



The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from December 2008 to April 2009.

AGRICULTURE, FISHERIES AND ENVIRONMENT (SUB-COMMITTEE D)

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ACCESS TO MODERN ICT IN RURAL AREAS (7201/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 22 April 2009.

We share your reservations about the proposal to channel funding from the European Economic Recovery package through the EAFRD and earmark it for rural broadband, due to the inflexibility of rules for spending EAFRD funds, and the fact that this might not otherwise have been a spending priority.

We note, however, that the relevant proposal (5883/09) has already been agreed in Council, and that this Communication was discussed in Council on 23 March – with a scrutiny override taking place in the latter case. We will now lift scrutiny on the Communication, but would ask that you keep us informed of how the UK's Rural Development Programmes are to be adapted to accommodate this new funding stream.

23 April 2009

AFRICAN HORSE SICKNESS (16456/08)

Letter from the Rt Hon Jane Kennedy MP, Minister of State for Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

On Monday 6 March 2009 I submitted an Explanatory Memorandum informing Parliament of a proposal to undertake a codification of Directive (EEC) No 92/35 of the Council of 29 April 1992 laying down control rules and measures to combat African horse sickness.

We have been notified that the Council and the Commission have decided to suspend the proposal on legal grounds. There is no indication as to when the proposal will be reactivated.

28 March 2009

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your Explanatory Memorandum (EM) and letter (28 March) on the above proposal were considered by Sub-Committee D at its meeting of 22 April 2009.

We note that the proposal has been suspended, and that you do not yet have an indication of when it might be reactivated. Unless you can inform us that the proposal will be withdrawn altogether, we will hold it under scrutiny, and would ask you to alert us to any prospect of it being reactivated.

23 April 2009

AGRICULTURE AND FISHERIES COUNCIL DECEMBER 2008

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

In light of the Parliamentary recess, I am writing to you in place of the usual written statement to summarise what took place at the meeting of the Agriculture and Fisheries Council in Brussels on 18 and 19 December, at which I represented the United Kingdom. Richard Lochhead and Michelle Gildernew also attended.

There were only three substantive items on the agenda, plus four AOB points. The Council had one substantive fisheries point; to agree the fishing opportunities for 2009 for certain fish stocks, notably in the North Sea, Irish Sea, Channel, Atlantic and Biscay. Many stocks (e.g. cod, for which the revision was agreed at the November Council) are now governed by multi-annual plans which set a framework for their management. In addition, many stocks of interest to the UK were agreed the week before as part of the EU-Norway fisheries agreement, providing for a 30% increase in North Sea cod TAC, with restrictions on fishing effort to reduce fishing mortality.

The main challenge for the UK was to achieve the right balance of sustainability of fish stocks and sustainability of the UK's fishing industry. Our main priorities were:

- To secure a continuation of the catch limit for nephrops, particularly in the Irish Sea;
- To secure flexibility on proposed restrictions on the kind of fishing gear that could be used in nephrops fisheries to the west of Scotland;
- To secure appropriate increases in the TAC for monkfish and megrim.

At the opening discussion, the Presidency tabled an initial compromise, in agreement with the Commission. In a table round, Member States set out their order to agree to it. Political level trilaterals were held lasting until late evening, at which the UK pressed the case for our requests, emphasising the scientific basis for these and the economic fragility of the fishing communities affected.

The next morning, at the request of the Presidency and the Commission, a further series of senior official-level technical meetings took place, at which certain concessions were offered to Member States (including the UK). However we made it clear these moves were not sufficient. After a further meeting with the Commissioner, the final deal secured for the UK was:

- Only a 2% reduction on TACs for Irish Sea nephrops; 5% reductions for the west of Scotland and the North Sea (compared to the 15% reduction proposed);
- Appropriate flexibility on selective fishing gear that will allow the continued fishing to the west of Scotland through minimising the by-catch of cod, haddock and whiting;
- An increase of 8% for west of Scotland monkfish and megrim (with a rollover for the North Sea);
- 32% increase in mackerel;
- 13% increase in plaice.

The formal Council session resumed at lunchtime with a final compromise package on the table, including concessions for the other main fishing Member States. The Regulation was adopted unanimously. The UK had one of the shorter wish lists amongst the delegations, but we were able to emphasise a scientific base to fisheries management and the need to build on the co-operative relationship with the fishing industry as part of a more effective regime.

Discussions then turned to the Agriculture items, with the Presidency presenting its progress report on Quality Policy following the adoption of the Commission's Green Paper on 15 October - the first in the field of agriculture for some 20 years. The Green Paper launched a review of EU agricultural product quality, considering existing requirements such as marketing standards and labelling schemes. The Presidency summarised the range of views advanced by Member States at Working Group and SCA level; noting that the Commission's consultation on the Green Paper would not conclude until the end of December. Further work would thus be undertaken under the incoming Czech Presidency.

The final substantive item discussed the antimicrobial treatment of poultry. Following the near unanimous rejection of the Commission's proposal to authorise four antimicrobial treatments for

poultry in the Standing Committee on the Food Chain and Animal Health earlier in the year, the Commission's proposal was passed to the Council under the comitology rules. The Presidency confirmed that a qualified majority of Member States supported the Council decision rejecting the proposal (all Member States supported rejecting the proposal, except the UK who abstained); and as such the proposal now falls.

Turning to the items under Any Other Business, the Commission betrayed a little irritation with Poland for once again raising the recycling of unspent CAP funds. The Commission reiterated its commitment (formally set out in a declaration in the political compromise on the CAP Health Check) to examine the basis for distributing direct payments, however they stressed that the unspent funds were not Commission resources. This money belonged to Member States and an interinstitutional decision would be required to utilise it - a very unlikely prospect in the current economic climate. Poland stressed that new finance needed to be available to address the negative impacts of the economic downturn on the agricultural sector.

Ireland then outlined the actions taken since 6 December when high levels of dioxins had been found in Irish pigmeat. Welcoming the support of the Commission, the European Food Safety Authority (EFSA) and other Member States, Ireland stressed that the risk management measures taken had been proportionate, swift and based on the advice of EFSA. Ireland particularly welcomed the decision earlier in the day in the Commission's Management Committee to grant Community co-finance for some of the measures taken, while noting that the majority of costs of product withdrawal and disposal would fall to the Irish Exchequer. Ireland also confirmed that high levels of dioxins had been detected in a limited number of cattle herds, and that animals testing positive would be removed from the food chain, together with carcasses that were being held under restriction pending test results. In response the Commission welcomed the action taken by the Irish authorities and praised the speed at which EFSA had produced its risk analysis. The Commission undertook to continue to monitor the situation and would be reflecting on whether any further action might be necessary to reduce the risks of such instances in the future.

Romania reported that, following a meeting earlier in the day, Greece has given an undertaking to remove, from 19 December, any restrictions blocking the movement of cereals from Bulgaria and Romania.

Finally, the Presidency recalled the November Euromed Summit declaration and in particular its commitment to an inaugural meeting of agriculture and rural development Ministers. The Presidency announced that its Euromed co-chair, Egypt, had agreed to host the event, details of which would follow in due course.

5 January 2009

Letter from the Chairman to the Huw Irranca-Davies MP

Your letter (5 January) regarding the above Council meeting was considered by Sub-Committee D at its meeting of 21 January 2008.

We note that agriculture quality policy was among the agriculture items discussed at this Council, and that the Presidency summarised the range of views advanced by Member States at working group level. As this is a subject that we are taking a close interest in, we would be grateful if you could provide us with a similar summary of other Member States' views on agricultural product quality, and outline for us what position the UK has been taking in Council working groups.

22 January 2009

AGRICULTURE AND FISHERIES COUNCIL MARCH 2009

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister of State for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your letter (15 April) regarding the above Council meeting was considered by Sub-Committee D at its meeting of 29 April 2009.

Like you, we welcome the Commission's refusal to re-open the milk market aspects of the Health Check, and its willingness to look at how implementation of sheep and goat electronic identification could be facilitated.

We note that Germany raised concerns about the draft Directive on soil protection, and would ask you to update us on the progress of negotiations in Council on this proposal, and on how your own stance towards the proposal is developing.

30 April 2009

AGRICULTURE: COMMUNITY SUPPORT FOR RURAL DEVELOPMENT FOR PERIOD
2007-13 (5883/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Agriculture

Your Explanatory Memorandum (17 February) on the above proposals was considered by Sub-Committee D at its meeting of 25 February.

We share your reservations about this proposal, notably as regards the precedent that could be set by treating the margin between allocated expenditure and the CAP budget ceiling as 'underspend'.

However, we recognise that this risk may be worth incurring in order to secure agreement on the broader package of European Economic Recovery Plan measures.

We will therefore lift scrutiny on this proposal.

26 February 2009

AGRICULTURE COUNCIL NOVEMBER 2008

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

In light of the prorogation of Parliament, I am writing to you in place of the usual written statement to summarise what took place at the special meeting of the Agriculture Council in Brussels on 28 November, at which I represented the United Kingdom.

There were only four items on the agenda, two substantive items and two under any other business. Firstly, the Presidency (Mr Bamier) introduced revised draft conclusions on the CAP post-2013. While a large majority of Member States were in favour, pro-reform Member States and a sub-set of new Member States raised serious reservations which had not been taken into account in the Presidency redraft. The UK and Sweden needed significant amendment to the text: the language on the table prejudiced the debate on the future reform of the CAP by attempting to fix objectives. Denmark would have preferred greater alignment of the text with UK thinking. The Netherlands needed a reference to the development of Developing Country agriculture. Poland and Estonia could not accept the assumption that the CAP Health Check would result in "fair competition". Portugal sympathised whilst Latvia would be compelled to vote against if there were no calls for reform of the historical bases for allocating CAP receipts.

The Presidency worked the margins, making small changes to accommodate difficult Member States, but conspicuously avoided talking to the UK. Mr Bamier asserted that he would not "water the text down beyond redemption". Called to vote, the UK stressed the need for consensus not compromise, opposing the adoption of Council conclusions with the overt support of Latvia and Sweden. The Presidency concluded that the conclusions were adopted as Presidency conclusions with the support of twenty-four Member States (even though the positions of Denmark and the Netherlands in fact remain unclear). The Commission noted the outcome, claiming that the conclusions would still serve as a useful milestone for future work. The Czech Republic suggested they would consider the conclusions a "working document", action on which they would take forward under their own Presidency.

Next, the Presidency introduced a discussion on the proposed legal basis (Article 37) for the proposal on food for the most deprived persons in the Community, with the Commission and Council Legal Services having taken conflicting positions on its appropriateness (for and against respectively). The Presidency felt that in addition there were important political considerations, not least that of providing food to the poorest of the Community's citizens. The Agriculture Commissioner (Mariann Fischer Boel) agreed with the President's assessment. It was her view that the proposal fell within the ambit of the CAP, and that Article 37 was the legitimate legal base. She stressed the global economic situation meant the scheme was more necessary than ever. On the technical detail she emphasised the importance of the co-financing element.

Germany led a blocking minority of Member States (with the UK, the Netherlands, Denmark, Sweden and the Czech Republic) opposing the proposal on both political and legal grounds. A large number of delegations could not agree with co-financing. The President concluded that a majority of Member States supported the proposal (choosing not to highlight there was a blocking minority). Mr Barnier called for technical discussions, including on co-financing, mandating the Special Committee on Agriculture to discuss these further.

Discussions then turned to the two items under any other business. The Agriculture Commissioner provided an update on WTO/DDA negotiations and emphasised the recent G20 call for a successful conclusion this year to the DDA. Pascal Lamy had responded with the announcement of a WTO Ministerial in the 10-19 December window, a formal decision on which would be taken imminently. But political will needed now to be translated into progress, and Committee chairs would need to produce revised negotiating texts, technical work on which was ongoing in Geneva. As far as the EU red-lines and reflecting offensive interests, the EU would need to defend its position. On agriculture, the big issues would continue to be: Special Safeguard Mechanism (SSM), tariff simplification, TRQ expansion, sensitive products and cotton.

A number of Member States insisted that there should be no further concessions made in agriculture, and no further withdrawing from the package on the table in July. Spain called for a solution on bananas, while the UK, the Netherlands, Denmark and Sweden all encouraged the Commission press ahead to a positive outcome. The Presidency concluded that the Commission was still within its negotiating mandate, though only just; and called for Agriculture Ministers to be present in Geneva at the forthcoming Ministerial.

Finally, the Commission responded to a Polish call for the introduction of export refunds in the dairy sector by noting that the call was understandable given the current market situation, but that export refunds were not for the moment warranted. The Management Committee had firmly rejected their reintroduction, but the Commission would keep the sector under review.

Following completion of the formal Council business, there was an informal Ministerial lunch on food security. A number of issues were discussed and there was a lot of interest, although some Agriculture Ministers were not necessarily in tune with their wider governmental positions, for example on the relationship between trade and aid. Indeed the interest was such that, prompted by the Dutch, the Presidency agreed to table the subject for discussion at the next Council.

12 December 2008

AGRICULTURE: NATIONAL RESTRUCTURING PROGRAMMES FOR THE COTTON SECTOR (5902/09)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 11 March 2008.

We share your grave concerns about this proposal, which is likely to postpone further reform of the cotton regime.

We were also dissatisfied with the Commission's judgment (in the Explanatory Memorandum accompanying the proposal) that further consultations of interested parties are 'not opportune', and that an impact assessment is not necessary. We would urge you to raise these issues in Council, and report back on the Commission's response.

We support your decision to vote against the proposal in Council, and are therefore content to lift scrutiny.

11 March 2009

AGRICULTURE: RECIPROCAL LIBERALISATION MEASURES BETWEEN THE EC AND
THE STATE OF ISRAEL AND MODIFICATIONS TO THE EURO-MEDITERRANEAN
AGREEMENT (7162/09)

**Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister of State for
Farming and Environment, Department for Environment, Food and Rural Affairs**

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 22 April 2009.

We are aware that the Commission's Food and Veterinary Office is responsible for third country inspections of food and hygiene standards and that one of the more recent inspections carried out by the FVO was in Israel. A number of deficiencies were identified in the course of that inspection. We would be interested to know whether the Government are content with the procedures in place to monitor Israel's compliance with relevant legislation and with Israel's response to deficiencies identified.

You note that agreement has been delayed because other Member States have concerns. We would be grateful if could elaborate on those concerns.

We will hold the Proposal under scrutiny and look forward to your comments on the issues raised above.

23 April 2009

ANIMAL BY-PRODUCTS NOT INTENDED FOR HUMAN CONSUMPTION (10637/08)

**Letter from the Rt Hon Jane Kennedy MP, Minister of State for Farming and
Environment, Department for Environment Food and Rural Affairs**

Thank you for your letter of 17 July 2008 to Jeff Rooker about the above proposal held under scrutiny pending progress on negotiations and clarification on the appropriate definition of a small establishment for the purposes of derogation from the regime.

I apologise for not responding to you sooner. Two further Supplementary Explanatory Memoranda and an Impact Assessment were sent to Parliament on 4 November 2008 and 11 March 2009. As requested, I am now writing to explain our position concerning that part of the proposal which deals with this derogation. Our understanding is that this derogation is intended to apply to certain operators that generate small quantities of animal by-products (which may not necessarily be the same as small establishments) and that the rules determining the criteria under which such operators would benefit from the derogation would be laid down in an implementing Commission regulation.

Thus, this proposal for a regulation of the European Council and Parliament would only set a framework which made such a derogation possible. As drafted, it proposes that Member States may authorise the disposal of animal by-products, by means other than those which normally apply under the regulation, where they "do not pose a risk to public or animal health" and where they "arise at the premises of operators handling no more than a volume of such animal by-products arising per week", with the implementing Commission regulation setting out "...the volume of animal by-products, in relation to the nature of activities and the species of origin..." which would benefit from the derogation.

In principle, the Government consider that such a derogation would be consistent with its de-regulatory aims and wish to impose the minimum burden on small businesses. However, it has concerns about how this could be applied in a fair and reasonable manner, that it should not distort competition, that it is straightforward for enforcement authorities to police and that it does not jeopardise animal and public health. The Government has therefore consulted widely with interested parties and stakeholders, seeking views on these points and, on the assumption that the proposal will be adopted as drafted, will take these into account in when considering a proposal from the Commission for an implementing regulation.

28 March 2009

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your Supplementary Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 1 April 2009.

We strongly regret that we did not receive a response to my predecessor's letter of 17 July 2008 in time to consider it alongside this SEM, and would ask you to inform us of the action you will take to ensure that such delays do not recur in future.

We note from your impact assessment that the impact of this Regulation is, to a large extent, dependent on the content of the Commission implementing Regulations and that this reserve applies to our query regarding the derogation for small quantities.

You are mindful of the need take account of the views of stakeholders when considering any proposal from the Commission for implementing rules on derogations for small quantities. We would hope that you will be mindful of the implications of all the Commission's proposals for implementing rules flowing from the various aspects of this Proposal. With specific regard to the derogation for small quantities, we agree with you that it must be possible to apply and enforce the agreed derogation in a fair and reasonable manner, without distorting competition, and without jeopardising animal and public health.

It is our understanding that the Proposal has been discussed at COREPER on 1 April with a view to securing a first reading agreement with the European Parliament to be adopted by Council at its meeting in April.

We will continue to hold the Proposal under scrutiny and we look forward to receiving, in advance of the April Council meeting, information on the outcome of the COREPER meeting and a response to our letter of 17 July 2008.

2 April 2009

Letter from the Rt Hon Jane Kennedy to the Chairman

Thank you for your letter of 2 April 2009 about the above proposal.

Once again I apologise for not responding sooner to the earlier letter from your predecessor of 17 July 2008. A reply had been prepared last year but due to an oversight was unfortunately not sent. My letter of 28 March 2009 to you which was sent subsequently also seems to have crossed with your letter. I have made my office aware of the importance of ensuring that we respond promptly to the Committee's letters in future.

On the substance of the proposal, I trust my letter of 28 March explained the Government's approach to agreeing implementing rules for use and disposal of small quantities of animal by-products and that is satisfactory to you. With regard to the COREPER meeting on 1 April the proposal successfully cleared this hurdle and there is every prospect of a first reading agreement following the EP plenary session from 21-24 April and the Agriculture Council meeting on 23-24 April.

I would be most grateful if the Committee could therefore clear the proposal from scrutiny before the latter meeting.

16 April 2009

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your letters (28 March and 16 April) on the above proposal were considered by Sub-Committee D at its meeting of 22 April 2009.

Your letter of 28 March, responding to our letter of 17 July 2008, did not reach us in time for consideration at our meeting on April 1, as we only received it (electronically) on April 2.

We note that you now expect a first reading agreement between the European Parliament and the Council to be reached in May, and will therefore lift scrutiny on the proposal.

23 April 2009

ANTIMICROBIAL SUBSTANCES BEING USED TO REMOVE SURFACE CONTAMINATION FROM POULTRY CARCASSES (10351/08, 15214/08)

Letter from the Chairman to Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 17 December 2008.

We note that the proposal was due to be considered for vote by the 17-19 December Agriculture Council and that its adoption appears to be very unlikely.

We note your caution as regards the available evidence and information and we note too that the substances are already authorised for use in the USA. In that light we would be interested to know since when they have been used in the USA and whether any research has been carried out concerning the possible adverse impacts of using these substances, as well as the benefits of doing so. Furthermore, we would be grateful for an indication of how you intend to proceed in terms of conducting your own analysis of the available evidence and information. We would also appreciate any views that you may have on how the Commission is likely to take this forward.

