Subject: State aid (United Kingdom)
   Aid n. N 264/2003
   TSE testing of sheep and goats for human consumption

Sir,

I. Procedure

1. In accordance with article 88 (3) of the EC Treaty, the United Kingdom Permanent Representation to the European Union notified the Commission of these measures by letter of 12 June 2003 registered on 16 June 2003.

II Description

Objective

2. The aid is designed to cover the costs of TSE testing of sheep and goats aged over 18 months destined for human consumption.

Duration

3. The scheme will run until March 2008.

Budget

4. Budgetary appropriations are as follows:

   2003/2004   £ 10.7m in Great Britain and £ 0.2m in Northern Ireland
   2004/2005   £ 11.13m in Great Britain and £ 0.21m in Northern Ireland
   2005/2006   £ 11.57m in Great Britain and £ 0.22m in Northern Ireland
   2006/2007   £ 12.04m in Great Britain and £ 0.23m in Northern Ireland
   2007/2008   £ 12.52m in Great Britain and £ 0.23m in Northern Ireland

The Right Hon Jack STRAW MP
Secretary of State for Foreign and Commonwealth Affairs
Downing Street
LONDON SW1A 2AL
United Kingdom
Beneficiaries

5. Sheep and goat farmers in the UK.

Legal basis

   - National implementing provisions of Regulation 999/2001:
     - TSE (England) Amendment Regulations 2002 (SI 2002/1353)
     - TSE (Wales) Regulations 2002 (SI 2002/1416)
     - TSE (Scotland) Regulations 2002 (SI 2002/255)
     - Transmissible Spongiform Encephalopathy Regulations (Northern Ireland 2002 (SR 2002/225)

Description of the measure

Legal requirements

7. According to Regulation 999/2001 as amended, the UK is required to carry out a set number of TSE tests a year on sheep and goats aged over 18 months destined for human consumption, in order to monitor the prevalence and epidemiological spread of TSEs within UK sheep and goats. Each year the number of sheep to be tested will be set by the European Commission. The requirement for 2003/2004 is 60,000 sheep.

The scheme: functioning, aid intensity and eligible costs

8. Under the proposed scheme, 100% compensation will be given for the following eligible costs:

For Great Britain:

- collection of brain stem samples at abattoirs;
- training MHS to take samples;
- provision of consumables (sampling spoons, pots, etc);
- transport of samples from abattoirs to the laboratory;
- purchase of EU-approved rapid testing kits;
- undertaking EU-approved rapid test.

For Northern Ireland:

- Collection of brain stem samples at abattoirs;
- provision of consumables (sampling spoons, pots, etc);

¹(OJ L 147, 31.5.2001)
- transport of samples to laboratory;
- provision of EU rapid test kits;
- undertaking EU rapid test.

9. The aid will take the form of direct payments by the Department for Environment Food and Rural Affairs (DEFRA) in Great Britain, and by the Department of Agriculture and Rural Development (DARD) in Northern Ireland.

10. Payments will be made to laboratories. Farmers will not be charged for the services by the laboratories.

11. Fallen sheep and goats to be tested are chosen at random. The scheme is open to all UK sheep and goat meat producers (about 120,000).

The service providers

12. The services will be provided by DEFRA, DARD or the Meat Hygiene Service (an Executive Agency of the Food Standards Agency) the Veterinary Laboratories Agency (VLA, an Executive Agency of DEFRA), or by independent contractors.

13. The UK authorities undertake that any contractor chosen to perform some of all of the services will be selected on market principles, in a non-discriminative way, where necessary using tendering procedures which are in accordance with Community law and case law\(^2\), using a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed. Such a tender exercise in currently under way.

III. Assessment

Presence of aid

14. In accordance with Article 87(1) of the EC Treaty, any aid granted by a Member State or through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is to be deemed incompatible with the common market.

15. By not having to pay for the obligatory TSE testing of their sheep and goats destined for human consumption, farmers receive economic benefits which they would not otherwise have received in their normal course of business, and therefore their competitive position is improved compared to other farmers in the Community which do not receive the same type of aid\(^3\). The aid is granted by

\(^2\) Judgment of the Court of Justice in Case C- 324/98 Telaustria Verlag GmbH v Telekom Austria AG (2000) ECT I-10745

\(^3\) According to the case law of the Court of Justice, improvement in the competitive position of an undertaking resulting from State aid generally points to a distortion of competition
means of national resources. Sheep and goat producers are active in a highly competitive international market, with substantial intra-community trade (in 2001, intra-community imports of sheepmeat and goatmeat totalled 196,000 tons, exports 199,000 tons, and the UK accounts for 20% of total EU sheep and goat production). It can thus be concluded that measure affects trade between Member States. Therefore, the notified scheme falls within the scope of article 87 (1) of the Treaty.

Compatibility of aid

16. The prohibition on state aid in Article 87(1) EC is subject to exceptions. In application of the derogation in Article 87(3)(c) EC, the Commission may consider an aid compatible with the common market if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

17. The specific rules concerning this type of aid are set out in the Community guidelines for State aid concerning TSE tests, fallen stock and slaughterhouse waste (hereinafter “the TSE guidelines”), which take precedence over the general legal basis of point 11.4 of the Community guidelines for State aid in the agriculture sector. The agricultural guidelines remain applicable on a subsidiary basis.

18. The TSE guidelines set out the principles governing aid to compensate for the costs of TSE testing.

a) The cost of TSE tests is a normal production cost, which has to be borne, in principle, by farmers.

b) However, the cost of these tests may be high. Especially in the case of low-value animals, such as sheep and goats, the tests may cost more than the animal is worth. Making owners pay for tests could entail the risk that such animals are marketed without testing, thus reducing the availability of data on TSEs, diseases that are a serious public health concern. Therefore, aid towards the cost of TSE tests is allowed.

19. Point 25 of the TSE Guidelines states that aid towards the costs of TSE tests has to be paid to the operator where the samples have to be taken. However, payment of the aid may be made to laboratories, provided it can be properly demonstrated that the full amount of State aid paid is passed on to the operator. The notified measure fulfils these requirements. Payment of aid may be made to laboratories. However, the full amount of aid is passed on to sheep and goat farmers, who receive the testing services free of charge.

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4 Official Journal C 324, 24/12/2002 P. 0002 - 0007
5 Official Journal C 28 of 2002, p. 02
20. The proposed aid complies with point 23 of the TSE Guidelines, allowing a 100% state contribution for TSE testing of animals other than bovines slaughtered for human consumption. The measure is therefore in line with relevant State aid legislation.

*The service providers*

21. As the contractors entrusted with providing the services will be chosen on the basis of a transparent tendering procedure as described in point 13 above, the scheme can be considered in line with Community legislation on public procurement.

*Conclusions*

22. On the basis of the considerations above, the Commission has decided to consider that the aid measures under the current aid scheme are compatible with the common market according to article 87(3)(c) of the Treaty, in that they facilitate the development of certain activities without adversely affecting trading conditions to an extent contrary to the common interest.

23. If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days from the date of receipt. If the Commission does not receive a reasoned request by the stipulated deadline, you will be deemed to agree to publication of the full text of this letter in the authentic language on the Internet site: [http://europa.eu.int/comm/secretariat_general/sgb/state_aids/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/). Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission  
Directorate-General for Agriculture  
Directorate H.2  
Office: Loi 130 5/128  
B-1049 Brussels  
Fax No: 0032 2 2967672

Yours faithfully,  
For the Commission

Franz FISCHLER  
Member of the Commission