AMDEA™
The Association of Manufacturers of Domestic Appliances

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Dear Ms Riches

UK Position Paper: Continuity in the availability of goods for the EU and UK

AMDEA is the UK Trade Association representing manufacturers of domestic appliances.

As you will appreciate, none of our members trade exclusively within the UK, so it is a matter of some urgency that there is still so little detail on how the UK plans to trade with the rest of Europe after we leave the EU.

While the paper refers to the ambition for "the freest possible future economic relationship" there is a series of practical difficulties to overcome.

The attached paper aims to explain certain aspects associated with the free movement of goods and identify our industry's concerns in relation to this paper.

We are, of course, happy to discuss any of the issues in more detail with yourself and/or any of your colleagues.

Yours sincerely

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AMDEA BREXIT Paper in response to the
UK Position Paper:
"Continuity in the availability of goods for the EU and the UK"

1) Introduction to AMDEA and this paper

AMDEA is the UK trade association for the manufacturers of small and large domestic appliances; representing over 80% of the domestic appliance industry as a whole and 95% of the market leaders in large white goods.

Members are all manufacturers, importers or distributors of household appliances and include most of the UK's top selling brands of major white goods. In addition to fridges, freezers, washing machines, laundry dryers and dishwashers, members' products also include cooking, heating, water heating, floor care, waste disposal and ventilation equipment.

AMDEA assists UK producers to deliver best practice, compliance and continuous improvement at every stage of the life cycle of household appliances from development, manufacture, marketing and after sales service, through to the final disposal and recycling of the products. AMDEA represents the industry at both UK and European level and works closely with those organisations of which it is a member, such as the European Committee of Domestic Equipment Manufacturers (CECED) and the Confederation of British Industry (CBI).

Considering the referenced position paper, AMDEA welcomes the objective of "ensuring a smooth and orderly withdrawal from the European Union (EU) in regard to the availability of goods, in a way that supports the move to the freest possible future economic relationship". However, we are concerned that there are a large number of practical difficulties to overcome in reaching that objective. This paper aims to explain certain aspects associated with the free movement of goods and identify our concerns in relation to the referenced position paper.

2) Regulatory requirements for products: a brief summary of changes from the early 1970s to today

There have been various comments in the news concerning how the UK was successful in supplying goods worldwide before it joined the Common Market on 1 January 1973, in accordance with the European Communities Act 1972. Therefore this paper briefly explains the regulatory situation for domestic appliances before, immediately after, and following this Act.

In the early 1970s there were no product requirements covering environmental matters and the number of countries having mandatory requirements for the emission of radio frequency interference was comparatively small (notably however, in Germany there was

the ‘f’ mark which required third party assessment). For safety there was a plethora of national safety approval marks, some of which were voluntary and some of which were mandatory. The three European standards bodies (CEN, CENELEC and ETSI) had not been created at this point and the development of standards was undertaken at national and international level (within ISO, IEC and the ITU).

Soon after joining the EEC, a Directive, 1973/23/EEC (known as the Low Voltage Directive, or LVD) was introduced for safety. It set out a number of “safety objectives”, compliance with which could be demonstrated by compliance with certain safety standards. Nevertheless, technical barriers to the trading of goods across the (then) EEC remained. To an extent, these were eased by the Cassis de Dijon judgement in 1979 (Case 120/78) where the Court of Justice found that, under the principle of mutual recognition, a product lawfully marketable in one Member State should be freely marketable in another Member State. This principle was subsequently given further impetus by the Single European Act, which had an objective of creating a single market by 31 December 1992. Technical barriers to trade for domestic appliances have been progressively eroded, as has the preference for national safety marks (with the possible exception of Germany and its GS mark).

Achieving the single market by 31 December 1992 required a new approach to the creation of the laws that would sweep away the national legislation which created those barriers to trade. Hence, the so-called “New Approach” was conceived in 1985. It was (arguably) based on the LVD, and foresaw laws that contained only ‘essential requirements’ forming the legal basis of compliance, with technical details being contained in ‘harmonised standards’, the requirements within which would be updated at regular intervals so that they remained ‘state of the art’. This principle has been revised and amended a number of times, as have requirements governing the production and approval of harmonised standards. Initially there was no requirement to mark products to signify conformity, but subsequently, the CE marking was introduced as such a means of easily identifying products that claim to meet various EU requirements.

