BEFORE THE ARBITRATION TRIBUNAL

PCA Case No. 2024-45

IN THE MATTER OF AN ARBITRATION

PURSUANT TO ARTICLE 739 OF THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

- between -

THE EUROPEAN UNION

("Complainant")

- and -

THE UNITED KINGDOM OF GREAT BRITAIN AND

NORTHERN IRELAND

("Respondent", and together with the Complainant, the "Parties")

EUROPEAN UNION'S COMMENTS ON THE UNITED KINGDOM'S WRITTEN REQUEST TO REVIEW PRECISE ASPECTS OF THE INTERIM REPORT

16 April 2025

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I. INTRODUCTION

1. On 10 April 2025, the United Kingdom submitted a Request that "*that the Arbitration Tribunal review certain precise aspects of the Interim Report*" ('UK Request'). The UK Request is expressed to be made "*pursuant to Article 745(2) of the TCA, and the Arbitration Tribunal's letter of 27 March 2025*".[1]

2. The European Union considers that certain parts of the UK Request exceed the intended scope of the review mechanism provided for in Article 745(2) TCA and should be rejected by the Arbitration Tribunal for that reason.[2] Therefore, the European Union first outlines its position as to the correct interpretation of the review mechanism set down in Article 745 TCA and hence, the permissible scope of a "*request to review certain precise aspects*" of an interim report. It further addresses the United Kingdom's unsubstantiated assertion that it has suffered "*procedural unfairness*" in these proceedings.

3. In addition, the European Union considers that there is no basis in fact or in law for the Arbitration Tribunal to review its findings as requested by the United Kingdom in Sections B, C and D of the UK Request. The European Union makes limited comments as regards the "*further suggested corrections*" in Section E of the UK Request.

II. THE PROPER SCOPE OF A REQUEST FOR "REVIEW" PURSUANT TO ARTICLE 745 TCA

4. As has been addressed by the Parties in this dispute and as has been affirmed by the Arbitration Tribunal in its Interim Report, the interpretative approach when construing provisions under the TCA is set down in Article 4(1) TCA. This

[1] UK Request, paragraph 2.

[2] For completeness, the European Union observes that the Arbitration Tribunal's letter of 27 March 2025 cannot be interpreted such as to extend the scope of that review mechanism beyond the terms agreed by the Parties and set down in Article 745(2) TCA. The letter provides in relevant part: "*Pursuant to Article 745(2) of the Trade and Cooperation Agreement, each Party may deliver to the Arbitration Tribunal a written request to review precise aspects of the Interim Report by Thursday, 10 April 2025*."

provision essentially replicates the customary international law principles of treaty interpretation reflected in the Vienna Convention on the Law of Treaties.[3]

5. Article 745 TCA forms part of Part Six, Title 1 of the TCA entitled "Dispute Settlement". It is, therefore, one of the provisions which is intended to define the dispute settlement framework for all disputes arising under the TCA subject to that Part.[4] Thus, the interpretation of Article 745 is of broader relevance than purely this dispute and extends beyond disputes arising under Heading Five of Part Two on fisheries. Notably, it encompasses disputes under the Trade part of the TCA.

6. The overall objective of Title I of Part Six TCA is described as being:

"*to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement and supplementing agreements with a view to reaching, where possible, a mutually agreed solution*."[5]

7. Within that framework, Article 745 TCA makes provision for the ruling of the arbitration tribunal.

8. Article 745(1) TCA provides that the arbitration tribunal shall deliver an interim report to the Parties. Article 745(2) TCA provides:

"*Each Party may deliver to the arbitration tribunal a written request to review precise aspects of the interim report within 14 days of its delivery. A Party may comment on the other Party's request within six days of the delivery of the request.*"

9. As is clear from Articles 745(3) and 745(5) TCA, where such a request is made, it shall be addressed by the Arbitration Tribunal in the final ruling.

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[3] See Interim Report, paragraph 150 and footnote 235.

[4] See Article 735 TCA.

[5] Article 734 TCA.

10. When negotiating the dispute settlement framework under the TCA, the Parties had close regard to existing dispute settlement frameworks governing trade disputes, notably that provided for in the World Trade Organization's Dispute Settlement Understanding ("DSU"). As a result, there is considerable parallelism between the wording of the provisions in Part Six of the TCA, and of those that appear in the DSU. This is relevant since it reflects that when agreeing to the dispute settlement framework, the Parties to the TCA agreed that the different procedural stages should be understood and interpreted in an equivalent manner.[6]

11. Article 15 of the DSU makes provision for an interim review stage in a dispute before the WTO dispute settlement body. It provides in relevant part:

"*2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions.* ***Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members.*** *At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members*" (emphasis added).

12. Therefore, the expression "*written request* (…) *to review precise aspects of the interim report*" is essentially identical in Article 15(2) DSU and under Article 745(2) TCA.

[6] As to the relevance of WTO law in general when interpreting the provisions under the TCA, see also Article 516 TCA: "*The interpretation and application of the provisions of this Part shall take into account relevant interpretations in reports of WTO panels and of the Appellate Body adopted by the Dispute Settlement Body of the WTO as well as in arbitration awards under the Dispute Settlement Understanding*."

13. When interpreting Article 15 DSU, it has consistently been considered that the term "*precise aspects of the interim report*" denotes that a review must pertain to "*specific and particular*" aspects of a report and must be sufficiently particularised.[7] In line with this, in previous WTO disputes it has been considered that those requests should pertain to specific, identified paragraphs.[8]

14. Equally, under the DSU, a panel is not expected to defend its findings and conclusions during the interim review stage and nor is this review conceived as an opportunity for parties to enter into a debate about the merits of an interpretation of relevant legal provisions, *a fortiori* when they have exchanged views on the subject matter during the course of a proceeding.[9] This has been expressed as meaning that parties should not use the interim review process to relitigate arguments.[10]

15. There may be circumstances in which a panel considers it necessary to review specific findings if it is persuaded that there has been an error of fact or law. Such review is, however, to be based on evidence properly on the record and hence before the panel. It has consistently been held by panels and the Appellate Body that interim review is not an appropriate point for a party to adduce new evidence since at that stage the process is "*all but completed*".[11]

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[7] Panel Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996, as modified by Appellate Body Report WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, DSR 1996:I, p. 125, paragraph 5.2.

[8] Panel Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/R and Corr.1, adopted 6 November 1998, as modified by Appellate Body Report WT/DS18/AB/R, DSR 1998:VIII, p. 3407, paragraph 7.3.

[9] Panel Report, *Indonesia – Safeguard on Certain Iron or Steel Products*, WT/DS490/R, WT/DS496/R, and Add.1, adopted 27 August 2018, as modified by Appellate Body Report WT/DS490/AB/R, WT/DS496/AB/R, DSR 2018:VII, p. 3707, Annex A-3, paras. 2.3-2.4.

[10] Appellate Body Report, *Australia – Certain Measures concerning Trademarks, Geographical Indications and other Plain Packaging Requirements applicable to Tobacco Products and Packaging*, WT/DS435/AB/R and Add.1, adopted 29 June 2020, DSR 2020:IV, p. 1525, paragraph 6.25 and footnote 766.

[11] Appellate Body Report, *European Communities – Trade Description of Sardines*, WT/DS231/AB/R, adopted 23 October 2002, DSR 2002:VIII, p. 3359, paragraph 301: "*Article 15 permits parties, during that stage of the proceedings, to submit comments on the draft report issued by the panel, and to make requests 'for the panel to review precise aspects of the interim report'. At that time, the panel process is all but completed; it is only—in the words of Article 15—'precise aspects' of the report that must be*

16. In line with the above, previous panels have distinguished legitimate requests by parties for "reconsideration" of specific factual or legal findings based on evidence on the record from a mere request for reconsideration of factual and legal determinations which challenge the basis of a panel's conclusions and findings.[12] Where a party raises questions concerning the merits of the panel's analysis, this has been considered to go beyond the interim review process contemplated by Article 15 DSU.[13]

17. The European Union considers that given the deliberate choice to use the same terminology, the terms of Article 745 TCA should be interpreted in an equivalent manner to Article 15 DSU.

18. Three other factors should be borne in mind when interpreting the permissible scope of a request to review precise findings pursuant to Article 745(2) TCA.

19. First, under the TCA, the Parties agreed to compressed timeframes in which to conclude a dispute. This is reflected in Article 745(1) TCA, which provides that "*the arbitration tribunal shall deliver an interim report to the Parties within 100 days after the date of establishment of the arbitration tribunal*." It is also reflected in Article 745(4) TCA which provides that "*the arbitration tribunal shall deliver its ruling to the Parties within 130 days of the date of establishment of the arbitration tribunal*." Whilst there is a limited possibility for the Arbitration Tribunal to notify the Parties if it is unable to adhere to the deadline for issuing an interim report, Article 745(4) TCA provides that the

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verified during the interim review. And this, in our view, cannot properly include an assessment of new and unanswered evidence. Therefore, we are of the view that the Panel acted properly in refusing to take into account the new evidence during the interim review, and did not thereby act inconsistently with Article 11 of the DSU." See also Appellate Body Report, *European Communities – Selected Customs Matters*, WT/DS315/AB/R, adopted 11 December 2006, DSR 2006:IX, p. 3791, paragraph 259.

[12] Panel Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/R, adopted 13 June 2012, as modified by Appellate Body Report WT/DS381/AB/R, DSR 2012:IV, p. 2013, paragraph 6.3.

[13] Panel Report, *Indonesia – Safeguard on Certain Iron or Steel Products*, WT/DS490/R, WT/DS496/R, and Add.1, *adopted* 27 August 2018, as modified by Appellate Body Report WT/DS490/AB/R, WT/DS496/AB/R, DSR 2018:VII, p. 3707, Annex A-3, paragraphs 2.3-2.4.

