for "a Member State", substitute "the United Kingdom";

(b) in point 2, for "within the Community", substitute "in any part of the United Kingdom";

(c) for point 3, substitute—

(d) "3. a national of the United Kingdom providing maritime transport services, or any legal person (wherever incorporated) providing such services and controlled by a national of the United Kingdom, where the vessel is registered in the United Kingdom,"

(e) in point 4, for "being a resident in the Community", substitute "resident in the United Kingdom";

(f) in point 5—

(i) for "within the Community", substitute "in the United Kingdom";

(ii) for "a Member State", substitute "the United Kingdom".

(g) After point 5, insert—

"For the purposes of this Article, a natural person is resident in the United Kingdom where that person has been so resident for a period of at least six months within the 12-month period immediately prior to the date on which, under this Regulation, an obligation arises or a right is exercised.

For the purposes of this Article, "a national of the United Kingdom" means—

(a) British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who, under the British Nationality Act 1981(**a**), is a British subject;

(**a**) 1981 c.61.

(c) a British protected person within the meaning of that Act.".

(13) For Article 11a, substitute—

"Article 11a

1. Regulations under Articles 1 or 5 may make—

(a) different provision with respect to different cases or descriptions of case;

(b) incidental, supplementary or consequential provision;

(c) transitional, transitory or saving provision.

2. A statutory instrument containing regulations under Article 1 or point (b) of the second paragraph of Article 5 is subject to annulment in pursuance of a resolution of either House of Parliament.".

(14) After Article 12, omit the words from "This Regulation shall be binding" to "all Member States".

(15) In the Annex—

(a) for "EU interests" in each place that it occurs, substitute "United Kingdom interests";

(b) for "EU citizens or companies", substitute "United Kingdom nationals or companies".

Amendment of Commission Implementing Regulation (EU) 2018/1101

4.—(1) Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, is amended as follows.

(2) In Article 1, for "application of", substitute "making and consideration of applications referred to in";

(3) In Article 2, in point (d), for "Union", substitute "United Kingdom".

(4) In Article 3—

(a) in paragraph 1—

(i) after "in writing to", insert "the Secretary of State.";

(ii) omit the words from "European Commission" to the end;

(b) in paragraph 4, for "Commission", in both places that it occurs, substitute "Secretary of State";

(c) omit paragraph 5.

(5) In Article 4—

(a) in the first paragraph, for "Commission", substitute "Secretary of State";

(b) in point (b), omit "third";

(c) in point (c), in each place that it occurs, omit "third";

(d) in point (i), for "Union's", substitute "United Kingdom's";

(e) in point (j), for "Union or a Member State", substitute "United Kingdom";

(f) in point (k), for the words from "internal market" to the end, substitute "financial or economic stability of the United Kingdom or key United Kingdom infrastructure";

(g) in point (m), for "one or several Member States and its cross-border consequences within the Union", substitute "the United Kingdom".

(6) Omit Article 5.

(7) In Article 6—

(a) in paragraph 1—

(i) for "Commission", substitute "Secretary of State";

(ii) omit "its";

(b) in paragraph 2, omit "and Regulation (EC) No 45/2001";

(c) omit paragraph 3.

(8) After Article 7, omit the words from "This Regulation shall be binding" to "all Member States".

PART 4

Transitional etc provisions

Treatment of retained Commission Implementing Regulation (EU) 2018/1101

5. The retained Commission Implementing Regulation is to be treated as if it were regulations made by the Secretary of State under point (b) of the second paragraph of Article 5 of the retained Blocking Regulation.

Transitional provision relating to certain authorisations

6. A United Kingdom person authorised pursuant to the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, as it had effect immediately before exit day, is to be treated as if authorised by regulations made by the Secretary of State under point (a) of the second paragraph of Article 5 of the retained Blocking Regulation.

Definitions in this Part

7. In this Part—

"retained Blocking Regulation" means Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and the provision made by these regulations;

"retained Commission Implementing Regulation" means Commission Implementing Regulation 2018 (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and the provision made by these regulations;

"United Kingdom person" means a person who would, upon the coming into force of these regulations, fall within Article 11 of the retained Blocking Regulation.

Signed by authority of the Secretary of State

Ranil Jayawardena
Parliamentary Under Secretary of State
Department for International Trade

31st December 2020

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b) and (g) of subsection (2)) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to the EU rules prohibiting persons from complying with the trade sanctions legislation of third countries to the extent that that legislation purports to have extraterritorial effects, together with amendments (consequent upon withdrawal) to the related UK implementing legislation. The changes to these EU rules are made to ensure that these rules operate as UK rules after withdrawal. For instance, the provisions prohibiting EU persons from complying with the relevant third country legislation become provisions prohibiting UK persons from doing so; powers on the part of the European Commission to make EU tertiary legislation to amend the annex of third country legislation (compliance with which is proscribed) becomes a power, exercisable by the Secretary of State, to amend the annex by domestic secondary legislation; obligations to provide information to the Commission become obligations to provide information to the Secretary of State; and provisions whereby persons may apply to the Commission to be allowed to comply with the third country legislation become provisions whereby persons may apply to the Secretary of State for permission to do so.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. A copy of the Explanatory Memorandum is published alongside the Regulations on www.legislation.gov.uk. Further information is available from Trade Policy Group, Department for International Trade, 3 Whitehall Place, London SW1A 2AW and on the gov.uk website (www.gov.uk).

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