We will hold the proposal under scrutiny pending information from you on the outcome of the Council vote and on the issues raised above.

17 December 2008

Letter from the Rt Hon Dawn Primarolo MP to the Chairman

I refer to the Explanatory Memorandum submitted to the European Union Committee for its consideration. I understand that the dossier has been held under scrutiny pending the outcome of the Council vote regarding authorisation of these antimicrobial treatments. I can now inform you that this was considered at Council on 18 December and was rejected by a qualified majority of Member States (all Member States supported rejecting the proposal except UK who abstained).

You asked about the use of these antimicrobial treatments in the USA and research carried out concerning both benefits and possible adverse impacts. The benefits of the four substances in terms of reducing the level of microorganisms on carcasses¹ has been previously reviewed in a series of publications (2002) prepared for the United States Department of Agriculture Foreign Agricultural Service (USDA FAS) and Food Safety and Inspection Service Office of International Affairs (FSISO). It was noted that chlorine dioxide has been used as an effective water treatment disinfectant in the United States and Europe for over 50 years. Trisodium phosphate, acidified sodium chlorite and peroxyacids are approved for treatment of carcasses in the US Code of Federal Regulations (21 CFR 182.1778; FDA 2003, 21 CFR 173.325; FDA 2003, 21 CFR 173.368; FDA 2003). The overall conclusion was that the use of the four substances as antimicrobial agents in poultry process water should not have a significant impact on the environment.

For the UK situation I consider it important to engage with consumers and the food industry before reaching conclusions on the risks and benefits. As part of the consultation process the Food Standards Agency will consider the need for data collection and research so that the uncertainties in relation to the safety and environmental impact of these treatments can be fully assessed.

And finally you asked for my views on how the Commission is likely to take this forward; I understand that the Commission currently has no intention of re-tabling the proposal.

12 January 2009

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Your letter (12 January) regarding the above proposal (15214/08) was considered by Sub-Committee D at its meeting of 21 January 2009.

We note that the proposal was rejected by a qualified majority of Member States in Council on 18 December and that you do not expect the Commission to re-table it. We are therefore content to lift scrutiny on the proposal.

We understand that the Commission was expected to withdraw proposal 10351/08 if the proposal to authorise the use of antimicrobial substances was unsuccessful. We are therefore content to lift scrutiny on this second proposal also.

22 January 2009

¹ As little as one part per million of chlorine dioxide in poultry process water provides a very effective antimicrobial effect. Under commercial operating conditions, 2 to 3 ppm residual chlorine dioxide in process water can achieve 2 to 3 log reductions in microbial levels in poultry chiller water and 1 to 2 log reductions on poultry carcasses. Under commercial operating conditions, an 8-12% solution of trisodium phosphate can achieve 1 to 2 log microbial reductions on poultry carcasses, acidified sodium chlorite solutions can achieve 1 to 2 log reductions, and peroxyacid solution can achieve 1 to 3 log reductions of microorganisms on poultry carcasses.

BIODIVERSITY ACTION PLAN (17473/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above subject was considered by Sub-Committee D at its meeting of 18 March.

We support the goal of halting biodiversity loss as soon as possible, and consider that the goal needs to be integrated into sectoral policies where appropriate.

You may be aware that EASAC (the European Academies Science Advisory Council), of which the Royal Society is a member, recently published a policy report entitled "Ecosystem services and biodiversity in Europe". That report observed that insufficient attention has been paid to assuring the delivery of ecosystem services, as defined by the Millennium Ecosystem Assessment. It recommended that the Commission propose an EU Ecosystem Services Directive, which would aim to create a strategy for the conservation and maintenance of ecosystem functions and of the services provided by ecosystems. We would be interested in your reaction to this recommendation, particularly in view of the study on ecosystem services that you yourself have commissioned.

We are content to release the Communication from scrutiny and look forward to your comments.

18 March 2009

BIO-WASTE MANAGEMENT (17559/08)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment, Department for the Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Green Paper was considered by Sub-Committee D at its meeting of 11 March 2009.

We note that the Green Paper arises from the recently agreed Waste Framework Directive, one article of which is devoted to bio-waste. We would be grateful if you could clarify what the Government's stance was on bio-waste when negotiating the Directive, including the types of measures that you may have had in mind when agreeing that Member States should introduce bio-waste management measures.

Waste reduction is not referred to at all in either the Green Paper or your EM, but it was the subject of last year's Report by the House of Lords' Science and Technology Committee (*Waste Reduction*, HL 163, S & T Committee, 6th Report of Session 2007-8), and we were disappointed that you did not make reference to that Report in your response. We would welcome information from you on your bio-waste reduction strategy and we would also be grateful if you could indicate whether you plan to include waste reduction in your response to the Commission.

We are content to release the Report from scrutiny and we look forward both to your responses on the above points and to receipt of the Government's response to the Consultation once completed.

11 March 2009

CLIMATE CHANGE: DEFORESTATION AND FOREST DEGRADATION (14473/08)

Letter from the Chairman to Joan Ruddock MP, Parliamentary Under Secretary of State, Department of Energy and Climate Change

Your Explanatory Memorandum (26 February) on the above proposal was considered by Sub-Committee D at its meeting of 18 March.

We concur with the Commission's analysis of the importance of halting deforestation, and agree with its assessment that the issue is central to an international climate change agreement.

With regard to the Global Forest Carbon Mechanism, we share your reservations about hypothecation of ETS auction revenues. However, we are also concerned that in any event, the revenues raised by carbon permit auctions may be far smaller than anticipated, partly because the carbon price may be lower (it is currently around €12 per tonne) than had been estimated, and partly because the final version of the ETS Directive introduces a lower proportion of auctioning than

originally envisaged by the Commission, again eroding future auction revenues. We would be grateful for your analysis of what this means for the financing of climate change-related projects, including initiatives aiming to stem deforestation. We would also ask you to elaborate on the “innovative sources of financing”, maximising leverage from the private sector, that you say you are considering.

As regards the use of deforestation credits in the carbon market, we support your call for full consideration to be given to whether this can be achieved any earlier than 2020. However, the Commission lists a series of compelling reasons why the inclusion of such credits is problematic, so we would be grateful if you could explain in more detail why you view the Commission’s analysis as overly pessimistic.

It appears likely that an agreed EU position on these proposals will be negotiated in tandem with the broader EU position on financial assistance to the developing countries that ratify the Copenhagen climate change agreement. We would therefore ask you to report back on how those discussions have progressed thus far and on the proceedings at the Spring European Council.

In light of the considerable delay in supplying us with this EM (the Communication was published in October 2008), we would be grateful for a prompt response to the above requests, and will hold the Communication under scrutiny in the meantime.

18 March 2009

CLIMATE CHANGE: GREENHOUSE GAS EMISSION ALLOWANCE TRADING SYSTEM (5862/08)

Letter from the Chairman to Mike O'Brien QC MP, Minister of State, Department of Energy and Climate Change

Your letter (25 November) on the above proposal was considered by Sub-Committee D at its meeting of 10 December.

As you will be aware, we have been conducting an inquiry into this proposal, and published a report (“The Revision of the EU’s Emissions Trading System”; HL 197) on December 10.

We understand that this proposal will be considered at the European Council on 11-12 December. Following the update provided in your letter, and a further update on the progress of negotiations provided by your officials, we are content to support the negotiating position that you intend to defend, and will now lift scrutiny on this proposal. However, we would ask you to report back on the outcome of negotiations at the European Council, and the subsequent vote in the European Parliament.

10 December 2008

CLIMATE CHANGE: INTERNATIONAL CLIMATE CHANGE AGREEMENT IN COPENHAGEN (5892/09)

Letter from the Chairman to the Rt Hon Ed Miliband MP, Secretary of State, Department of Energy and Climate Change

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 25 February 2009.

We welcome the publication of the Commission’s Communication as a useful starting point for discussions on the position to be adopted by the EU at Copenhagen. In that context, we look forward to hearing from you how the discussions progress in the upcoming Environment, ECOFIN and European Councils.

More specifically, we agree that developed countries should aim collectively to reduce emissions by 30% by 2020, and that developing countries must also play their part. In our recent report (HL Paper 197, Session 2007-2008) on the Review of the EU Emissions Trading System (EU ETS) we agreed that persuading advanced developing countries to accept such commitments will be challenging and that increased financial flows to developing countries, through external credits and direct assistance for adaptation to climate change, will be an essential bargaining tool in the negotiations. We note that you are still formulating your position on financing but that, at least for the moment, you are minded to explore a hybrid option between the Commission’s two options. We would be grateful if you could

explain in greater detail how such an option might operate, and whether you have managed to gain the support of other Member States for that option.

In our report on the ETS, we suggested that the international agreement include provisions on enforcement, as that aspect has proved to be a weakness of the Kyoto Protocol. We note that enforcement is not referred to in either the Communication or your EM, and we would therefore appreciate your view on the type of enforcement provisions that the new agreement should include.

We note, too, that no mention is made of carbon leakage despite the fact that the EU's own policy towards carbon leakage will depend on action taken in Copenhagen. In that light, we would be interested in how you consider the EU might approach the issue of carbon leakage in the negotiations.

In terms of linkages with other cap and trade schemes around the world, the Committee concluded in its report on the ETS that the EU ETS should be able to link with similar schemes around the world because emissions trading will become increasingly effective as it becomes more widespread. The evidence that we took demonstrated, however, that linking schemes is far from simple and we therefore warned that the EU may in future face stark trade-offs between compromising the environmental integrity of its scheme and extending its reach. Both your approach to this issue, and that of the Commission, are very ambitious. We would be grateful for your view on how practical you consider the achievement of an OECD-wide carbon market by 2015, extended to advanced developing countries by 2020, to be.

As you note in your EM, the EU's thinking on this issue will continue to crystallise throughout the year in the run up to Copenhagen. We will therefore hold the Communication under scrutiny and look forward to your views on the points raised above in addition to information on the outcome of discussions in the upcoming Councils.

26 February 2009

Letter from the Rt Hon Ed Miliband MP to the Chairman

Many thanks for your response to the Government's Explanatory Memorandum on the European Commission Communication: "Towards a comprehensive climate change agreement in Copenhagen".

As you will be aware, Environment Council was held on 2 March. Here, EU Ministers:

- Reiterated the EU's commitment to move to a 30% reduction in the event of a global deal that includes comparable emissions reductions from developed countries and adequate contributions from developing countries.
- Called on developed countries to propose quantified emission limitation or reduction commitments for the medium-term by mid-2009 and asked countries at similar levels of development and GDP/Capita (notably OECD member countries) to consider making similar commitments.
- Identified criteria that could be used to assess comparability of developed country efforts.
- Considered that developing countries should commit to integrate low-carbon development strategies, that identify domestic mitigation actions and additional support needed, into national and sectoral strategies by 2012. Advanced developed countries in particular should propose these strategies, or meaningful actions that will form part of them, before Copenhagen.
- Proposed to build an OECD-wide carbon market by 2015 and extend this to economically more advanced developing countries by 2020.
- Invited the Spring European Council (SEC) to consider the options for generating financial support, including, but not limited to, contributory and market-based approaches.

The UK welcomed the outcome from Environment Council as a good starting point for further discussions. In particular, this sends a clear message that the EU accepts the need for additional public finance to supplement private and carbon market sources. The EU will of course continue to develop its position over the course of the year.

You raised several key points in your letter, which I would like to take this opportunity to address.

As noted, the Environment Council has invited SEC to consider the options for new mechanisms for generating finance on which the negotiations should focus. The options to be considered include an approach whereby the overall level of support to be provided by each country, excluding Least Developed Countries and Small Island Developing States, is determined according to an agreed scale; and an approach whereby a proportion, again established according to an agreed scale, of the Assigned Amount Units (AAUs) are subject to an international auctioning arrangement. The former is a variant of a proposal put forward by Mexico, and the latter a variant of a proposal put forward by Norway. The EU will of course remain open to other proposals that have and will come forward from other developed and developing countries.

We are also considering how a merger of the Norwegian and Mexican proposals could work in practice, although our thinking on this is at an early stage. It will be important to use the best aspects of each proposal, particularly given that they aim in essence to make up for two separate gaps in the financial architecture – the Norwegian proposal for generating new finance, and the Mexican proposal for encouraging greater responsibility for financing. There will be various possible methods of merging the proposals, some of which will be more attractive to some Parties than others. However, we need first to conduct more consultation with other countries on the two options, before reaching firm views on possible methodologies.

On enforcement, we do not believe that the provisions laid out by the Kyoto Protocol are an area of weakness. In fact, these provisions are one of the strongest of any multilateral environmental agreement. To give you an example, the Compliance Committee recently banned Greece from engaging in emissions trading until it had improved and demonstrated the robustness of its reporting and verification system. The current system also provides for a 30% penalty against any country that fails to meet its emissions reduction target. Any provisions under a Copenhagen agreement would need to build on successful elements of the Kyoto compliance system, resolve some technical uncertainty that derives from the particular wording of Article 18 of the Kyoto Protocol, as well as designing new provisions appropriate to any new commitments or actions on the basis of 'form follows function'. The precise nature of the enforcement provisions is dependent on what substantive commitments and actions are agreed.

You asked how the EU may approach the issue of carbon leakage in the negotiations as this is not addressed in the Commission Communication.

The EU's approach to 'carbon leakage' in the Climate and Energy 2020 package is intended to be an internal interim solution until a comprehensive global climate change agreement is reached. Such a global agreement will minimise the risk of 'carbon leakage' to energy-intensive and trade-exposed sectors by creating a level playing-field. To minimise risks to competitiveness and resulting carbon leakage, the agreement should ensure comparable emission reduction efforts for developed countries and adequate contributions from developing countries according to their responsibilities and respective capabilities.

The issue of 'carbon leakage' is unlikely to be addressed directly in the international negotiations on the road to Copenhagen. However, we recognise that the nature of the agreement that is reached in Copenhagen will have a significant impact on the risk of 'carbon leakage' faced by EU industry going forward. The EU will need to be mindful of this interaction.

It is right therefore, that the measures the EU takes to address 'carbon leakage' take full account of what happens at Copenhagen. The EU 2020 package will be reviewed following agreement to a global deal. This review will ensure that the EU's reduction targets deliver the EU's international commitments, and that the measures to be taken towards this are consistent with the international approach.

We recognise too that there is a potential trade-off between the environmental integrity of linked cap and trade schemes and the extension of scope to an OECD-wide carbon market by 2015, extended to advanced developing countries by 2020. We and our Embassies and High Commissions around the world work hard to set out the lessons that we have learnt from the UK and EU Emissions Trading Systems and the need for ambition.

There has been enormous progress around the world over the last two years on developing emissions trading outside the EU. We expect this progress to continue and will do what we can to support it. We believe that the benefits of trading to emissions reduction are, for certain sectors of the economy, undeniable, and we expect continued interest and enthusiasm for this. We therefore believe that the ambition of an OECD-wide carbon market by 2015, extended to key sectors in advanced developing countries by 2020, is challenging but achievable.

I thank you once again for your response, and hope that I have addressed your concerns effectively.

10 March 2009

Letter from the Chairman to the Rt Hon Ed Miliband MP

Your letter (10 March) on the above Communication was considered by Sub-Committee D at its meeting of 1 April 2009.

We thank you for the overview you provide of the conclusions adopted by the Environment Council on March 2. However, we would ask you to provide us with further details of the position that the UK in particular has been advocating at Council meetings, not only at the Environment Council, but also at the Ecofin Council and the Spring European Council.

With regard to your comments on enforcement, we would ask you to explain whether in your view, banning individual countries (e.g. Greece) from engaging in emissions trading, or holding out the prospect of future penalties (in the form of more ambitious targets) for countries that fail to meet their current emission reduction targets, has genuinely served to deter non-compliance. We are concerned that the latter type of penalty in particular may simply serve to discourage countries that have failed to comply in the past from signing up to new agreements.

As regards the international aspects of compliance, you indicate that the form of enforcement must flow from its function. We accept this logic but would nonetheless assert the importance of taking compliance and enforcement into account when negotiating the substantive commitments and action under the agreement.

You note that the issue of 'carbon leakage' is unlikely to be addressed directly in the international negotiations on the road to Copenhagen. However, we assume that given the significance of this issue for the EU's own internal arrangements – notably in the context of the third phase of the EU ETS – it will be a dominant consideration in developing the EU's negotiating position, and the EU will therefore need to be more than "mindful" of the interaction. For that reason, we would ask you to supply us with further information on how you intend to ensure the issue is addressed in the formulation of the EU's negotiating stance.

Pending a response to these queries, and information on the outcome of discussions in upcoming Council meetings, we will continue to hold the Communication under scrutiny.

2 April 2009

COMMON AGRICULTURAL POLICY SIMPLIFICATION (7771/09)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister of State for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 29 April 2009.

We welcome the simplification process, and acknowledge its successful development, although we note too that it clearly represents "work in progress".

In your EM, you indicated that the UK is working with other Member States to demand more of the Commission in terms of CAP simplification. Could you explain, please, what further action you are demanding and what the Commission's response has been.

We would also be grateful for examples of specific occasions when the Government have questioned the quality of the Commission's impact assessment and how the Commission has responded in those instances.

You note that the Presidency hopes to agree Presidency conclusions at the May Council. We would be grateful if you could give us an indication of the possible content of those Conclusions.

We are content to release the Communication from scrutiny at this stage and look forward to your response to the comments above.

30 April 2009

COMMON AGRICULTURAL POLICY: SUPPORT SCHEMES FOR FARMERS UNDER THE CAP, SUPPORT FOR RURAL DEVELOPMENT BY THE EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT (EAFRD), COMMUNITY STRATEGIC GUIDELINES FOR RURAL DEVELOPMENT (9656/08)

Letter from the Rt Hon Jane Kennedy MP, Minister of State for Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Your predecessor wrote to me on the 14 November 2008 about the Government's negotiating position on the CAP Health Check at Agriculture Council.

As expected, the French Presidency tabled a compromise text soon after the European Parliament plenary vote on 19 November, followed by a further iteration early the following morning which a qualified majority of Member States indicated they could support. However, the UK and some other Member States indicated that they could not support the deal on the table in November.

You explained that you attached particular importance to the outcome on milk quotas, market intervention and modulation, so I will address those first.

The Health Check deal establishes the process for phasing out milk quotas by 2015, including a 1% per year increase in quotas over the next five years. However, a number of Member States pressed for faster increases, while others were concerned about the impact of quota phase out on less competitive farmers, which led to a range of additional measures being put in place. In particular, the final deal involves differential quota increases for some Member States: Italy will be allowed to bring forward its quota increases by implementing a one off 5% increase in 2009; and there are changes to butterfat adjustments (which alter milk quota references) which will have the effect of creating further differences between Member States. Member States will also have the option to use rural development schemes, national envelopes and state aids to provide support to their dairy sector. The Government is concerned about these additional measures as they may create distortions and uncertainty for the dairy sector. Furthermore, there are two scheduled reviews of the quota phase out process (in 2010 and 2012) which adds to the uncertainty for the sector. On balance, the cumulative outcome for the dairy sector was one of the reasons why we felt unable to support the compromise proposal.

For other market measures, the Health Check deal makes some worthwhile progress in scaling back the intervention system through a number of measures, including the abolition of intervention for pigmeat, the introduction of a tendering system for wheat intervention above 3 million tonnes, setting intervention rates at zero for all other cereals and abolishing dairy disposal schemes.

