



OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 7 September 2023

Session 6



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Pàrlamaid na h-Alba

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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
23rd Meeting 2023, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Donald Cameron (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*Neil Bibby (West Scotland) (Lab)

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Kate Forbes (Skye, Lochaber and Badenoch) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Murdoch MacLennan (Office for the Internal Market)

Rachel Merelie (Office for the Internal Market)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 7 September 2023

[The Convener opened the meeting at 09:00]

Interests

The Convener (Clare Adamson): Good morning, and welcome to the Constitution, Europe, External Affairs and Culture Committee's 23rd meeting in 2023.

Our first agenda item is the declaration of interests as a result of membership change. I put on record again my thanks to Ben Macpherson, Alasdair Allan and Maurice Golden for their commitment to the committee, and I wish them well in their new roles. I give a warm welcome to Kate Forbes, Keith Brown and Alexander Stewart, who join the committee. I invite each of them to declare any relevant interests.

Kate Forbes (Skye, Lochaber and Badenoch) (SNP): I do not believe that I have any relevant interests to declare.

Alexander Stewart (Mid Scotland and Fife) (Con): I have none, either, but I am delighted to return to the committee. I sat on its predecessor committee for three years in the previous session, so I look forward to our work, convener.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I am not aware of any relevant interests, although, in the interests of transparency, I should say that my partner is the Minister for Culture, Europe and International Development.

Decision on Taking Business in Private

09:01

The Convener: Our second agenda item is a decision on whether to take item 4 in private. Do we agree to take that item in private?

Members indicated agreement.

Office for the Internal Market (Annual Report)

09:02

The Convener: Before we move on to our next agenda item, I point out that we are in a hybrid meeting. Our deputy convener, Donald Cameron, joins us remotely. I hope that we will be able to manage questions and interactions on that basis.

I thank the witnesses from the Office for the Internal Market for attending. We are joined by Murdoch MacLennan, who is the chair of the Office for the Internal Market, and Rachel Merelie, its senior director. I welcome them warmly to the committee. I invite Mr MacLennan to give an opening statement.

Murdoch MacLennan (Office for the Internal Market): Good morning, convener, deputy convener and committee members. For those who do not know me, I am the panel chair of the Office for the Internal Market. Rachel Merelie is the senior director of the OIM. She and I welcome the opportunity to meet you and update the committee on the OIM's recent work. With your permission, I will set out some key points. It will take only a couple of minutes, but it is helpful background.

As the committee is aware, the OIM launched in September 2021. Our role is to assist Governments, legislatures and other key stakeholders across the United Kingdom in understanding how businesses can trade their products and services effectively across the four nations and the impact of the regulatory provisions on that. Our advice and reports are non-binding. The OIM is not the regulator of the internal market and, unlike other parts of the Competition and Markets Authority, we have no enforcement role in the matter.

The OIM works even-handedly in relation to all four Governments. It is worth mentioning that the Northern Ireland protocol matters are outside the scope of our functions under the United Kingdom Internal Market Act 2020.

Since the last time that we gave evidence before the committee, which was in January 2022, the OIM has achieved several milestones. We published our first monitoring report on the operation of the UK internal market and the effectiveness of the UK internal market regime. Those reports are the first of their kind on the UK internal market.

We have also published our intra-UK trade data strategy road map, which looks to promote the collection and publication of intra-UK trade data. I will come back to that throughout the meeting, because we are trying to build up as strong a

database as possible, not to make our job easier but to make it more relevant to the Governments.

We continue to have excellent engagement with businesses and other stakeholders in Scotland, including with Scottish Government officials, and I register my sincere gratitude for the work that they put into that; they have been very helpful.

The OIM has developed open and equal working relationships across the four nations, and we welcome the on-going engagement with the committee and the invitation to appear here today.

I hope that that is a helpful introduction. We would be happy to answer any questions, and then I will ask for some help and support.

The Convener: That was, indeed, helpful and sets the scene for our deliberations. I will open with a question about an area of concern that has been raised by the committee, as a scrutiny committee of the Scottish Parliament. My question is about the transparency of the common frameworks. It is difficult to scrutinise the development of those frameworks or to understand what negotiations have taken place, because they tend to be worked on at officer-to-officer level.