Since joining the EEC (now European Union, EU) the technical barriers to trade between the UK and other countries within the EU have been largely removed for domestic appliances. However, the number of areas subject to regulation have steadily increased over that period as well. Not only do products have to be safe (as before) they also now need to meet requirements for electromagnetic compatibility (EMC), protection of the radio spectrum, and a large number of environmental requirements, some of which are attested by affixing the CE marking, though some are not.

3) CE marking – a passport for products

The CE marking was introduced as a means by which a manufacturer signifies to market surveillance authorities that their product meets all the EU legislation applicable to that

product. The Regulation on accreditation and market surveillance relating to the marketing of products (RAMS) defines 'CE marking' as "a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in Community harmonisation legislation providing for its affixing".

Depending on the particular legislation, it can sometimes be necessary for the manufacturer to have conformity assessed by a third party, known as a notified body, and sometimes the number of the notified body has to accompany the CE marking.

In all cases, the CE marking represents an explicit statement made by the manufacturer that they take legal responsibility for the product's compliance, as compared with the situation that pertained before the CE marking of an implicit inference that the manufacturer would take responsibility based on their act of placing the product on the market.

The act of CE marking consequently facilitates the free movement across internal borders within the Customs Union. As such, the CE marking acts a passport for goods within the EU.

After leaving the EU, manufacturers in the UK will continue to affix the CE marking to demonstrate the compliance of their products with EU requirements. However, it is currently unclear how they will demonstrate conformity with the provisions of UK law, including those provisions which resulted from the transposition of EU law.

Moreover, many Directives contain clauses that require the Commission to assess the operation of that law after a few years. This frequently leads to those Directives being revised, sometimes quite radically, and/or the Directive being converted into an EU Regulation.

AMDEA calls for HM Government to clarify its position on how it intends to ensure "the freest and most frictionless trade possible in goods" under these circumstances. Specifically, clarity should be provided on whether it will take the same approach as Norway in adopting EU legislation into domestic law, or whether the UK will modify EU legislation to suit the domestic needs of the UK. Obtaining certainty around these matters is crucial to UK businesses.

4) Implications for manufacturers resulting from the New Legislative Framework

RAMS, and Directives implementing the New Legislative Framework, make clear the responsibility of various economic operators. In particular, they define an 'importer' as "any natural or legal person established within the Community who places a product from a third country on the Community market" and 'authorised representative' as any natural or legal person established within the Community who has received a written mandate

from a manufacturer to act on his behalf in relation to specified tasks with regard to the latter's obligations under the relevant Community legislation". Once the UK leaves the EU it is AMDEA's understanding that it will become a 'third country' and consequently organisations currently designated as a manufacturer will, additionally, either also have to become an importer into the EU or appoint an authorised representative. This will inevitably increase costs.

The Government's position paper "Continuity in the availability of goods for the EU and the UK states its desire to secure "the freest and most frictionless trade possible in goods and services". AMDEA fully supports this goal. However, this objective cannot be achieved until the Government clearly sets out its policy for demonstrating compliance with those legal provisions to be enacted as UK law that stem from EU legislation requiring the affixing of the CE marking. These goals are also incompatible with the UK being a 'third country'.

5) CE marking and standards

As mentioned in section 2), the affixing of the CE marking is intimately linked to standards. This too has evolved over time and now (especially considering two recent judgements by the European Court of Justice) there is a very close relation involving not only those who write standards, but also the Member States and Commission.

Perhaps it would be helpful to begin by describing what a standard is. According to the Oxford English Dictionary, it is "A basis for comparison; a reference point against which other things can be evaluated"; however, this does not explain who can write such documents. In the broadest terms, anybody can write a standard; an individual; a company; a consortia of companies; or a body specifically formed and sanctioned in some way to write standards. This paper considers only standards that have been written and published by de jure standards bodies, i.e. BSI in the UK; CEN, CENELEC or ETSI in Europe; and ISO, IEC and ITU internationally. European standards written by CEN and CENELEC are published by BSI as (e.g. BS ENs); ETSI publishes its own standards.