"*arbitration tribunal shall not deliver its ruling later than 160 days after the date of establishment of the arbitration tribunal under any circumstances*."[14]

20. This implies that where an arbitration tribunal has availed itself of the possibility to extend the timeframe for the interim report, it must nonetheless ensure that, overall, the proceedings remain within the maximum 160 day limit. The compression of the timeframes also has implications for the Parties in terms of the duration of any period in which they may comment on a request to review an interim report which is set at six days.

21. Given that that Part Six of the TCA is structured such as to place emphasis on the need for rapid resolutions of disputes, the scope of the interim review mechanism must be interpreted such as to reflect that it cannot be deployed in a manner by a party that would undermine that objective or make it excessively difficult for the Arbitration Tribunal to adhere to the overall timeframes. Similarly, the extent of any request should not unfairly prejudice the other Party who has a very limited period in which to comment on any such request.

22. The overall duration of proceedings, and the right of a party to have a proceeding brought to a close in a timely manner are factors which have been considered relevant when interpreting the scope of the review mechanism under the DSU.[15] They should likewise be considered highly relevant by the Arbitration Tribunal when interpreting Article 745 TCA.

23. Second, the term "*review*" is to be distinguished from the term "*appeal*". If the Parties had intended to allow for an "*appeal*" of findings set out in an interim report, this would have been provided for explicitly. Instead, in line with the

[14] The European Union refers the Arbitration Tribunal to the terms of Point 18 of Annex 48 TCA which specify that: "*When the arbitration tribunal considers that there is a need to modify any of the time periods for the proceedings other than the time periods set out in Title I of Part Six of this Agreement or to make any other procedural or administrative adjustment, it shall inform the Parties, in writing and after consultation of the Parties, of the reasons for the change or adjustment and of the time period or adjustment needed*."

[15] Panel Report, *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products – Recourse to Article 21.5 of the DSU by Brazil,* WT/DS484/RW and Add.1, circulated to WTO Members 10 November 2020, appealed 17 December 2020, paragraphs 6.49 and 6.50.

objective of ensuring swift dispute resolution, under the TCA, the Parties agreed to a limited review mechanism and no appeal.

24. These differences with the procedures set down under the DSU should be understood as deliberate choices by the Parties fully consistent with the overriding objective of ensuring a swift resolution of disputes within a maximum of 160 days. Indeed, if the Parties had intended the review mechanism to constitute an avenue for a *de facto* appeal, it is inconceivable that they would have agreed a period of solely six days for the other Party to comment.[16] The terms of Article 745(3) TCA reflect that there may be occasions on which no requests are considered necessary.

25. Finally, the review mechanism set down in Article 745(2) TCA must be interpreted and utilised by the Parties in good faith in the light of the role that it plays in the overall dispute settlement procedure defined in the TCA. In other words, a Party cannot seek to use this mechanism to make submissions that should properly have been before the Arbitration Tribunal at an earlier point or to repeat submissions that have already been made and which have been considered by the Arbitration Tribunal.

II.1. The UK Request exceeds the permissible scope of a review under Article 745 TCA

26. The European Union considers that the manner in which the United Kingdom has formulated certain aspects of its Request go beyond a good faith interpretation of the review mechanism set down in Article 745 TCA.[17]

27. In particular, to the extent that the United Kingdom is not seeking the review of "*precise*" aspects of the Interim Report, but rather, invites the Arbitration Tribunal to change its conclusion as regards two of the European Union's claims, this should be rejected. In particular, the United Kingdom indicates that:

[16] There is no such mandatory timeframe in Article 15 DSU.

[17] The United Kingdom has not provided any interpretation justifying the breadth of this request.

"*The primary aspect that the UK requests the Arbitration Tribunal review (in Section B below) is its conclusion that the UK's decision to prohibit sandeel fishing in English waters of the North Sea was inconsistent with the requirement of Article 496(1) of the TCA, read together with Article 494(3)(f), to have regard to the principle of applying a proportionate measure for the conservation of marine living resources and the management of fisheries resources, while preserving the regulatory autonomy of the Parties*".[18]

28. Although the United Kingdom cites certain paragraphs of the Interim Report where the reasoning of the Arbitration Tribunal is set down, it appears that in reality the UK is challenging the entire premise for the Arbitration Tribunal's ultimate findings in relation to the applicable legal standard.[19]

29. In essence, therefore, the United Kingdom seeks to use this review mechanism to appeal the Arbitration Tribunal's findings upholding the European Union's claim that the prohibition on the fishing of sandeel in English waters of the North Sea ("the English measure") is inconsistent with the United Kingdom's obligations under Article 496 read together with Article 493(3)(f) TCA and consequentially, Annex 38 TCA.

30. This is not the intended function of the review mechanism.

31. Second, and in any event, the reasons given by the United Kingdom for seeking this broad review are highly generalised. Notably, the United Kingdom states that the Arbitration Tribunal should "*review these findings on the basis that they do not properly reflect the legal or factual position*."[20]

32. It is inherent to many disputes, including this one, that the Parties do not agree as to the legal position or the application of the law to the facts. The task of the

[18] See UK Request, paragraph 3.

[19] See UK Request, paragraph 3 referring to "*Interim Report para. 690, and the reasoning at paras. 659-663, 678 and 687-689).*" See also UK Request, paragraphs 6 and 7, citing Interim Report, paragraphs 659. 661, 662, 678, 687, 688 and 689.

[20] UK Request, paragraph 8.

Arbitration Tribunal is, having considered the respective position of the Parties in the course of the proceedings, to form an objective view. The United Kingdom is effectively seeking to re-litigate its position through the review mechanism. It should not be permitted to do so.

33. The European Union recalls that the Parties were each afforded the opportunity to respond in writing to questions, to comment on each other's replies to those questions and to provide the Arbitration Tribunal with a supplementary written submission within 10 days of the hearing. These deadlines ran, in accordance with the terms of the TCA concurrently. The European Union considers that it would be highly inappropriate were the United Kingdom, which elected not to adduce any such supplementary written submission, be allowed to utilise the mechanism of a request to review the Interim Report as a means to develop arguments on legal points in respect of which the Parties could make submissions at an earlier stage and were, in certain instances, invited to respond to questions in writing by the Arbitration Tribunal.

34. This is also clearly not what was contemplated by the Parties when providing for a review mechanism with compressed timeframes both for the Parties and for the Arbitration Tribunal.

35. The European Union will, by way of subsidiary argument, address the various points invoked by the United Kingdom in so far as precise paragraphs in the Interim Report are identified and a reason for requesting the review of that specific paragraph has been advanced. However, this is without prejudice as to its position as to the appropriateness of parts of the UK Request, as described above. For the avoidance of doubt, the European Union disagrees that "*Interim Report para. 690, and the reasoning at paras. 659-663, 678 and 687-689*" should reviewed.

III. PROCEDURAL FAIRNESS OF THE PROCEEDINGS

36. The European Union strongly objects to the United Kingdom's allegation that it has suffered "*procedural unfairness*" and invites the Arbitration Tribunal to dismiss these remarks.[21]

37. The dispute settlement mechanism set down in the TCA involves multiple, distinct stages, each of which is intended to afford the Parties an opportunity to present their respective positions. The European Union maintains that these proceedings have been conducted by the Arbitration Tribunal in full accordance with that framework together with the procedural orders governing this dispute.

38. To the extent that the United Kingdom did not respond to certain arguments advanced by the European Union or did not highlight certain evidence on the record, this is attributable to the United Kingdom's litigation choices as opposed to either the procedural conduct of the hearing by the Arbitration Tribunal or the manner in which the European Union advanced its case.

39. In essence, the United Kingdom claims that it had not realised that the European Union was challenging the proportionality of the English measure by reference to the specific legal and factual situation that the decision on that measure was taken during the adjustment period and hence, in a period in which Annex 38 TCA is applicable. The United Kingdom goes further and asserts that if it had understood this, it may not have redacted certain documents on the record to the same extent and might have provided the Arbitration Tribunal with alternative evidence.[22]

40. The European Union underscores that the Arbitration Tribunal is not required to consider speculation on the part of the United Kingdom that other evidence or unredacted statements might have been made available to it or to the European Union.

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[21] UK Request, paragraphs 16 and 18.

[22] UK Request paragraphs 16 to 18.

41. The Arbitration Tribunal is required, in accordance with Article 742 TCA, to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of, and conformity of the measures at issue with, the covered provisions. Those facts are to be derived from the evidence properly placed on the record by the Parties at the appropriate juncture. This evidence was essentially only in the possession of the United Kingdom and the United Kingdom was explicitly asked by the Arbitration Tribunal to identify where in the record consideration of relevant factors is to be found.[23]

42. In any event, the United Kingdom has misrepresented how the European Union formulated its case and it is abundantly clear that the United Kingdom was aware of the European Union's arguments.

III.1. The European Union's presentation of its claims

43. From the outset of this dispute, it has been clear that: a) the European Union challenged the "*English measure*" on the grounds that "*it is not proportionate within the meaning of Article 494(3)(f) of the TCA*"; and b) the European Union considered that the United Kingdom had breached the European Union's right of full access to UK waters to fish sandeel as prescribed in Annex 38 TCA. Moreover, it was clear that the European Union considered these two claims to be closely connected to one another.[24]

44. This position was articulated by the European Union in its Written Submission, elucidated upon at the oral hearing and addressed in the written responses to the Arbitration Tribunal's questions. Moreover, the European Union chose to address this point in its Supplementary Written Submission precisely because it was clear from the UK's submissions in the oral hearing that the Parties had a

[23] The United Kingdom indicated in the hearing that it had been "*entirely transparent as to all the evidence*." See Hearing, 30 January 2025, 39:15–16.

[24] See European Union, Request for the establishment of an Arbitration Tribunal.

very different interpretation of the legal relevance and even status of Annex 38 TCA.[25]

III.1.1. The European Union's Written Submission

45. In its Request, the United Kingdom provides a narrow and incomplete description of the European Union's Written Submission.