Our concerns are shared by some of the other legislatures. Are you aware of them? I believe that you issue a questionnaire asking whether exclusions from the market access principles have been requested or granted. Do you intend to publish that data to make it available to the Parliaments?

Rachel Merelie (Office for the Internal Market): I can pick that question up. I welcome the opportunity to appear in front of the committee.

To take a step back, we recognise that common frameworks are a really important way for regulatory divergence or, indeed, regulatory alignment between the four nations to be managed, and we are very open, so far as our statutory duties allow, to supporting that process. We flagged up the question of transparency in our periodic report, as you said. When we were gathering evidence at our round-table meetings, we found that many people, particularly in business and trade associations, were not aware of the common frameworks and that, where they were aware of them, they did not have a lot of information about what the discussions were about or what key issues were under consideration.

We certainly support your suggestion that there should be greater transparency. Obviously, it is not for us, as it is not our process—that is something for the Governments to think about—but we certainly support the idea of greater transparency.

Transparency is really important to our work in general. There is always a trade-off between transparency and confidentiality. That must be taken seriously and the CMA is used to that balancing act, but our default position is to be transparent. We feel strongly about that because we think that that is how we get the best inputs and the best evidence, which, as Murdoch MacLennan said, is really important to us.

The Convener: Might you publish the requests or data about the number of requests?

Rachel Merelie: Are you asking about exclusion requests?

The Convener: Yes.

Rachel Merelie: That is not really for us to do. The exclusion requests come through the common frameworks process and are managed by the Governments. When we carry out our statutory periodic reporting, we are interested in understanding how well the common frameworks are working. As you can see in our most recent report, we have published the information that we have gathered from the four Governments and from a range of different stakeholders about how that is happening.

The Convener: We move to questions from committee members, beginning with Neil Bibby.

Neil Bibby (West Scotland) (Lab): Good morning to the panel. The report repeatedly mentions issues to do with businesses not understanding or appreciating that regulatory divergence could occur across the UK. Is more work being done, or could more work be done, to educate businesses and those who are likely to be affected about that possibility?

Murdoch MacLennan: That is a very good point. More could certainly be done. If a person is in business, they do not really worry about anything. If they are trading effectively across the four nations, there is no problem, so they do not get concerned. However, for the future, it is important that people understand.

The contact that we have had with the trade associations has been very effective. They get it, and some of the larger companies get it. Basically, it is very early days for the OIM, but if people do not really have any problems trading across the four nations, they do not show a great deal of interest in that particular point.

As time moves on, it is a certainty. We would appreciate your guidance on how to get in contact with the business world on a broader base and your help with that. We have plenty of engagement at the moment, but it is never enough. Data collecting is currently probably one of the most important aspects of that. We are working on that.

Neil Bibby: Thanks for the work that you are doing on that. I note what you said about the engagement that you are carrying out with Scottish business, but after three years of the United Kingdom Internal Market Act 2020 being in operation, are you concerned that there is still a lack of understanding?

Murdoch MacLennan: I go back to the point that, if someone is in business, they are too busy trying to trade effectively. Part of our job is to ensure that companies across the four nations can trade effectively and unencumbered for the benefit of not just their business but consumers, and to keep competition going. However, it is early days. That is not a problem at the moment.

Neil Bibby: Do you think that the primary reason why there is a lack of understanding is that companies have operated on the basis of a single market across the European Union and they assume that the UK internal market is operating with the same standards across the UK? Is that because of that assumption?

Murdoch MacLennan: It is not so much about the assumption; it is just about the basic trading. If people do not have any barriers to trade, they are not bothered. That is it.

Rachel Merelie: We gathered quite a lot of evidence from businesses as part of our statutory reporting. As Murdoch MacLennan said, the vast majority have no issues in trading across the UK. I think that we said that around 15 per cent of businesses trade across the nations. Fewer than 10 per cent of those flagged up issues with different regulations. Murdoch MacLennan is absolutely right: the vast majority can trade seamlessly. A lot of businesses do not even think about the fact that they do cross-border trading, as they have no particular reason to do so.

