



EUROPEAN COMMISSION

Brussels, 10.X.2007
C (2007) 4537 final

Subject: State aid N 338/2007 - United Kingdom
Aid No Agricultural and Horticultural Development Board -
Quality Products

Dear Foreign Secretary,

I have the honour to inform you that, having examined the information supplied by your authorities, the Commission has decided to raise no objection to the State aid scheme mentioned above.

In reaching this decision, the Commission based itself on the following considerations:

I. PROCEDURE

- (1) The measure was notified by letter dated 19 June 2007, registered on 19 June 2007. Additional information was received by letter of 27 August 2007, registered on 27 August 2007, and by letter of 13 September 2007, registered on 13 September 2007. On 5 September 2007, a meeting took place with the UK authorities.

II. DESCRIPTION

2.1. Title

- (2) Agricultural and Horticultural Development Board - Quality Products

The Rt Hon David Miliband MP
Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
King Charles Street
LONDON SW1A 2AH
United Kingdom

Commission européenne, B-1049 Bruxelles – Europese Commissie, B-1049 Brussel – Belgium
Telephone: 00 32 (0) 2 299.11.11

2.2. Budget

- (3) Annual amount: £22 million (€32.6 million)
Overall budget: £132 million (€195.4 million)
- (4) Another £17.91 million will be spent on administrative activities. According to information provided by the UK authorities, these activities are non-economic activities. Thus, the overall budget for State aid amounts to £132 million (€195.4 million).

2.3. Duration

- (5) 1 April 2008 until 31 March 2014

2.4. Beneficiaries

- (6) Over 1000 primary producers in the relevant sectors

2.5. Measure

- (7) The aim of the scheme, which will be administered by the new levy board and its six sector companies, is to encourage the production of quality products in the agricultural sectors covered by statutory levy. The new levy board Agricultural and Horticultural Development Board and its sector companies will support market research activities, quality assurance schemes, product conception and design, the preparation of applications for the recognition of geographical indications and designations of origin or certificates of specific character.¹
- (8) The scheme will cover Annex I-products, including also potatoes other than starch potatoes. Support for businesses active in the processing and marketing of Annex I products will be covered by Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis aid*² ("*de minimis aid*").
- (9) The scheme will apply to England, Wales and Scotland in the milk, horticulture and potato sector, to England, Wales, Scotland and Northern Ireland in the cereals and oilseeds sector, and England alone in the pig, the beef and lamb sectors.

¹ This scheme is part of the Agricultural and Horticultural Development Board package: Agricultural and Horticultural Development Board - Technical Support, State aid No N 145/2007, and Agricultural and Horticultural Development Board - Advertising, State aid No 529/2007.

² OJ L 379, 28.12.2006, p. 5.

2.5.1. Change of the levy arrangements

- (10) On 1 April 2008 the new statutory levy arrangements will come into force. The current levy bodies (the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council) will be abolished and replaced by an overarching levy body and six sector companies. The new Agricultural and Horticultural Development Board will cover the cereals and oilseeds sector in the United Kingdom, the British milk, potato and horticulture sectors, and the English pig and English beef and lamb sectors. All existing levy-funded schemes (with the exception of the approved British Pig Health Scheme, State aid No N 308/2005) will therefore end when the levy board begins operating.

2.5.2. Agricultural and Horticultural Development Board and sector companies

- (11) The new overarching levy body consists of Agricultural and Horticultural Development Board, and six wholly-owned subsidiary sector companies. Agricultural and Horticultural Development Board will be a non-departmental public body in which there will be no private share capital. Financial accountability for the sector companies will rest with Agricultural and Horticultural Development Board and as a non-departmental public body, Agricultural and Horticultural Development Board will be required to lay Annual Reports and Accounts before Parliament.
- (12) Under the Companies Act, each sector company will be required to produce its own annual report and accounts. Agricultural and Horticultural Development Board will not have line management responsibility for the sector companies. Agricultural and Horticultural Development Board will report to the levy board chair who will report to the permanent secretary of Defra (Department for Environment, Food and Rural Affairs).
- (13) Agricultural and Horticultural Development Board will consist of ten members appointed by UK Ministers: the chair, three independent directors, and six members representing the sectors covered by statutory levy. The chair and three directors will be independent of the agricultural and horticultural sectors.
- (14) Agricultural and Horticultural Development Board as owner of the sector companies will appoint the sector company board members. The boards of the sector companies will have a maximum of 15 members that will include a majority of members representing the interests of farmers or growers, and at least one independent board member.
- (15) The UK authorities have given assurances that the UK government controls the expenditures of the Agricultural and Horticultural Development Board and its companies by exercising a right of approval of the business plan for all its activities.