46. First, at paragraph 16 of the Request, the United Kingdom decontextualises paragraph 775 of the European Union's Written Submission. The European Union submitted - in paragraph 776 of its Written Submission - that given the specific rationale for the establishment of an "*adjustment period*", the Arbitration Tribunal should apply particular scrutiny to the United Kingdom's exercise of its right to decide on fisheries management measures applicable to sandeel.

47. Second, in paragraph 16 of its Request, the United Kingdom claims that it did not understand the European Union to be arguing that the proportionality assessment would be defective if it did not refer to Annex 38 TCA. The European Union refers the Arbitration Tribunal to the following paragraphs of its Written Submission:

    47.1. "*the EU submits that in adopting and applying the sandeel fishing prohibition the UK has acted inconsistently with its obligation to ensure that a measure decided on for the conservation of marine living resources and the management of fisheries resources pursuant to Article 496 TCA has regard to the principle that measures applied for that purpose must be "proportionate and non-discriminatory" within the meaning of Article 494(3)(f) TCA. <u>In so far as the sandeel fishing</u>*

[25] See Hearing, 29 January 2025, 190:19–24: "*As explained already, fundamentally the socioeconomic benefits that arise under the TCA are pursuant to an administrative arrangement, and they are subject, importantly, to fisheries management measures.*"

prohibition impairs the rights conferred under Annex 38 TCA, it is also inconsistent with that provision" (emphasis added);[26]

47.2. "*To demonstrate that a measure is proportionate it must be shown that there has been a 'weighing and balancing' of the contribution of the measure to its legitimate objective, the economic and social impacts of the measure and the impairment by the measure of other rights provided for in the TCA. In the context of Heading Five, this includes the right of "full access to waters to fish" set down in Annex 38 TCA*" (emphasis added);[27]

47.3. "*The EU recalls that the right to decide on fisheries management measures must be reconciled with the commitments of the Parties to grant "full access to its waters to fish" (Article 2(1)(a) of Annex 38 TCA and section V.3.3 above). Those rights have been impaired by the sandeel fishing prohibition since EU vessels may no longer access UK waters of the North Sea to fish sandeel. In other words, the rights of access that exist in consequence of the sandeel fishing prohibition are the diametric opposite of the right provided for in Article 2(1)(a) of Annex 38 TCA, namely that the UK should grant "full access to its waters to fish" sandeel*";[28] and

47.4. "*The EU recalls that the right to decide on fisheries management measures must be reconciled with the commitments of each of the Parties to grant "full access to its waters to fish" (Article 2(1)(a) of Annex 38 TCA and section V.3.3 above). In particular, during the adjustment period established by Article 1 of Annex 38 TCA, that right should not be lightly impaired, given the rationale of the adjustment period is the "social and economic benefits of a further period of*

[26] EU Written Submission, paragraph 513.

[27] EU Written Submission, paragraph 639.

[28] EU Written Submission, paragraph 733.

stability, during which fishers would be permitted until 30 June 2026 to continue to access the waters of the other Party as before the entry into force of this Agreement" (second preambular paragraph to Annex 38 TCA)" (emphasis added).[29]

III.1.2. The European Union's oral submissions

48. The relationship between Annex 38 TCA and the assessment of whether a measure is proportionate was addressed by the European Union in the oral hearing, as acknowledged by the United Kingdom in its Request.[30] The European Union refers the Arbitration Tribunal to the following statements:

48.1. "*In that regard, the provisions of Heading Five, and in particular its Article 296, read together with Article 294 TCA, must be read in light of Annex 38 during the adjustment period. This means that when adopting fisheries management measures such as the sandeel fisheries prohibition, the parties cannot ignore the legal reality that we are in the adjustment period, and hence the terms of Annex 38 must be considered. Annex 38 must be given meaning. There must be a particular onus on the parties to consider the impairment of the rights of the other party that derive from the objectives of the protocol in Annex 38, which establishes a transition period to provide for "a further period of stability"*" (emphasis added);[31]

48.2. "*The EU notes here that this dispute takes place during the adjustment period agreed upon by the parties. During that period, when adopting measures such as the sandeel fisheries prohibition, the parties must consider the specific terms and rationale of Annex 38 in view of the*

[29] EU Written Submission, paragraph 739.

[30] UK Request, paragraph 16 and footnote 6.

[31] Hearing, 28 January 2025, 192:12-25.

further period of stability and the social and economic benefits of that period of stability" (emphasis added);[32]

48.3. "*What separates the parties, and what you must now determine, is the extent to which regulatory autonomy can be relied upon to justify an impairment or, in this instance, nullification of the right to access to waters to fish set down in Heading Five of the TCA, read together with Annex 38 of the TCA. Yesterday afternoon, Mr Westaway took you to Annex 38 TCA, describing the provisions of that protocol to a binding international agreement as setting down "an administrative arrangement" (Day 2/190 1 :20-21) or "administrative provisions" (Day 2/147:15). That characterisation is wrong in law, and shows a complete disregard to the commitments which the United Kingdom negotiated and agreed to with the European Union when entering into the TCA*" (emphasis added);[33]

48.4. "*The third point that the European Union would make on the benefits of the measure is that the United Kingdom confirmed yesterday to the Tribunal that the measure was not justified as an emergency*"; and

48.5. "*The European Union would stress is that th[e] lack of urgency should be contrasted with the relevant context in which this measure was adopted, which, as my co-Agent has recalled, was during the adjustment period foreseen by Annex 38 of the TCA. So that was why the United Kingdom was wrong to maintain that it has not overstated the benefits of the measure*" (emphasis added).[34]

[32] Hearing, 28 January 2025, 193:10-16.

[33] Hearing, 30 January 2025, 2:16-25; 3:1-6.

[34] Hearing, 30 January 2025, 31:1-4; 20-25; 32:1-2.

III.1.3. The European Union's Responses to the Questions of the Arbitration Tribunal

49. The relationship between Annex 38 TCA and the assessment of whether a measure is proportionate was addressed by the European Union in its Responses to Questions. The European Union refers the Arbitration Tribunal to the following paragraphs:

49.1. "*The absence of any "real and pressing need" to act can be contrasted with the relevant context in which the measure was adopted, namely the adjustment period established by Annex 38 TCA, whose rationale is the "social and economic benefits of a further period of stability, during which fishers would be permitted until 30 June 2026 to continue to access the waters of the other Party as before the entry into force of this Agreement" (second preambular paragraph to Annex 38 TCA)*";[35]

49.2. "*Article 496 TCA and Article 494(3) TCA cannot be read in isolation from Annex 38 TCA. It is therefore, inherent to the task of the Tribunal, as it should have been inherent to the task of the UK, to consider the nature and objectives of other provisions conferring rights on the EU when deciding on a measure that, by design, impair those rights*" (emphasis added);[36]

49.3. "*The adjustment period established by Article 1 of Annex 38 TCA, as well as the terms and rationale of the annex as a whole, must be taken into account when interpreting and applying the legal framework of Article 494 TCA and Article 496 TCA in the present dispute*" (emphasis added);[37] and

[35] EU's Responses to Questions, paragraph 74.

[36] EU's Responses to Questions, paragraph 74.

[37] EU's Responses to Questions, paragraph 80.

49.4."*Any management measure that a Party adopts in its waters must be consistent with Article 496 TCA, read together with Article 494 TCA, and must take into consideration the terms and rationale of Annex 38 TCA*" (emphasis added).[38]

III.1.4. The European Union's Replies to the United Kingdom's Responses to the Questions of the Arbitration Tribunal

50. The European Union further addressed the relationship between Annex 38 TCA and the assessment of whether a measure is proportionate in its replies to the United Kingdom's Responses to Questions. The European Union refers the Arbitration Tribunal to the following paragraphs:

50.1."*The EU disagrees, however, that there is "no need to reconcile" the right of full access to waters to fish set down in Article 2(1)(a) of Annex 38 TCA with regulatory autonomy to decide on fishing management measures. Measures that derogate from the right of full access to waters to fish must be decided on and applied in a manner that is consistent with Article 496 TCA, read together with Article 494 TCA, and taking into consideration the terms and rationale of Annex 38 TCA*" (emphasis added);[39]

50.2."*Article 496 TCA cannot be read in isolation from the other provisions of the TCA. During the adjustment period, this means that Annex 38 TCA and the context of the adjustment period must be taken into consideration when interpretating and applying the legal framework of Article 494 TCA and Article 496 of the TCA. That context includes the social and economic impacts which result particularly during the adjustment period – a period which the recitals of Annex 38 TCA note to be 'a further period of stability' for fishers to continue to access the*

[38] EU's Responses to Questions, paragraph 176.

[39] EU's Replies to the UK's Responses to Questions, paragraph 16.

waters of the other Party as before the entry into force of the Agreement" (emphasis added);[40]

50.3. "[*W*]*hile the EU agrees with the UK that a Party to the TCA may decide on fisheries management measures for shared stocks such as sandeel, and that those measures must be consistent with Article 496 TCA, read together with Article 494 TCA, the EU adds that a Party must also take into consideration the terms and rationale of Annex 38 TCA that provides for full access to waters to fish each and every shared stock for which a TAC has been agreed, including sandeel*" (emphasis added).[41]

III.1.5. The European Union's Supplementary Written Submission

51. The European Union addressed the relationship between Annex 38 TCA and whether a measure is proportionate in its Supplementary Written Submission. The European Union refers the Arbitration Tribunal to the following paragraphs:

51.1. "*[T]he UK clearly overestimated the ecosystem benefits of the sandeel fishing prohibition. This clear overestimation is confirmed by the following:*

.1. (...)

.2. *the lack of any real or pressing need to act, which can be contrasted with the relevant context in which the measure was adopted, namely the adjustment period established by Annex 38 TCA. [Transcript Day 1, page 155, line 8 to page 162, line 8; Transcript Day 3, page 31, lines 1 to 24]*";[42] and

[40] EU's Replies to the UK's Responses to Questions, paragraph 166.