I think that that will become more evident as time goes on. Obviously, there has not been a huge amount of regulatory divergence post-transition, but if that builds, businesses will need to be more aware of that.

Alexander Stewart: I will ask a supplementary question. You have talked about data, which is vitally important. Trade associations and federations might collect data for their sectors. How well do you manage with that? Some sectors are very proactive in ensuring that they have data for their sector, but others do not seem to have that robustness. It is about trying to manage that so that there is much better understanding. As you have identified, in different parts of the country, some federations and organisations are much more robust at putting that together.

Murdoch MacLennan: We use the data on volumes of intra-UK trade as a priority indicator. You are right that it is about assessing the

effectiveness of the market. Again, it is early days. That is a major priority for us, because that will improve our effectiveness. We are there as a resource for you, businesses and other stakeholders, and that is the way that we see ourselves operating, very much evenhandedly, across the four nations.

09:15

Donald Cameron (Highlands and Islands)

(Con): I have a question on data, too. I am sorry not to be there in person—I should preface my question with that.

I am interested in your experience of finding data on intra-UK trade. In your report, I think that you say that the available data on that was limited, with long lags before figures were available for Scotland, Wales and Northern Ireland and no data at all for England. I think that you also mention inconsistencies in the way that data is collected. What can the Governments—or anyone, really, including businesses—do to improve that?

I have a more specific question about the data strategy road map and the Scottish Government's commitment to publish a single "Export Statistics Scotland" report. Do we need more regular statistics on Scottish exports than those that are currently promised?

Rachel Merelie: I am happy to pick that up. As Murdoch MacLennan said, this is an important area for us, and we believe that we can add value by bringing together the data and evidence that already exist and by helping to improve them. As you refer to, we published our data strategy road map alongside our statutory reporting in March.

We have been working closely with the Office for National Statistics and the equivalent bodies across the nations, and we have been bringing together the national pictures that exist. However, as was referred to, we recognise that the data that has been collected so far is not collected on an entirely consistent basis, and the ONS is trying to bring together the experts to, first, put forward a sort of experimental methodology for having more consistent data between the nations and, then, to populate that methodology. By the end of next year, we hope to have better data across the nations.

That will not solve all the issues—I feel sure of that—partly because we are relying to a large extent on survey data rather than customs data or anything that is mandated. It is more of a voluntary process. We are trying to build in a number of sources to get a more robust picture of trade across the nations, because we think that that is important.

Murdoch MacLennan: I completely agree with Rachel Merelie. At present, there are significant limitations on the intra-UK trade data between the nations. The development of that data is absolutely vital for us, so the strategy road map that we have produced sets out the initiative by partners, including the Scottish Government and the ONS, to improve the collective understanding. The purpose of that is a catalyst for the improvement of the evidence base, and building that up will be really helpful to you and all of us.

The Convener: Mr Cameron, do you want to come back in?

Donald Cameron: There is still the question on Scottish export statistics. Do we need to achieve more regular publishing of those? I do not know whether that is feasible. I am not sure whether the witnesses will have an observation on that.

Rachel Merelie: Anything that can be done to improve the data is certainly to be welcomed.

Mark Ruskell (Mid Scotland and Fife) (Green): I wonder to what extent you still have an eye on the European Union. Arguably, the EU is the world's most successful single market, which manages a degree of regulatory divergence between member states in that market. Do you still look across to Europe to see how good practice is developed and how businesses are managing regulatory divergence in their sectors? What can we learn from that?

Rachel Merelie: I am happy to pick that up. There are possibly things that we can learn from a number of single markets, with the European Union clearly being an important one. We have also had a brief look at Australia, Canada and Spain—a number of federal nations. The UK internal market has some specific characteristics. We started from a position in which we were pretty unified, and that plays into the way in which the internal market operates.

What is happening in the EU is certainly of relevance, and if anybody flags up anything that we can learn from it that is relevant to the operation of the internal market, we would be very open to that. It is a good question. We keep an eye on what is happening in the EU, but it is probably no more than an eye, because we have to think carefully about whether the lessons are relevant to the UK.

