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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2570/2000
of 20 November 2000**

amending Regulation (EC) No 393/98 imposing a definitive anti-dumping duty on imports of stainless steel fasteners and parts thereof originating, inter alia, in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Article 11(3) and (4) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 393/98 ⁽²⁾, the Council imposed a definitive anti-dumping duty of 74,7 % on imports of stainless steel fasteners and parts thereof (hereinafter referred to as 'the product') originating, *inter alia*, in the People's Republic of China. The product is currently classifiable under CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30.

B. CURRENT PROCEDURE

(2) The Commission subsequently received an application from Bulten Fasteners (China) Co Ltd (hereinafter referred to as 'the company') for a review of the measures currently in force, namely, a request to initiate a 'new exporter' review of Regulation (EC) No 393/98, pursuant to Article 11(3) and (4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'). The company claimed that it operated under market economy conditions as provided for in Article 2(7)(c) of the basic Regulation and that it was not related to any of the exporting producers in the People's Republic of China subject to the anti-dumping measures in force with regard to the product. Furthermore, the company claimed that it had not exported the product during the

original period of investigation (1 January 1996 to 30 November 1996), but had exported it to the Community since then.

(3) The product covered by the current review is the same as the one under consideration in Regulation (EC) No 393/98.

(4) The Commission examined the evidence submitted by the company and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 11(3) and (4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 59/2000 ⁽³⁾, a review of Regulation (EC) No 393/98 with regard to the company and commenced its investigation.

(5) By the Regulation initiating the review, the Commission also repealed the anti-dumping duty imposed by Regulation (EC) No 393/98 with regard to imports of the product produced and exported to the Community by the company and directed customs authorities, pursuant to Article 14(5) of the basic Regulation, to take appropriate steps to register such imports.

(6) The Commission officially advised the company and the representatives of the exporting country. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However no such request has been received by the Commission.

(7) The Commission sent a questionnaire to the company and its two related companies in Sweden (Bulten Micro Fasteners AB and Bulten Stainless Industry AB) selling the product produced by the company and received full replies within the deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation, and carried out verification visits at the companies' premises.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽²⁾ OJ L 50, 20.2.1998, p. 1.

⁽³⁾ OJ L 7, 12.1.2000, p. 1.

- (8) The investigation of dumping covered the period from 1 January 1999 to 31 December 1999 (hereinafter referred to as the 'investigation period').
- (9) The same methodology as in the original investigation was applied in the current investigation.

C. SCOPE OF THE REVIEW

- (10) As no request for a review of the findings on injury was made in this investigation, the review was limited to dumping.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

- (11) The investigation confirmed that the company had not exported the product during the original period of investigation and that the company had begun exporting it to the Community after this period.

Furthermore, according to documentary evidence submitted, the company was able to satisfactorily demonstrate that it did not have any links, direct or indirect, with any of the Chinese exporting producers subject to the anti-dumping measures in force with regard to the product.

Accordingly, it is confirmed that the company should be considered as a new exporter in accordance with Article 11(4) of the basic Regulation, and thus an individual dumping margin should be determined for it.

2. Dumping

a) Market economy treatment

- (12) Since the company applied for market economy treatment, detailed questions regarding ownership, management control and determination of commercial and business policies were put forward.
- (13) The investigation at the company's premises showed that the five criteria required by Article 2(7)(c) of the basic Regulation in order to grant market economy status, were fulfilled.
- (14) Details of the outcome of this investigation were presented to the members of the Advisory Committee on 23 March 2000. Member States were given an opportunity to comment on the proposal but did not object to the conclusions of the Commission.

b) Normal value

- (15) In accordance with Article 2(2) of the basic Regulation it was examined whether the volume of the company's sales of the like product on the Chinese domestic market in total reached at least 5 % of the volume of the exports of the product to the Community. It was established that

the volume of domestic sales of the like product achieved a level considerably in excess of the 5 % threshold mentioned above. For each product type exported to the Community, it was then examined whether or not there were representative domestic sales of identical or directly comparable types. It was found that this was not the case and that in fact the product types sold on the domestic market were not at all comparable to the types sold for export to the Community, mainly because the types of steel grade used for domestic purposes, although all stainless steel, were different from the ones used for exports.