With regard to modulation, the compulsory rate will gradually rise by 5% to a total of 10% in 2012, increasing the amount of CAP spending on public benefits across the EU. We estimate this increase to be worth about €2-3bn annually. The increase in compulsory modulation will not lead to an increase in the rural development budgets in England, because the Health Check requires that our level of voluntary modulation be reduced by an equivalent amount. Nevertheless, this means that the gap in modulation rates between the UK and the rest of the EU will narrow, leading to a more level playing field for our farmers, whilst enabling us to continue to fund the commitments made in our rural development programmes.

In addition, the agreement requires some 'progressive modulation' with an additional 4% of modulation applying to farms that receive direct payments over €300,000. When combined with compulsory modulation increases, the highest rate would therefore reach 14% by 2012. Although this is below the level at which modulation is being applied in England and will, therefore, have little impact on farmers here, the Government is disappointed at the complexity which this will add to the farm payments system.

The Health Check took a number of other positive steps in reforming the CAP, which the Government welcomes. It will lead to further decoupling of subsidy from production in the following sectors:

- arable crops, and specific aid schemes for durum wheat, hops and olive oil in 2010;
- rice, nuts, seeds, protein crops, beef and veal (except suckler cow premium) in 2012 or sooner;
- potato starch, dried fodder and flax and hemp in 2012.

This amounts to further decoupling of about half of the coupled payments which remained after 2003 (amounting to approximately £3bn of direct farm payments), thus reducing the market distortions faced by UK farmers and making farmers across the EU more responsive to market signals. However,

this decoupling in some sectors could be significantly reduced if Member States fully utilise new payments under national envelopes (see below). The Government had already taken up the option of decoupling most of the payments in England, but following the Health Check all those coupled payments that we were required to maintain will be phased out.

There are welcome measures to simplify the system of direct farm payments, such as reducing the number of types of 'entitlements', and removing further restrictions on the categories of land that are eligible for payment. The Health Check will also allow Member States the flexibility to set a higher minimum payment level. For the UK this will mean having the option of setting the minimum either in the range of 100 to 200 Euros or in the range of 1 to 5 ha. Further simplification arises from removing some of the statutory management requirements that applied under cross-compliance.

There are new cross-compliance measures aimed at protecting a range of landscape and habitat features. The Government welcomes, in particular, the inclusion of an option for Member States to use cross-compliance to address the environmental effects of ending set-aside. We plan to consult on whether and how to take that up.

The Government has particular concerns about other aspects of the Health Check deal, including the market distortions created by the increased flexibility in the use of 'national envelopes' (under Article 68), which allow Member States to support specific sectors using payments coupled to production, and to fund risk management measures. Although there are restrictions on how and when national envelopes can be used, they will lead to a less even playing field as the application of measures and support levels between Member States could vary significantly. In addition, Member States may now decide to use unclaimed single payment funds to finance Article 68 measures. The lack of clarity over the budgetary implications of that proposal was a further reason why the Government felt unable to support the package in November.

On balance, the Government takes the view that the agreement reached on the Health Check is a worthwhile step along the road of reform, but it missed the opportunity to go further and introduces some unwelcome new distortions. We are continuing to explore with the Commission how our concerns can be addressed in advance of agreement on the legal text, and for the longer term we will continue to press for further reform for the benefit of farmers, consumers, taxpayers and the environment in the forthcoming EU Budget Review.

Finally, I sympathise with the last comment in your letter about the difficulty created when a Presidency tables a compromise text very late in the day. In the case of the Health Check, I understand that the Commissioner billed her original proposals in May as a "first compromise", so the expectation was that we would see little substantive change until we got to the very end-game, where inevitably, there were always likely to be some significant changes at the last moment in order to secure a deal.

14 December 2008

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your letter (14 December) regarding the above proposals was considered by Sub-Committee D at its meeting of 21 January.

We are grateful for the detailed summary of the outcome of the negotiations on the CAP Health Check that you provide. We are now content to lift scrutiny on those proposals.

However, we would like to reiterate that the French Presidency's decision to table a compromise text at the same Council at which political agreement was to be sought made effective scrutiny impossible, and would consequently urge you to take a firm line with future Presidencies on the undesirability of this practice.

22 January 2009

CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS (15130/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (9 March) on the above document was considered by Sub-Committee D at its meeting of 1 April.

We note that you appear to have secured the desired amendments to the Council Decision, which was adopted before scrutiny clearance had been obtained, so a scrutiny override took place.

We note that although the Explanatory Memorandum was drafted in November 2008, it was not submitted to us until March 2009, and would be grateful if you could explain why this delay occurred.

We will release the proposal from scrutiny.

1 April 2009

ENVIRONMENT: EU STRATEGY FOR BETTER SHIP DISMANTLING (16220/08)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Minister of State for Farming and Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 11 February 2009.

We agree with you and with the Commission that safe and environmentally sound ship dismantling must be promoted.

We believe that, as with any form of international environmental agreement, enforceability is a key issue. You take the view that the Commission's proposed development of a certification and audit scheme would require particularly careful consideration. We agree that any such scheme would need to be assessed carefully but we would also be keen to know from you what other steps the UK Government consider ought to be taken in order to ensure that any new IMO Convention in this field is enforceable.

You note that the option, suggested by the Commission, of a mandatory international funding system would also require particularly careful consideration. Clearly, the financial implications would need to be clarified but, given that there is a strong economic incentive for ship owners to choose recycling facilities with particularly poor social and environmental standards, it seems to us that a ship dismantling fund, at least for a transitional period, may be helpful in order to provide a positive incentive to recycle and could assist with enforcement. We would be grateful if you could comment further on the advantages and disadvantages of such a fund.

We are content to release the Communication from scrutiny but look forward to your views on the points raised above.

11 February 2009

ENVIRONMENTAL LAW (16222/08)

Letter from the Chairman to Lord Hunt of Kings Heath, Minister for Sustainable Development, Climate Change, Adaptation and Air Quality, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above proposal was considered by Sub-Committee D at its meeting of 28 January 2009

We consider the implementation of environmental law to be a very important area and we therefore welcome this Communication. In our recent Report on the Emissions Trading System (ETS), we noted that the practical application and enforcement of the ETS is critical to its success. Such a principle can, in our view, be applied across the environmental acquis.

In its Impact Assessment, the Commission notes that when it comes to the enforcement of Community law, the largest caseload is consistently handled by the Environment Directorate General of the Commission. We agree that some of the problems could be overcome by better Commission impact assessments. We would also welcome your views, however, on whether the significant problems faced in implementing Community environmental law would suggest that it is appropriate to ensure high compliance with the existing environmental acquis before it is expanded further.

We are content to release the Communication from scrutiny and look forward to your comments on the above points.

29 January 2009

Letter from the Chairman to Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health

Your Supplementary Explanatory Memorandum (SEM) on the above proposal was considered by Sub-Committee D at its meeting of 10 December 2008.

We note that you have been making progress in the negotiations on this Regulation. We would be grateful if you could indicate whether you intend to support the emerging Common Position in Council.

We support the overall objective of this Regulation – to simplify and modernise the legislative framework governing the marketing and use of animal feed. However, in light of periodically recurring problems relating to animal feed (e.g. recent problems with pork feed in Ireland), we are concerned that the proposed repeal of the current requirement for mandatory percentage declaration of the ingredients of compound feed might lead to a lowering of standards and/or accountability. We would ask you to explain how you intend to manage this risk.

In your original EM, you expressed reservations about the proposal to repeal the requirement for bioprotein ingredients to undergo a safety assessment before they are marketed, noting that although this would reduce administrative burdens for business, some bioprotein ingredients might still require prior assessment due to their safety implications. You indicated that you would seek clarification from the Commission about the circumstances in which pre-marketing assessments might still be appropriate, but do not return to this in your SEM. We would ask you to inform us of the outcome of those discussions.

10 December 2008

Letter from the Rt Hon Dawn Primarolo MP to the Chairman

Thank you for your letter of 10 December 2008 confirming that the Committee is content to lift its scrutiny reservation following receipt of the Supplementary Explanatory Memorandum submitted on 20 November 2008. However, your letter did seek clarification of three specific questions, which I address below.

The Committee was concerned that a repeal of the existing requirement for the mandatory percentage declaration of the ingredients of compound feed might lead to a lowering of standards and/or accountability. This issue should be considered alongside existing legislative provisions which impose a number of other requirements on feed business operators. They are required to label their products with their name and address, all of the ingredients in descending order by weight, use-by dates, and any instructions for use. They are also required to use only those additives which have been specifically authorised for use in feed, to respect the maximum permitted levels laid down for certain undesirable substances (chiefly naturally occurring and thus unavoidable environmental contaminants), and to avoid claims that their products can treat, cure or prevent disease.

Feed business operators will also remain subject to the requirements of two other EC Regulations on the general principles of food law and on feed hygiene, which require them to ensure the traceability of the materials they use, to recall or withdraw feed which they know or suspect to be unsafe, to co-operate with any investigations undertaken by competent authorities, to adhere to standards concerning recordkeeping, training of personnel, storage of feed and maintenance of equipment, and to adopt HACCP (Hazard Analysis of Critical Control Points) procedures to ensure the safety and integrity of their production systems. It is therefore reasonable to say that the accountability of feed business operators and the standards to which they are required to adhere will not be compromised following the repeal of the existing requirement for the mandatory percentage declaration of compound feed ingredients. Retention of mandatory percentage declaration would not have prevented the recent Irish pork safety incident because feed manufacturers can only label what they know to be deliberately included in their products.

You also asked about the outcome of negotiations on the proposed repeal of the requirement for a prior assessment of bioprotein ingredients. UK officials raised the potential safety implications of such a repeal and sought clarification of the circumstances in which a prior assessment could be requested during discussions at Council Working Group level. Unfortunately, there was no support from the Commission or any of the other Member States. The general view was that the potential safety implications of new bioprotein products could be satisfactorily managed through post-market monitoring of their use, with any products found to be unsafe being considered for addition to the list of ingredients the use of which in feed is expressly prohibited. This position also appears to have been

accepted by UK stakeholders, who have not raised any concerns over the proposed repeal of the Directive on bioproteins.

I apologise that this point was not made clearer in the second version of the Impact Assessment. It may be worth adding that, since the second version of the Impact Assessment was signed, the text of the proposed Regulation has been further amended to require the European feed industry to draw up and publish a register of feed materials, which will include new bioprotein products. This should enable Member States to make checks, where necessary, on the safety of such products.

Finally, you asked whether the UK intends to support the emerging Common Position in Council. Although some minor technical issues remain to be resolved in trialogue discussions with the European Parliament's rapporteurs, the UK considers that it can support the Council's Common Position. As requested, I will report back on progress as regards negotiations in Brussels.

12 January 2009

Letter from the Chairman to Rt Hon Dawn Primarolo MP

Your letter (12 January) regarding the above proposal was considered by Sub-Committee D at its meeting of 21 January.

We are grateful for your detailed and informative response to our queries. We look forward to receiving further updates from you as inter-institutional negotiations in Brussels progress.

22 January 2009

FISHERIES: BEHAVIOUR WHICH SERIOUSLY INFRINGED THE RULES OF THE COMMON FISHERIES POLICY IN 2006 (15416/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 17 December 2008.

We share your view that this Communication is useful as a tool to forge future discussions on control and enforcement. As you will be aware, we were very critical of the current systems for control and enforcement in our recent report *The Progress of the Common Fisheries Policy* (HL 146, Session 2007-08).

In our report, we noted that the Community and its Member States' response to persistent failure in this respect has been to introduce layer upon layer of regulation intended to counter fishermen's adverse incentives, and to put in place penalties that Member States do not have the courage to impose. We considered that a more fruitful control regime should be based on measures that reward good behaviour, and thus work with, rather than counter to, fishermen's incentives.

We noted and supported Member States' reluctance to harmonise criminal penalties. However, we did conclude that the co-ordination of administrative penalties is necessary. We suggested that a penalty-points system—whereby infringements are penalised with points, leading to the temporary, and eventually permanent, suspension of fishing rights—could provide a promising basis for co-ordination, delivering the same effect across vessels and fleets.

As regards the role of the Community Fisheries Control Agency (CFCA), we supported the extension of the CFCA's remit to include land-based inspections, and recommended that the Agency be allowed to co-ordinate joint deployment plans for all types of stocks, not just those subject to recovery plans. We also suggested that there may be a role for the CFCA in monitoring and reporting on Member States' enforcement activities, with the aim of promoting transparency, and with it, peer pressure.

We note that the European Commission published a Proposal on 14 November aimed at addressing many of the control and enforcement shortcomings and we look forward to receiving your EM on that Proposal.

In the meantime, we are content to release this Communication from scrutiny.

17 December 2008

FISHERIES: COMMISSION'S ANNUAL POLICY STATEMENT ON FISHING
OPPORTUNITIES IN 2009 (10264/08)

**Letter from Huw Irranca-Davies MP, Minister for the National and Marine Environment,
Food and Rural Affairs, Department for Environment, Food and Rural Affairs**

The Lord Grenfell wrote to my predecessor, Jonathan Shaw, on 17 July in relation to our Explanatory Memorandum on the above proposal. I apologise for the delay in replying.

You ask in your letter whether there is a case to start the quota year from April, so that management measures follow the spawning season for certain species. This is a point Ben Bradshaw MP (UK Fisheries Minister 2003-2007) raised during our Presidency of the European Council in 2005 with Commissioner Borg. In these discussions, which also included other Member States, there was some support for changing the fishing year, but this was not the majority view. In fact, the preference was to bring forward the release of the annual scientific advice from the International Council for the Exploration of the Sea (ICES), to allow more time for proper consideration of proposals between publication (then released during mid-October for the majority of stocks) and decisions being taken in December. In addition, there was general support for the principle of frontloading i.e. allowing discussion to take place earlier in the year on the basis of informal papers in advance of formal Commission proposals. Subsequently, a new mechanism was agreed with ICES by which scientific advice on the majority of the stocks is made available earlier in the year (in June). This will allow not only due consideration by national Fisheries Administrations, but also permit Regional Advisory Councils (RACs) to discuss the issues in the necessary depth.

You also ask for confirmation that the Council is not required to set a particular TAC on the basis of the Commission's fishing opportunities 'paper. In view of the fact that the Commission's paper on fishing opportunities is written and published in advance of the publication of the ICES advice, it is not possible for the Commission to stipulate the level of cuts in TAC necessary for stocks to remain at or return to safe biological limits. Therefore, the Commission merely outline the scale of cuts or quota increases they intend to make in a number of various circumstances, including when a scientific assessment of the stock has not been possible due to poor or insufficient data. The Commission will use these guiding principles for TAC setting to develop its proposal for the overall annual package of TACs and Quotas for 2009, but the Council are not bound by them. The Council will also wish to consider other issue like the socio-economic consequences of their decisions.

You also asked for an update, on any discussions held with the Commission, on the issue of low take up resulting in quota loss. I can confirm that my officials have repeated their concerns in a range of fora in the interim and I propose to raise the issue with Commissioner Borg in due course to underline the importance of it to the UK.

I hope this sufficiently answers the points you have raised.

1 December 2008

FISHERIES: COMMUNITY CONTROL SYSTEM FOR ENSURING COMPLIANCE WITH
THE RULES OF THE COMMON FISHERIES POLICY (15694/08)

**Letter from the Chairman to Huw Irranca-Davies MP, Minister of State, Department for
Environment, Food and Rural Affairs**

Your Explanatory Memorandum (EM) on the above documents was considered by Sub-Committee D at its meeting of 11 March 2009.

We note that the Commission's proposal was published on 14 November and we therefore regret that your EM, signed on 10 February, lacked significant policy analysis. The Proposal is clearly very complex and of profound importance and raises a wide range of issues, a rigorous analysis of which we look forward to receiving. We would draw your attention to a number of specific points.

You will be aware that, in our report *The Progress of the Common Fisheries Policy* (HL 146, Session 2007-8), we were critical of the existing control system, blaming in particular the introduction of layer upon layer of technical regulations and excess capacity in the fleet.

We are aware that the simplification of technical conservation measures is the subject of a separate draft Regulation, but we would draw your attention to the close link between the two pieces of legislation and therefore the importance of the section of the Control Regulation that deals with monitoring the application of technical measures.

As we considered that the CFP could not be successfully enforced before the problem of excess capacity has been tackled, we would also draw particular attention to the monitoring of capacity in the context of this Regulation. We would appreciate your view on the efficacy of those provisions in the draft Regulation.

In our Report, we took the view that the co-ordination of administrative penalties is necessary, and we advocated a penalty-points system leading to the temporary, and eventually permanent, suspension of fishing rights. We would therefore strongly support the thrust of the Commission's proposal with regard to administrative penalties, including the proposed penalty-points system. We would, however, be interested in your views on the level of fines proposed and the link to the value of the fish products. Furthermore, we would welcome your interpretation of how the details of the penalty points system would be established, as regards the number of points to be applied for each offence and the threshold to be reached before a licence might be suspended.

You are categorical in your rejection of any expansion of the Community Fisheries Control Agency's role. In our report, we considered there to be some merit in an extension of the Agency's remit as we believe that the Agency could assist in promoting transparency by assuming a role in monitoring and reporting on Member States' enforcement activities, with a view to stoking peer pressure among Member States. We would ask you to provide a more detailed explanation of your reservations in this regard.

We also observed in our report that, in the UK, the compulsory registration of buyers and sellers of first sale fish had all but eliminated demand for illegal fish. Other EU countries have been slower to adopt similar legislation. We therefore welcome the inclusion in this draft Regulation of provisions on the monitoring of marketing, including buyers and sellers, but would also wish to see an emphasis placed on the implementation of existing EU law in this area across all Member States.

In your EM, you noted that the provisions on the monitoring of marketing might require all TAC stocks to be sold through auctions. We would agree that, should this indeed be the case, it would certainly cause difficulties and we would therefore appreciate information from you as to whether your initial interpretation was correct.

You also highlight in your EM the provisions relating to the monitoring of recreational fisheries. Could you, please, explain how the activities of recreational fisheries are currently monitored by the Government. We would also be interested to know why it has been deemed necessary to include recreational fisheries in the provisions of this Regulation, and why control would be limited to stocks that are subject to a multi annual plan.

The EM indicates that the proposal contains a number of very good ideas. We would be grateful if you could identify which of the proposed provisions the Government supports. You also allude to the potentially burdensome nature of some of provisions. We have taken note in particular of the provisions relating to new technologies, logbooks, notification of information prior to arrival in port, transshipment and landing declarations. Information from you on how onerous you consider those to be would be welcome. We would be particularly interested in your view on how the provisions and systems for vessel monitoring, automatic identification and vessel detection may interact.

We were interested to observe the provisions on closures, and we would therefore be grateful for your initial reaction both on the proposed procedures for closure of fisheries by either Member States or the Commission in the light of data collected, and on the concept in Article 43 of a "trigger by-catch level" beyond which a real time closure of fisheries would be triggered.

Finally, the Proposal contains a number of elements that would appear to empower the Commission significantly. We would appreciate your view on the extent to which the provisions on evaluation, management and control by the Commission are within the remit of the powers of the Commission and on the array of actions that might be taken by the Commission against Member States to ensure compliance with the CFP.

We look forward to your comments on the points raised above, any further issues that arise out of your analysis, your impact assessment once completed and information on the progress of negotiations in the Council. In the meantime, we will hold the draft Regulation under scrutiny but release the Communication.

11 March 2009

FISHERIES: CONSERVATION OF FISHERIES RESOURCES THROUGH TECHNICAL
MEASURES (10476/08)

**Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment,
Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the
Chairman**

Your predecessor wrote to me on 18 July in response to our Explanatory Memorandum on the above proposal. I sincerely apologise for the long delay in replying, which was delayed because I hoped to be in a position to send our consultation impact assessment on this proposal to you. This is attached separately under cover of a Supplementary Explanatory Memorandum.