Mark Ruskell: You work with businesses, so are there particular scales or types of businesses that are more integrated in the European market and have more experience of working within different regulatory set-ups? In your report, you mention deposit return schemes. Different deposit return schemes operate across the member states in Europe. Some companies will supply to only one scheme, but some will work across the

continent and will engage with different models. I am interested in which business sectors are particularly adept at working within that larger internal market and which have concerns about divergence if they are working in one particular market but not in others.

Rachel Merelie: That is a really interesting question. So far, we have prioritised the sectors in which we have seen the most potential for divergence within the UK, but there is no doubt that, quite often, those sectors will also have experience of trading across the EU. We flag up in our report that the environment, food and drink, agriculture and a couple of other areas are really important to us.

You mentioned the deposit return scheme. If we were to be involved to any extent in work on a deposit return scheme, we would certainly want to learn lessons about how such schemes operate in other countries.

Murdoch MacLennan: It might be worth while thinking about how we could be used in such cases. If, in relation to a deposit return scheme or, in fact, any other new item of business, a Government is considering putting something into legislation, it is worth while asking the OIM—this is a sales pitch, really—for its technical advice. The peat report, which is the only report that we have produced so far, gives a very good indication of the quality of work from economists and those on the legal side. The technical support that is offered is considerable. I implore people to think about the OIM as an important resource that can provide information to committees and Governments. The great thing is that, at the end of the day, people do not have to take the advice, but the technical advice is there to be used. That is the best way of looking at the OIM.

Mark Ruskell: Is that advice fed into the common frameworks process? If particular issues come up relating to single-use plastics or anything else, would you offer advice? Have you been asked for advice?

Rachel Merelie: It would be one of the Governments that would ask us for advice, and it is, of course, for that Government to work out how to use the advice that we offer, but it could certainly be fed through into the common frameworks discussions. It would certainly make sense for that to be the case.

Murdoch MacLennan: It applies to all four Governments; that is the important part. On the question of transparency, it would be helpful, in that sense.

Mark Ruskell: My last question is about the value of having divergence in different markets. Does that come through in the evidence that you get from businesses? Is divergence just seen as a

barrier, or do businesses consider that, if there is a different market for a certain product in a particular area, they are responding to local needs? Is there value in that kind of diversity within markets, or is having different markets operating in different places just seen as a bit of a pain?

Rachel Merelie: It is important to recognise that divergence can be beneficial and that it can have downsides. It is clear that businesses want to be able to trade seamlessly across the UK, which is one of the issues that we look at. There are also benefits in innovation, and we have given a couple of examples of that in our report, including the trialling in Wales of the charge on plastic carrier bags and in Scotland of the smoking ban. There are things that can usefully be trialled in individual nations as part of an innovative process before being taken on board more widely.

Kate Forbes: Mr MacLennan, in your response to Neil Bibby, you mentioned the fact that most businesses do not think of trade barriers when they are trading freely. If we reflect on the past few years, we know that there has been a huge amount of upheaval, such as rising costs, Covid or the trade barriers associated with Brexit, which might have done more than at other times to push businesses into new markets. Those factors might have encouraged Scotland-based businesses that had been trading within the EU to trade more within the UK, or vice versa. I can think of one business in my constituency that used to trade primarily within the UK but that now trades in Europe, and I can think of another that has done the opposite.

You have taken a lot of qualitative evidence from businesses. Have you come across a lot of examples of businesses that might have traded more frequently in Europe having to adjust to operating within the UK and dealing with some of the challenges that that brings?

Rachel Merelie: That is a really interesting question. I do not think that we have had a lot of evidence to that effect. I take your point, and we would be really interested in hearing from businesses that are adjusting to trading within the UK. We heard, through the independent research that we commissioned as part of our statutory reporting, that businesses are now more accustomed to dealing with regulatory change. Obviously, they have increased their agility in dealing with the EU—that would probably be the way that they look at it—and therefore if they encountered issues within the internal market, they felt that they were better equipped. That was certainly true of larger businesses, although smaller businesses may have some challenges in that respect.