- (16) As a result, the normal value for each product type exported to the Community was constructed on the basis of the cost of manufacturing incurred by this producer plus a reasonable amount for sales, general and administrative expenses and for profits in accordance with Article 2(3) and 2(6) of the basic Regulation, since the prices of another exporting producer could not be used instead. The sales, general and administrative expenses and the profit margin on domestic sales in the ordinary course of trade were those of the producer in question.

c) Export price

- (17) All exports of the company were made to a related company based in the Community. This company sold to independent customers in the Community and partially to another related company also based in the Community, which in its turn sold the product, together with similar products sourced from other exporters, to independent customers.
- (18) In order to establish a correct export price for the product of the company only, it was constructed in accordance with Article 2(9) of the basic Regulation as based on the price at which the exported product was first resold to independent customers in the Community by the first related company. This price was adjusted for all costs incurred between importation and resale and for profit.
- (19) A profit margin of 5 % was used, in line with the findings concerning unrelated importers during the original period of investigation.

d) Comparison

- (20) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value by product type was compared, on an ex-factory basis, with the weighted average export price at the same level of trade.

- (21) For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect prices and price comparability. These adjustments were made, in accordance with Article 2(10) of the basic Regulation, in respect of import charges, discounts and rebates, transport, insurance, handling and ancillary costs, packing and credit costs.

e) Dumping margin

- (22) The comparison revealed the existence of dumping for exports of the product to the Community during the investigation period.
- (23) This weighted average dumping margin established for the company, expressed as a percentage of the free-at-Community-frontier price, amounts to 18,5 %.

E. AMENDMENT OF THE MEASURES BEING REVIEWED

- (24) Based on the findings made during the investigation, it is considered that imports into the Community of stainless steel fasteners and parts thereof produced and exported by the company should be subject to an anti-dumping duty corresponding to the dumping margin established

for it. Regulation (EC) No 393/98 should be amended accordingly.

F. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

- (25) As the review has resulted in a determination of dumping in respect of the company, the anti-dumping duty applicable to it should also be levied retroactively from the date of initiation of this review on imports which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 59/2000.

G. DISCLOSURE AND DURATION OF THE MEASURE

- (26) The company was informed of the facts and considerations on the basis of which it is intended to impose a definitive anti-dumping duty on its imports to the Community.
- (27) This review does not affect the date on which Regulation (EC) No 393/98 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The table in Article 1(2) of Regulation (EC) No 393/98 shall, with regard to China, be replaced by the following:

'Country	Company	Rate of duty	TARIC additional code
China	Bulten Fasteners (China) Co. Ltd	18,5 %	A208
	Ningbo Shyechang Metal Products	24,2 %	8757
	Power Van Industrial Co. Ltd	13,6 %	8333
	All other companies	74,7 %	8900'

2. The duty hereby imposed shall also be levied retroactively on imports of the product which have been registered pursuant to Article 3 of Regulation (EC) No 59/2000.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 November 2000.

For the Council

The President

H. VÉDRINE

COMMISSION REGULATION (EC) No 2571/2000
of 23 November 2000
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 November 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 23 November 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	109,8
	204	115,6
	999	112,7
0707 00 05	052	116,0
	999	116,0
0709 90 70	052	82,8
	999	82,8
0805 20 10	204	74,8
	999	74,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	62,8
	999	62,8
	052	64,3
0805 30 10	528	28,7
	600	64,7
	999	52,6
	052	76,5
	400	85,7
0808 10 20, 0808 10 50, 0808 10 90	404	102,8
	999	88,3
	052	73,9
	064	57,5
	388	78,5
0808 20 50	400	84,7
	999	73,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2572/2000
of 23 November 2000
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 624/98 ⁽⁴⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1411/2000 ⁽⁵⁾, as last amended by Regulation (EC) No 2562/2000 ⁽⁶⁾.