The three European standards organisations (ESOs) are CEN, CENELEC and ETSI. Currently, BSI is a member of all of these ESOs and has stated its desire and intention to remain so. It is also a member of ISO and IEC at the international level. It is common for standards developed by ISO and IEC to be converted into European Norms (ENs) published by CEN and CENELEC respectively (the converse is also true). Sometimes the European standards are identical to those produced at the international level, sometimes there are differences called "common modifications". Using an international standard in combination with a common modification is one way of creating a harmonised standard (see later).

The linkage between a standard and legislation can take many forms, but the most common are:

i) A law specifically requires compliance with one or more standards;

ii) A law defines technical requirements to be met but does not describe how to measure compliance with those technical requirements, instead specifically identified standards that have been assessed in some way are then identified by the law maker and may be used for conformity assessment

iii) A law defines a broad set of requirements, standards that have been assessed in some way are then identified by the law maker; compliance with those cited standards provides a rebuttable presumption of conformity with the legally defined set of broad requirements

iv) A law describes a set of technical requirements but makes no reference to standards.

Of the above, option iii) is the classical approach defined in the "New Approach" (of 1985) and is used e.g. with the Low Voltage Directive, the EMC Directive, and the Radio Equipment Directive; option ii) is a variant of the "New Approach" used e.g. with the Ecodesign Directive and its associated EU Regulations. As far as AMDEA is aware, although option i) was used in the past, it is no longer commonly used.

Note that in cases ii) and iii) there needs to be an assessment of the standard before it can be used and indeed the situation is even more complex than that. Following the publication of the Standardisation Regulation (1025/2012) it is first necessary for a standardisation request (SReq) to be issued by the Commission to one or more of the three ESOs and be accepted fully by them. The standard is then written and must fulfil the requirements set out in the SReq, including an annex which describes how each clause in the standard corresponds to an Article in the Directive/EU Regulation. The resulting document is then assessed by, or on behalf of, the Commission and if found to be acceptable a reference to it is published in the Official Journal of the European Union (OJEU) (described above as being "identified by the law maker"). Standards developed according to this process are known as "harmonised standards". While compliance with a harmonised standard provides manufacturers with a presumption of conformity with the law, this presumption can be rebutted by a Member State in accordance with provisions set out in Regulation 1025/2012. Harmonised standards can be written from scratch by one or more ESOs, or can comprise an international standard in combination with a set of common modifications (see earlier).

It will be seen that there is a very detailed set of requirements linking European standards and EU laws. Naturally, UK companies wishing to demonstrate compliance with EU laws will continue to be able to use harmonised standards as they do now.

A question does, however, arise concerning UK laws that have been transposed from EU Directives. Presumably, the UK law will either have to make a direct reference to harmonised standards as cited in the OJEU or the UK will have to have its equivalent of

the OJEU (which is kept closely in sync with it if technical barriers are to be kept to a minimum). So which of these options will be used by HMG?

6) CE marking and market surveillance

Setting laws that are common across the EU is one thing, but a law that is not enforced is largely irrelevant. Equally, it is not possible to eliminate technical barriers to trade if each Member State enforces a common law according to its own national preferences. Consequently, there exists a commonly used mechanism (the Administrative Cooperation Agreement, or Adco) for market surveillance authorities to exchange information on the operation of specific Directives.

In addition, both the General Product Safety Directive (GPSD) and RAMS provide mechanisms whereby market surveillance authorities in each Member State can share, in a confidential manner, information concerning assessments they have carried out. This results in potential benefits, for:

- Enforcement authorities, since it should result in less duplication of effort;
- Consumers, since non-conforming products should be dealt with more swiftly; and
- Producers, since it should mean that their products are not assessed multiple times for compliance with the same requirements.

However, while these systems operate effectively for those countries within the single market, they do not operate for those outside the single market. If the UK requirements are somehow synchronised with EU requirements then it is possible to see how the existing cooperation could continue. However, if UK requirements will differ from those in the EU at some point then it is difficult to see how the existing level of cooperation will continue. As far as AMDEA is able to determine, the details on this have yet to be agreed. Nevertheless, these details are essential if the objectives of the Government's position paper are to be practically realised.