[41] EU's Replies to the UK's Responses to Questions, paragraph 258.

[42] EU's Supplementary Written Submission, paragraph 69.

51.2. "*The UK's position that it "does not consider that Annex 38 operates to constrain the regulatory autonomy of a party to decide upon measures under Article 496 of the TCA*" [UK's Responses to Questions, page 4] and that "*fundamentally the socioeconomic benefits that arise under the TCA are pursuant to an administrative arrangement" [Transcript Day 2, page 190, lines 19 to 21] is a clear indication that the UK did not give the rights of the EU resulting from Annex 38 TCA the appropriate – or even any – weight when determining whether the sandeel fishing prohibition was a justifiable nullification of those rights*.

In doing so, the UK undermines the specific nature of the EU's rights in Annex 38 TCA. This is further indication that the weighing and balancing exercise by the UK when deciding on and applying the sandeel fishing prohibition does not consider the nature and the full spectrum of the EU's rights under the Agreement" (emphasis added).[43]

52. On the basis of the above, the European Union respectfully suggests that the United Kingdom was well aware throughout the proceedings that the Parties had a different interpretation of Annex 38 TCA as well as of the nature and extent of the obligation to have regard to the principle of applying proportionate measures. Moreover, the United Kingdom had multiple opportunities in the course of the proceedings to raise arguments against the European Union's position and cannot legitimately claim that any "*surprise*" it felt on receipt of the Interim Report results from "*procedural unfairness*".

III.2. The United Kingdom's position

53. For completeness, the European Union draws the Arbitration Tribunal's attention to relevant aspects of the United Kingdom's submissions as regards Annex 38 TCA and the relationship with the obligation to have regard to the principle of applying proportionate measures. The European Union does so to illustrate that the United Kingdom's claim of "*surprise*" is unwarranted and that

[43] EU's Supplementary Written Submission, paragraphs 86-87.

in reality, the United Kingdom took a different view premised on a different interpretation of the legal relevance of Annex 38 TCA. This does not provide any basis for the United Kingdom to assert at the stage of a request for review of an interim report that the procedural rights of the United Kingdom have been impaired. Nor should it provide a basis for a *de facto* appeal of the Arbitration Tribunal's legal determinations.

III.2.1. The United Kingdom's Written Submission

54. The United Kingdom chose to address the issues arising from Annex 38 TCA, "*very briefly*".[44] This does not imply, however, that the United Kingdom was unaware that the European Union considered the terms of Annex 38 TCA to be of relevance in general or to its proportionality claim.[45] In footnote 659 of its Written Submission, the United Kingdom responded to certain of the European Union's arguments as follows:

"*The relevant right that (on the EU's case) is impaired by the prohibition (the right of access in Article 2(1)(a) of Annex 38 of the TCA to access UK waters to fish sandeel: EU submission, para. 733) is in any event subject to the UK's right to take fisheries management measures, as the EU accepts and as explained in connection with Claim 3 below (see paras. 424-429 below). The social and economic benefits that are recognised to flow from that access (Recital 3 to Annex 38) are not individual "rights" that the UK has agreed to respect subject only to necessary limitation (cf. EU submission, para. 544 referring to "economic rights").*"

55. The United Kingdom returned to this issue in paragraph 401 of its Written Submission in which it stated in response to the proportionality claim:

[44] UK Written Submission, paragraph 19.8.3.

[45] See for instance, UK Written Submission, footnote 616: "*Moreover, the relevant right of access to waters under Annex 38 is qualified by the coastal State's right to implement fisheries management measures*".

"*As to point (ii), the EU contends that the right of "full access" to UK waters was impaired by the sandeel fishing prohibitions, implying that this itself renders the measure disproportionate.802 For the reasons set out in relation to the EU's Claim 3 below,803 there was no impairment of the qualified right of access in Article 2(1)(a) of Annex 38. It follows that this provides no basis for the EU's contention that the measures are disproportionate. Even if there were somehow a breach of the right of access (which is not accepted), that would not automatically render the measures disproportionate. The character of the rights in question is relevant, specifically the UK's sovereign rights to manage the living resources in its own waters as compared to the qualified right of access granted under the TCA to the EU. This is very far from a situation of "perfect equality" of rights to the "exclusion of any preferential privilege of any one* (…) *State" in which the total denial of the right (which is in any event not what has occurred here given EU vessels can still access UK water to fish species other than sandeel) has before been held by the ICJ to be disproportionate*".

56. The United Kingdom disagreed, therefore, with the European Union's legal interpretation but cannot legitimately contend that it was unaware that the European Union was advancing claims *inter alia* on the basis that the nature of the rights in the adjustment period was a factor to which the United Kingdom should have had regard.

III.2.2. The United Kingdom's oral submissions

57. In its Request, the United Kingdom criticises the Arbitration Tribunal for not asking specific questions in relation to Annex 38 TCA: "*the UK was never asked by the Arbitration Tribunal to identify documents or passages within documents demonstrating its consideration of the adjustment period/Annex 38 or legal rights generally.*"

58. The European Union makes the following observations.

59. First, the Arbitration Tribunal had no obligation to question the United Kingdom in a manner to allow it to make its case as suggested. However, the

Arbitration Tribunal explicitly posed questions to the Parties concerning Annex 38 TCA and to the United Kingdom concerning the evidential record.

60. Second, the United Kingdom acknowledges that the European Union made submission in the oral hearing. The United Kingdom was allocated the same period of time as the European Union to advance rebuttal submissions and indeed addressed certain arguments in its oral submissions.

61. Third, and related to the above, the United Kingdom advanced a positive case with a much narrower interpretation of both Annex 38 TCA and of the obligation to have regard to applying proportionate measures. This was the basis on which it chose to resist the European Union's claims.

62. Unsurprisingly, the transcripts confirm that the United Kingdom had understood that the European Union attached importance to Annex 38 TCA in the context of the proportionality assessment, but as described above, the United Kingdom disagreed with nature of the obligation to have regard to applying a proportionate measure. The European Union recalls the following statements made by counsel for the United Kingdom:

    62.1. "*The EU wrongly characterises the obligation not as a "have regard to" duty, but as a duty to ensure that the measures decided upon are proportionate and non-discriminatory. That creates a substantive obligation and that is not the language of the TCA*";[46]

    62.2. "*But we do accept that this question is fundamental, and it's fundamental not just to this case but to the relationship between the parties under the TCA. It affects the question the Tribunal has to ask itself under claim 2, and therefore under Article 496, taken together with 494. Is the question, as we say, whether the EU has demonstrated that the UK failed to have regard; or is the question another one, that the EU has 16 demonstrated that the measures substantively were not*

[46] Hearing, 29 January 2025, 152:5-9.

disproportionate or non-discriminatory? We set this out in our written case, so I'll take it relatively briefly";[47]

62.3. "*[I]f the party, in taking the measure, has properly grappled with the question, and has come to the conclusion, considering the relevant factors, that the measure is proportionate, that's, as far as Article 494(3)(f) is concerned, the end of the analysis*";[48]

62.4. "*Second point, on impacts: the impairment of the right of full access under Annex 38, which was very heavily emphasised by the EU, it's there, but it doesn't add significantly here. As explained already, fundamentally the socioeconomic benefits that arise under the TCA are pursuant to an administrative arrangement, and they are subject, importantly, to fisheries management measures. They are subject to those measures. So if the UK's analysis is right on that, that point doesn't materially add, despite the EU's continuing returning to it*";[49] and

62.5. "*There was a point taken by the EU, a sort of softer articulation, that Article 2(1)(a) and Annex 38 are considerations that need to be expressly considered within the proportionality assessment and the decision-making process. I've covered what the UK says is the impact of Annex 38 and the difference between the parties on that, which is, at least as the EU now puts its case, quite fundamental, because we say that it's not a proper reading of Annex 38. But I'd add on that point that were it the case that specific regard had to be given to Annex 38 in that context, it may be said to be surprising that there's no reference to that*

[47] Hearing, 29 January 2025, 153:8-19.

[48] Hearing, 29 January 2025, 165:21-25.

[49] Hearing, 29 January 2025, 190:16-191:1.

anywhere in the TCA, given that the TCA does set out principles to which regard should be had".[50]

III.2.3. The United Kingdom's Responses to the Questions of the Arbitration Tribunal

63. Both Parties had the opportunity to respond in writing to the questions posed by the Arbitration Tribunal.

64. The United Kingdom duly filed a written response to those questions in which it reiterated its position that "*the UK does not consider that Annex 38 operates to constrain the regulatory autonomy of a party to decide upon measures under Article 496 of the TCA. There is accordingly no need to 'reconcile' the rights granted under Annex 38 – or under Article 500 – with the right to decide on management measures. Any rights granted under Article 2(1) of Annex 38 to access waters to fish are subject to measures decided upon under Article 496(1), or agreed under Articles 498(4) or 500(2), or pre-dating the TCA, such as the 2000 closure*."[51]

65. The United Kingdom further addressed this point in its response to post-hearing question 2 ("*For both Parties: What is the impact of the context of the adjustment period on the interpretation of the legal framework of Articles 494 and 496 of the TCA and their application? Does the adjustment period set out in Annex 38 require that this context be taken into account when interpreting and applying the obligations in question*?"). In its response to that question, the United Kingdom reiterated that it considered that Annex 38 TCA had no bearing on the assessment under Articles 494 and 496 TCA. The United Kingdom further responded that:

"*To the extent that there are social and economic impacts resulting from measures that restrict access, that is a factor to be weighed when having regard*

[50] Hearing, 29 January 2025, 197:1-16.