In Lord Grenfell's letter to me I was asked about the views of stakeholders on the proposed changes to the gear rules, on the grounds that their commitment is essential to ensure the controls are fully effective and contribute to the long-term sustainability of fishing under the Common Fisheries Policy. Those fishermen who responded to our consultation were concerned about the inflexibility of the 'one net rule', which requires that fishermen only carry gear of one mesh size range on any one fishing vessel on any trip. This would prevent them from reacting quickly to changing fishing circumstances whilst at sea and would thus reduce the potential profitability of each voyage.

Currently, the technical conservation rules specify which mesh size ranges may be used to target specific species i.e. avoiding larger fish being targeted with smaller nets. However, the effectiveness of this is dependent on effective control, which is more difficult at sea. Restricting the carriage of gear, will clearly make our enforcement authorities' task that much easier. Indeed, a one net rule is already in operation under the cod recovery plan, for this very reason. However, there are, in our view, some specific instances where such a rule is unnecessary, either because there is no threat to whitefish or because there is a threat to economic viability. Examples include the squid fishery at Rockall (which is an entirely clean fishery with little or no other species caught) and the freezer trawler fishery targeting whitefish and herring or mackerel during the same trip. There may additionally be scope for allowing the carriage of small mesh nets that are designed to release all sizes of whitefish by using grids or large meshed panels. Fishermen with small vessels who are likely to only fish for short durations and are responsible for smaller catches of fish, could also be exempt.

Lord Grenfell also referred to a potentially confusing array of mechanisms that the Commission is proposing for dealing with real time closures, and asked our views on their clarity, necessity and enforceability. Under common and permanent measures, the Commission have proposed a mechanism by which vessels are required to move fishing ground if they catch large quantities of fish that they will need to discard. This requirement is not the same as under the proposed parallel real time closure scheme, which once triggered by a single vessel catching large quantities of a particular species, would apply to all vessels fishing in that area. The effectiveness of these schemes will be dependent on their having the approval of the wider industry and therefore it will be essential that fishermen are fully consulted in their preparation.

Lord Grenfell also asked about our position on the proposal for Member States and Regional Advisory Councils (RACs) to submit their own plans for reducing or eliminating discards. We welcome this initiative, because it allows measures that reflect the particular circumstances of the region concerned to be formulated and implemented, and where the three month waiting period for Commission assessment would cause undue delays, to be implemented rapidly. It is however important, that these plans are at least consistent Community-wide and thus follow a broadly standard pattern. We will also need to clarify the legal base of these plans once the Commission agrees them.

Lastly, Lord Grenfell asked about the involvement of regional stakeholders when agreeing regional measures in comitology. While we appreciate there isn't a reference to consultation of these measures, we expect that as well as national governments, regional stakeholders in the RACs will also be consulted, as is the case currently.

I hope this addresses the important issues raised.

15 December 2008

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 15 December 2008 on the above Proposal was considered by Sub-Committee D at its meeting of 14 January 2009.

We are grateful for your responses to the points raised in my predecessor's letter of 18 July 2008. While we understand the nature of the individual real time closure mechanisms proposed, we remain

unclear as to how they would work together and whether they are all necessary and enforceable. We would therefore appreciate further clarification from you in this respect, notably on when one mechanism rather than another would apply, who would take that decision and how it would subsequently be enforced.

Since my predecessor wrote to you in July, negotiations have no doubt moved on in Brussels. We would find it useful to receive from you an update on the progress of negotiations, an indication of the issues that have proved most contentious and remain to be resolved and any information that you may have on how the Czech Presidency intends to handle the dossier.

Finally, we take note of your impact assessment but observe that the impact of this measure remains very unclear. We would therefore appreciate an update from you as soon as greater clarity has been shed by industry and enforcement colleagues on the likely costs and benefits of this legislation.

We will continue to hold the proposal under scrutiny.

14 January 2009

FISHERIES: EXPLOITATION OF NORTHERN STOCK OF HAKE (7764/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 29 April 2009.

The overall thrust of the Proposal – ie to reduce capacity and then to manage the hake fisheries at a sustainable level, according to fixed criteria that may be amended in the light of new scientific advice – is acceptable to us. We have some concerns, however, about the provisions surrounding the fixing of TACs when the available data is deemed to be weak. In those circumstances, the Council would be obliged to apply at least a 15% reduction, with no upper limit on the level of reduction. Your view on this provision would be of interest to us, including the threshold for determining data to be weak.

The Commission's impact assessment emphasises that the policy option chosen is one of decommissioning followed by fishing at a stable rate thereafter. It is not clear from the Proposal or from your EM whether any additional finance will be made available through the European Fisheries Fund for this purpose. We would be grateful for clarification on that matter.

We note that the North Western Waters Regional Advisory Council (NWWRAC) and the South Western Waters Regional Advisory Council (SWWRAC) issued a joint response to the Commission's initial consultation on this management plan and that the Commission appears to have acted on this advice. We would be interested to know what dialogue you have engaged in with stakeholders on this proposal.

We look forward to receiving details of the UK position, responses to the points raised above and the impact assessment. In the meantime, we will hold the Proposal under scrutiny.

30 April 2009

FISHERIES: FIXING THE GUIDE PRICES AND COMMUNITY PRODUCER PRICES FOR THE 2009 FISHING YEAR (160.28/08, 16507/08, 16794/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandums (EMs) and letters (dated 5 December, submitted 9 December) on the above proposals were considered by Sub-Committee D at its meeting of 17 December 2008.

We are aware that these proposals will by now have been adopted as an A point in Council, and note that you anticipated that the scrutiny process would be overridden on these occasions. We will now lift scrutiny on these three proposals.

17 December 2008

FISHERIES: MULTI-ANNUAL PLAN FOR THE STOCK OF HERRING DISTRIBUTED TO THE WEST OF SCOTLAND AND THE FISHERIES EXPLOITING THAT STOCK (9342/08)

Letter from Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs

The Lord Grenfell wrote to my predecessor, Jonathan Shaw, on 18 July in response to our Explanatory Memorandum on the above proposal. I apologise for the delay in replying.

You ask in your letter whether scientific evidence supports a linear relationship between the target mortality and the stock size. I confirm that this was indeed the view taken by the EU's STECF (Scientific, Technical and Economic Committee for Fisheries, the role of which is to provide scientific advice to the Commission on implementation of the CFP). That view was based on a desire to avoid substantial annual fluctuations in the TAC from one year to the next. However, their suggestion of setting a TAC based on a mortality target is not without risk, since should the spawning stock biomass (SSB) fluctuate around the trigger levels (for example, when moving from just below Blim to just above it), the proposed mechanism would still lead to potentially substantial annual changes in the TAC.

Whilst we have a great deal of sympathy with STECF's view, we believe an alternative solution is more appropriate, that is to place constraints in the management plan on the percentage amount by which the TAC is allowed to change annually.

We had initially suggested in our EM that the appropriate figure was 15%. However, on further reflection, we are supportive of the line taken by the Pelagic RAC that 20% would be more effective - offering slightly more flexibility - when the spawning stock is between 50,000 and 75,000 tonnes. This is more in line with our conservation aspirations for the stock and the guiding principles contained in the Commission's statement on fishing opportunities for 2009.

I hope this sufficiently answers the points you have raised.

1 December 2008

Letter from the Chairman to Huw Irranca-Davies MP

Your letter (1 December) on the above proposal was considered by Sub-Committee D at its meeting of 10 December 2008.

In light of the oral evidence you gave before the Sub-Committee on 10 December, we are content to lift scrutiny on this proposal.

10 December 2008

FISHERIES: FISHING OPPORTUNITIES FOR CERTAIN FISH STOCKS IN COMMUNITY WATERS, IN WHICH CATCH LIMITATIONS ARE REQUIRED (15578/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs

Your Explanatory Memorandum, Supplementary Explanatory Memorandum and Impact Assessment relating to the above proposal were considered by Sub-Committee D at its meeting of 10 December 2008.

In light of the oral evidence you gave before the Sub-Committee on 10 December, we are content to lift scrutiny on this proposal, but would ask you to report back on the outcome of the Fisheries Council on 17-18 December and on the outcome of EU-Norway negotiations on jointly managed stocks.

10 December 2008

Letter from Huw Irranca-Davies MP to the Chairman

Following the conclusion of the negotiations on TACs and Quotas at December EU Fisheries Council at which the Commission's package was ultimately agreed, I am writing to detail the outcomes achieved for the UK.

As previously, these negotiations took place against a challenging background of a generally poor scientific outlook for most stocks. As I have already explained, our guiding principle was to seek a

balance between the need to conserve fish stocks for the long term with the need to safeguard the livelihoods of fishing fleets and their local communities. The Government also sought to ensure a package of measures that reflected the interests of different parts of the UK.

Negotiations this year were particularly intense (covering just two days), but I am pleased to report that we secured some significant gains for the UK in line with the priorities I outlined in my EM. These are detailed further in Annex A. Annex B contains a table listing the final position on a fuller range of stocks of interest to the UK.

Most importantly, we were successful in the attainment of our 3 top level priorities for December Council. In relation to the proposed closure in the West of Scotland, we were able to secure a viable, though challenging, set of conservation measures for the West of Scotland whitefish fleet that avoided the closure of this vital UK fishery. The package reflects the need for action on stocks of cod, haddock and whiting, but takes account of the socio-economic impact on hard-pressed fishermen and the communities that depend on them. We were also able to resist the proposed substantial cuts to important nephrops TACs - limiting reductions to 2% in area VII (from -15%), and 5% in the North Sea and West of Scotland (from -9.7% and -15% respectively). In addition, we secured a roll over in the TACs for other key UK 'use it or lose it' stocks (those where the Commission were proposing to cut the TACs purely on the basis of previous lack of quota uptake) e.g. monkfish for area VII and flat fish for the North Sea.

The framework of the new cod recovery plan was agreed, as you know, at November Council. Our objective was to deliver a plan which continues the steady progress towards stock recovery whilst acknowledging the significant contribution which the UK (and other Member States) have already made to effort reduction and rewarding future action by Member States' fleets to significantly cut mortality. We were partially successful in achieving these gains, in relation to the exclusion of the Celtic Sea and a more appropriate reference period on which to calculate effort. However, in relation to other aspects of the plan, it is clear that 2009 will be a particularly challenging year for the cod fisheries in the Irish Sea, North Sea, Eastern English Channel and West of Scotland, where we will need to deliver 25% cuts in the amount of fish being killed. The measures under the new plan require our fishing fleet to make significant cuts in the scale of their cod discards, in order to improve the chances of stock recovery. We will be working closely with the industry to find the best way for achieving this.

In relation to the cod TACs, the 30% increases in the North Sea and Eastern English Channel, secured as part of the EU-Norway negotiations, were extremely welcome, but as we proposed, were combined with associated measures which should ensure that whilst more cod can be landed, less is discarded. For the West of Scotland and Irish Sea, 25% cuts in the respective cod TACs were agreed as required by the new Recovery Plan.

On North Sea whiting, we were able to minimise a significant cut in our quota share (from 30% to 10%), by invoking Hague Preference.

We have also achieved a reasonable package of TACs for pelagic species, for example:

- a smaller than anticipated cut for West of Scotland herring (from 52% to 20%), in line with the new management plan;
- a number of increases, such as for Atlanta-Scandian herring and western mackerel. In relation to western mackerel - the significant 33% increase in TAG achieved reflects improved management of their own position by the fishermen themselves.

Although we achieved a number of gains, we recognise some of the results are not what we hoped for. For example, although we started with zero TACs for spurdog and porbeagle, we ended up with a package which, whilst further discouraging targeting of the species, recognised the importance of avoiding unnecessary discards. The TACs for spurdog and porbeagle were retained but cut by 50% and 25% respectively from 2008 levels. These reduced TACs came with associated technical measures setting maximum landing sizes to protect larger females. We believe these measures mean that we are following the scientific advice on porbeagle and spurdog as far as is practical, given that a zero TAG will not prevent these species from being caught and discarded.

In relation to skates and rays, we expected to achieve practical management measures to protect these vulnerable species. The final package included a TAG for area VI and VII et at the historic baseline, without the expected 15% TAG cut applied. We had also expected the 25% by-catch provision to be retained for all areas for over 15m vessels and were therefore disappointed to see that the North Sea TAG is the only TAG for which the provision will still apply. However, we believe the new TACs for these stocks will allow fishermen to prepare themselves for future more focused management measures aimed at stock conservation.

In conclusion therefore, I believe this was a successful Council during which we were able to make gains in a number of important areas for the UK. The package offers a fair deal for the UK in which British fishermen gain vital quota increases while enabling action to protect stocks and cut waste. I look forward to working with the fishing industry in 2009 on the implementation of the provisions agreed.

If your Committee would find it useful to meet to discuss the process of these negotiations and the outcomes achieved at Council further I would be more than happy to accommodate.

11 January 2009

ANNEX A

DECEMBER 2008 FISHERIES COUNCIL: SUMMARY OF OUTCOMES

Priority	UK objective	Initial proposal (% change)	Progress Change) (%)
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A revised **Cod Recovery Plan** which continues the steady progress towards stock recovery and includes effort arrangements which acknowledge the contribution which the UK has already made; reward future action by Member States' fleets designed to significantly reduce mortality

Celtic Sea	Exclusion from Plan	In	Successfully resisted inclusion - achieved
Reward for cod avoidance	Introduce appropriate incentivisation	Insufficient rewards offered	Opportunity to gain back days at sea
Pace of change	Ensure appropriate to achieve recovery whilst maintaining viability of Industry	25% Mortality cuts	25% Mortality cuts

Measures for 2009 which reduce substantially discards of **North Sea cod and whiting** whilst allowing significantly greater landings of cod, minimising reductions in landings of whiting, and reducing mortality for both stocks - with a view to delivering international commitments to achieve over time Maximum Sustainable Yield

Cod TAC	Substantial increase	+15.0	+30.0
Whiting TAC	Minimise cuts	NA	-14.5 (plus Hague Preference invocation – gain of 1785 tonnes)

Secure rollover of **Nephrops** TACs

Area VII (Irish Sea)	Rollover	-15.0	-2.0
Area VI (West of Scotland)	Rollover	-15.0	-5.0
Area IV (North Sea)	Rollover	-8.7	-5.0

For **demersal fisheries in the West of Scotland**, replace Commission's proposals with spatial and selectivity measures which ensure sustainability and are practicable for UK fleets

Closure to demersal gear	Proposal disproportionate, replace with more suitable measures	Closed except with Swedish Grid for nephrops	Closure replaced by selectivity and spatial measures e.g larger square mesh panels and meshes; safeguards stocks and allows
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				key fisheries to continue
Average landings – oppose TAC cuts based on recent landings (Use it or lose it)				
	Clyde Herring	Rollover	-15.0	rollover
	West of Scotland Plaice	Rollover	-15.0	rollover
	West of Scotland Pollack	Rollover	-15.0	rollover
	Area VII Pollack	Rollover	-15.0	rollover
	Area VII Saithe	Rollover	-15.0	rollover
	Irish Sea Herring	Rollover	-8.3	rollover
	West of Scotland Megrin	Rollover	-15.0	+8.0
	Area VII Megrin	Rollover	-15.0	rollover
	Western Approaches (hjk) Sole	Rollover	-14.9	-14.9
	Western Approaches (hjk) Plaice	Rollover	-15.5	-15.5
	Area VII Anglerfish	Rollover	-15.0	rollover
	West of Scotland Sole	Rollover	-17.2	rollover
	North Sea Flatfish (Turbot and Brill, Lemon Sole and Witch, Dab and Flounder)	Rollover	All -10.0	All Rollover

	North Sea Ling	Rollover	-15.0	Rollover
	WoS Ling	Rollover	-15.0	rollover
	North Sea Tusk	Rollover	-15.0	rollover
	WoS Tusk	Rollover	-15.0	rollover
Secure increased fishing opportunities for monkfish and North Sea megrim (increase in TAC and flexibility from area IV to area VI).				
	North Sea Monkfish	Increased TAC	0.0	0.0
	West of Scotland Monkfish	Increased TAC	0.0	8.0
		Flexibility	No	No
	North Sea Megrim	Increased TAC	-15.0	0.0
Separate TACs for Irish Sea (VIIa) haddock and Eastern Channel (VIId) cod , with increased catching opportunities.				Achieved
	Irish Sea haddock	Increased TAC	-15.0	+15.0
	Eastern Channel (VIID) Cod	Increased TAC	+5.0	+30.0
For North Sea haddock , to follow the long-term management plan and accept the TAC cut it implies but to secure - by “banking or borrowing” and/or transfers from Norway and/or Hague Preferences - fishing opportunities for 2009 at least equal to 2008 landings				Achieved through Hague Preference – gain of 2144 tonnes. B&B from 2009
		TAC Change	-9.3	-9.3
		EU Quota change	-13.1	-13.1
		UK Quota Change	-19.0	-13.0

Mackerel – secure increase in TAC, and improve management of mackerel fisheries. 33% increase in Western TAC agreed. Resisted attempts to include the stock in the EU/Norway balance.				
		Increase	NA	+33.0
For Rockall haddock , ensure EU continues to claim 65% of the global TAC (i.e. EU Share should be 6,331 tonnes)				
		EU Share	6,120	6,120
Support protection for skates and rays through technical measures whilst resisting blunt TAC cuts				
		Area IV	-15.0	Rollover
		Area VI, VII	TAC set at average landings (2001-2006) - 15%	TAC set at average landings (2001-2006)
		Area VIId	TAC set at average landings (2001-2006) - 15%	TAC set at average landings (2001-2006)
Prohibition on landings : Area IV: Common Skate Area VIId: Common Skate, Undulate Ray Area VI, VII: Undulate Ray, Common Skate, Norwegian Skate and White Skate				
Support effective protection for spurdog and porbeagle through practicable management and other measures.				
		Spurdog	-100.0	-50.0
		Porbeagle	-100.0	-25.0
Spurdog - Maximum Landing Length: 100cm Porbeagle – Maximum Landing Length 210cm Prohibition on landing: Angel Shark Commission statement to reduce Spurdog TAC to 0 in 2010 with 10% of 2009 TAC for bycatch				
Explore with Commission scope for resisting cut in TAC for Western Channel (VIle) sole				
		Explore scope for rollover through plan	-15.0	-15.0
For deep sea species secure an agreement that recognises the perilous nature of some stocks and delivers measures that reflect the scientific advice. Ensure blue ling protection zone is effective.				
		Effective blue ling closure		Agreed as proposed 15% cut in EU Quota
Ensure any realignment of Horse mackerel TAC areas take due account of historic catches				
			New TAC areas	Rollover until further technical work done
Ensure an allocation of herring between the north and south North Sea which is consistent with ICES advice				
			11.0% to IVd,c	13.7% to IVd,c
For blue whiting , secure revisions to the management plan which prioritise the long-term sustainability of the stock; avoid any increase in transfers to Norway and the Faroes above 2008 levels (if possible, moving closer to reductions in transfers which are equivalent to reductions in the TAC) and securing a reduction in Norwegian access to EU waters				