- (2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 November 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 141, 24.6.1995, p. 16.

⁽⁴⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁵⁾ OJ L 161, 1.7.2000, p. 22.

⁽⁶⁾ OJ L 293, 22.11.2000, p. 7.

ANNEX

to the Commission Regulation of 23 November 2000 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	29,66	2,39
1701 11 90 ⁽¹⁾	29,66	6,70
1701 12 10 ⁽¹⁾	29,66	2,25
1701 12 90 ⁽¹⁾	29,66	6,27
1701 91 00 ⁽²⁾	27,99	11,24
1701 99 10 ⁽²⁾	27,99	6,72
1701 99 90 ⁽²⁾	27,99	6,72
1702 90 99 ⁽³⁾	0,28	0,37

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

**COMMISSION REGULATION (EC) No 2573/2000
of 23 November 2000**

**fixing the maximum export refund on common wheat in connection with the invitation to tender
issued in Regulation (EC) No 1701/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Regulation (EC) No 1666/2000⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 2513/98⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund on exportation of common wheat to all third countries with the exclusion of certain ACP States was opened pursuant to Commission Regulation (EC) No 1701/2000⁽⁵⁾, as amended by Regulation (EC) No 2019/2000⁽⁶⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in

Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 November 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1701/2000, the maximum refund on exportation of common wheat shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 24 November 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 195, 1.8.2000, p. 18.

⁽⁶⁾ OJ L 241, 26.9.2000, p. 37.

**COMMISSION REGULATION (EC) No 2574/2000
of 23 November 2000**

**fixing the maximum export refund on common wheat in connection with the invitation to tender
issued in Regulation (EC) No 2014/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of common wheat to certain ACP States was opened pursuant to Commission Regulation (EC) No 2014/2000 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix

a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 November 2000, pursuant to the invitation to tender issued in Regulation (EC) No 2014/2000, the maximum refund on exportation of common wheat shall be EUR 3,00/t.

Article 2

This Regulation shall enter into force on 24 November 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 241, 26.9.2000, p. 23.

COMMISSION REGULATION (EC) No 2575/2000
of 23 November 2000
fixing the maximum export refund on barley in connection with the invitation to tender issued in
Regulation (EC) No 2317/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of barley to all third countries except for the United States of America and Canada was opened pursuant to Commission Regulation (EC) No 2317/2000 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria

referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 November 2000, pursuant to the invitation to tender issued in Regulation (EC) No 2317/2000, the maximum refund on exportation of barley shall be EUR 0,00/t.

Article 2

This Regulation shall enter into force on 24 November 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 267, 20.10.2000, p. 23.

COMMISSION REGULATION (EC) No 2576/2000
of 23 November 2000
fixing the maximum export refund on rye in connection with the invitation to tender issued in
Regulation (EC) No 1740/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1740/2000 ⁽⁵⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix

a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 November 2000, pursuant to the invitation to tender issued in Regulation (EC) No 1740/2000, the maximum refund on exportation of rye shall be EUR 25,31/t.

Article 2

This Regulation shall enter into force on 24 November 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 199, 5.8.2000, p. 3.

**COMMISSION REGULATION (EC) No 2577/2000
of 23 November 2000**

**fixing the maximum export refund on oats in connection with the invitation to tender issued in
Regulation (EC) No 2097/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾,

Having regard to Commission Regulation (EC) No 2097/2000 of 3 October 2000 on a special intervention measure for cereals in Finland and Sweden ⁽⁵⁾ and in particular Article 8 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries was opened pursuant to Regulation (EC) No 2097/2000.
- (2) Article 8 of Regulation (EC) No 2097/2000 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in

Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 17 to 23 November 2000, pursuant to the invitation to tender issued in Regulation (EC) No 2097/2000, the maximum refund on exportation of oats shall be EUR 29,49/t.