[51] UK's Responses to Question 4. See also the UK's Responses to Question 4.c.

to "applying proportionate … measures" under Article 496(1) read with Article 494(3)(f). As to standard of review, in its written submission, the EU contended that the Annex 38 adjustment period required that any restriction of the right of access under Article 2(1)(a) should be "extraordinary" and that the Tribunal should exercise a "particularly high degree of scrutiny" in respect of a measure relied on to restrict that right (summarised at UK written submission, para. 427). The UK explained why these contentions were wrong at para. 428 of its written submission. It does not repeat those points here."

66. The Arbitration Tribunal further directed questions to the United Kingdom to clarify its position on the relevant documents in the evidential record.[52]

III.2.4. The United Kingdom's Replies to the European Union's Responses to the Questions of the Arbitration Tribunal

67. The United Kingdom had the opportunity to reply to the European Union's Responses to Questions and duly did.

68. Finally, the European Union recalls that the United Kingdom elected not to provide a supplementary written submission within the 10-day deadline prescribed by the Arbitration Tribunal and as foreseen in Point 32 of Annex 48 TCA.

IV. FAILURE TO TAKE INTO CONSIDERATION THE RIGHTS AND INTERESTS OF THE EUROPEAN UNION DURING THE ADJUSTMENT PERIOD [UK REQUEST, SECTION B]

IV.1. Legal findings

69. In paragraphs 10 to 13 of the UK Request, the United Kingdom challenges certain of the Arbitration Tribunal's legal findings. In particular, the United Kingdom requests the Arbitration Tribunal to review its determination that the "*rights and interests" as regards stability to be considered in respect of the*

[52] Tribunal, pre-hearing questions 14 and 17.

adjustment period/Annex 38 are separate and distinct from the "social and economic impacts on the fishing and processing industry of a Party". The United Kingdom specifically identifies the findings at paragraph 661 of the Interim Report.[53]

70. The European Union disagrees that the determination in paragraph 661 requires review and objects to this request.

71. The Parties have a fundamentally different understanding of the legal significance of the rights of full access to waters to fish set down in Annex 38 TCA, which in these proceedings, the European Union considered to be part of a binding international agreement and which the United Kingdom characterised as an administrative arrangement. Each Party presented their submissions to the Tribunal in this respect throughout these proceedings.

72. As to the argument that the United Kingdom was only required to have regard to the "*to the relevant social and economic benefits of the status quo*", as stability is not an interest that is protected under Annex 38 TCA, the European Union refers the Arbitration Tribunal to paragraph 739 of its Written Submission in which it explained its interpretation of the Preamble to Annex 38 TCA:

"*the EU recalls that the right to decide on fisheries management measures must be reconciled with the commitments of each of the Parties to grant "full access to its waters to fish" (Article 2(1)(a) of Annex 38 TCA and section V.3.3 above). In particular, during the adjustment period established by Article 1 of Annex 38 TCA, that right should not be lightly impaired, given the rationale of the adjustment period is the "social and economic benefits of a further period of stability, during which fishers would be permitted until 30 June 2026 to*

[53] The European Union understands this to be the only specific paragraph that the United Kingdom identifies in this context. The vaguer assertion at paragraph 3 of its Request is insufficiently precise for the reasons discussed above.

continue to access the waters of the other Party as before the entry into force of this Agreement" (second preambular paragraph to Annex 38 TCA)."

73. The European Union further recalls its position that the weighing and balancing of social and economic benefits does not take place in a factual or legal vacuum and that it is undisputed that this dispute arose in the adjustment period. The European Union made submissions on the rationale of that adjustment period in its Written Submission, to which it refers.[54] The United Kingdom disagreed.[55]

74. As to the argument that "*an assessment of social and economic impacts necessarily has regard to what is being impacted, i.e. the social and economic benefits of the further period of stability*", the European Union considers this is an oversimplification. A decision to apply a fisheries management measure must be taken with regard to the competing rights and interests in the relevant legal and factual context. The nature of the English measure (in this case a total prohibition in English waters of the North Sea) as well as the timing of that measure are relevant factors when deciding on a fisheries management measure.

75. As to the alleged circularity in the Arbitration Tribunal's reasoning, the European Union reiterates that it is undisputed that the Parties may adopt fisheries management measures in the adjustment period. However, when deciding upon such measures, a party is obliged *inter alia* to have regard to the principle of applying proportionate measures. That proportionality assessment must be contextualised. The UK Government was therefore, required to have regard to the rationale of Annex 38 TCA and the importance attached by the Parties to an additional period of stability when deciding on measures which by design impair the right of full access to UK waters to fish sandeel agreed to under the terms of that Annex. For these reasons, the European Union disagrees that there is circularity in the reasoning or that a further textual reference to Annex 38 TCA would be necessary to support this interpretation of the relevant

[54] See EU Written Submission, paragraph 354 and paragraphs 358 to 365.

[55] See UK Written Submission, paragraph 401 and footnote 802.

provisions of the TCA. Once again, these are points that were put before the Arbitration Tribunal during the proceedings.

IV.2. Factual findings

76. The United Kingdom "*asks the Arbitration Tribunal to revisit its conclusions in respect of three points concerning factual issues*" (UK Request, paragraph 14):

    76.1. UK Request, paragraphs 14(a) and 15-22, and the failure of the United Kingdom Government to "*have regard to the adjustment period/Annex 38 in the decision-making process*" (UK Request, paragraph 15);

    76.2. UK Request, paragraphs 14(b) and 23-28 and "*the desirability of taking action prior to 30 June 2026*" (UK Request, paragraph 14(b)); and

    76.3. UK Request, paragraphs 14(c) and 29, and the claim that "*the adjustment period/Annex 38 was not raised by the EU in its consultation responses or other correspondence*" (UK Request, paragraph 14(c)).

77. The European Union considers that none of these factual findings should be modified by the Arbitration Tribunal as part of a review pursuant to Article 745 TCA.

78. Regarding point 73.1 above and the failure of the United Kingdom Government to "*have regard to the adjustment period/Annex 38 in the decision-making process*", the European Union makes three comments.

79. First, for the reasons set out in paragraphs 36-42 above, the United Kingdom has not suffered any "*procedural unfairness*" (UK Request, paragraph 18). Similarly, UK Request, paragraph 20, is unclear when it refers to United Kingdom "*not having been put specifically to proof on the matter*". However, to the extent that this can be understood as a repetition of the United Kingdom's claim that it has suffered "*procedural unfairness*", this criticism is unwarranted and unsubstantiated. The United Kingdom had every opportunity to present its interpretation of the TCA.

80. Second, the Joint Fisheries Statement (Exhibit R-5) referred to in UK Request, paragraph 20, does not show either "*a clear recognition of the nature and effect of the adjustment period/Annex 38 in respect of the English measure in this case*" (UK Request, paragraph 21, emphasis added) or that "*there is information on the record making it clear that the decision-maker* [i.e. the United Kingdom Government] *gave consideration to the adjustment period*" in respect of the English measure. Rather, the Joint Fisheries Statement contains only a single general reference to the adjustment period established by Article 2(1)(a) of Annex 38 TCA. This is unsurprising given the general nature of that statement. Moreover, the Joint Fisheries Statement contains only a single reference to sandeel at paragraph 5.3.5[56] and that reference is unrelated to the adjustment period established by Article 2(1)(a) of Annex 38 TCA:

81. Third, UK Request, paragraph 22, the United Kingdom argues for the first time during these proceedings that:

    81.1. "*it is self-evident that the Minister responsible for fisheries in England (and his officials) was aware of Annex 38*";

    81.2. "*it is an obvious and significant component of the framework for shared fisheries governance that does not need specific reference*"; and

    81.3. "*[t]hose basic matters can and should therefore safely be taken to have played a role in the weighing exercise carried out in respect of the English measure*".

    82. Those new arguments contradict the United Kingdom's previous position that Annex 38 TCA had <u>no</u> role to play in the weighing exercise

[56] "Some key stocks of concern such as deep-sea stocks, tuna species covered by ICCAT, and species such as sandeel and Norway pout that are targeted by industrial fisheries are already managed through existing conservation management measures and are not covered by [Fisheries Management Plans]. The fisheries policy authorities will continue to regularly review the efficacy of these existing measures, including whether preparing a [Fisheries Management Plan] would add further value to managing fishing activity for such stocks".

that the UK Government was required to carry out in respect of the English measure.[57]

83. Regarding point 73.2 above, the European Union makes six comments.

84. First, the United Kingdom already referred in its oral submissions[58] and its Responses to Questions[59] to paragraph 17 of the Ministerial Submission of 14 September 2023 (Exhibit R-77) and:

    84.1. the European Union addressed those references in its Replies to Questions[60] and in its Responses to the UK's Replies to Questions;[61] and

    84.2. the Arbitration Tribunal explicitly addressed the Ministerial Submission of 14 September 2023 in Interim Report, paragraph 687.

85. Moreover, and in any event, the last sentence of paragraph 17 of the Ministerial Submission of 14 September 2023 does not give "*a clear indication of why action was being pursued in the adjustment period*" (UK Request, paragraph 24). Rather, as its wording confirms, the last sentence of paragraph 17 merely states in general terms that the English measure "*will give industry notice of the measure as far ahead of the 2024 season as possible and mean that benefits to the ecosystem can begin to accrue from the next sandeel fishing season*."

86. Second, the United Kingdom already referred in its oral submissions[62] and its Responses to Questions[63] to the foreword to the Call for Evidence on future management of Sandeels and Norway pout (Exhibit C-43) and:

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[57] Hearing, 29 January 2025, 196:25-197:15.

[58] Hearing, 30 January 2025, 98:22-99:4.

[59] UK's Responses to Questions, page 12.

[60] EU's Responses to Questions, paragraph 73(b).

[61] EU's Replies to the UK's Responses to Questions, paragraphs 147-148.

[62] Hearing, 29 January 2025, 151:17-20.

[63] UK's Responses to Questions, page 12.