			-53.4	-53.4
For North Sea herring , ensure revisions to the management plan which prioritise the long-term sustainability of the stock				
		Management Plan	-15.0	-15.0
Secure an increase in the transfer from Norway of the Norway Others stock				
				Rollover
Reduce the percentage of North Sea whiting and haddock by-catch allocated to industrial fisheries				
			Same level as 2008	Same level as 2008
For West of Scotland herring , secure agreement on a long-term management plan which reflects the problematic health of the stock but which ensures that progress towards target mortality rates is proportionate and steady and which ensures that effective and workable controls and compliance measures are put in place.				
		Management Plan with 20% TAC constraint	-52%	-20%
Ensure no return of the Butt of Lewis Box closure.				
			Not included	Not included – achieved

2009 TACs AND UK QUOTAS (PROVISIONAL)

	Stock	TACs for 2008			TAC's for 2009			% Change from 2008		
		Total TAC	EC availability	UK Quota	Total TAC	EC Availability	UK Quota	Total TAC Change	EC Availability Change	UK Quota Change
1	Sandeel Norwegian Waters of IV	Not relevant	20,000	1,000	pm	pm	pm	NA	NA	NA
2	Sandeel Ila; EC waters of IIIa & IV	Not established	Not established	Not established	200,000	177,500	3,660	NA	NA	NA
3	Greater silver smelt EC & international waters of I & II	116	116	50	116	116	50	0.0	0.0	0.0
4	Greater silver smelt EC and international waters of III and IV	1,331	1,331	21	1,331	1,331	21	0.0	0.0	0.0
5	Greater silver smelt EC & international waters of V, VI, VII	5,311	5,311	297	5,311	5,311	297	0.0	0.0	0.0
6	Tusk EC & international waters of I, II & XIV	23	23	7	20	24	7	-13.0	4.3	0.0
7	Tusk EC & international waters of IV	231	231	94	231	231	94	0.0	0.0	0.0
8	Tusk EC & international waters of V, VI, VII	Not relevant	435	123	3,785	435	123	NA	0.0	0.0
9	Tusk Norwegian waters of IV	Not relevant	170	4	Not relevant	170	4	NA	0.0	0.0
10	Herring IV North of 53o30'N	201,227	116,210	30,025	171,000	97,843	25,275	-15.0	-15.8	-15.8
11	Herring VIId; IVc	" "	26,661	2,269		23,567	1,910	NA!	-11.6	-15.8
12	Herring By-catches in IV, VIId and in EC waters of Ila	18,806	18,806	342	15,985 21,760	15,985	291	-15.0	-15.0	-14.9

13	Herring EC and international waters of Vb, VIb and VIaN	27,200	26,540	16,036		21,100	12,749	-20.0	-20.5	-20.5
14	Herring VIa Clyde	800	800	800	800	800	800	0.0	0.0	0.0
15	Herring VIIa	4,800	4,800	3,550	4,800	4,800	3,550	0.0	0.0	0.0
16	Herring VIIe,f	1,000	1,000	500	1,000	1,000	500	0.0	0.0	0.0
17	Herring VIIg,h,j,k	7,890	7,890	10	5,918	5,918	7	-25.0	-25.0	-30.0
18	Cod IV; EC waters of IIa	22,152	18,386	8,628	28,798	23,902	11,216	30.0	30.0	30.0
19	Cod VI; EC waters of Vb; EC & international waters of XII & XIV	402	402	241	302	302	182	-24.9	-24.9	-24.5
20	Cod special conditions VIa; EC waters of Vb	402	402	241	240	240	144	-40.3	-40.3	-40.2
21	Cod VIIa	1,199	1,199	345	899	899	259	-25.0	-25.0	-24.9
21a	Cod VIId	1,291	1,291	120	1,678	1,678	155	30.0	30.0	29.2
22	Cod VII b-k, VIII, IX, X, Cefac 34.1.1 (EC)	3,883	3,883	284	4,023	4,023	295	3.6	3.6	3.9
23	Porbeagle EC waters of I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII & XIV	Not relevant	581	3	436	436	2	NA	-25.0	-33.3
24	Megrim EC waters of IIa & IV	1,597	1,597	1,537	1,597	1,597	1,537	0.0	0.0	0.0
25	Megrim VI; EC waters of Vb; international waters of XII & XIV	2,592	2,592	813	2,799	2,799	878	8.0	8.0	8.0
26	Megrim VII	18,300	18,300	2,624	18,300	18,300	2,624	0.0	0.0	0.0
27	Dab & Flounder EC waters of IIa & IV	18,810	18,810	1,620	18,810	18,810	1,620	0.0	0.0	0.0
28	Anglerfish EC waters of IIa & IV	11,345	11,345	9,233	11,345	11,345	9,233	0.0	0.0	0.0
29	Anglerfish Norwegian waters of IV	Not relevant	1,610	289	Not relevant	1,550	278	NA	-3.7	-3.8
30	Anglerfish VI; EC waters of Vb;	5,155	5,155	1,586	5,567	5,567	1,713	8.0	8.0	8.0

	international waters of XII & XIV									
31	Anglerfish VII	28,080	28,080	5,050	28,080	28,080	5,050	0.0	0.0	0.0
32	Haddock IV; EC waters of IIa	46,444	37,626	31,672	42,110	32,679	27,507	-9.3	-13.1	-13.2
33	Haddock EC and international waters of VIb, XII and XIV	6,916	6,916	5,574	5,879	5,879	4,738	-15.0	-15.0	-15.0
34	Haddock EC waters of Vb & VIa	6,120	6,120	4,743	3,516	3,516	2,737	-42.5	-42.5	-42.3
35	Haddock VII, VIII, IX, X, EC waters of Cefac 34.I.I	11,579	11,579	1,158	11,579	11,579	1,158	0.0	0.0	0.0
36	Haddock VIIa (formerly a special condition of VII)	1,238	1,238	592	1,424	1,424	681	15.0	15.0	15.0
37	Whiting IV; EC waters of IIa	17,850	15,012	9,336	15,173	12,593	8,426	-15.0	-16.1	-9.7
38	Whiting VI; EC waters of Vb; international waters of XII & XIV	765	765	438	574	574	329	-25.0	-25.0	-24.9
39	Whiting VIIa	278	278	107	209	209	81	-24.8	-24.8	-24.3
40	Whiting VIIbcdefhk	19,940	19,940	2,140	16,949	16,949	1,788	-15.0	-15.0	-16.4
41	Hake EC waters of IIa & IV	1,896	1,896	341	1,808	1,808	326	-4.6	-4.6	-4.4
42	Hake VI & VII; EC waters of Vb, international waters of XII & XIV	30,281	30,281	5,442	28,879	28,879	5,190	-4.6	-4.6	-4.6
43	Hake special conditions VIIIabde	3,924	3,924	810	3,742	3,742	772	-4.6	-4.6	-4.7
44	Blue whiting: Norwegian waters of IV	1,266,282	8,000	400	590,000	4,000	200	-53.4	-50.0	-50.0
45	Blue whiting: Northern component: I, II, III, IV, V, VI, VII, VIIIabde, XII, XIV (EC & International waters)	1,266,282	175,466	34,759	590,000	74,058	14,670	-53.4	-57.8	-57.8
46	Lemon sole & witch of EC waters of IIa & IV	6,793	6,793	4,151	6,793	6,793	4,151	0.0	0.0	0.0

	Blue ling Community waters and waters not under the sovereignty or jurisdiction of third countries of VI, VII	2,009	2,009	386	2,058	1,708	328	2.4	-15.0	-15.0
47	Ling EC & international waters of I & II	45	45	10	38	38	8	-15.6	-15.6	-20.0
48	Ling IIIa EC waters of IIIbcd	100	100	7	100	100	7	0.0	0.0	0.0
49	Ling EC waters of IV	2,856	2,856	2,196	2,428	2,856	2,197	-15.0	0.0	0.0
50	Ling EC & international waters of V	34	34	6	34	34	6	0.0	0.0	0.0
51	Ling EC & international waters of VI, VII, VIII, IX, X, XII, XIV	10,776	10,776	3,645	16,664	10,776	3,645	54.6	0.0	0.0
52	Ling Norwegian waters of IV	Not relevant	850	67	Not relevant	850	67	NA	0.0	0.0
53	Norway Lobster (Nephrops) EC waters of IIa, IV	26,144	26,144	22,644	24,837	24,837	21,513	-5.0	-5.0	-5.0
54	Norway Lobster (Nephrops) Norwegian Waters of IV	Not relevant	1,250	66	Not relevant	1,210	64	NA	-3.2	-3.0
55	Norway Lobster (Nephrops) VI; EC waters of Vb	19,885	19,885	19,415	18,891	18,891	18,445	-5.0	-5.0	-5.0
56	Norway Lobster (Nephrops) VII	25,153	25,153	8,251	24,650	24,650	8,086	-2.0	-2.0	-2.0
57	Northern prawn IIa, IV	3,984	3,984	877	4,980	4,980	1,096	25.0	25.0	25.0
58	Plaice IV; EC waters of IIa	49,000	47,875	13,626	55,500	52,615	14,975	13.3	9.9	9.9
59	Plaice VI; EC waters of Vb; international waters of XII & XIV	786	786	477	786	786	477	0.0	0.0	0.0
60	Plaice VIIa	1,849	1,849	558	1,430	1,430	432	-22.7	-22.7	-22.6
61	Plaice VIId,e	5,050	5,050	1,469	4,646	4,646	1,352	-8.0	-8.0	-8.0
62	Plaice VIIf,g	491	491	73	422	422	56	-14.1	-14.1	-23.3

63	Plaice VIIhjk	303	303	38	256	256	16	-15.5	-15.5	-57.9
64	Pollack VI; EC waters of Vb; international waters of XII & XIV	450	450	165	450	450	165	0.0	0.0	0.0
65	Pollack VII	15,300	15,300	2,668	15,300	15,300	2,668	0.0	0.0	0.0
66	Saithe IIIa & IV; EC waters of IIa, IIIbcd	135,900	65,232	10,911	125,934	60,448	10,110	-7.3	-7.3	-7.3
67	Saithe VI; EC waters of Vb; EC & international waters of XII & XIV	14,100	14,100	3,708	13,066	13,066	3,617	-7.3	-7.3	-2.5
68	Saithe VII, VIII, IX, X, Cefaf 34.I.I	3,790	3,790	582	3,790	3,790	481	0.0	0.0	-17.4
69	Turbot & brill EC waters of IIa & IV	5,263	5,263	813	5,263	5,263	813	0.0	0.0	0.0
70	Skate & rays EC waters of IIa and IV	1,643	1,643	1,062	1,643	1,643	1,062	0.0	0.0	0.0
70a	Skate & rays Via-b & VIIa-c, e-k	No 08 fig	No 08 fig	No 08 fig	15,748	15,748	4,070	NA	NA	NA
70c	Skates and Rays EC waters of VIII, IX	No 08 fig	No 08 fig	No 08 fig	6,423	6,423	14	NA	NA	NA
70b	Skates and Rays VIId	No 08 fig	No 08 fig	No 08 fig	1,044	1,044	157	NA	NA	NA
71	Greenland Halibut EC waters of IIa and IV; EC and international waters of VI	Not relevant	847	359	Not relevant	720	270	NA	-15.0	-24.8
72	Mackerel IIIa & IV; EC waters of IIa, IIIbcd	385,366	18,149	462	511,287	23,450	1,463	32.7	29.2	216.7
73	Mackerel VI, VII, VIIIabde, EC waters of Vb; non-EC waters of IIa; international waters of XII and XIV	" "	234,082	136,522	569,171	311,531	181,694	47.7	33.1	33.1
74	Mackrel special conditions IIIa and Ivb	5600	5600	490	pm	pm	490	NA	NA	0.0
75	Mackerel special conditions EC waters of IVa	70,225	70,225	41,200	93,459	93,459	54,829	33.1	33.1	33.1
76	Common sole EC waters of II & IV	12,800	12,710	545	14,000	13,910	596	9.4	9.4	9.4
77	Common sole VI; EC waters of Vb;	68	68	14	68	68	14	0.0	0.0	0.0

	international waters of XII & XIV									
78	Common sole VIIa	669	669	146	502	502	107	-25.0	-25.0	-26.7
79	Common sole VIId	6,593	6,593	1,268	5,274	5,274	1,014	-20.0	-20.0	-20.0
80	Common sole VIIe	765	765	450	650	650	382	-15.0	-15.0	-15.1
81	Common sole VIIfg	964	964	271	993	993	279	3.0	3.0	3.0
82	Common sole VIIh,j,k	650	650	108	553	553	92	-14.9	-14.9	-14.8
83	Sprat EC waters of IIa and IV	195,000	175,777	6,659	170,000	150,777	5,705	-12.8	-14.2	-14.3
84	Sprat VIId,e	6,144	6,144	3,226	6,144	6,144	3,226	0.0	0.0	0.0
85	Spurdog EC waters of IIa, III and IV	631	581	470	316	266	216	-49.9	-54.2	-54.0
	Spurdog EC and international waters of I, V, VI, VII, VIII, XII and XIV	2,004	2,004	739	1,002	1,002	368	-50.0	-50.0	-50.2
86	Horse Mackerel EC waters of IIa, IV	39,309	37,230	3,721	39,309	34,770	3,470	0.0	-6.6	-6.7
87	Horse mackerel EC waters of VI, VII, VIIIabde, EC waters of Vb; international waters of XIII and XIV	170,000	167,920	16,470	170,000	165,939	16,276	0.0	-1.2	-1.2
88	Norway pout Norwegian waters of IV	Not relevant	5,000	250	Not relevant	1,000	50	NA	-80.0	-80.0
89	Other species Norwegian waters of IV	Not relevant	5,000	1,875	not relevant	5,000	1,875	NA	0.0	0.0

Letter from the Chairman to Huw Irranca-Davies MP

Your letter (11 January) regarding the above proposal was considered by Sub-Committee D at its meeting of 21 January.

We are grateful for the detailed breakdown of the outcome of negotiations on TACs and Quotas for 2009 that you have provided us with. We thank you for your offer to discuss them with us in person, but are content with the comprehensive explanation presented in your letter. We intend, however, to take you up on your offer at a later stage, when the Commission publishes its Green Paper on the reform of the Common Fisheries Policy – a prospect which we hope will be amenable to you.

22 January 2009

FISHERIES: REGULATION ON IMPORTS OF FARMED SALMON ORIGINATING IN NORWAY (I1083/08)

Letter from Gareth Thomas MP, Minister for Trade, Investment and Consumer Affairs, Department for Business, Enterprise and Regulatory Reform, and Department for International Development, to the Chairman

Thank you for your letter dated 21 July in which you sought additional information in respect of the cooperation between the Department for Business, Enterprise and Regulatory Reform (BERR) and the Scottish Executive in respect of the above named proposal for a Council Regulation. Please accept my sincere apologies for the delay.

It would perhaps be helpful if I provided you with some background. Following a complaint by Scottish (and Irish Republic) salmon farmers, strongly supported by HMG and the Irish Government, the EC imposed anti-dumping measures against imports of low-priced farmed salmon from Norway in January 2006. The measure is in the form of a Minimum Import Price (MIP) below which imports attract an additional anti-dumping duty. In April 2007, the Commission opened an Interim Review of the measure at the request of Italy, Lithuania, Poland, Portugal and Spain.

The Commission's Interim Review resulted in a proposal to repeal the antidumping measure. The proposal is contained in document I1083/08 which was the subject of the Explanatory Memorandum that was submitted by BERR.

The UK has fought hard to provide Scottish farmers with this relief to provide a breathing space for them to restructure in the face of competition from Norway. The very high-level (PM downwards), intensive effort responded to strong lobbying from a range of cross-party Scottish interests.

Throughout the whole life span of the case, BERR and Scottish Executive Ministers and officials liaised very closely. There are a number of examples of this close collaboration:

- BERR and Scottish Executive Ministers were in regular contact by telephone and also discussed the issue on the occasions when they met in person.
- In a letter to Peter Mandelson, Alex Salmond wrote - "We will continue to work closely with colleagues in the UK Government on this issue, and I warmly welcome the continuing support for the salmon measures from John Hutton".
- It was arranged for Scottish Executive officials to attend meetings of the Anti-dumping committee when salmon was discussed.
- Scottish Executive and BERR officials, together with their Irish counterparts jointly produced a document entitled "The Case against a review of the Anti-Dumping measures concerning imports of farmed salmon originating in Norway" that was submitted to the European Commission in March 2007.

4 December 2008

FISHERIES: SHARK CONSERVATION AND MANAGEMENT (6158/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above subject was considered by Sub-Committee D at its meeting of 18 March.

We welcome the fact that the Commission has come forward with an Action Plan, in line with the FAO's 1999 International Plan of Action on Sharks.

It is clear to us that the strengthening of Council Regulation 1185/2003 on the removal of fins of sharks on board vessels is an important element of this Action Plan, and we note that you would support it. On the other hand, it is not clear to us how the Regulation might realistically be strengthened given the fact that demand for shark fins and carcasses respectively is geographically diverse. We would be grateful for your view on the matter and on how you will be working with the Commission to improve the legislation. In addition, we would be interested in your assessment of whether other Member States share your eagerness to revise this legislation.

On the other actions suggested, many of them seem laudable but, as you note, it is difficult at this stage to assess their impact without more specific proposals.

We are content at this stage to release the Action Plan from scrutiny. We look forward to your view on the point raised above, to a copy of the Council Conclusions once adopted and to information relating to the UK-wide position once it has been agreed.

18 March 2009

FISHERIES: SUSTAINABLE BALANCE BETWEEN FISHING CAPACITY AND FISHING OPPORTUNITIES (5382/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for State, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Report was considered by Sub-Committee D at its meeting of 11 March 2009.

This Report emphasises once again the difficulty of monitoring the effectiveness of the Common Fisheries Policy. We note that the capacity reductions observed continue on a downward trend of 2-3%, which in itself is insufficient and may be neutralised by technological progress.

We strongly regret that the UK again failed to report to the Commission on time. Your predecessor assured us in his EM last year that steps had been taken to ensure that the deadlines were met for the 2007 Report. We note and welcome the information that you provide on the further steps that have been taken within the Department and we trust that the UK will strive to meet the end of April 2009 deadline this year. We would ask you to inform us when you submit the 2007 and 2008 reports, enclosing copies thereof.

Finally, you comment on the inadequacy of the guidelines produced by STECF this year. We would be grateful if you could outline how you are working with the Commission to improve further the guidance issued to Member States in order that a proper assessment of Member States' efforts to achieve a sustainable balance between fishing capacity and fishing opportunities can be undertaken.

We are content to release the Report from scrutiny but look forward to your response on the points raised above.

11 March 2009

FISHERIES: TEMPORARY ACTION TO PROMOTE RESTRUCTURING OF FISHING FLEETS AFFECTED BY ECONOMIC CRISIS AND ADAPTATION TO HIGH FUEL PRICES
(11369/08, 11370/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs

We have not yet received a response to my predecessor's letter of 10 October on the above Regulation.

In that letter, we requested further information on how DEFRA and the devolved administrations intend to avail themselves of the opportunities offered by the new Regulation. We would be particularly interested to hear how those plans have been adapted in light of recent declines in the price of fuel.

17 December 2008

FOOD DISTRIBUTION TO THE MOST DEPRIVED PERSONS IN THE COMMUNITY
(1290/05, 1235/07, 13195/08)

Letter from the Rt Hon Jane Kennedy MP, Minister of State for Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 5 November about this proposal from the Commission to amend the food for the most deprived persons scheme.

I have delayed replying before now pending the discussion at the extra meeting of the Agriculture and Fisheries Council organised by the French Presidency on 28 November. However, the discussion confirmed that several Member States continue to have policy and technical issues with the proposal such that at present there is not a qualified majority in favour of it. The proposal will now pass to the Czech Presidency and I will, as you request, keep you informed of further developments.