Kate Forbes: My second point is about the notion of raising awareness. You said that the

issues about which you have received most submissions are probably those that have been covered most widely in the press. Might the fear created by some of the press cause more concern among businesses than would be caused by the genuine trade barriers that exist?

Murdoch MacLennan: Are you thinking of anything in particular?

Kate Forbes: Your report considered five areas—glue traps, food and drink, genetic technology, single-use plastics and the deposit return scheme—all of which probably appeared more often in the press than some other issues.

Murdoch MacLennan: You are one of the major stakeholders, so you would bring that to our attention and ask us for advice. The OIM does not react to the press; it gives very high quality technical support. If you raise an issue with us and ask us to investigate it, we will look at that and take it very seriously.

Kate Forbes: My question was about the qualitative evidence that you have taken from businesses and what they have expressed to you.

Murdoch MacLennan: I see.

Kate Forbes: Do concerns largely get raised about issues that are focused on by the media, or do they largely come from the direct experiences that businesses have had?

Murdoch MacLennan: In my experience of business, I would be more interested in any effects on the company I was running than on what was in the media. I would not pay much attention to that.

Kate Forbes: I suppose that it raises awareness, which you earlier suggested is needed.

Murdoch MacLennan: Yes, it does in the sense that I am saying that we are looking for further assistance on the data collection side. That is true.

The Convener: I have a supplementary question on the issue of businesses that have been agile and pivoted. Unfortunately, we are also aware of a number of businesses that have ceased trading as a result of the post-Brexit situation. Do you collect data on the number of businesses in particular sectors or the scale of the trading in those sectors in order to understand whether businesses are ceasing to trade at all as a result of post-Brexit relations?

Rachel Merelie: It is a good question. To go back to the question of what trade data we can collect at the moment, most of that is at the national level. It has been tricky to get data by sector or region, but we are working to get more granular data, and that is part of the road map that we have set out.

Keith Brown: I am new to this, but from listening to what has been said and in response to your point that we started off with a more unified situation, I suppose that the implication is that we are about to become less unified or experience more divergence. It seems a bit absurd to have started off in a single market and to now be moving to what appears, even in name, to be the more insular approach of an internal market. If it was a single market previously, surely the benefits were there in the first place. Do we need bureaucratic superstructures to regulate or monitor a situation where we previously had a single market? It seems odd that we would have to do that.

Murdoch MacLennan: It is a fair point. If everyone was trading effectively and there were no issues across the four nations, yes, there would be no need. However, as I think that you understand, there could be some serious divergence in the future. Again, I go back to fact that we exist as a technical support, not to make decisions that rest entirely with Government.

Keith Brown: On that and in an attempt to be helpful, you have mentioned meaningful data, so one way that you could build that—whether you do that by your own hand or whether others do it—is through an examination of public bodies' approved lists of contractors. It is probably easier to gain that information from them than from elsewhere. The purpose of that would be to say that, in a perfect market where innovation and efficiency are rewarded, we would see huge numbers of Scottish companies servicing Welsh local authorities or English companies servicing Northern Ireland authorities. That might give you a better indication, especially over time, of whether the internal market is working more efficiently. Would it be possible, either through your organisation or the Office for National Statistics, to get that kind of data and to monitor it over time to see whether it improves or otherwise?

Murdoch MacLennan: That is worth looking at.

Rachel Merelie: Yes, that is really interesting. I am not aware that we have looked at that to date, but we will certainly take it away and think about it. Thank you.

Keith Brown: I have one last point, which is counter to the point that I just made, but that is the way that I think of these things.

There is also a fairly developed movement—I forget the term for it; it is not quite a circular economy. The north of England area, perhaps Sheffield, does this very effectively: it tries to ensure that the money spent by public bodies is spent in the local area—it is recycled, if you like. I do not know whether that would be termed as

divergence, but have you come across that or would you take it into account in the figures?

There has been a movement away from compulsory competitive tendering, decades ago, to best value and, in the past 10 years, a more liberal regime. For example, local authorities could place a contract with somebody who was not giving them the cheapest price because there would be wider benefits from placing the contract with them. I suppose that that works against the idea of an internal market, but I just wonder whether that has appeared on your radar yet.