86.1. the European Union addressed those references in its oral submissions,[64] in its Replies to Questions[65] and in its Responses to the UK's Replies to Questions;[66] and

86.2. the Arbitration Tribunal found in Interim Report, paragraph 687, that "*the record does not show any analysis as to why the matter was so urgent that it required action during the adjustment period*".

87. Moreover, and in any event, the foreword to the Call for Evidence merely states in general terms that "*urgent action is required to protect stocks and the wider ecosystem*", without any reference to the adjustment period or to a possible prohibition of sandeel fishing in English waters of the North Sea.

88. Third, the Arbitration Tribunal's advance question 17 had explicitly invited the Parties to "*comment on whether there was any urgency involved in implementing the challenged measure and, if so, how such urgency interacts with the amount of time remaining in the adjustment period*" (emphasis added). However, in its oral and written responses to that question:

88.1. the United Kingdom identified only paragraph 17 of the Ministerial Submission of 14 September 2023 (Exhibit R-77) and the foreword to the Call for Evidence on future management of Sandeels and Norway pout (Exhibit C-43) as demonstrating that "*there was* (…) *urgency involved in implementing the challenged measure*"; and

88.2. as the European Union noted in its Replies to the UK's Responses to Questions, "*the UK has failed to reply to the Tribunal's question regarding how (the lack of) urgency interacts with the amount of time remaining in the adjustment period.*"[67]

[64] Hearing, 30 January 2025, 31:7-24.

[65] EU's Responses to Questions, paragraph 73(a).

[66] EU's Replies to the UK's Responses to Questions, paragraphs 145-146.

[67] EU's Replies to the UK's Responses to Questions, paragraph 149.

89. Fourth, none of the extracts from the literature review in the English Scientific Report (Exhibit C-45) identified by the United Kingdom for the first time in its Request provides "*justification for the need to take immediate action*" (UK Request, paragraph 26, emphasis added) concerning English waters of the North Sea. Rather, those extracts merely refer in a general manner to "*increasing fishing pressure*", "*adverse environmental conditions*" and "*direct risk from pressures such as climate change* (…) *and diseases such as avian flu*".

90. Fifth, none of the other "*decision-making documents*" on the record and identified by the United Kingdom for the first time in its Request recognise "*the urgency arising from the impact of highly pathogenic avian influenza (avian flu) on seabirds*" (UK Request, paragraph 27) concerning English waters of the North Sea:

    90.1. the extract from paragraph 22 of the 15 February 2023 Ministerial Submission (Exhibit R-74) quoted in UK Request, paragraph 27(a), merely states that "*kittiwakes are already under incredible pressure (red listed species) and are known to be impacted by avian flu*". Moreover, that same paragraph qualifies that extract when it states that "*[w]hilst e-NGOs may prefer that management measures should be introduced this year and say that the routine timeframe will not address the risks to birds, we can explain that by delivering with the routine timeframe takes into account the need for stakeholders to have a reasonable time to respond to the consultation and may help to reduce the risk of any decision in favour of closure being successfully challenged*";

    90.2. the extract from the United Kingdom Government response of 31 January 2024 (Exhibit R-87) quoted in UK Request, paragraph 27(b), merely refers in a general manner to "*the ongoing avian flu outbreak*"

and to the fact that "*management of the sandeel fishery could be an important step in increasing seabird resilience*";[68] and

90.3. the letters from the United Kingdom Government Ministers of 30 January 2024 (Exhibits C-58 and R-83) referred to in UK Request, paragraph 27(c), both merely state that "*[a]midst the ongoing avian flu outbreak* (…) *increasing the availability of sandeels as a food source is an important step towards increasing seabird resilience more widely*".

91. Sixth, the fact that the United Kingdom "*took action to prohibit sandeel fishing for its own vessels as early as 2021*" (UK Request, paragraph 28) and sought in 2021 (but not in 2022 or 2023[69]) "*to agree with the EU a zero catch on sandeels as part of annual consultations*" (ibid) does not demonstrate the "*urgency of protecting sandeel*" (ibid) in English waters of the North Sea.

92. Regarding point 73.3 above, the European Union makes two comments.

93. First, the United Kingdom argues for the first time that the extent to which the United Kingdom Government was required to have "*regard to the rights and interests of the European Union during the adjustment period*" (Interim Report, paragraph 662) depended on "*what the EU had raised*" (UK Request, paragraph 14(c)).

94. Second, and in any event, the extent to which the United Kingdom Government was required to have "*regard to the rights and interests of the European Union during the adjustment period*" (Interim Report, paragraph 662) was in no way dependent on "*what the EU had raised*" (UK Request, paragraph 14(c)).

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[68] Those general references can be contrasted with the wording of the decision-making documents relating to the Scottish measure. See, for example, Ministerial Submission of 6 February 2023, paragraph 4: "*This advice, which was shared with us on 15 December 2022, concluded that HPAI had resulted in substantial mortality in some seabird species during 2022 (on the basis of the available evidence) and that closure of the sandeel fishery had the potential to bring benefits to seabirds more generally, as well as some of those species impacted by HPAI*".

[69] See UK's Written Submission, paragraph 131: "*Consistent with its concerns regarding the impact of sandeel fisheries on the marine ecosystem, in March 2021 the UK advocated for a zero TAC for sandeel in the first bilateral negotiations with the EU under the TCA*" (emphasis added).

Irrespective of whether a Party has "*raised*" the issue of Annex 38 TCA with the other Party, "*measures that derogate from the right of full access to waters to fish during the adjustment period must be decided on and applied in a manner that is consistent with the disciplines set out in the TCA*" (Interim Report, paragraph 467). The UK's belated new legal argument is simply a further attempt to "*read Annex 38 out of the TCA*" (Interim Report, paragraph 462) and downgrade its "*binding*" nature on the Parties (Interim Report, paragraph 465) to something akin to an "*administrative arrangement*" (ibid).

V. OTHER ASPECTS OF THE ARBITRATION TRIBUNAL'S REASONING ON THE ENGLISH MEASURE AS REGARDS CLAIM 2 [UK REQUEST, SECTION C]

95. At paragraph 30 of its Request, the United Kingdom asks the Arbitration Tribunal to modify paragraph 640 of the Interim Report on the grounds of an alleged inconsistency. The European Union objects to this request.

96. First, the European Union considers that there is no ambiguity in that paragraph as the United Kingdom suggests.

97. Second, there was a clear difference in position between the Parties as to the standard of review and paragraph 640 of the Interim Report articulates a determination by the Arbitration Tribunal on that point. The language in paragraphs 616 and 626 of the Interim Report addresses a different point, namely the obligation incumbent on the UK Government as decision-maker. There is, therefore, no inconsistency.

98. Given that the question of the appropriate standard of review by the Arbitration Tribunal was in issue, the European Union considers that the clarification provided by the Arbitration Tribunal in paragraph 640 of the Interim Report is both appropriate and necessary and requests that this language is maintained. The only reason advanced by the United Kingdom to support its request is that

the Arbitration Tribunal has reached a determination "*which – in the UK's submission – is the wrong standard.*"[70] The European Union disagrees.

99. At paragraph 33 of its Request, the United Kingdom requests the Arbitration Tribunal to review paragraph 687 of the Interim Report. The European Union objects to this request.

100. The weighing and balancing of competing interests implies first identifying the relevant interests and second conducting a holistic assessment of those interests. It was clear from the United Kingdom's submissions that they considered the fact that the Parties had agreed an adjustment period is immaterial. The European Union disagreed.

101. The Arbitration Tribunal has identified that this is not a situation of characterising certain interests as having "*primacy*". The European Union does not share the United Kingdom's interpretation of the implications of this statement. The European Union also disagrees with the United Kingdom that the conclusions in that paragraph diverge from the position of "*both*" Parties. The European Union argued precisely that the rationale of the adjustment period should be taken into account. The United Kingdom argued that the decision-maker need only "*grapple*" with different interests.

102. Hence, the Parties had a different interpretation of what "*weighing and balancing*" might be required, the weight to be given to the interests likely to be adversely affected and the degree of deference that should be accorded to the decision maker in light of the principle of regulatory autonomy.[71]

[70] UK Request, paragraph 32.

[71] See also UK Written Submission, paragraphs 347 and 353. Notably the United Kingdom argued that "*the character of any rights or interests likely to be adversely affected is an important consideration. The relative weight to be given to the adverse impacts of a measure will vary depending on whether what is being weighed are simply interests that might be affected as compared to unqualified rights existing within a relationship of equality between the Parties*."

103. At paragraphs 36-37 of its Request, the United Kingdom asks the Arbitration Tribunal to modify paragraph 654 of the Interim Report. The European Union objects to this Request.

104. First, paragraph 90.2 already explains why the extract from the United Kingdom Government response of 31 January 2024 (Exhibit R-87) quoted in UK Request, paragraph 38, is not "a *matter going to the importance of introducing the measure now*" (UK Request, paragraph 39).

105. Second, the extract from the letter of the UK Minister to the Danish Minister of 27 February 2024 (Exhibit R-85) quoted in UK Request, paragraph 40, is not "*clear evidence of a weighing up of considerations in light of the factors set out in that letter and the consultation response document*" (UK Request, paragraph 41). The letter merely states in a general manner that the English measure "*is neither discriminatory nor disproportionate having regard to the important aim the ban seeks to achieve*", without disclosing "*any weighing and balancing* (…) *of the considerations that the decision-maker took into account in deciding on the closure*" (Interim Report, paragraph 654).

106. Third, the European Union agrees that "*the evidence on the record needs to be taken as a whole to understand the weighing and balancing that was undertaken by the UK Government in respect of the English measure*" (UK Request, paragraph 42). Such a holistic assessment is precisely what the Arbitration Tribunal undertakes at Interim Report, paragraphs 652-654, and the UK Request has not provided any grounds to modify that assessment.

107. At paragraph 43 of its Request, the United Kingdom asks the Arbitration Tribunal to modify paragraph 682 of the Interim Report. The European Union objects to that request.