Finally, I can confirm that I do not envisage our participating in any revised scheme for the reasons set out in paragraphs 8 and 9 of my Explanatory Memorandum.

8 January 2009

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your letter (8 January) regarding the above proposal was considered by Sub-Committee D at its meeting of 28 January.

We note that there is a blocking minority against this proposal, which includes the UK. We share your reservations about this scheme, and are therefore content to lift scrutiny. We would ask you to inform us promptly, however, if the position of the Council, or your own approach, changes.

29 January 2009

FOOD PRICES IN EUROPE (17380/08)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister for Farming and Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 11 March 2008.

We support your intention to caution against hasty intervention, and agree that further analysis of events in the second half of 2008 and 2009 is called for.

We would also urge caution with regard to potential future initiatives to address excessive volatility in agricultural commodity markets. We take the view that clumsy intervention in this area could stifle market signals, and are also conscious that the EU's past experience of managing agricultural price volatility via the CAP often led to unintended and undesirable consequences.

For these reasons we strongly support your intention to call for any future proposals to be accompanied by thorough Impact Assessments.

Finally, we would welcome further information from you on whether the permanent European monitoring of food prices and the supply chain envisaged by the Commission can be undertaken within existing institutional structures and budget lines.

We are content to release the Communication from scrutiny, but would ask you to respond to the points raised above.

11 March 2009

GENERAL: DORMANT SCRUTINY ITEMS (11408/05, 9898/06, 11640/06, 12917/06, 16902/06, 16833/07, 16832/07, 11083/08, 11380)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs and the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

There are a number of items currently being held under scrutiny by the Committee that have already been adopted or agreed by the Council of Ministers. We wish to clear these items from scrutiny, so as to focus our scrutiny activity on items that are still actively under consideration by the EU institutions. The items on which we will lift scrutiny are as follows – scrutiny overrides will be recorded where appropriate:

- 11408/05 **Communication on TSE Roadmap**
Superseded by another proposal. No override.
- 9898/06 **Communication on Community Fisheries Management**
Discussed in Council on 27 June 2006. No override.
- 11640/06 **Council Decision authorising the placing on the market of GM oilseed rape products**
Adopted by Commission on 26 March 2007. Override during parliamentary recess.
- 12917/06 **Commission Communication on Fishing Opportunities for 2007**
Discussed in Council on 24 October 2006. Override.
- 16902/06 **Regulation on Tariff Quotas for Imports into Bulgaria and Romania of Raw Cane Sugar**
Adopted in Council on 7 May 2007. No override as UK voted against.
- 16833/07 &
16832/07 **Decision on EC position on proposals to amend the Schedule of the International Convention on the Regulation of Whaling**
Adopted in Council on 5 May 2008. No override, waiver under Art. 3 (b) of the scrutiny reserve resolution.
- 11083/08
Norway **Regulation on Anti-Dumping Duties on Farmed Salmon Originating in Norway**
Adopted in Council on 17 July 2008. No override.
- 11380/08 **Council Regulation establishing a School Fruit Scheme**
Adopted in Council on 18 December 2008. Override.

2 April 2009

GENETICALLY MODIFIED CARNATION (16271/08)

Letter from the Rt Hon Hilary Benn MP, Secretary of State, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to inform you of a proposal to approve the placing on the market of a GM carnation (line 123.8.12) which is to be voted on at the Agriculture and Fisheries Council on 19 January.

The proposal is part of the routine process for dealing with applications to place GM products on the market. An Explanatory Memorandum was prepared and submitted on 17 December 2009 but your Committee has not yet cleared this dossier. In the circumstances, it is clearly unfortunate that scrutiny procedures could not be completed but I wish to inform the Committee that the Government has decided to proceed. The UK vote will be in favour of this proposal on the basis of the scientific evidence.

19 January 2009

Letter from the Chairman to the Rt Hon Hilary Benn MP

Your letter (19 January) regarding the above Proposal was considered by Sub-Committee D at its meeting of 28 January 2009.

We note that an override took place with respect to this Proposal, which was due to go to Council on January 19. You indicate in your letter that an Explanatory Memorandum was prepared and submitted on 17 December 2008, and note that it was clearly unfortunate that scrutiny procedures could not be completed.

Our records indicate that although the date written on the Explanatory Memorandum is indeed 17 December 2008, the EM was only submitted to us – electronically – on 9 January 2009.

Furthermore, there was no indication in the EM, or in the covering email, that consideration by the Committee was urgent – the relevant paragraph of the EM (Paragraph 17) indicated that it was not yet known when a vote would be taken in Council. This was clearly unfortunate, as it might otherwise have been possible to prevent a scrutiny override on this occasion.

29 January 2009

GENETICALLY MODIFIED MAIZE: USE AND SALE IN HUNGARY AND AUSTRIA OF LINE MON 810 AND T 25 (5685/09, 6330/09, 6327/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Agriculture

Your Explanatory Memorandums (10 February and 16 February) on the above proposals were considered by Sub-Committee D at its meeting of 25 February.

We have consistently supported the risk assessment process carried out by EFSA and the ACRE, and are therefore content to lend our support to your position in favour of the Commission's proposals.

However, we would like to seize this opportunity to ask you to update us on what progress has been made in reviewing the GM authorisation process.

We will clear the proposals from scrutiny, but would be grateful for the update requested above.

26 February 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 26 February 2009 regarding the Explanatory Memoranda on the above three proposals. The Committee cleared these proposals from scrutiny but asked to be updated on what progress has been made in reviewing the GM authorisation process.

We have been continuing to argue in various forums at the European level for the EU GM regulatory process to be improved, and there are signs that the Commission is now trying to push through decisions on GM issues more quickly, as evidenced by the number of recent votes taken on GM applications and safeguard actions (9 votes since the beginning of the year). However, as demonstrated in the Environment Council when votes were taken on lifting the safeguard proposals domestic Member States politics is still having a bearing on authorisation processes.

The EU Environmental Council adopted a set of written conclusions on GM issues in December 2008 some of which may have a bearing on the authorisation process. Amongst other things, these set out an agreed view on the operation of the risk assessment process for GMOs and included a reference to the forthcoming Commission report on the implementation of Directive 2001/18/EC which we await with interest. The full text of the Conclusions is available at:

16 March 2009

GEOLOGICAL STORAGE OF CARBON DIOXIDE (5835/08)

Letter from the Rt Hon Ed Miliband MP, Secretary of State, Department of Energy and Climate Change, to the Chairman

I am writing to update you on the conclusion of EU negotiations on the Directive on the geological storage of carbon dioxide, following Lord Grenfell's letter dated 19 November lifting scrutiny of the proposal. The Directive was agreed at its first reading by the Council of Ministers at the December European Council alongside the other proposals in the EU Climate Change and Energy Package and passed by the European Parliament on 17 December 2008.

I am attaching a pre-official version of the text, which you should also have received from the European Parliament. Please bear in mind that this has yet to be finalised by legal-linguistic experts. Last minute changes to the text were avoided but as outlined in detail in my last letter to you, the agreed Directive differs from the original proposals in a number of key ways:

- it now explicitly recognises that carbon dioxide storage can take place in tandem with the enhanced recovery of hydrocarbons;
- multiple use of the same region of the sub-surface are now permitted, so long as these uses do not conflict with the storage of carbon dioxide;
- the requirements before responsibility for a storage site can be transferred to a competent authority have been significantly strengthened and more detail is provided on how these requirements are to be met;
- the competent authority must now charge a fee before accepting long-term responsibility for a storage site, the level of which must cover at least the anticipated costs of monitoring the store for a period of 30 years after closure; and
- on carbon capture readiness, it now requires economic assessments of transport and CCS retro-fitting, but only requires that space for capture and compression equipment must be set aside if the assessments of the other three factors show CCS is ultimately feasible.

The UK government will be implementing the Directive within the two years provided for transposition in Article 39. However, you will note that there are also transitional measures, which should enable Member States, including the UK, to proceed with permitting sites under national legislation, where a national framework is already in place. You will be aware that the UK government has already put in place a framework for regulating the geological storage of carbon dioxide offshore in the Energy Act 2008, which we expect to commence in April 2009.

I would like to thank you and your committee for your helpful and swift scrutiny of this proposal during negotiations, which assisted the government in reaching a first reading agreement.

16 February 2009

INDIAN OCEAN TUNA COMMISSION (7481/09)

Letter from Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to advise you that this proposal was agreed as an A Point at Agriculture Council on 23 March 2009. An EM was submitted to the Committees on Thursday 19 March.

The purpose of the proposal was to provide the EU Commission with a mandate to negotiate on behalf of the European community at next week's meeting of the Indian Ocean Tuna Commission which takes place in Bali. The EU is proposing a number of measures on protection of sharks, reduction of fishing effort and capacity and measures aimed at combating Illegal, Unregulated and Unreported (IUU) fishing. The UK has 4 vessels actively fishing in the IOTC regulatory area broadly supports the position to be taken by the Commission.

It is essential that the Commission has a mandate to negotiate on behalf of the EU at this meeting. In view of this, and the importance of the fishing opportunities for UK vessels, I voted in favour of this proposal at Council prior to it being cleared by the Scrutiny Committees.

26 March 2009

INTEGRATED COASTAL ZONE MANAGEMENT IN THE MEDITERRANEAN (I3991/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the National and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 10 December 2008.

Whilst generally supporting the principle of an integrated approach to coastal zone management, we recognise that the proposal does not impose new obligations on the Community, and has no policy implications for the UK or Gibraltar. We are therefore content to clear the Proposal from scrutiny.

10 December 2008

KYOTO: PROGRESS TOWARDS ACHIEVING OBJECTIVES (I4508/08)

Letter from the Chairman to Joan Ruddock MP, Parliamentary Under Secretary of State, Department of Energy and Climate Change

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 10 December 2008.

We note that the UK is among those Member States that are projected to meet their targets under the internal EC burden-sharing agreement, and has indeed already discharged its responsibilities. We commend that achievement.

Some other Member States' progress appears to be far less encouraging. We are conscious that the EU is in the process of negotiating another effort-sharing agreement as part of the Energy and Climate Change Package, yet experience thus far suggests that some Member States are failing to shoulder their share of the burden. We support your view that all Member States should comply with their individual targets, and that the EU should not rely on over-compliance by some to achieve collective targets. We would consequently ask you to explain how this issue has been addressed in the design of the new effort-sharing decision (on emissions in sectors outside the scope of the ETS). We would also ask you to clarify what enforcement mechanisms are available to promote compliance (or punish non-compliance) with the burden-sharing agreement currently in force.

We note that the EU's emissions reduction trajectory will have to become much steeper from 2012 onwards if Member States are to meet their target of a 20 per cent reduction in EU greenhouse gas emissions by 2020. Progress thus far on reaching the 8 per cent target does not inspire confidence that a much more demanding target of 20 or even 30 per cent is readily achievable. We would therefore ask you to indicate whether the findings presented in this report will have any impact on the EU's negotiating position at Copenhagen – a subject on which we understand the Commission is preparing a separate Communication. We would particularly welcome your views on how credible or realistic a 30 per cent emission reduction target would be in light of the findings presented in this report.

Finally, we note that in Phase 1 of the Emissions Trading System, the UK was one of six Member States whose verified emissions were higher than allocations. We would be grateful if you could explain why this was the case, and how a repeat is to be avoided in Phases 2 and 3 of the scheme.

As this is not a legislative document, we are content to clear it from scrutiny, but we will await your response on the queries raised above.

10 December 2008

PERSISTENT ORGANIC POLLUTANTS (POPS) (5466/09, 5946)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Agriculture

Your Explanatory Memorandums (10 February and 16 February) on the above proposals were considered by Sub-Committee D at its meeting of 25 February.

We support in principle the Community's intention to ensure that its internal controls on Persistent Organic Pollutants are replicated at the international level where appropriate.

We note that you do not anticipate that the exemptions permitted under EC Regulation 850/2004 will be contested or indeed withdrawn at the international level – but would urge you to notify us if this changes during the course of the negotiations.

Finally, we note that you raise no concerns about the European Commission's role in representing the Community on matters falling within its competence.

On the basis of these observations, we are content to lift scrutiny on the above proposals.

26 February 2009

PETROL VAPOUR RECOVERY AT SERVICE STATIONS: STAGE II (17170/08)

Letter from the Chairman to Lord Hunt of Kings Heath, Minister for Sustainable Development, Climate Change, Adaptation and Air Quality, Department for Environment, Food and Agriculture

Your Explanatory Memorandum (4 February) on the above proposal was considered by Sub-Committee D at its meeting of 25 February.

We note that the proposal is expected to have a limited impact on the UK, but that it might extend the scope of existing domestic regulation on Stage II petrol vapour recovery to stations with a lower throughput and to stations undergoing a major refurbishment.

We will await receipt of your assessment of the likely impact of these extensions, and hold the proposal under scrutiny in the meantime. We would also ask you to provide us with information on the likely timetable for consideration of this proposal following the Council working group meeting on February 12.

26 February 2009

Letter from Lord Hunt of Kings Heath to the Chairman

Thank you for your letter of 26 February on behalf of the Sub-Committee D which discussed this matter at its meeting of 25 February.

The Presidency, Commission and European Parliament appear agreed on fast-tracking this proposal. As things stand, two more Council Working Groups are planned for 6 and 26 March. The EP Envi Committee is due to vote on 31 March, followed by a plenary vote on 4-7 May.

I will write again once we have completed our impact assessment.

March 2009

Letter from the Chairman to Lord Hunt of Kings Heath

Your letter (9 March) on the above proposal was considered by Sub-Committee D at its meeting of 18 March.

We are grateful for your prompt response to our letter of 26 February, and for the information you provide on the likely timetable for consideration of this proposal.

We will continue to await receipt of your assessment of the likely impact of this draft Directive, and hold the proposal under scrutiny in the meantime.

18 March 2009

PHARMACOLOGICALLY ACTIVE SUBSTANCES IN FOODSTUFFS OF ANIMAL ORIGIN
(8653/07)

**Letter from the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment,
Department for Environment, Food and Rural Affairs, to the Chairman**

I am writing to update you on progress in this area prior to it being considered for adoption at the Council of Agriculture Ministers on 17/18 December.

Sub-committee D considered Ben Bradshaw's EM on this proposal at its meeting on 27 June 2007. Your letter of that date explained that the Committee thought that the Article wording in relation to extrapolation could be clearer, and expressed serious concerns about the introduction of "reference points for action" for banned substances. The Committee is holding the proposal under scrutiny.

Jeff Rooker wrote to you on 26 July 2007 and 8 October 2007 to update you on the proposal, In particular, his later letter explained that officials carried out an initial consultation in September to seek views from over 630 organisations which could contribute to an informed Impact Assessment. Unfortunately none of the 12 responses addressed the possible costs or savings. That letter also indicated that it appeared that the Portuguese would be making serious attempts to clarify key issues. This included the reference points for action issue and the emerging importance to the Commission of including biocides in the proposal.

Unfortunately those issues remained confused under the remainder of the Portuguese Presidency and throughout Slovenia's Presidency in the first half of this year. The French then moved the proposal forward at pace at Coreper level, but with reference points for action remaining contentious. However, all Member States eventually accepted the text. Consensus has been reached between the Presidency/Council, the European Parliament rapporteur and the Commission. The proposal will be presented to the Council of Ministers for adoption on 17/18 December, and then to EP plenary - probably early in the New Year.

In respect of extrapolation, you agreed that, in principle, greater use of extrapolation is a welcome contribution to simplification of the existing rules, but added that its success is predicted on clarity. Jeff agreed with your view that article 5 might be re-drafted in a clearer fashion. Officials pursued this line in Council Working Group, and achieved some success in that forum. However, those changes were lost in subsequent trilogue discussions. There is, however, added wording emphasising the need to ensure a high level of human health protection.

In his EM, Ben explained that guidelines already exist on extrapolation. Whilst the wording of the Article could be clearer, I would suggest that the guidelines are key to ensuring this work continues to be carried out correctly. Article 5 requires the EMEA to automatically assess new applications for potential for extrapolation, which is not the case at present. This will require amendment to the guidelines, which the UK will follow closely.

With regard to setting reference points for action, you asked if we could articulate the scale of the problem and added that, if such limits are necessary, it is absolutely vital that they are fully justified and set at the right level. I hope the text in the attached SEM gives you enough information about the main problem areas and the steps being taken to address them.

The Commission's desire to include procedures for establishing MRLs for pharmacologically active substances in biocides only became apparent after a few Council Working Group meetings. This came as a surprise, as there is only a fleeting reference to disinfectants in recital 19. This was not included in the four week consultation held in September 2007 as the position was still somewhat confused. The Committee will also wish to note a late addition to the text on use of the cascade system and increasing the availability of veterinary medicinal products for horses, proposed by the EP.

The Government will carry out a full consultation shortly on the latest proposal. It is hoped that this exercise will elicit enough information on the original proposals and the EP addition to enable a full and informed IA to be produced.

8 December 2008

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your letter (8 December 2008) and Supplementary Explanatory Memorandum (SEM) on the above proposal were considered by Sub-Committee D at its meeting of 14 January 2009.

We are aware that a Common Position on this proposal was adopted at the Agriculture Council on 17-18 December.

We regard it as regrettable that the Committee was not kept informed of the rapid progress of negotiations in late 2008. Over a year elapsed between your predecessor's letter of 8 October 2007 and your letter of 8 December 2008, by which time a compromise text had effectively already been accepted by all the parties.

We are concerned to note that a proposal of this nature should be agreed in Council while you have not yet been able to prepare an impact assessment. We are particularly perplexed at the inclusion of the provisions relating to biocidal products at a late stage in the discussions and with no consultation of stakeholders. We would be grateful if you could confirm whether an impact assessment of (a) the original text of the draft Regulation, and (b) the provisions relating to biocidal products were carried out by the Commission, and whether the European Parliament carried out an impact assessment of the provisions that it proposed.

As regards the substantive content of the compromise text, we note that the final provisions relating to Reference Points for Action are not entirely satisfactory. It is not clear to us that the provisions are sufficiently stringent to protect human health, nor is it clear that the desired harmonisation of maximum tolerated residue limits in third-country imports will be secured. We recognise, however, that the UK sought to improve the text in these two respects.

We will now lift scrutiny on this proposal, but would welcome your response to the points raised above.

14 January 2009

PLANT PROTECTION PRODUCTS

Letter from the Chairman to José Manuel Barroso, President, European Commission

The above Commission proposal is the subject of scrutiny by our Committee. In that context, our Environment and Agriculture Sub-Committee took evidence on 10 December from the responsible UK Minister, Mr Huw Irranca-Davies MP.

We have strong concerns about the impact of this proposal and we were particularly disappointed to learn from Mr Irranca-Davies that the European Commission has declined to publish a thorough impact assessment on certain elements of the proposal. He informed us that the Commission did not consider it necessary to assess the need for hazard criteria, as opposed to the adoption of a risk-based approach, simply because the Council indicated its support for hazard criteria when responding to the Commission's progress report on the functioning of Directive 91/414/EEC.

Our understanding is that the proposal as currently before the European Parliament and Council could have significant un-intended consequences and, as such, we are extremely concerned that a piece of legislation may be adopted that is out of line with the principles of good governance and the Commission's better regulation initiative.

We would therefore be grateful for information from you urgently as to the impact assessments undertaken by the Commission on this dossier, the Commission's rationale for not undertaking a comparative assessment of the hazard criteria approach and the risk-based approach, and how the Commission's policy in this regard sits with its approach to better regulation. An important aspect of that approach is an acknowledgement that the European Parliament and the Council also have responsibilities with regard to the assessment of legislation as it proceeds through the legislative process. We would therefore be grateful for information from you on how the Commission has worked with the other institutions to ensure that the impact of the proposal as amended has been assessed.