2.5.3. Governmental and commercial activities of Agricultural and Horticultural Development Board and sector companies

- (16) Agricultural and Horticultural Development Board will collect and administer the levy on behalf of the UK government.
- (17) Agricultural and Horticultural Development Board will provide corporate services for Agricultural and Horticultural Development Board and its sector companies (human resources, administration etc.).
- (18) Technical support services may be provided by the sector companies and Agricultural and Horticultural Development Board themselves but only where appropriate. Otherwise, services may be procured from private sector organisations. Contracts will be awarded in compliance with EU procurement rules.
- (19) Agricultural and Horticultural Development Board may engage in commercial activities but such activities will be undertaken by a wholly owned commercial subsidiary company of Agricultural and Horticultural Development Board. Thus, separate accounts will be kept for such activities to prevent cross-subsidisation.

2.5.4. Administrative costs of governmental activities

- (20) According to information provided by the UK authorities, the administration of the new structure will cost around £109.5 million; this figure is subject to further savings due to the new structure.

2.5.5. The new statutory levy

- (21) The scheme will be funded by a statutory levy. Additionally, Defra, the Scottish Executive, the National Assembly for Wales, the Department for Agriculture and Rural Development in Northern Ireland and the Regional Development Agencies within the UK may provide funds from their general budgets.
- (22) The statutory levy will be collected from farmers and in some cases from the processors and dealers in the sectors covered by the levy (milk, potatoes, horticulture, cereals and oilseeds, pigmeat, beef and lamb).
- (23) The rate of levy and the method of collection of the parafiscal levy will be established by the Statutory Order.
- (24) Exporters are covered by the scheme as the gain for these producers will be the same as that for producers for the UK market. The levy will not apply to imported products.

2.5.5.1. Potato sector

- (25) The levy will be collected from any person or partnership growing three hectares or more of potatoes in any calendar year.

- (26) Further, this levy must be paid by any person who buys one thousand tonnes or more of potatoes grown in Great Britain (excluding seed potatoes) in any year based on the weight of potatoes bought (tonnage levy). Any person buying potatoes to be sold by retail or catering establishments (including fish friers) will be excluded from paying the levy unless they buy the potatoes directly from the grower. Co-operatives are exempt from paying this levy. Tonnage levy will not be payable on potatoes once they have been processed, except where they are processed by the producer. Producers of seed potatoes will pay a levy based on area planted; however, levy will not be payable at any further stage on seed potatoes.
- (27) Maximum levy rates will be as follows: £50 per hectare for growers of potatoes; £0.25 per tonne for buyers of potatoes.

2.5.5.2. Cereals and oilseeds sector

- (28) Levy will be payable on cereals (wheat, barley, oats, rye, maize and triticale) and oilseeds (rapeseed, linseed, soyabean, and sunflowerseed) grown in the United Kingdom.
- (29) Further, levy will be collected from any person in the United Kingdom who buys cereals or oilseeds grown in the United Kingdom from the grower. This will apply to all buyers, including other farmers purchasing the product directly as an alternative to buying from a merchant, as well as processors buying directly from farmers. Levy will be based on the weight of cereals or oilseeds bought, and will be collected at the point of purchase when the cereals or oilseeds are transferred to the buyer.
- (30) In the case of cereals the levy will be in two parts: the grower levy and the buyer levy.
- (31) In the case of oilseeds there will be a grower levy only.
- (32) In the case of cereals, any person who carries out industrial processes on cereals grown in the United Kingdom by way of business must pay a processor levy. The levy will be based on the weight of the cereals that are to be processed.
- (33) Cereal processors producing animal feed will pay a lower rate of levy than standard cereals processors as the value added to cereals when made into animal feed is lower than the value added when cereals are made into food for human consumption. Levy will not be collected from oilseed processors.
- (34) The maximum rate of the levy will be: 60 pence per tonne for cereal growers; 5 pence per tonne for cereal buyers; 12 pence per tonne for cereal processors producing non-feedingstuffs; 6 pence per tonne for cereal processors producing feedingstuffs; 98 pence per tonne for oilseeds growers.