108. First, pages 6-7 of the summary review prepared for the UK Government (Exhibit R-76) merely refer back to the English consultation document (Exhibit R-61) and to the English Scientific Report (Exhibit C-45). Both documents do not therefore concern the temporal period "*[a]fter the English consultation and during the decision-making process*" (Interim Report, paragraph 682) during

which "*the United Kingdom did not give consideration to whether any partial closure might have achieved its objectives*" (ibid).

109. Second, paragraph 24 of the Ministerial Submission of 14 September 2023 (Exhibit R-77) does not consider "*whether a partial closure might have achieved the English measure's objectives after the consultation and during the decision-making process*" (UK Request, paragraph 46). Rather, that paragraph merely explains why "*a full closure would be the best available option in order to support delivery on our aims*", without considering "*whether any partial closure might have achieved its objectives*" (Interim Report, paragraph 682).

110. At paragraph 47 of its Request, the United Kingdom asks the Arbitration Tribunal to modify Interim Report, paragraph 686 (third sentence), and the statement that "*the adverse impact on the economic interests of the EU fishing industry were in effect discounted on the basis of the argument that EU vessels could either fish for other species or fish for sandeel in EU waters*". The European Union objects to that request.

111. The next sentence of Interim Report, paragraph 686, states that "*[t]here is some, but limited, evidence on the record that EU vessels could indeed fish for other species or in other areas such that this was a relevant factor to be weighed in applying the principle of proportionality*." This clarifies any possible "*misunderstanding*" (UK Request, paragraph 47) of Interim Report, paragraph 686, third sentence.

VI. THE UNITED KINGDOM'S "CLARIFICATIONS (…) REGARDING THE TRIBUNAL'S REASONING IN RESPECT OF THE BEST AVAILABLE SCIENTIFIC ADVICE CLAIM" [UK REQUEST, SECTION D]

112. The European Union comments below on the "*clarifications* (…) *regarding the Tribunal's reasoning in respect of the best available scientific advice claim*" in UK Request, section D.

113. First, the United Kingdom asks the Arbitration Tribunal to modify Interim Report, paragraph 491 (final sentence) and the finding that "*available advice*" extends to advice that "*could reasonably have been obtained when a decision is to be taken and which would be likely to improve the quality or value of the advice that exists*." The European Union objects to that request.

114. The UK Request, paragraph 48, argues that, "*read in isolation, para. 491 may be taken to suggest that further advice must be obtained (potentially at great expense and delay) even where it would only make a negligible contribution to the improvement of the quality or value of the advice*". However, the Interim Report must be read as a whole and the UK Request identifies other paragraphs of the Interim Report which, according to the United Kingdom, clarify any possible ambiguity in paragraph 491 (final sentence).

115. Second, the United Kingdom asks the Arbitration Tribunal to modify Interim Report, paragraphs 531 (second sentence[72]), 533 (final sentence[73]), 565 (second sentence[74]), 587 (second sentence[75]), 588 (last sentence[76]), 668 (first sentence[77]) and 685 (fourth sentence[78]) to align those paragraphs with the

[72] "*Based on the figures provided by the European Union, the omission of Norwegian catches from the external reference point in the Natural England/Cefas/JNCC model, used to simulate the effect of the closure of UK waters, is likely to overestimate the predicted impact on the biomass of various species*".

[73] "*Only that the simulated results in the Natural England/Cefas/JNCC Advice appear to overestimate the biomass response to a closure of UK waters to sandeel fishing*".

[74] "*The Arbitration Tribunal has found that the 7% increase in seabird biomass is likely to be an overestimation*." UK Request, paragraph 50, also requests a modification of Interim Report, paragraph 566 (second sentence) and the words "*likely to be an overestimation*". However, the European Union assumes that this is a clerical error since Interim Report, paragraph 566 (second sentence), does not contain the words "*likely to be an overestimation*".

[75] "*The Arbitration Tribunal acknowledges that the data on fishing mortality that formed the basis of the simulations of the effect of a closure of UK waters has proved difficult to verify and is likely to have overestimated the biomass response to a closure of UK waters to sandeel fishing*".

[76] "*The simulated outcomes appear to be reasonably consistent with the trends indicated in the scientific literature, although with high levels of uncertainty and likely some overestimation of biomass responses*".

[77] "*The Arbitration Tribunal has already found that the calculation of sandeel fishing mortality in the EwE model simulations, and therefore the potential impact of a closure of UK waters to sandeel fishing, is likely to be an overestimation of the likely benefits from a full closure*".

[78] "*As the Arbitration Tribunal has already concluded (see Section V.C.3(b) above), the predicted benefits from the model of a full closure were overestimated*".

wording of Interim Report, paragraph 533, second to last sentence (UK Request, paragraphs 49-50). The European Union objects to that request:

115.1. Interim Report, paragraph 531, second sentence, does not find that "*the "figures provided by the European Union" (para. 531) mean that the UK's reference point is "likely to overestimate the predicted impact on the biomass of various species" (para. 531)*" (UK Request, paragraph 49). Rather, as its wording confirms, that sentence makes a different finding, namely that "*[b]ased on the figures provided by the European Union* (…) *the omission of Norwegian catches* (…) *is likely to overestimate the predicted impact on the biomass of various species*" (emphasis added). In other words, that sentence does not reach "*a definite conclusion regarding the effect of the EU's competing reference point*" (UK Request, paragraph 49). The same is true regarding Interim Report, paragraphs 587 (second sentence) and 668 (first sentence); and

115.2. Interim Report, paragraphs 565 (second sentence), 588 (last sentence) and 685 (fourth sentence) do not concern "*the figures provided by the European Union*" and "*the reference point for the calculation of biomass increases*". Rather, as their wording confirms: (i) paragraph 565 (second sentence) concerns more generally "*the 7% increase in seabird biomass*" (the accuracy of which the European Union contested on the basis not only of the reference point chosen by the United Kingdom); (ii) paragraph 588 (last sentence) generally concerns the "*overestimation of biomass responses*" in the "*simulated outcomes*"; and (iii) paragraph 685 (fourth sentence) cross-refers to "*Section V.C.3(b) above*", which, as the heading of that section confirms, concerns all the "*Alleged Flaws in the EwE Model as Updated by Natural England/Cefas/JNCC*" and not only "*the figures provided by the European Union*" and "*the reference point for the calculation of biomass increases*".

116. Third, the United Kingdom asks the Arbitration Tribunal to modify Interim Report, paragraphs 547 (final sentence[79]) and 557 (second sentence[80]) (UK Request, paragraphs 51-53). The European Union objects to that request:

116.1. Interim Report, paragraph 547 (second to last sentence) notes the "*failure*" of the Natural England/Cefas/JNCC Advice "*to present information on both categories of seabirds separately*". Moreover, Interim Report, paragraph 547 (second sentence) records that presenting information on the disaggregation of seabirds into the two categories already existing in the 2015 EwE Key Run model "*would have produced more precise information on the impacts of a sandeel fishing prohibition in UK waters on the biomass of diving or surface feeding seabirds, which may have been of assistance to the decision-maker*". It therefore follows that Interim Report, paragraph 547, does identify an "*error*" due to the "*failure*" to present "*information on both categories of seabirds separately*", albeit not an "*error*" of sufficient "*materiality*"; and

116.2. Interim Report, paragraph 557 (second sentence) is essentially a repetition of Interim Report, paragraph 547 (second sentence) and the United Kingdom has not requested the Arbitration Tribunal to review the wording of Interim Report, paragraph 547 (second sentence).

VII. THE UNITED KINGDOM'S "*FURTHER SUGGESTED CORRECTIONS*" [UK REQUEST, SECTION E]

117. In the third column of the table below, the European Union comments on the "*further suggested corrections*" of the Interim Report in the UK Request, Section E.

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[79] "*The Arbitration Tribunal therefore concludes that this was not an error of such materiality that the Natural England/Cefas/JNCC Advice is not "best available scientific advice.'*"

[80] "*In addition, the representation of the results of the simulations could have better shown the impact on the different functional groups of seabirds that were already included within the EwE model of the North Sea*."

Para.	Point	Notes	European Union's comments
Page v	List of Defined Terms. Revise entry for "DAERA" as follows: "Northern Ireland Department of Agriculture, Environment, and Rural Affairs".	This is to clarify to which devolved government the department appertains.	The European Union does not object to the suggested correction.
8	Lines 1-2. Amend "Partnership Council of the European Union" to "Partnership Council of the European Union and the United Kingdom".	To reflect the joint nature of the body. See for reference TCA Article 7.	The European Union does not object to the suggested correction.
17	Lines 1-2. Revise the sentence as follows: "On 9 December 2024, the Parties notified the Arbitration Tribunal that they did not propose to submit any ~~submitted their respective~~ comments on the *Amicus Curiae* Submissions."	This avoids the potential misunderstanding that the Parties had made substantive comments on the *Amicus Curiae* submissions.	The European Union does not object to the suggested correction.
43	Line 2. Delete "before they".	Sandeels return to the seabed at night daily over this period: see UK's Written Submission para. 89.3.	The European Union does not object to the suggested correction.
51	Line 1. Delete "According to the European Union".	The process of annual consultations is common ground (and is set out in the TCA).	The European Union does not object to the suggested correction.
56	Lines 6-7. Replace "size" with "biomass" on two occasions.		The European Union does not object to the suggested correction.
56	Lines 1-4: Revise the sentence as follows: "Since 2011, sandeel fisheries in the Greater	Minor technical correction as the Fcap values are not set each	The European Union does not object to the suggested correction.