Article 2

This Regulation shall enter into force on 24 November 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 249, 4.10.2000, p. 15.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 April 1999

on the treatment by the Netherlands tax authorities of a technolease agreement between Philips and Rabobank

(notified under document number C(1999) 1122)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2000/735/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 93(2), second paragraph,

Having requested the parties concerned to submit their comments pursuant to those Articles,

Whereas:

I. PROCEDURES

- (1) By means of press articles dated January/February 1997 mentioning that the Netherlands tax authorities had accepted a technolease agreement between Philips and Rabobank that would impose a large but unspecified burden on the State budget, the Commission was informed that the Netherlands may have been granting aid to Philips and/or Rabobank within the framework of a technolease agreement.
- (2) By letter of 24 April 1997, the Commission informed the Netherlands that the procedure provided for in Article 93(2) of the EC Treaty had been initiated in respect of the aid that may have been granted in the form of a tax advantage within the framework of an agreement on sale-leaseback of know-how between Philips and Rabobank (hereafter the technolease agreement).
- (3) The Commission has not received any comments from other Member States or third parties concerned.

II. DESCRIPTION

- (4) In 1992, Philips sold a defined quantity of its know-how with a value on its balance sheet of NLG 2 200 million to its subsidiary Electrologica. In return Philips received the shares of Electrologica and provided a loan at an annual interest rate of 7 %. Electrologica then leased the know-how to Philips and in turn was compensated by the royalties it received from Philips.

- (5) On 30 November 1993 Philips and Rabobank agreed that Philips would sell its shares in Electrologica to Rabobank on 3 January 1994. The market value of the know-how then was estimated NLG 2 800 million. Rabobank paid NLG 640 million in cash to Philips for the shares in Electrologica. In addition, Philips kept its claim on Electrologica, from that moment on a subsidiary of Rabobank. Furthermore Rabobank and Philips agreed that 50 % of the future revenues from sublicensing (parts of) the know-how of Electrologica to third parties would go to Philips and 50 % to Rabobank.
- (6) The sale-leaseback contract between Philips and Electrologica provided for yearly interest payments of NLG 154 million by Electrologica to Philips and yearly royalty payments of NLG 140 million by Philips to Electrologica. Furthermore, once 10 years have elapsed after the acquisition of the shares in Electrologica by Rabobank, Rabobank will have for the following 24 months the right to sell the shares in Electrologica to Philips for NLG 50 million.
- (7) By the transfer of the shares in Electrologica from Philips to Rabobank, Electrologica is no longer part of the tax group of Philips. This means that the taxable income of Electrologica is no longer consolidated with the taxable income of Philips. After the transfer Electrologica forms a part of the tax group of Rabobank so the taxable income of Electrologica will from then on be consolidated with the taxable income of Rabobank.
- (8) Overall the technolease agreement implies a shift in taxable income between the tax group of Philips and the tax group of Rabobank because the exclusive right to depreciate on the know-how is shifted from Philips to Rabobank. In return Philips receives from Rabobank an immediate cash payment of NLG 640 million and an inter-group debt of NLG 2 200 million is converted in a loan to Rabobank which implies a substantial improvement of the figures on the balance sheet of Philips.
- (9) Both Philips and Rabobank are private enterprises. Philips is listed at the Amsterdam Exchanges and Rabobank is a cooperative. The Netherlands authorities are not a stakeholder in either one of them. The technolease agreement therefore is a commercial transaction between private parties.
- (10) The Commission decided to initiate the procedure pursuant to Article 93(2) of the EC Treaty in connection with the tax treatment of the technolease arrangement because of the following doubts:
 - for the assessment whether any burden was imposed on the State budget, information was needed on the depreciation period, the depreciation rate and the basis for depreciation of the know-how,
 - the revaluation of the know-how from NLG 2 200 million to NLG 2 800 million lacked a solid basis,
 - it was not clear whether taxable profits of Philips in those years would be enough for Philips to realise the full benefit of the depreciation of the know-how itself,
 - more information on the tax rules governing sale-leaseback of immaterial assets was necessary to assess whether any discretionary power was used by the Netherlands tax authorities to the benefit of Philips and/or Rabobank.