2.5.5.3. The horticulture sector

- (35) A levy will be collected from any person or partnership in Great Britain who grows the horticultural products listed below.
- (36) Further, a levy will be collected from any person who sells those products grown by him or anything derived from them.
- (37) The horticultural products subject to a levy are:
- a) All vegetables grown in the open and sold for human consumption, including watercress but excluding potatoes.
 - b) All soft fruit and orchard fruit including nuts but excluding varieties of cider apples and perry pears (as certified by the levy board and/or horticultural sector company), hops and grapes.
 - c) All flowers whether cut or in pot, foliage, bulbs, corms, tubers and rhizomes.
 - d) All hardy nursery stock including:
 - Fruit trees, bushes and canes, strawberries for runner production and other fruit stock for transplanting
 - Roses (including stock for budding)
 - Shrubs and hedging plants
 - Ornamental trees and trees for sale for amenity purposes
 - Perennial herbaceous plants
 - Aquatic plants
 - e) All other nursery stock, seedlings and cuttings for propagation
 - f) All crops grown in glasshouses and other forms of protection including pot plants, bedding plants and plants being propagated for growing elsewhere.
 - g) All species of herbs
- (38) A levy will also be collected from any person who buys more than 700 litres of mushroom spawn in any year ending 31 March, and any person who buys compost containing more than 700 litres of mushroom spawn.
- (39) The maximum levy rates will be 0.75% of the adjusted sales figure for the general growers' levy, 20 pence per litre of spawn used or sold for agaricus spawn and 8 pence per litre for non-agaricus spawn.

2.5.5.4. The English pigmeat sector and the English beef and lamb sector

- (40) A levy will be payable on pigs, cattle and sheep slaughtered in slaughterhouses in England and on exports of live pigs, cattle and sheep that were reared in England.
- (41) The levy will be based on the number of animals slaughtered or exported, and will consist of two parts: the producer levy and the slaughter or export levy. The slaughterhouses or exporters will act as collection agents for the producer levy.

(42) Levy will not be payable for animals imported from another member state and slaughtered within three months in the case of cattle and two months in the case of pigs or sheep.

(43) The maximum rate of levy will be:

- Cattle (slaughterer or exporter)	£1.75 per head
- Cattle (producer)	£5.25 per head
- Calf (slaughterer or exporter)	£0.50 per head
- Calf (producer)	£0.50 per head
- Sheep (slaughterer or exporter)	£0.60 per head
- Sheep (producer)	£0.60 per head
- Pigs (slaughterer or exporter)	£0.275 per head
- Pigs (producer)	£1.075 per head

2.5.5.5. The dairy sector

(44) All producers of cow's milk in Great Britain will be liable to pay a levy to the milk sector company. The levy will be based on the volume in litres of liquid milk sold off-farm.

(45) The maximum rate of levy will be 0.08 pence per litre of milk.

2.5.6. Encouraging the development of quality products

a) Meat quality standard marks

(46) Meat sector companies have established meat quality standard marks (for examples see figures 1 and 2). According to information provided by the UK authorities, these meat quality standard marks have substantial reputation and may have significant value in market places and will add value to English markets for pork and pork products, beef and lamb.

(47) The meat sector companies will licence the use of these meat quality standard marks in accordance with the quality specification that will be audited in accordance with EN45011 by independent verifiers contracted through transparent procurement. The quality mark schemes comply with the definition of nationally recognised quality scheme as set out in Article 22 of Regulation 1974/2006.

(48) All businesses within the meat sector will be eligible to participate in the quality mark schemes, which will be open to businesses in all member states. Participants will be able to use the quality mark logo in the marketing of their products.

(49) A national or regional variant may be used on compliant products as appropriate. There will also be an EU variant to cover products crossing frontiers within the EU in their production stages.

- (50) Meat sector companies will administer the following meat quality standard marks: beef and lamb (currently run by English Beef and Lamb Executive (EBLEX) and pig (currently run by the British Pig Executive (BPEX)).



Figure 1: Examples of quality standard mark logos – beef and lamb





Figure 2: Examples of quality standard mark logos – pork

- (51) The UK authorities have given assurances that the quality of eligible final products goes significantly beyond the commercial commodity standards as regards quality, the scheme involves binding product specifications verified by an independent inspection body, the scheme is transparent and ensures complete traceability of the products and the scheme corresponds to current and foreseeable market opportunities.
- (52) The UK authorities have provided information and given assurances that if names and logos of Agricultural and Horticultural Development Board and sector companies and Quality Standard Marks will be used or referred in written information materials directed at the public, any references to the names and logos will remain a subsidiary message to the main communication.
- (53) Eligible costs:
- a) 100% of costs of market research activities and product conception and design associated with the continuing development of the scheme;
 - b) 100% of costs of training appropriate personnel to apply the scheme;
 - c) Incentive payment for participation in the quality standard mark schemes up to a maximum of €3 000 per holding. The actual sum paid will match the fixed costs of participating in the scheme (e.g. waiver of the participation fee). The support is limited for five years from the date of joining the scheme.