17 December 2008

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

Your predecessor wrote to me on 10 October regarding developments on this proposal. I apologise that we were not able to write to you before the summer recess.

As you know, the Parliament's first reading amendments would have been highly damaging, effectively rendering conventional agriculture impossible. Ministers met UK members of the Parliament's Environment, Public Health and Food Safety (ENVI) Committee in September to discuss the concerns raised by the UK's impact assessment, and officials have provided them with detailed briefing. The

ENVI Committee adopted its second reading amendments on 5 November, and substantially watered down their position (in light, I believe, of the UK's impact assessment). They are, however, still seeking to add further criteria which would reduce pesticide availability. At November's Agriculture Council, the Dutch, Irish and ourselves tabled a paper setting out our concerns. Hilary Benn spoke at the meeting to urge Ministers to resist the Parliament's proposals, and 14 other Ministers took the opportunity to express similar concerns (a much bigger number than the last time he raised this).

So we believe that our message is beginning to get through, and we have secured a clear political direction from the Council. Our next objective is to secure restrictions in the specific provision for endocrine disruptors which causes us such difficulty. But this will not be easy, as the fungal diseases for which we need triazoles are primarily a problem of mild maritime climates. So whilst Ireland shares our concerns, few others do.

The French Presidency is aiming to reach a second reading agreement with the Parliament by the end of this year. They will need the support of a qualified majority of Member States, but of course they do not need to secure our support whilst others remain content. This will make further successes difficult to achieve, but we will continue to press for changes in the negotiations and for an impact assessment for these proposals. Hilary Benn pressed Commissioner Vassiliou on impacts, and asked her to identify corresponding benefits to human health or the environment, but none has so far been provided.

Our first step in this direction has been to revise the assessment published by the Pesticides Safety Directorate in May this year, primarily to reflect the Council's common position and the second reading amendments adopted by the ENVI Committee. The initial assessment - of the substances which would be affected - is now available and a detailed examination of the agronomic impacts will follow a little later. In contrast, whilst Sweden and The Netherlands have also published impact assessments (which reached broadly similar conclusions to ours), there is little interest among other Member States for a Community-wide assessment. It is also unfortunate that a number of amendments from MEPs, which would have introduced a requirement for an impact assessment into the Regulation, were not adopted by the ENVI Committee.

Ministers and officials alike will continue to press for changes to the proposals to alleviate our concerns, and for a proper understanding of the impacts, but we recognise that time is now very short. There next few weeks are likely to be critical, and I will let you know how negotiations with the Parliament progress.

5 December 2008

PROTECTION OF ANIMALS AT TIME OF KILLING (13312/08)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Supplementary Explanatory Memorandum (SEM) on the above proposal and your letter of 24 March were considered by Sub-Committee D at its meeting of 1 April 2009.

We were extremely disappointed that you were not able to respond more promptly to my predecessor's letter of 29 October 2008 and would note that such problems appear to be indicative of a wider malaise within Defra with regard to matters pertaining to parliamentary scrutiny of EU documents.

As regards the auditing that is done to ensure that slaughterhouses in third countries comply with EU requirements, you note that the Commission's Food and Veterinary Office (FVO) is responsible. We would be grateful if you could indicate whether you are content with the auditing process and clarify what enforcement powers the FVO has, if any, when an inspection reveals sub-standard approaches to animal welfare in third countries. In terms of the competitiveness of EU operators in external markets, we welcome your comments and look forward to further information on the outcome of that aspect of your consultation.

You assure us that the Government will be seeking to ensure that the minimum welfare standards in the current legislative framework are reflected in the Regulation. We welcome your assurance on this point but would wish that you indicate how those negotiations are progressing.

In your SEM, you outline the Government's three primary negotiating objectives. These appear to be sensible objectives aimed at reducing the regulatory burden of the Proposal. We are supportive of your approach and would request that you inform us on your progress in negotiating those objectives successfully.

More generally, your Impact Assessment suggests that the costs associated with the implementation of this Directive are expected to be significant (even if the Government is successful in achieving its negotiating objectives). In a new financial environment where both the private sector and the Government are facing a spending squeeze, we would welcome your view on whether you still consider this piece of regulation to be urgently necessary.

We will hold the Proposal under scrutiny and look forward to information from you on the points raised above, as also on the outcome of your consultation and on your progress in achieving your negotiating objectives.

1 April 2009

Letter from the Rt Hon Jane Kennedy MP to the Chairman

Thank you for your letter of 1 April which raised a number of additional points in relation to the above proposal.

I regret the delay that arose in relation to your predecessor's letter of 29 October 2008. We are currently reviewing the procedures for dealing with parliamentary scrutiny of EU documents within Defra and will be seeking to ensure that correspondence is not delayed in future.

You have requested an update on the negotiations and in particular how far the proposed regulation will maintain current welfare protection and the success we have achieved in reducing the regulatory burdens associated with the proposal. Working Group discussions have been very constructive and the presidency working closely with the Commission has revised the text of the proposal significantly. A copy of the latest text (prepared for discussion by Attaches on 4 May) is attached.

The latest text addresses a number of issues of concern to the UK. While the proposed regulation, which is intended to provide an output driven framework for ensuring welfare at killing, is less detailed and prescriptive than our current legislation, it does now establish a basis for ensuring current welfare protection can be maintained. A number of technical concerns remain to be resolved including the level of competence required to slaughter animals for private consumption, the voltages and frequencies used in electrical stunning, gas concentrations and key parameters for gas stunning, limits on the number and weight of birds to which cervical dislocation applies, the range of stunning / killing methods available, restrictions on electrical stimulation of carcasses post stun but before bleeding and stun to dressing intervals. There are a number of other areas where the wording still needs to be tidied up to ensure the proposed regulation makes complete sense

The Council of Ministers will also need to take decisions on a number of key points that it will be difficult to resolve at a Working Group level. These include the approach to religious slaughter (should Member states retain discretion over Religious Slaughter practices or should they be obliged to allow such practices as suggested by the Agriculture Committee of the European Parliament), the use of rotating crates for religious slaughter (banned in the UK but strongly advocated by France) and the procedures to be used to determine the approach to be adopted in relation to slaughtering farmed fish. In addition there support from a number of Member States for national top up provisions where the proposed regulation fails to maintain current levels of welfare protection.

The consultation closed on 20 April. We have received some 37 responses. These are currently being analysed and a full summary of responses will be published in due course. There is general support for the introduction of a Regulation to replace the current directive and the measures to improve the knowledge of personnel involved in killing or slaughter activities. There are some concerns about increased costs especially for small and medium size slaughterhouses while considerable concern has been voiced about the proposed weight and number limits that will restrict the use of cervical dislocation to kill poultry. Four consultees consider the arrangements for killing for private consumption need to be more robust while one of those who responded wants these provisions extended to include adult cattle. Six consultees had concerns about a possible reduction in welfare standards in the UK and supported the use of national rules where necessary to maintain existing standards. Seven consultees thought further clarification was needed in relation to enforcement issues and suggested that a role should be specified for the Official Veterinarian present in most slaughterhouses. Eighteen consultees commented on religious slaughter. One thought religious slaughter should be permitted as a right. The other seventeen thought religious slaughter should be prohibited or thought some form of stunning should be required. Three consultees supported compulsory labelling of meat from animals that have not been stunned. The poultry industry is concerned that the proposed stunning currents and frequencies could increase carcase damage in poultry with potential losses estimated at £80m per annum. There was support from welfare organisations for the proposed switch to constant current for stunning purposes but industry representatives expressed concern about cost and operator safety. Welfare organisations would like

to see electric waterbath stunning of poultry phased out and the use of high CO2 gas mixtures banned for routine slaughter operations.

Overall we consider that the proposed regulation does represent a worthwhile step forward and support its introduction. In particular the proposed regulation will extend the slaughterman licensing arrangements that currently apply in the UK to all Member States. It will also expand the Animal Welfare Officer concept, that has been adopted voluntarily by many slaughterhouses in the UK and Germany, to all Member States. There will also be an alignment of slaughterhouse control procedures in relation to hygiene and welfare issues reducing bureaucracy by applying a common risk based approach to both. Even if we have to concede Member State top up powers in relation to some of the more detailed technical aspects of the Regulation, ensuring minimum EU standards in these areas will be a significant step forward. Further, as many of the new measures build on existing UK practice the cost of implementation here will be significantly less than in those Member States that have no such measures in place. However we will continue to press for a proportionate approach across the range of measures addressed by the Regulation and will try to ensure that any additional costs are kept to a minimum.

You asked specifically what enforcement powers the Commission's Food and Veterinary Office (FVO) has. The FVO has no specific powers to stop trade with third countries. The FVO reports to the Standing Committee on the Food Chain and Animal Health (SCOFCAH), who can impose a ban on trade, require additional guarantees or send a further mission to establish the position more fully.

Discussions on this proposal are moving forward quickly and could be presented to the Agriculture Council for a view on 22 / 23 June. We see no reason to delay formal endorsement of these proposals subject to our ability to safeguard existing levels of welfare protection in the UK and, ensuring any additional costs imposed are proportionate to the welfare benefits involved.

30 April 2009

PROTECTION OF ANIMALS USED FOR SCIENTIFIC PURPOSES (15546/08)

Letter from the Chairman to Meg Hillier MP, Parliamentary Under Secretary of State, Home Office

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 17 December 2008.

We note that this is a major legislative proposal, into which we may wish to conduct an inquiry in due course, and would therefore be grateful if you could provide us with further information on the expected timetable for consideration of the proposal in the Council of Ministers and the European Parliament.

We would also ask you to set out in more detail how the proposed EU framework governing animals used for research would differ from the regulatory regime currently in place in the UK, and to specify which of the Directive's provisions you regard as potentially unnecessary or disproportionate.

We note that the Protocol on Animal Welfare cannot be used as a legal base to justify EC action, and that the legal base for the proposal is Article 95 of the EC Treaty. We would ask you comment on whether you regard the legal base for this proposal as appropriate, in view of the draft Directive's main aims.

We observe that different Member States may take different views of what the minimum acceptable standards for the protection of animals used in research are, and that this is an ethical issue rather than a Single Market one. We would therefore ask you to elaborate on the assertion in your EM that 'the proposal is consistent with the principle of subsidiarity'.

Finally, we would be grateful if you could provide us with further information on other Member States' and the European Parliament's attitudes to the proposal.

Pending receipt of your impact assessment, and further information on the points raised above, we will hold this proposal under scrutiny.

17 December 2008

SUBSTANCES THAT DEplete THE OZONE LAYER (12832/08)

Letter from the Chairman to Lord Hunt of Kings Heath, Minister for Sustainable Development, Climate Change, Adaptation and Air Quality, Department for Environment, Food and Rural Affairs

Your Supplementary Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 28 January.

We are grateful for your response to the queries raised in our letter of 5 November. We support your intention to press for the inclusion in the draft Regulation of a duty on the Commission to carry out a cost-benefit analysis of each proposed new recovery and destruction obligation in the event that this Regulation is adopted – but not prior to its adoption, as you had originally proposed.

We would ask that you keep us informed of the outcome of your discussions with the Commission on the justification for extending restrictions on the export and inward processing of HCFCs.

We will continue holding this proposal under scrutiny, pending receipt of the information requested above, and updates on the progress of negotiations in Council and between the Council and the European Parliament.

29 January 2009

Letter from Lord Hunt of Kings Heath to the Chairman

Your predecessor wrote to me on 5 November about the consideration by Sub Committee D of the Explanatory Memorandum on the proposed recast of EC Regulation 2037/2000 on substances that deplete the ozone layer. I am sorry it has taken so long for this reply to reach you.

In relation to new recovery and destruction obligations, I agree that the key requirement on the Commission should be to carry out a comprehensive cost-benefit analysis on a case by case basis after the Regulation has been adopted but before any proposal is put to Member States to vote on. The Explanatory Memorandum previously submitted (paragraph 14) noted that no assessment had been presented of the likely costs across the EU or in individual Member States. The Memorandum noted that more analysis should have been presented alongside the proposed revised Regulation, given the significance of the new power of proposal for recovery/destruction obligations that the Commission is seeking. But as you say, the key issue is the need for proper analysis of individual proposals. We will be pressing for an explicit duty on the Commission to be included in the revised Regulation to carry out this analysis after the Regulation has been agreed but before bringing forward new recovery/destruction obligations for Member States to vote on.

The Committee also commented that the concern that making mandatory recovery/destruction of ozone-depleting substances might prevent the marketing of carbon credits was not a conclusive argument against regulation. We agree with this comment and we will continue to assess the overall pros and cons of these different approaches, in discussion with other Member States as well.

It was asked for clarification of the risks presented by "banked" ozone depleting substances. The global bank of blowing agents in foams was estimated by the Inter Governmental Panel on Climate Change (2005) to be close to three million metric tonnes. Because of the high global warming potentials of the ozone-depleting substances involved, this would equate to approximately ten billion tonnes of CO₂ equivalent. Although the proportion of this bank existing in the UK is much less certain, early estimates suggest this might be in the order of 100,000 tonnes. If this figure was correct, this would have a potential climate impact on release of 336 million tonnes of CO₂ equivalent.

If not recovered, it is expected that all of these materials will be released to the atmosphere sooner or later. Whilst this release could be spread over 100 years, there are expected to be peaks associated with the demolition of relevant building stock. Although further study is required on age profiles of buildings, these releases are likely to begin in earnest in the decade from 2010-2020 and may reach their peak in 2030-2040. In the interim, since most of these foams are currently still in buildings where the annual level of emissions is known to be at its lowest while the foam remains undisturbed, the risk of emissions remains low. Defra has commissioned some initial work with the Building Research Establishment to develop a better evidence basis for assessing costs and benefits.

3 March 2009

Letter from the Chairman to Lord Hunt of Kings Heath

Your letter (3 March) on the above proposal was considered by Sub-Committee D at its meeting of 11 March.

We are grateful for your response to the queries raised in our letter of 5 November 2008, and are pleased to note that you have taken on board our views.

Please note, however, that following receipt of your Supplementary Explanatory Memorandum, our letter of 5 November 2008 was superseded by our letter of 29 January, to which we are still awaiting a response.

We will continue holding this proposal under scrutiny, pending receipt of a response to our letter of 29 January, and updates on the progress of negotiations in Council and between the Council and the European Parliament.

12 March 2009

Letter from Lord Hunt of Kings Heath to the Chairman

Thank you for your letter of 29 January on the above proposal.

First reading negotiations between the Council and the European Parliament are now well advanced and the UK has made very good progress in addressing the key issues identified in the Explanatory Memoranda submitted. The European Parliament will be voting on a compromise text on 26 March after which the Council is expected to formally approve the text.

You asked about the outcome of discussions with the Commission on restrictions on the export and inward processing of HCFCs. I am pleased to say that we have been successful in arguing for derogations to be included in the proposed compromise package that will allow these activities to continue.

In addition, the compromise package includes our clear preference for a single (Article 175) legal base rather than a dual Article 175/133 base. The text also includes an explicit requirement, in relation to any new proposed recovery/destruction obligations, for the Commission proposal to be accompanied and supported by a full economic assessment of costs and benefits, taking into account the individual circumstances of Member States.

18 March 2009

Letter from the Chairman to Lord Hunt of Kings Heath

Your letter on the above proposal was considered by Sub-Committee D at its meeting of 1 April.

We are grateful for your response to the queries raised in our letters of 29 January and 12 March, and are now content to release this Communication and Regulation from scrutiny.

2 April 2009

SUGAR: GUARANTEED PRICES FOR CANE SUGAR (14122/08)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister for Farming and Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 10 December 2008.

We note that the proposal gives effect to previously agreed arrangements, and we are therefore content to release it from scrutiny.

Nonetheless, we consider that there are a range of important issues surrounding the proposal, reflecting some of those that we highlighted in our own report on the reform of the sugar regime three years ago (Too much or too little: Changes to the EU Sugar Regime, HL 80, 2005-6).

You consider that the price changes have been of substantial financial benefit to the supplying countries. Could you explain, please, on what basis you make this assertion and whether you see any change in that situation as the reference price falls over the coming years.

The negative impact of the reform on ACP countries was one of the principal concerns expressed in our 2005 report. We expressed the view that the greatest benefit to ACP countries would come

from financial aid to a long term development strategy. Could you, please, therefore provide us with your assessment of the extent to which country-specific long term development strategies have been put in place to assist the process of restructuring in ACP countries.

In the context of potential budgetary implications, you indicate that uptake of the restructuring scheme has been very good. We would appreciate further information on the level of uptake to which you refer.

More generally, we would be interested in your assessment of how competitive the EU industry is, and what the prospects are for further reform, should you deem it necessary.

10 December 2008

Letter from the Rt Hon Jane Kennedy MP to the Chairman

Your Committee considered Explanatory Memorandum I4122/08 of 13 October 2008 and concluded that it should be held under scrutiny.

The proposal was considered at the Special Committee on Agriculture on 10 October and it was agreed that the proposal would go to a future Agricultural Council as an 'A' point. At this meeting the UK secured a scrutiny reserve.

The proposal was then put forward and adopted as an 'A' point at the additional, ad-hoc Agriculture Council meeting on 28 November.

It is unfortunate that the Lords Scrutiny had not been completed ahead of this Council. However, I wish to inform your Committee that the Government supported the Commission's proposal.

Although we had not expected the proposal to come forward for adoption so rapidly, the Government considered the proposal to be a routine and uncontroversial issue that we should not seek to delay because of our scrutiny position. The proposal approved the conclusion of Agreements of guaranteed prices for cane sugar originating in the African, Caribbean and Pacific countries and in India for delivery periods between 1 July 2006 and 30 September 2009. The Sugar Protocol, obliges the EU to import about 1.3 million tonnes of cane sugar each year. The Protocol requires the guaranteed price to be negotiated annually, within the price range obtaining in the Community, taking into account all relevant economic factors and this was the final stage of the process for the years in question.

22 December 2008

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your letter (22 December) regarding the above Proposal was considered by Sub-Committee D at its meeting of 21 January 2008.

We have already lifted scrutiny on this proposal, but in our letter of 10 December, took the opportunity to raise a number of queries relating to the implementation of the reform of the sugar regime. You do not offer a response to those queries in your letter, and we would therefore be grateful if you could redress this.

22 January 2009

TIMBER AND TIMBER PRODUCTS (14482/08)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 26 November about the proposed Regulation laying down the obligations of operators.

You asked for further information on the objectives and views of other EU Member States on the proposed Regulation.

All of the EU Member States share our concern over the global illegal trade in timber. The proposed new Regulation is a key tool for meeting the objectives of the existing Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, which has the agreement and support from all EU Member States. The EU's continued intention to address the issue of illegal logging and deforestation

was most recently expressed in the December European Environment Council conclusions. These conclusions underline the EU's role in addressing deforestation and promoting Sustainable Forest Management (SFM) through the implementation of the FLEGT Action Plan and promotion of FLEGT processes.

As discussions continue on the shape of the new Regulation, Member States will undoubtedly have differing views on the best means to ensure a proportionate, easy to use system that does not place undue burden on producers, but remains effective in excluding illegal timber from EU markets. We share this aim, and are working with other Member States, the European Commission and wider stakeholders to ensure an effective design for the proposed new system.