III. OBSERVATIONS OF INTERESTED PARTIES

- (11) Commission communication giving the other Member States and third parties notice to submit their observations was published in the *Official Journal of the European Communities* ⁽¹⁾ on 8 November 1997. As part of the procedure, no other Member States or third parties submitted any observations to the Commission.

IV. COMMENTS OF THE NETHERLANDS

- (12) The Netherlands authorities forwarded their observations to the Commission by letter of 28 October 1997. The general position of the Netherlands authorities was that there was no element of State aid in the treatment by the Netherlands tax authorities of the technolease agreement between Philips and Rabobank because it merely applied general tax rules instead of using discretionary power. In

⁽¹⁾ OJ C 338, 8.11.1997.

addition they addressed more specifically the questions put forward by the Commission. At a meeting between representatives of the Netherlands and the Commission that was held on 19 February 1998 in The Hague, the representatives of the Commission were enabled to examine confidential documents. As some information was still missing, the Commission requested additional information by letter dated 24 April 1998. In response, the Netherlands authorities provided all the needed information by letter dated 29 April 1998.

- (13) In the observations they submitted, the Netherlands authorities explained that:
- neither civil nor tax law in the Netherlands contains special provisions for the assessment of sale-leaseback transactions. Nevertheless the interpretation of the law by the High Court in the Netherlands ⁽¹⁾ as found in its jurisprudence makes it clear that sale-leaseback transactions are legally valid under existing law in the Netherlands,
 - because no special provisions existed for the assessment by the tax authorities of sale-leaseback of immaterial assets, the technolease agreement between Philips and Rabobank had to be assessed on the basis of the principle of 'sound business practice' that is laid down in the Netherlands tax law. According to the principle of sound business practice the owner of a fixed asset can yearly deduct a certain percentage of the value of the asset from taxable income. The central issue in case of sale-leaseback of immaterial assets is where the ownership actually lies, at the side of the lessor or at the side of the lessee. The assessment of the ownership of the know-how was made in accordance with civil and tax law as well as jurisprudence,
 - the Netherlands tax authorities had approved already another case of sale-leaseback of immaterial assets (trade marks) in 1987 merely by interpreting general tax rules,
 - the book value of the know-how before the transfer of Electrologica from Philips to Rabobank was based on cost-minus, leaving some cost elements out because of the principle of prudence that rules the concept of sound business practice in the Netherlands. The Netherlands tax law ⁽²⁾ prescribes the revaluation of assets from book value to market value at the moment a subsidiary leaves the tax group so any hidden reserves can be taxed. The market value of the know-how of Electrologica at the moment of the transfer to Rabobank was determined on the basis of the OECD-guidelines for transfer pricing ⁽³⁾,
 - royalty and interest to the amount of NLG 140, respectively NLG 154 million, are fully paid between Philips and Rabobank for a period of 10 years, the length of the contract. However in 1994 and 1995 the royalty payments from Philips to Rabobank are settled with the cash payments from Rabobank to Philips, implying that Rabobank deducted the royalties that Philips owed them from the cash payment to Philips,
 - the guidelines for the assessment of sale-leaseback of immaterial assets published in the Directive of 22 August 1994 by the Netherlands tax authorities merely give an interpretation of the general tax law and cannot change the Netherlands tax law. Furthermore it is argued that a *posteriori* application of the Directive to the technolease agreement between Philips and Rabobank would not have altered the outcome.
- (14) These arguments were developed in the subsequent correspondence and at the meeting held with the Commission. Furthermore, the Netherlands authorities provided:
- detailed information on the depreciation scheme applying to Philips and Rabobank,
 - figures on the taxable income of Philips as well as Rabobank in 1990, 1991, 1992 and 1993,
 - the contracts underlying the technolease agreement between Philips, Rabobank and Electrologica.