Para.	Point	Notes	European Union's comments
	North Sea have been managed according to an escapement strategy, ~~pursuant to which maximum fishing levels (termed Fcap)~~ where quotas are set such that a minimum stock size should remain every year (biomass left after fishing, Bescapement) so as not to affect negatively the recruitment of new sandeel the following year and that fishing rates should not exceed a maximum value (termed Fcap)."	year.	However, the European Union suggests using language from the TCA, and would hence replace the term "*quotas are*' by '*a total allowable catch is*".
70	Lines 3-4. Revise as follows: "Northern Ireland Department of Agriculture, Environment, and Rural Affairs (hereinafter "**DAERA**")".	This is to clarify to which devolved government the department appertains.	The European Union does not object to the suggested correction.
82	Lines 4-6. Replace "notes" with "calculates".	This reflects the EU's submissions in its Responses to Questions (para. 8) and Replies to the UK's Responses to Questions (para. 11).	The European Union does not object to the suggested correction.
154	Line 3. Delete "those of"		The European Union objects to the suggested correction because the language in the Interim Report correctly reflects Article 4(3) TCA: "*For greater certainty, an interpretation of this Agreement or any supplementing agreement given by the courts of either Party shall not be binding on the courts of the other Party*"

Para.	Point	Notes	European Union's comments
			(emphasis added).
180	Line 6. Revise text as follows: "as a defence to ~~for~~ a breach …".		The European Union does not object to the suggested correction.
224	Line 7. Replace "the measure must not necessarily conform" with "the measure need not necessarily conform".	This reflects the UK's submissions. See e.g. UK's Written Submission para. 324.3 ("the Parties are not required to adopt measures that conform to those principles").	The European Union considers that, to the extent that the Arbitration Tribunal considers that the language of the Interim Report should be corrected, the language used should mirror that of the Written Submissions.
244 to 246	Para. 244, line 1. Substitute "two key changes" for "one key change". Para. 245, line 1. Delete the word "First," and start the sentence with "The ICES …". Para. 246, line 1. Delete the word "Second" and start the sentence with "Since the …".	As the Arbitration Tribunal noted at para. 514, the calculation of the reference point (described in para. 246) is not a change to the EwE model; it is used to assist in narrowing down which of the outputs of the model were relevant to the question under consideration. Consequently, the UK suggests that paras. 244 to 246 be corrected so that the Arbitration Tribunal is not taken to be suggesting that what is described at para. 246 involves any 'change' to the model. The UK suggests this can be done by referring to one 'change' or 'update' in para. 244 and retaining the content in para. 246 but without introducing it as a 'change'.	The European Union does not object to the suggested correction.
246	Lines 7-8. Replace "EEZ" with "waters" on two	To reflect the fact that the calculations included the UK's territorial sea as	The European Union does not object to the suggested

Para.	Point	Notes	European Union's comments
	occasions.	well as its EEZ.	correction.
363	Consider adding to footnote 872 additional reference to the UK's submissions at Hearing, 29 January 2025, 189.8-195.8 (Westaway).	This ensures that the UK's oral submissions on the proportionality of the measures is captured.	The European Union does not object to the suggested correction.
461	Lines 4-7. Revise the sentence as follows: "The United Kingdom appears to be arguing that because Article 500(2) provides that any technical and conservation measures agreed by the Parties are without prejudice to Article 496, this indicates that ~~enables~~ a Party may ~~to~~ decide to adopt fisheries management measures under Article 496 and that any such measures should not be regarded as ~~are~~ a derogation from Annex 38." Consider extending reference in footnote 1037 to Hearing, 29 January 2025, 148.10-150.19.	The text here does not reflect the UK's submission, which was that measures taken under Article 496 are not a derogation from Annex 38.	The European Union does not object to the suggested correction.
462	Lines 7-8. Revise the sentence as follows: "Third, the interpretation offered by the United Kingdom would mean that ~~read~~ Annex 38 does not have any additional significance when the Parties are determining measures under Article 496 ~~out~~ of the TCA."	The final sentence here does not accurately reflect the UK's submission. It was no part of the UK's submission that Annex 38 does not apply or should be "read out" of the TCA, but that it does not impose any additional requirement on the determination of measures by Parties	The European Union objects to the suggested correction because the Interim Report, paragraph 462, correctly reflects the United Kingdom's submissions on Annex 38 TCA. The characterisation given to Annex 38 TCA at the Hearing, 29 January 2025, 190.11-25 provides a clear example of the United Kingdom's

Para.	Point	Notes	European Union's comments
		under Article 496.	submissions.
483	Lines 2-3. Delete the second sentence entirely or alternatively replace it with the following: "The United Kingdom rejects as a blanket proposition that the best available scientific advice excludes any advice not based on the most recent scientific data, noting that experts might consider it desirable to use data other than the most recent if it is of higher quality or involved a larger sample size. It contends that the desirability of particular data will be fact-and circumstance-dependent".	The second sentence does not reflect the UK's submission (referred to in the footnote), which was more nuanced than this para. suggests. In respect of data, the UK did not reject the proposition that scientific advice should be supported by the most recent available data. To the contrary, and as accurately captured in para. 229 of the Interim Report, the UK accepted that if two datasets were otherwise equal, with one being more recent, then the recent data would be the "best" for the purposes of "best available scientific advice" in this context, "unless there were a reasoned justification for preferring the older data", but that such a scenario did not arise on the facts of the present case.	The European Union does not object to the suggested correction.
483	Lines 3-4. Revise the sentence as follows: "The United Kingdom ~~rejects the notion~~ contends that the Tribunal should follow the approach of the International Court of Justice in the *Whaling Case* in which the Court found it unnecessary to devise specific criteria of "scientific advice" ~~should have any particular characteristics~~".	The third sentence does not accurately reflect the UK's submission (either as referred to in the footnote or as developed at the hearing), which was not that scientific advice is inherently lacking any particular characteristics, but rather that it would be appropriate for the Tribunal in this case to follow the approach of	The European Union objects to the suggested correction. The United Kingdom's Written Submission, paragraph 211.1, concludes in the final sentence that "[t]hat approach is also appropriate in the present fisheries context". This final sentence follows a description of the ICJ's approach in the *Whaling* case. The fact that the ICJ did not consider it necessary "to devise alternative criteria" (United

Para.	Point	Notes	European Union's comments
		the International Court of Justice in the *Whaling Case* in which the Court found it unnecessary to devise specific criteria of scientific advice. The UK notes that it expressly accepted that scientific advice must be "systematic or methodical in order to qualify as science" (Hearing, 29 January 2025, 65:14-16 (Juratowitch); UK's Written Submission para. 211).	Kingdom's Written Submission, paragraph 211.1) is one aspect of the ICJ's approach. Another aspect of that approach, as summarised in the United Kingdom's Written Submission, paragraph 211.1, is that the ICJ rejected that "the research had to meet specific characteristics". The Interim Report, paragraph 483 lines 3-4, thus correctly summarise the United Kingdom's position. The fact that the United Kingdom accepted at the hearing that scientific advice must be "systematic or methodical in order to qualify as science" is fully reflected in Interim Report, paragraph 484.
558	Line 14. Insert "so" after "particularly".		The European Union does not object to the suggested correction.
596	Lines 3-4. Delete ""to heed",[1306]" and the associated footnote.	The UK did not agree that the word "heed" was of material assistance – see UK's Written Submission para. 321.	The European Union does not object to the suggested correction.
599	Lines 7-9. Revise the sentence as follows: "The United Kingdom accepts that as a procedural tool, it must make a difference, but not to the extent of <u>necessarily as a matter of law</u> making a difference to the outcome of the decision-making."	This reflects the submission made at Hearing, 30 January 2025: 84.6 (Juratowitch).	The European Union does not object to the suggested correction.
602	Line 3. Move quotation marks from "aspirational	This reflects the EU's submission at para. 82 of	The European Union does not object to the suggested

Para.	Point	Notes	European Union's comments
	goals" to just "goals".	its Reply to the UK's Responses to Questions. The UK used the word "goals", but the characterisation of those as purely "aspirational" is the EU's. NB the same text is correctly quoted at para. 609 of the Interim Report.	correction.
616	Line 13. Remove quotation marks from "aspirational goal".	The UK's submission was not made in those terms. See above as regards para. 602.	The European Union does not object to the suggested correction.
622	Lines 6-7. Add "To the extent that the Arbitration Tribunal assesses the proportionality of a measure itself," before "The United Kingdom accepts".		The European Union objects to the suggested correction because the United Kingdom has not provided any justification for it.
654	Line 4. Replace "attached" with "provided a footnote reference to".		The European Union does not object to the suggested correction.
674	Lines 8-9. Replace "Marine Maritime Organisation" with "Marine Management Organisation"		The European Union does not object to the suggested correction.
741	Lines 2-4. Consider amending the sentence that "The Arbitration Tribunal does not agree that regulatory autonomy gives a Party unfettered freedom to adopt a fisheries management measure that does not meet the requirements of Article 496, read together	The Arbitration Tribunal's disagreeing with this proposition may inadvertently give the impression that one or other of the Parties put it forward, which they did not. The UK's position was expressly that its discretion is not unfettered and that there	The European Union objects to the suggested correction because the Interim Report, paragraph 741 (lines 2-4) is correctly worded within the relevant section of the Interim Report on "*The Arbitration Tribunal's interpretation*".

Para.	Point	Notes	European Union's comments
	with Article 494 of the TCA." The UK suggests as a possible alternative: "It is common ground that regulatory autonomy does not give a Party unfettered freedom to adopt a fisheries management measure and that the requirements of Article 496, read together with Article 494 of the TCA, must be met." If this suggestion finds favour with the Arbitration Tribunal, the first word of the following sentence ("Rather") may be deleted.	is a duty to comply with Article 496 read together with Article 494, see e.g. UK's Written Submission para. 330, Hearing, 29 January 2025: 152.12-18 (Westaway) and 30 January 2025: 79.13-18 (Westaway).	

All of which is respectfully submitted on behalf of the European Union by:

Anthony DAWES

Daniela GAUCI

Bernhard HOFSTÖTTER

Josephine NORRIS

Laura PUCCIO

Legal Service,

European Commission