The UK authorities have provided the following assurances and information:

- (i) Only agricultural products for human consumption are covered;
- (ii) it concerns a Community food quality scheme or a food quality scheme recognised by a Member State complying with the precise criteria established according to Article 32(1)(b) of Regulation 1698/2005;

- (iii) the annual incentive payment whose level is determined according to the level of the fixed costs arising from the participation in such schemes for a maximum duration of five years;
 - (iv) The support is limited to € 3000 per year and holding.
- (54) Further, the UK authorities have given the following assurances: With the exception of the support for the participation in food quality schemes, direct payments of money to producers are excluded. The aid is available to all the farmers eligible in the area concerned based on objectively defined conditions.
- (55) Aid for businesses active in the processing and marketing of Annex I products and will be paid in line with Regulation No 1998/2006. Support for advertising activities is excluded.

b) Quality product development including pre-competitive research

- (56) Sector companies will commission pre-competitive and market research undertaken by third parties specifically aimed at identifying quality agricultural products or improving the quality of existing products. The levy organisations will ensure that the results of any research are available to all stakeholders in the relevant sectors by publishing on the internet or distributing hard copies where necessary.
- (57) The UK authorities have given assurances that the quality of eligible final products goes significantly beyond the commercial commodity standards as regards quality, the scheme involves binding product specifications verified by an independent inspection body, the scheme is transparent and ensures complete traceability of the products and the scheme corresponds to current and foreseeable market opportunities.
- (58) Eligible costs:
- a) 100% of costs of undertaking market research on consumers. Pre-competitive and market research will consist of a mixture of qualitative discussion groups, quantitative questionnaires, telephone research and in-home interviews. The research will involve using representative samples of consumers from England, Wales, Scotland, Great Britain or the United Kingdom.
 - b) 100% of costs of encouraging potential new quality product concepts and designs in liaison with consumers.
- (59) The UK authorities have given assurances that direct payments of money to producers are excluded.
- (60) The aid is available to all the farmers eligible in the area concerned based on objectively defined conditions.
- (61) Aid for businesses active in the processing and marketing of Annex I products will be paid in line with Regulation No 1998/2006. Support for advertising activities is excluded.

c) Establishing or encouraging the development of a quality scheme

- (62) Levy organisations may use the results of their market research to establish or encourage the development of a quality scheme based on product conception and design.
- (63) Eligible products must have specific characteristics or a quality that goes beyond the commercial commodity standards; involve binding product specifications and their compliance will be verified by an independent inspection body; be open to all producers; be transparent and assure complete traceability of the products; respond to current and foreseeable market opportunities.
- (64) Eligible costs: consultancy and similar support for the introduction of quality assurance schemes. The administration costs of any new quality schemes will be notified individually.
- (65) The UK authorities have given assurances, that with the exception of the support for the participation in food quality schemes, direct payments of money to producers are excluded. The aid is available to all the farmers eligible in the area concerned based on objectively defined conditions.
- (66) Aid for businesses active in the processing and marketing of Annex I products will be paid in line with Regulation No 1998/2006. Support for advertising activities is excluded.

d) Supporting the development of products with geographical indications, protected designations of origin and certificates of specific character

- (67) The sector companies will provide market research for their sectors for geographical indication, designation of origin or specific character of foods.
- (68) Eligible costs:
 - a) Market research activities with researching how levy payers may benefit from product recognition;
 - b) Product conception and design, in particular developing the specifications for the quality schemes; and
 - c) The preparation of applications for recognition of geographical indications, designations of origin and certificates of specific character.
- (69) The UK authorities have given the assurances that direct payments of money to producers are excluded. The aid is available to all the farmers eligible in the area concerned based on objectively defined conditions.
- (70) Aid for businesses active in the processing and marketing of Annex I products will be paid in line with Regulation No 1998/2006. Support for advertising activities is excluded.

2.6. Legal basis

- (71) Sections 87, 88, 89, 90, 91, 93, 94, 96 and 97 of the Natural Environment & Rural Communities Act 2006
(Proposal) The [Levy Board UK] Order 2007
Part I, section 5(2) (a) of the Regional Development Agencies Act 1998 Chapter 35,
Part I, section 4 of the Enterprise and New Towns (Scotland) Act 1990.