V. APPRAISAL

V.1. V.1. Technical appraisal of the operation

- (15) The Commission takes into consideration that the sale-leaseback of assets is widely used as a financing scheme in the Member States of the European Community as well as abroad. One consequence of sale-leaseback of assets is that the lessor that acquired the ownership of the asset obtains the exclusive right to depreciate on the acquired asset for tax purposes. The examination of tax legislation in Member States leads to the conclusion that this holds in the vast majority of the Member States.

⁽¹⁾ BNB95/116 Keereweer-Sogelease where the High Court in the Netherlands decided that the sale-leaseback of printing presses was legally valid under Dutch law.

⁽²⁾ Standard Conditions (i.e. No 16) in the Annex to Article 15, Law on Corporation Tax.

⁽³⁾ OECD-report 'Transfer pricing guidelines for multinational enterprises and tax administrations'.

- (16) The Commission supports the notion made by the Netherlands authorities that the exploitation of immaterial assets does not in principle differ from the exploitation of other assets. However, because of the special properties of immaterial assets special conditions may apply to the exploitation of immaterial assets ⁽¹⁾. In this respect the publication of the Netherlands tax authorities' Directive with guidelines on sale-leaseback of immaterial assets cannot be considered at odds with applying general tax rules.
- (17) By the transfer of the shares in Electrologica from Philips to Rabobank, Electrologica is no longer part of the tax group of Philips. This means that the taxable income of Electrologica is no longer consolidated with the taxable income of Philips. After the transfer, Electrologica forms part of the tax group of Rabobank so that the taxable income of Electrologica will, from then on, be consolidated with the taxable income of Rabobank. Furthermore, the technolease agreement has the following implications. First, the exclusive right to depreciate on the know-how (as deductible tax allowance) is shifted from Philips to Rabobank. Hence, the technolease agreement decreases taxable income of Rabobank and increases taxable income of Philips, allowing Rabobank to pay less tax than it would have without the technolease agreement while Philips at the same time pays more tax. Second, due to the technolease agreement, Philips makes a (taxable) book profit of NLG 600 million that it would not have realised without the sale of its subsidiary Electrologica to Rabobank.
- (18) The Dutch tax authorities provided all the information that enabled the Commission to certify that neither Philips nor Rabobank had unsettled fiscal losses at the time of the technolease agreement. The figures on taxable income of Philips and Rabobank in 1990, 1991, 1992 and 1993 lead the Commission to the conclusion that Philips and Rabobank both were in the position to benefit fully from the depreciation of the know-how. Moreover the prospects on future profits were promising to Philips as well as to Rabobank. Every change in taxable income therefore results accordingly in a change in overall tax revenues for the State.
- (19) In detail, the shift in taxable income for Philips and Rabobank, and thus in tax revenues for the State, is as follows (see also table below):
- without the sale of Electrologica to Rabobank, the tax group of Philips could have depreciated on the know-how linearly from 1994 in 4 years on the basis of the book value of NLG 2 200 million. Missing the depreciation on the know-how increases the taxable income of Philips with NLG 550 million per year over four years at a tax rate of 35 %,
 - after the sale of Electrologica to Rabobank, the fiscal depreciation on the know-how is based on a book value of NLG 2 800 million and over six years consists of depreciation of 25 % of the remaining book value (reducing balance method) in each year, followed by linear depreciation over four years. The depreciation on the know-how decreases the taxable income of the tax group of Rabobank with NLG 700 million the first year (25 % of NLG 2 800), NLG 525 million in the second year (25 % of NLG 2 100) down till NLG 125 million in year 10, at a tax rate of 35 % ⁽²⁾,
 - royalty and interest payments between Philips and Rabobank take place for a period of 10 years, the length of the contract. As far as the royalty payments from Philips to Rabobank have been settled out of the cash payments from Rabobank to Philips for the purchase of Electrologica, no actual transfer of money is made between Philips and Rabobank,
 - Philips and Rabobank agreed that the loan of NLG 2 200 million by Philips to Electrologica could be redeemed at the end of the contract. The debt conversion is tax neutral according to vast jurisprudence in the Netherlands ⁽³⁾
 - any revenues from sublicensing the know-how of Electrologica to third parties during the contract are divided equally between Philips and Rabobank and taxed accordingly. From the information received these revenues are expected in the second half of the duration of the contract (i.e. from 1999 on).

