Subject: State aid (United Kingdom)
Aid n. N 263/2003
TSE testing of sheep and goats fallen stock

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 removal, disposal and TSE testing of sheep and goats in the UK which died on farms.

Duration

3. The scheme will run until March 2008.
Budget

4. Budgetary appropriations are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Great Britain</th>
<th>Northern Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003/2004</td>
<td>£ 2.00m</td>
<td>£ 0.053m</td>
</tr>
<tr>
<td>2004/2005</td>
<td>£ 2.08m</td>
<td>£ 0.055m</td>
</tr>
<tr>
<td>2005/2006</td>
<td>£ 2.16m</td>
<td>£ 0.057m</td>
</tr>
<tr>
<td>2006/2007</td>
<td>£ 2.24m</td>
<td>£ 0.06m</td>
</tr>
<tr>
<td>2007/2008</td>
<td>£ 2.34m</td>
<td>£ 0.062m</td>
</tr>
</tbody>
</table>

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 on sheep and goats aged over 18 months which died on farms, in order to monitor the prevalence and epidemiological spread of TSEs. Every year, the number of animals to be tested is set by the European Commission. For 2003/2004, the Community requirement is 6,000 sheep and 24 goats.

The scheme: functioning, aid intensity and eligible costs

8. Under the proposed scheme, 100% compensation will be given for the following eligible costs:
   - collection of carcasses from farms;
   - disposal of carcass and by-products;
   - removal of head, collection of brain sample and onward delivery to laboratories;

¹ (OJ L 147, 31.5.2001)
- provision of consumables (sampling spoons, pots, etc);
- purchase of EU-approved rapid testing kits;
- undertaking EU-approved 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). These producers are informed about the survey by direct communication or by media campaigns. Control measures are in place at the collection and incineration points, or (Northern Ireland) at the rendering/sampling premises.

The service providers

12. The services of collection, sampling and disposal of fallen ovine and caprine carcasses will be provided by DEFRA, DARD or their Executive Agencies Rural Payment Agencies (RPA), the Veterinary Laboratories Agency (VLA), 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 law², 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 removal, destruction and TSE testing of their fallen stock, sheep and goat 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.

² Judgment of the Court of Justice in Case C-324/98 Telaustria Verlag GmbH v Telekom Austria AG (2000) ECT I-10745
which do not receive the same type of aid⁴. The aid is granted by 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) is subject to exceptions. In application of the derogation in Article 87(3)(c), 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 waste⁴ (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 sector⁵. 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 fallen stock disposal and TSE testing.

   a) TSE tests and disposal of fallen stock are normal production costs, which are to be borne, in principle, by farmers.

   b) However, the cost of removing fallen stock may be high, and it is difficult to control illegal disposal, which may create serious health risks. In particular, letter (f) of point 27 of the TSE Guidelines specifies that, where carcasses have to be tested for TSE, their uncontrolled disposal in order to avoid test costs could have the additional disadvantage that these animals are not tested, although it may be that precisely these animals should be tested, in order to ensure sound statistical data on TSEs. In the case of low-value animals, such as sheep and goats, the tests may cost more than the animal is worth. Therefore, aid is allowed for the removal and disposal of fallen stock, as well as for TSE tests, under the conditions detailed below:

   Fallen stock

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⁴ 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 compared with other competing undertakings not receiving such assistance, Case C-730/79, ECR 1980, p. 2671, paragraphs 11 and 12.

⁵ Official Journal C 28 of 2002, p. 02
19. Point 32 of the TSE Guidelines makes the approval of such State aid conditional upon the existence of a consistent monitoring programme, ensuring safe disposal of all fallen stock in the Member State. In the case at hand, this condition can be considered met. Such monitoring programs exist in all Member States, in implementation of Regulation 999/2001.

20. Point 31 of the TSE Guidelines state that Member States may grant aid of up to 100% for costs of removal (collection and transport) and destruction (storage, transformation, destruction and final disposal) of fallen stock where there is an obligation to perform TSE tests on the fallen stock. Since the UK is legally required to perform such tests under Regulation 999/2001, an aid intensity of 100% for removal and destruction of carcasses is allowed.

21. Points 32 and 33 state that aid for fallen stock may only be granted to farmers, and no aid may be given to operators active in the processing and marketing of such animals. However, payment of the aid may be made to economic operators active downstream from the farmer, provided it can be properly demonstrated that the full amount of State aid paid is passed on to the farmer. 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 collection, testing and disposal services free of charge.

22. The measure complies with the requirements of the TSE guidelines and is therefore in line with relevant State aid legislation.

23. The Commission reminds the United Kingdom that fallen stock which is not going to be tested for TSEs remains subject to the rules of points 28 and 29 of the TSE guidelines (as from 2004, aid for destruction is limited to 75% of eligible costs).

**TSE tests**

24. The proposed aid to cover the costs of TSE testing of fallen stock sheep and goats complies with point 23 of the TSE Guidelines, allowing a 100% state contribution for animals other than bovines slaughtered for human consumption. The measure is therefore in line with relevant State aid legislation.

**The service providers**

25. As the entities entrusted with providing the removal, testing and disposal 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**

26. 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.

27. 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/. 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