Rachel Merelie: No, not really. Our focus is very much on regulatory divergence or alignment, rather than how money is spent. That is not something that we have come across so far.

Keith Brown: I think that you are right—that would probably not come under divergence. However, I think that it would come under the efficient operation of an internal market.

Alexander Stewart: In the report, you talk about the actions of Governments across the nations when it comes to food that has a high fat, sugar and salt content, and the divergence that there might be in that regard in future. That might well create real difficulties for certain businesses and certain manufacturing or supply bases, which might have to deal with different processes in different locations. Is that simply a possibility, or is it a real issue that will become much more apparent as time progresses?

Rachel Merelie: That is a good question. The area is one that we are interested in looking at more closely. As you said, there is scope for divergence between the nations in the way in which things such as promotions and labelling are done, so we are monitoring that quite carefully.

Alexander Stewart: The possibility of different things happening in different locations might become a real issue for the market and for suppliers and consumers, depending on the approach that is taken and how that is planned. It will be interesting to see what data you collate on that in the future.

Rachel Merelie: Yes—it is an issue that we might well return to in our next report.

The Convener: No other members have put their hands up, so I will ask a final question. The committee has had a discussion about the EU tracker and the ambition of the Scottish and Welsh Governments to keep pace with European legislation, and the requirement on Northern Ireland to do so. Are you considering looking at the trends with regard to where divergence in relation to the internal market act is happening, so that you can see whether there is a pattern in health, environmental issues, product

development or the food and drink industry? Do you hope to be able to report on that in the future?

Rachel Merelie: In our statutory reporting, we are already starting to pull out trends in sectors where there is more divergence, and we will get more information on that as time goes on. That is not necessarily divergence from the EU, but it might well have an impact on the UK internal market. To that extent, we will pick up those trends over time.

The Convener: Are there any final questions?

Keith Brown: I want to follow up on the question that Donald Cameron asked about the figures on Scottish exports. There are huge numbers of key figures relating to the economy that rely on pretty ropey survey data. That is true across the UK. In Scotland's case, we often have to rely on the Department of Trade and Industry, or whatever it is now called, and HM Revenue and Customs for some of the figures.

It is true that, as Donald Cameron said, the figures are very woolly, which is really surprising for a so-called advanced economy in the 21st century. Is it your intention to see whether you can start to nail down those figures, not just in Scotland but across the UK?

Rachel Merelie: Absolutely. We are having conversations about that with the various expert statistical bodies across the UK in order to improve the level of data collection.

The Convener: We have exhausted our questions. Thank you for your attendance, which has been really helpful. I have no doubt that we will see you again at some point in the future.

Murdoch MacLennan: May I make a small additional point?

The Convener: Absolutely.

Murdoch MacLennan: We continue to engage regularly with a range of stakeholders in Scotland. We would welcome any ideas that the committee has about other stakeholders that we could talk to. We have engaged with the Institute of Directors, the Food and Drink Federation, the Federation of Small Businesses, the Law Society and the National Farmers Union. That engagement is a key part of our work, but the committee is closer to such matters than we are. The Senedd very kindly pointed us in the direction of the Royal Welsh Show and suggested that we engage with its businesses. Anything that the committee can think of in that regard would be helpful.

I repeat that we are a resource to be used. I am not saying that the committee would be silly not to do so, but it would be well worth considering using us when you are putting things into law, or even after you have done that. At the end of the day,

the committee does not have to take the advice of the OIM, but we are there to be used if needed.

The Convener: That is extremely helpful. I am sure that we will put our heads together to work out what this committee might do. In addition, we have a Conveners Group for the conveners of all the subject committees in the Parliament. It might be helpful to do a report for them about what you have suggested, as the subject committees tend to do much more in-depth analysis of their sectors than this committee does. We will take that on board and will feed back to you.

Murdoch MacLennan: Thank you very much.

The Convener: We now move into private session.

09:41

Meeting continued in private until 10:09.

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