⁽¹⁾ Commission Regulation (EEC) No 556/89 of 30 November 1988 on the application of Article 85(3) of the Treaty to certain licensing agreements (OJ L 61, 4.3.1989, p.2).

⁽²⁾ The differences between the depreciation schemes for Philips and Rabobank have been ascribed by the Netherlands authorities to the fact that the know-how played a significantly different role as a capital asset to Philips from the role it played Rabobank, for whom it was a purely financial asset.

⁽³⁾ BNB1969/202, BNB1978/140 for the creditor and BNB1993/237 for the debtor.

- (20) The first column of the first table below shows the increase in taxable income of the tax group of Rabobank resulting from the royalty payments made by Philips to Electrologica. The second and third columns show the decrease in taxable income of the tax group of Rabobank resulting from interest payments made by Electrologica to Philips and the depreciation on the know-how of Electrologica. The fourth column shows the decrease in taxable income of the tax group of Philips resulting from the royalty payments by Philips to Rabobank. The following three columns show the increase in taxable income of the tax group of Philips respectively due to the interest received from Electrologica, missing the depreciation on the know-how and finally the book profit Philips made on the know-how by selling Electrologica to Rabobank. The last column of the first table sums the shifts in taxable income. The last row of the first table shows the present value of all shifts in taxable income in 1994. The second table shows the impact of the changes in taxable income on overall tax revenues, based on a tax rate of 35 %.
- (21) As follows from the second table, the technolease agreement has the effect that overall tax revenues rise in the short term and fall in the long term. The shift over time in tax revenues can be attributed to two circumstances. First, because Electrologica leaves the Philips tax group in 1994 prior to the transfer to Rabobank, the previously hidden reserves on the know-how are realised and are subsequently taxed in that year. Second, because of the differences in depreciation schemes between Philips and Rabobank, depreciation on the know-how is to some extent decelerated.

Any future tax revenues from sublicensing the know-how to third parties will be left aside in the following overview. For the purpose of overall tax revenue it is irrelevant whether the revenues will be received by Philips (in case the know-how would not have been sold to Rabobank) or the revenues will be divided between Philips and Rabobank (as Philips and Rabobank agreed to under the terms of the technolease agreement).

Table 1

Shifts in taxable income due to technolease (1994 = year 1)

Year	Rabobank			Philips			Total	
	Royalties	Interest	Depreciation	Royalties	Interest	Depreciation	Book profit	
1	140	- 154	- 700	- 140	154	550	600	+ 450
2	140	- 154	- 525	- 140	154	550	—	+ 25
3	140	- 154	- 394	- 140	154	550	—	+ 156
4	140	- 154	- 295	- 140	154	550	—	+ 255
5	140	- 154	- 220	- 140	154	—	—	- 220
6	140	- 154	- 166	- 140	154	—	—	- 166
7	140	- 154	- 125	- 140	154	—	—	- 125
8	140	- 154	- 125	- 140	154	—	—	- 125
9	140	- 154	- 125	- 140	154	—	—	- 125
10	140	- 154	- 125	- 140	154	—	—	- 125

Present Value (in year 1 = 1994 at a discount rate of 1,06):

1	1 031	- 1 133	- 2 279	- 1 031	1 133	1 906	+ 566	+ 193
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Table 2

Shifts in tax revenues (effective tax rate 0,35) due to technolease (1994 = year)