2.7. Aid intensity

- (72) Up to 100%

III. EVALUATION

- (73) Under Article 87(1) of the EC Treaty, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States. It is obvious that there is substantial crossborder trade in agricultural products.³
- (74) The aid measure is financed by a parafiscal levy raised by the Levy Board. Therefore, it has to be qualified as being granted through State resources.
- (75) It favours companies in the agriculture sector in the United Kingdom. It is therefore liable to distort competition and to affect trade between Member States.
- (76) Therefore, Article 87(1) of the EC Treaty applies.
- (77) According to Article 87(3)(c) of the EC Treaty, aid to facilitate the development of certain economic activities or of certain economic areas can be regarded as compatible where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Concerning this aid, point 98 of the Community guidelines for State aid in the agriculture and forestry sector 2007-2013 (hereinafter: Community Agriculture Guidelines)⁴ referring to Article 14 of Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products⁵ applies.

³ Trade in agricultural products of the United Kingdom with other Member States in 2005: imports €25 604 million, exports €9 933 million (source: Eurostat).

⁴ OJ C 319, 27.12.2006, p. 5.

⁵ OJ L 358, 16.12.2006, p. 3.

- (78) The UK authorities have given assurances that only small and medium-sized enterprises are eligible for this aid. Support for measures covering the processing and marketing of Annex I-products will be granted under Regulation 1998/2006.

3.1. Agricultural and Horticultural Development Board

- (79) The activities of the Agricultural and Horticultural Development Board involve administrative activities – collection of levies, policy development and implementation of State aid measures - and project management – technical support, encouraging the development of quality products and advertising.
- (80) The Commission has consistently held that administrative activities are to be regarded as a non-economic activity, because a part of State activity is outsourced and there is no intention to offer goods or services on a certain market.⁶ Therefore, this activity must not be assessed under the competition law of the EC Treaty.
- (81) Project management activities of the Agricultural and Horticultural Development Board are to be regarded as an economic activity. The UK authorities have given assurances that related overheads will be included in the calculation of aid to the beneficiaries.
- (82) This decision in no way prejudices any further analysis by the Commission as far as respect for public procurement rules is concerned.

3.2. Agricultural and Horticultural Development Board parafiscal levy

- (83) The scheme is financed by Agricultural and Horticultural Development Board parafiscal levies, with some grants from government and its agencies. The Agricultural and Horticultural Development Board levy is charged on domestic production. In general, it is not charged on imported goods with the exception of imported live animals only after a three-month period of stay in the UK (sheep: two months). The levy is charged on exported goods.
- (84) Parafiscal levies are considered as discriminatory internal taxation prohibited by Article 90 of the EC Treaty if and to the extent to which charges imposed on the products produced and processed on the national market are only partially compensated by advantages deriving from the use made of its revenue and thereby disadvantaging exported domestic products.⁷ The levy is charged at the point of production, sale, slaughter or export excluding imported goods. The UK authorities have provided information to the effect that exporters receive a benefit proportionate to that obtained by operators processing or marketing on the national UK market.

⁶ See e.g. N 175/2003 – United Kingdom - MLC Generic Advertising Scheme or N 230/2003 – United Kingdom (Scotland) - Meat Quality Advertising Scheme.

⁷ Case C-234/99, *Nygård* [2002] ECR I-3657.

Article 14(6) of Regulation 1857, referring to Article 14(6) of Regulation 1857, given these commitments.

(90) Thus, the aid scheme complies with the conditions of the Community Agriculture Guidelines referring to Commission Decision 2006/1857.

3. Encouraging the production of quality products and marketing of agricultural products

(91) Aid to encourage the production of quality products in the agricultural sector is paid in line with Regulation 1857 (Article 87(3)(c) of the EC Treaty, *de minimis* aid).

IV. DECISION

(92) The measure complies with the Community guidelines for State aid in the agriculture and forestry sector 2007-2013. The Commission has accordingly decided that the aid is compatible with Article 87(3)(c) of the EC Treaty.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/index.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate H
Office: Loi 130 5/98A
B-1049 Brussels
Fax No.: 0032.2.296 7672



DECEMBER 2007
Mariann FISCHER BOEL
Director of the Directorate

Yours faithfully,
For the Commission

Mariann FISCHER BOEL
Member of the Commission