Department for
International Trade

Baroness Fairhead

Department for International Trade
King Charles Street
Whitehall
London
SW1A 2AH

T +44 (0) 20 7215 5000
E fairhead.correspondence@trade.gov.uk
W www.gov.uk

The Lord Stevenson of Balmacara
House of Lords
London SW1A 0PW

18 March 2019

Dear Lord Stevenson,

Trade Bill – Government Amendments

I am writing to draw your attention to some Government amendments which have today been tabled to the Trade Bill. I have attached a copy of these amendments for your information.

Maintaining UK statutory protections

The Government shares the same underlying objective as many who spoke at Lords' Report stage, which is to ensure that our levels of statutory protection are maintained when using the power in clause 2 of the Bill to implement obligations of continuity trade agreements. The Government has therefore tabled an amendment for Third Reading which would require certain UK levels of statutory protection to be maintained when making regulations under this power.

The new clause would require regulations made under the clause 2 power to be "compatible with maintaining UK levels of statutory protection" in comparison to those in place on the date the clause 2 regulations are laid. The term "UK levels of statutory protection" in the amended clause 2 would cover UK law, including retained EU law, relating to:

- the protection of human, animal or plant life or health;
- animal welfare
- environmental protection; and
- employment and labour.

I think it is also important to provide clarity on the areas listed in this amendment, which differ from those listed in Amendment 3 tabled at Report stage:

- Human rights. There is no need to include human rights in this list. The Government has already made clear its position on human rights in the context of Brexit, and there is nothing in our continuity free trade agreements that will require a change to human rights legislation. More than this, the Human Rights Act already requires regulations made under clause 2 to be consistent with the European Convention on Human Rights, and of course there is no power under the Trade Bill to amend the Human Rights Act;
- The marketing of agricultural products. This is appropriately provided for in clause 22 of the Agriculture Bill;
- Animal hygiene, public health, and food safety. The Government recognises the legitimate concerns Peers have in relation to these important areas. That is why we propose the formulation "protection of human, animal or plant life or health", which is broad enough to cover the protection of these three areas. This is drawn from relevant WTO rules and will help ensure that this amendment safeguards these important UK statutory protections in a way that is compatible with our international obligations.

Clarifying a drafting point in Clause 2

The clause 2 power has been drafted in a way which means that it cannot be exercised to create or extend criminal offences, impose fees, amend primary legislation, or create new public bodies. This drafting is based on longstanding principles about the construction of powers, which tell us that there are certain things that cannot be done by secondary legislation unless expressly provided for in the enabling Act. However, a number of Peers, including Lords with distinguished legal backgrounds, raised valid concerns at Report stage about the clarity of the language used in relation to "penalties". After further discussions with those Peers, the government has revisited this wording and can now confirm our agreement to amend the clause 2 power to clarify that it can only be used to impose civil penalties.

I have also written to Lord Purvis of Tweed, Lord Hope of Craighead and Baroness Jones of Moulsecoomb in similar terms, and I am placing a copy of this letter in the House Libraries.

Baroness Fairhead
Minister of State for Trade and Export Promotion
Department for International Trade

Trade Bill

AMENDMENTS

TO BE MOVED

ON THIRD READING

[*Supplementary to the Marshalled List*]

Clause 2

BARONESS FAIRHEAD

1 Page 2, line 22, leave out "(4)" and insert "(4A)"

BARONESS FAIRHEAD

2 Page 2, line 43, at end insert—

"(4A) If regulations under subsection (1) include provision in any of the areas listed in subsection (4B), the provision must be consistent with maintaining UK levels of statutory protection in that area.

(4B) The areas referred to in subsection (4A) are—

(a) the protection of human, animal or plant life or health;
(b) animal welfare;
(c) environmental protection;
(d) employment and labour.

(4C) "UK levels of statutory protection" means levels of protection provided for by or under any—

(a) primary legislation,
(b) subordinate legislation, or
(c) retained direct EU legislation,

which has effect in the United Kingdom, or the part of the United Kingdom in which the regulations have effect, on the date on which a draft of the regulations is laid."

BARONESS FAIRHEAD

3 Page 3, line 5, after first "for" insert "civil"