The Committee also questioned whether a unilateral approach was possible, in the event that the proposed EU-wide system does not receive sufficient support from Member States. Clearly a Community wide instrument would be favourable, and most effective at tackling trade in illegal timber. The UK will continue to push for this outcome. Action by the UK alone is in principle an option if EU-wide discussions do not progress. However, unilateral action could be perceived as creating a barrier to free circulation of goods within the EU, and distortion of competition in the internal market. Such concerns pose a real risk to the integrity of any possible system for excluding illegal timber from the EU.

10 December 2008

Letter from the Chairman to Huw Irranca-Davies MP

Thank you for your letter of 10 December on the above Proposal, which was considered by Sub-Committee D at its meeting of 21 January 2009.

We are grateful for the information provided in your letter. You note that discussions are continuing on the shape of the new Regulation. Pending further information on those discussions and receipt of your Impact Assessment, we will continue to hold the proposal under scrutiny.

22 January 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your Supplementary Explanatory Memorandum (SEM) on the above Proposal was considered by Sub-Committee D at its meeting of 29 April 2009.

We note that since your SEM was drafted, the European Parliament voted in favour of the amendments to the draft Regulation proposed by its Environment Committee. We would be grateful if you could set out your views on those proposed amendments, and indicate how they are likely to be received in Council.

It would also be helpful if you could indicate what the additional costs/benefits of the amendments proposed by the European Parliament might be.

We would also ask you to provide us with more information on how negotiations on this draft Regulation have been proceeding in Council, given the initial reservations of some Member States.

We note that you have released a consultation on the proposal, and the European Parliament's proposed amendments to it, and would request that you report back on the outcome of that consultation, notably where you are able to gather information to correct the data deficiencies that you highlighted in your impact assessment.

Pending the information requested above, we will continue holding the proposal under scrutiny.

30 April 2009

TRADE IN SEAL PRODUCTS (12604/08)

Letter from the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 23 October which raised a number of points in relation to the above proposal. I apologise for the delay in replying.

The Government originally lobbied for an extension of the current ban on the trade in products from "whitecoat" harp and "blueback" hooded seals to cover harp and hooded seals of any age, in response

to the continued public outcry concerning the Canadian commercial seal hunt. This approach would cover the two main species of seals currently affected by the Canadian seal hunt. The European Commission proposal goes much further and seeks to cover seventeen pinniped species (seals, sea lions and walrus) currently subject to commercial hunting. The Commission is seeking to improve the hunting methods and standards used in hunting pinnipeds globally rather than banning trade from a specific hunt that many find unethical.

The Government supports the overall approach adopted by the European Commission. However the UK considers that it would be sensible for any proposed regulation to cover all species of pinniped. This will future proof the legislation so that if hunting practices change, the products of any new pinniped hunt cannot be traded on the EU market. A total ban will also make enforcement simpler (it will be easier – and probably cheaper – to test if an item contains a seal product rather than a product from a specific banned seal species). Lastly, and perhaps most importantly, it will be easier to justify any ban in the WTO if it is not implicitly directed at a particular WTO member country (e.g. Canada).

At this stage, the only information that we have on what may qualify as an exempted “humane killing” practice is contained in Annex II to the draft Commission proposal. The European Commission intend to look at the detail in Committee as the implementing legislation is prepared. The Government made clear at the Environment Council on 20 October that the UK would prefer an outright ban of the commercial trade (import, export, sale) of pinniped products within the EU rather than a ban that would allow the commercial trade to continue if certain killing standards are met. We believe such standards would be difficult to define and enforce.

Although this is not a devolved matter, the Government will continue to consult the devolved administrations on this issue. Clearly this matter is of particular interest to Scotland because of the potential use of seal fur in the manufacture of sporrans. I should make clear that there is no commercial hunting of seals for their fur anywhere in the UK. In Scotland, where there are large numbers of seals, it is sometimes necessary to shoot individual animals in order to protect sustainable local fisheries and/or fish farms. This shooting is carried out under the provisions of The Conservation (Natural Habitats etc.) Regulations 1994 which implements the EU Habitats Directive and The Conservation of Seals Act 1970. There is no evidence that the fur from seals killed for these reasons in Scotland or anywhere else in the UK is used commercially. We believe that sporrans manufacturers buy their fur from Norway. If a seal trade ban is introduced it is anticipated that sporrans manufacturers will use other types of fur.

The Government shares the concerns of both HMRC and LACORS about the potential cost and the difficulties involved in enforcing the Commission proposal as it currently stands. However, the lack of clarity about the detailed implementation of the proposal at this stage together with the lack of verifiable data on the import of pinniped products, makes it impossible to provide any reliable cost estimates at this stage. We hope to be able to send you the Government’s impact assessment shortly. This will provide some indicative costs but any further clarification will be dependent on the final shape of the Commission proposal.

We have consulted various trade bodies in the UK to seek their views on the proposed ban. They have confirmed that little or no use is made of seal products in soap, cosmetics, food supplements and health products. Where seal products are currently used this is primarily in relation to clothing and footwear. We have also discussed the proposed ban with various welfare groups. Their view is that a total ban is the only way to ensure that seal welfare is improved and they are against any derogations allowing hunting that meets certain welfare conditions to continue. The welfare groups consider any derogations of this sort will render the ban meaningless. The Government is not planning a formal consultation until we are sure that this proposal is in its final form. We will continue to informally consult both industry and interested civil society (NGO’s) as this proposal develops.

24 March 2009

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your Supplementary Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 19 March.

We are grateful for the impact assessment you have supplied us with, but note that it does not investigate the possible compromise that is now before the Council, and which we understand the UK supports: a complete trade ban with an exemption for Inuit subsistence hunting only. We are not clear on what the enforcement costs for such a ban would be, and would ask you to provide us with information on this.

From your impact assessment (Sections 5 and 9), we gather that there is no direct evidence on the value of possible benefits from the introduction of this Regulation, and that the result of an EU trade ban might be to divert the trade in seal products from the EU to the rest of the world, with little impact on the way hunting is conducted globally. We also note that strength of feeling in favour of a ban has been assessed mainly through a public consultation which is unlikely to have attracted a representative sample of respondents, and that there is no direct evidence available on respondents' willingness to pay for a ban. We consider this to be an unsatisfactory foundation for policy development, and are concerned that this appears to be a recurrent practice on the part of the European Commission. We would ask you to indicate whether you share our concern, and whether you have raised or intend to raise the issue with the Commission, for example in connection with the Better Regulation initiative.

Finally, we note from the risk analysis in your impact assessment (Section 9) that any measure in this area involving a trade ban is likely to be challenged at the WTO by Canada. We would ask you to elaborate on this risk, including on whether it might be defended on the grounds of public morality, and the possible cost of defending such a case.

We will continue to hold the proposal under scrutiny, pending receipt of your response to the issues raised, and an update on the progress of inter-institutional negotiations.

1 April 2009

Letter from the Rt Hon Jane Kennedy MP to the Chairman

Thank you for your letter of 1 April which raised a number of additional points in relation to the above proposal.

Discussions on this proposal have moved forward since the original explanatory memorandum was submitted to the Committee. A compromise proposal was prepared on 23 April following trilogue discussions between the Commission, the Council and the European Parliament. A copy of the latest text is attached. In summary, under the current proposal the placing on the market (defined essentially as import and intra-Community trade) of seal products shall only be allowed where the seal products:

- result from traditional hunts conducted by Inuit and other indigenous communities;
- are for personal use;
- result from hunts regulated under national law with the sole purpose of the sustainable management of marine resources and where the products are marketed on a non-profit basis.

Under the current proposal export and transit trade would still be permitted. Whilst it may seem perverse to ban trade in imported seal products, while allowing such products to be exported, the Legal Services in the three EU institutions consider making this distinction will reduce the chance of a successful WTO challenge (see below).

You asked for clarification of the enforcement costs associated with a trade ban with an exemption for Inuit subsistence hunting only. As far as we are aware there have been no imports into the UK under the Inuit exemption in the existing seal pup trade ban. Further, imports of other seal products are very small (some £250,000 per annum). Consequently we consider there will be little if any import of seal products as a result of an Inuit exemption under the proposed trade ban.

On this basis we anticipate an exemption for Inuit subsistence hunting should have a minimal affect on enforcement activity and that the enforcement costs involved will be little different to those associated with a complete ban (option E in the Impact Assessment sent to you previously). The total scale of enforcement costs will depend on the nature and level of enforcement undertaken by HMRC. The cost of reactive checks, including physical and forensic examinations of consignments at the UK border, will depend entirely on what is found through routine custom checks. If additional proactive checks are undertaken, the cost of checks, involving consignments from the top five exporters plus the United States and Republic of South Africa, would be £600,000 pa if a 1% check is conducted rising to £6m pa if a 10% check is undertaken (see the table under Option E of the Impact Assessment). The detailed rules for applying the Inuit exemption will be established through the comitology procedures provided for under the proposed Regulation. If as a result of agreement on these rules a different approach to enforcement is required, we will consult further on the costs involved as appropriate.

You also questioned the benefits associated with a trade ban. As the Impact Assessment makes clear, the primary benefit will be the social benefit to the considerable number of UK citizens who object to what they perceive to be the unnecessary suffering associated with seal hunting worldwide. In addition the Commission is seeking to remove distortions in the internal market resulting from the introduction of national trade bans by a growing number of Member States. It is also trying to address the adverse impact public concern about the trade in seal products, is having on the trade in other similar (fur) products legitimately being sold on the internal market. Putting a monetary value on these benefits is almost impossible. However during negotiations we have stressed the need to ensure the proposal clearly sets out the reasons for introducing the ban. As a result the Commission has proposed a number of changes (primarily to the whereas clauses) to strengthen the case for the trade ban in relation to the working of the internal market.

Finally you have asked us to elaborate on the risks that the proposed trade ban might be challenged. There is a risk of challenge before the WTO on the basis that the ban poses a restriction on trade. The compromise proposal could strengthen the WTO compatibility of the measure because the removal of the export and transit bans reduces the grounds on which it can be challenged. If it cannot be successfully argued that the measure does not pose a trade restriction contrary to WTO rules, then the Commission will have to argue that the measure is necessary to protect public morals. Public morality arguments have been little tested before the WTO panel, so it is difficult to predict the panel's approach to this exception.

As indicated in the Impact Assessment, the legal costs associated with defending a WTO challenge could range from \$300,000 for a simple case to \$800,000 for a highly complex case. It is anticipated that any challenge would be mounted at an EU level and the cost of defending the case would fall to the Commission.

There is also a risk of a more general vires challenge within the domestic courts or the ECJ as the EU Treaty does not allow the Community to legislate on the basis of ethical concerns. For this reason the Commission is relying on Article 95 of the Treaty in bringing this measure forward. Article 95 can only be used as the legal basis for a measure banning the trade in seal products if it can be shown that the ban contributes to the functioning of the internal market for instance, by removing obstacles to the trade of products other than those that are banned. To address this concern the Commission has strengthened the whereas clauses in the latest text. ECJ case law suggests that the Commission does not need a great deal of evidence that a measure is suitable to improve the functioning of the internal market but it does need to be presented with a plausible case. While the reasoning for the use of Article 95 as the legal basis is much improved in the recitals to the latest text, there will still be a risk of a successful challenge if there is a lack of evidence to support the assertions made.

We do not share your concerns about the way this proposal has been made and do not plan to make representations to the European Commission on this point. The Government has been pressing for an EU wide ban on the trade involving a wider range of seal products for some time. We have received large volumes of correspondence on this issue as a result of NGO campaigns which, in recent years, have resulted in over 250,000 letters and postcards annually from concerned organisations and members of the public. Our support for the seal trade ban quite rightly acknowledges the strength of this public opinion whilst taking account of comments from those in the fur trade and other industries which might potentially use seal products.

There is clear and strong public support for measures to curb seal hunting and on balance, despite the risk of a possible challenge, we see merit in supporting the revised text. A failure to reach agreement now will postpone adoption of new measures until 2010 at the earliest. The latest proposal will make a meaningful contribution to the welfare of seals and we see no reason to delay our formal endorsement of these measures.

30 April 2009

TRADE IN WINE: AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND AUSTRALIA (14560/08)

Letter from the Rt Hon Jane Kennedy MP, Minister of State for Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 26 November in which you confirmed your agreement to release this Proposal from scrutiny. I am very grateful to the Committee for doing this, as it enabled the Proposal to be adopted by the Agriculture and Fisheries Council on 28 November and for the agreement to be signed when the Australian Minister for Foreign Affairs visited Brussels on 1 December. I am afraid

that we were not aware of this timetable when I submitted the Explanatory Memorandum on 13 November and can only apologise that the Committee was not given more notice.

Australia is now the largest supplier of wine to the EU market, with the UK accounting for around 70% of EU imports of Australian wine. Whilst the 1994 Agreement with Australia was beneficial to both Australia and the EU, I believe that the new agreement represents a significant improvement in a number of areas. In particular, it establishes principles for the mutual protection of EU and Australian Geographical Indications, whilst outlining the conditions for Australia to use a number of quality wine terms to describe wines exported to the EU and sold domestically. In addition, it updates the mutual agreement on wine making practices and provides a framework for its future development, as well as simplifying the import certification arrangements.

The Agreement has been warmly welcomed by the European Commission and by the Australian Government and once again I would like to thank your Committee for releasing the Proposal from scrutiny so quickly so that the Agreement could be signed.

8 January 2009

WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE) (17367/08)

Letter from the Chairman to Ian Pearson MP, Economic and Business Minister, Department for Business, Enterprise and Regulatory Reform

Your Explanatory Memorandum (15 January) on the above proposal was considered by Sub-Committee D at its meeting of 28 January.

We note that consideration of this proposal is still at a very early stage, and that you have not yet developed your negotiating position. We welcome the Commission's proposals for a more flexible, market-specific collection target, for more robust enforcement provisions, and for greater clarity on the Directive's scope.

It is not entirely clear to us how the Commission proposes to amend producers' obligation to finance the collection of WEEE. We would be grateful if you could elaborate on the proposed changes in this regard, which you allude to in your EM, and explain how they differ from the status quo.

We will await receipt of your impact assessment and information on the results of the stakeholder's consultation that you intend to conduct before considering this proposal in greater detail.

In the meantime, we would be grateful if you could update us promptly as you develop your negotiating position on this Directive. Pending these updates, we will hold the Proposal under scrutiny.

29 January 2009

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 29 January 2009 concerning the above proposal.

After considering the EM the Committee requested further clarification on how the proposals would potentially increase the financial obligations places upon producers of electrical and electronic equipment and the implications for the UK WEEE regulations and supporting infrastructure.

The current WEEE Directive (Article 8) places an obligation on Member States to ensure that producers of Electrical and Electronic Equipment (EEE) finance the collection, treatment, recovery and environmentally sound disposal of WEEE from private households deposited at collection facilities set up under Article 5(2).

The recast Directive (Article 12) proposes that:

“Member States, where appropriate shall encourage producers to finance all costs occurring for collection facilities from private households”

Under the current UK WEEE Regulations and supporting infrastructure, producers active in the UK market have obligations to finance the collection of WEEE from designated collection facilities, but have no obligations to finance the running of such facilities. The cost of operating such sites (largely local authority controlled civic amenity sites) is borne by the operator of the site.

The Commission's proposal implies that the producer will have an additional obligation to finance the running of the collection facility. Preliminary discussions with producer representative organisation have indicated producers' opposition to such a change

To assess the full impact of this proposal on producers active in the UK market, the UK Government is currently drawing together an impact assessment on all the Commission's proposals. It is anticipated a stakeholder consultation will begin in April 2009 which will include specific questions on the impact of the possible extension of producer responsibility as described. This will inform the UK negotiation position. I will send a copy to the Committee in due course.

11 March 2009

Letter from the Chairman to Ian Pearson MP

Your letter (11 March) on the above proposal was considered by Sub-Committee at its meeting of 18 March.

We are grateful for the explanation you provided of how the Commission proposes to amend producers' obligation to finance the collection of WEEE, and how the arrangements would differ from the status quo.

There are two additional clarifications that we would ask you to provide. One is whether there is any legal significance in the use of the term 'encourage' when setting out producers' responsibilities in Article 12 of the draft Directive.

The second is whether other EU countries already oblige producers to finance the running of collection facilities, and with what effect.

We will continue to await receipt of your impact assessment and information on the results of the stakeholder's consultation that you intend to conduct.

In the meantime, we would be grateful if you could update us promptly as you develop your negotiating position on this Directive. Pending these updates, we will hold the Proposal under scrutiny.

18 March 2009

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 18 March 2009 following consideration of the above proposal by Sub-Committee D.

As previously explained Article 12 of the recast Directive asks Member States to encourage producers of electrical and electronic equipment to finance its collection direct from households. The legal significance of the term "encourage" means that Member States can explore the options to extend producer responsibility to finance doorstep or kerbside collections but it is not a compulsory element of the recast proposals. In discussions with producers and their representative organisations we will be raising the viability of such an option and assessing the impact on both producers and the levels of separately collected WEEE which may result.

We are not aware of any Member State going beyond the requirement of Article 8 of the existing Directive which provides for producers to finance the collection of WEEE from established collection facilities.

We are currently preparing an informal consultation paper to assess the views of stakeholders. We are hopeful to have a clearly picture of the concerns and issues which should be raised as part of the negotiation process and will ensure you are updated in due course.

31 March 2009

Letter from the Chairman to Ian Pearson MP

Your letter (31 March) on the above proposal was considered by Sub-Committee at its meeting of 29 April.

We note that under the recast Directive, Member States could choose whether to extend producer responsibility to finance collections from private households, and that to your knowledge, no other Member State has thus far chosen to introduce such an obligation.

We also note that you are preparing an informal consultation paper, and would ask you to inform us of the views expressed by stakeholders in response.

In the meantime, however, we would be grateful if you could update us on the stance you are taking on this proposal in Council working group meetings, and on the main issues that have been raised by other Member States in those meetings thus far.

We will continue holding the proposal under scrutiny pending your response to the above queries and receipt of your impact assessment.

30 April 2009

WATER SCARCITY AND DROUGHTS IN THE EUROPEAN UNION (17586/08)

Letter from the Chairman to the Hum Irranca-Davies MP, Minister for the Natural and Marine Environment, Food and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (15 January) on the above document was considered by Sub-Committee D at its meeting of 11 February.

We welcome this attempt to keep water management issues across a range of EU policy areas under review, and note that the UK is making good progress in a range of areas.

We intend to consider these issues more closely when the Commission's White Paper on adaptation to climate change comes to us for scrutiny.

In the meantime, we are content to release this report from scrutiny.

11 February 2009

WHALING: INTERNATIONAL CONVENTION ON THE REGULATION AND ITS SCHEDULE (15950/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Agriculture

Your Explanatory Memorandum (EM) on the above dossier was considered by Sub-Committee D at its meeting of 25 February 2009.

We share your concerns with respect to whaling and therefore consider that the content of the joint policy position proposed by the Commission is sound. We were also pleased to note that a coordinated EU approach proved helpful at last June's IWC meeting.

When considering the draft Decision last year on proposals for amendments to the Schedule to the ICRW at last June's IWC meeting, we expressed concern about the use of Article 37 as a legal base. We were therefore pleased to note that the Commission's draft Decision in this instance relies on Article 175(1) in conjunction with Article 300(2)(2).

Nevertheless, we do consider that the adoption of an open-ended mandate for all future IWC meetings is rash, and we would therefore agree that a time limit on the mandate is desirable.

We understand that the proposal is likely to be tabled for adoption at the 2 March Environment Council and we are content to release the proposal from scrutiny.

26 February 2009