



HOUSE OF LORDS

Select Committee on the Constitution

House of Lords
London
SW1A 0PW

Tel: 020 7219 1228
constitution@parliament.uk
www.parliament.uk/lords

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

11 February 2019

Dear Roua,

Trade Bill

Thank you for your letter of 22 January in response to the Constitution Committee's report on the Trade Bill.

In relation to recommendation 3, you say that:

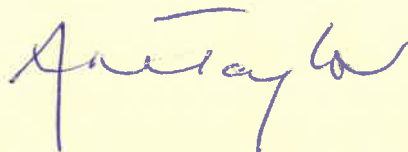
“unlike the EU (Withdrawal) Act 2018, the delegated power within clause 2 of the Trade Bill is drafted in a way so that the presumption is that the power cannot be used to do certain things – such as impose taxes, create new criminal offences or establish new public bodies – unless there is an express provision allowing it to do so. As a result, the Government feels that it is not necessary, or desirable, to exclude expressly the ability to do so.”

The powers in clause 2 are broad. They allow an appropriate authority by regulations to make such provision as it considers appropriate for the purpose of implementing an international trade agreement. Clause 2(5) states that regulations “may, among other things” make provision in a variety of ways, but these are not limited. As part of our current inquiry on parliamentary scrutiny of treaties, we are aware of the breadth of modern trade agreements and the extent to which they may engage areas of significant policy and political interest. In light of this, we remain of the view that explicit restrictions on the use of the clause 2 power are appropriate.

Additionally, we are surprised that your letter states that the explanatory notes are “the most suitable document to outline the restrictions to the use of the clause 2 power”, and that this argument is supported by caselaw based on *Pepper v Hart* 1993. The constitutional principle established in *Pepper v Hart* is that, in the exceptional circumstances where statute law is ambiguous or obscure or where its literal meaning would lead to an absurdity, courts may seek to ascertain the Government's intention by examining ministerial statements in Hansard (and in this context, explanatory notes), to aid their interpretation. Courts however do not take such recourse lightly. We believe it is constitutionally inappropriate to invoke such an interpretive rule when ambiguity on the face of a bill is clearly avoidable. The *Pepper vs Hart*

judgment does not constitute an invitation to draft legislation with insufficient clarity or an excuse for doing so.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Baroness Taylor". The signature is fluid and cursive, with a horizontal line above the "T" and a long, sweeping tail on the "l".

Baroness Taylor of Bolton
Chairman of the Constitution Committee