Year	Rabobank			Philips			Total	
	Royalties	Interest	Depreciation	Royalties	Interest	Depreciation	Book profit	
1	49	- 54	- 245	- 49	54	192	210	+ 157
2	49	- 54	- 184	- 49	54	192	—	+ 8
3	49	- 54	- 138	- 49	54	192	—	+ 54
4	49	- 54	- 103	- 49	54	192	—	+ 89
5	49	- 54	- 77	- 49	54	—	—	- 77
6	49	- 54	- 58	- 49	54	—	—	- 49
7	49	- 54	- 44	- 49	54	—	—	- 44
8	49	- 54	- 44	- 49	54	—	—	- 44
9	49	- 54	- 44	- 49	54	—	—	- 44
10	49	- 54	- 44	- 49	54	—	—	- 44

Present Value (in year 1 = 1994 at a discount rate of 1,06):

1	411	- 452	- 798	- 411	452	667	198	+ 68
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- (22) Overall, the technolease agreement can be expected to benefit the State budget in the sense that tax revenues are accelerated rather than decelerated. The discounted value of this benefit in 1994 amounted to NLG 68 million at a discount rate of 1,06 (¹). The tax benefit to Rabobank should therefore be fully paid up for by Philips paying more taxes. The tax benefit to Rabobank can be considered to be part of the fee Philips is paying for the financial services supplied by the Rabobank.
- (23) Any estimation made at the time by the Dutch administration, as mentioned in press articles, suggesting that the technolease agreement imposed a burden to the State resources appears to have overlooked the tax consequences of the technolease agreement at the side of Philips.

V.2. Application of Article 92(1) of the EC Treaty to the tax treatment of the operation

- (24) The technolease agreement must be assessed on the basis of the criteria laid down in Article 92(1) of the EC Treaty. For any element of State aid to be present in the technolease agreement some advantage must be given at the expense of State resources. Furthermore, to be considered an aid, the advantage must be specific or selective in that it favours certain enterprises or certain productions. Finally it has to be established that competition and trade between the Member States are affected.

a) Effect on trade

- (25) As stated in the opening of the procedure, Philips and Rabobank both operate outside the Netherlands on the Community market. So, if aid were available for these companies, it would place them in a better position to compete with their products and services in other Member States. It would also be more difficult for competitors from other Member States to compete against them in the Netherlands. Any aid given to Philips and/or Rabobank will therefore affect trade between Member States.

(¹) Discounting at a lower rate than 1,06 would result in a smaller benefit to the State budget.

b) Possible selective character through the use of discretionary power

- (26) The treatment of economic agents on a discretionary basis may mean that the individual application of a general tax measure takes on the features of a selective measure ⁽¹⁾. With regard to the doubts whether the Netherlands tax administration has exercised any discretionary power to the benefit of Philips and/or Rabobank or whether it merely has applied general tax rules, the Commission has considered the following.
- (27) In favour of the assumption that the tax administration exercised to some extent discretionary power to the benefit of Philips and/or Rabobank is the fact that the government intervened in the dossier. This intervention seems however to have been prompted by the pressure exercised by Philips to put an end to the conflict that took place inside the fiscal administration. This conflict was merely bearing on the interpretation of the general tax rules which was delaying an answer to the transaction submitted to it.
- (28) As neither civil nor tax law in the Netherlands contain specific provisions for the assessment by tax authorities of sale-leaseback transactions, assessment had to be based on the general principle of 'sound business practice' laid down in Dutch tax law. Applying this principle to the technolease agreement, the main question is whether Rabobank actually obtained the ownership of the know-how merely by the purchase of shares in Electrologica and was therefore justifiably benefiting from the depreciation on the know-how ⁽²⁾. To be regarded the economic owner of an asset it is necessary for the owner to bear some risk (positive or negative) with regard to the end value of the asset. Rabobank was entitled to the surplus value of the know-how over the book value at the end of the contract as well as to 50 % of the revenues from sublicensing the know-how to third parties. On the basis of the information available to it the Commission concludes that under Netherlands law and jurisprudence this would be considered sufficient for establishing risk and therefore ownership.
- (29) Also the Directive on sale-leaseback of immaterial assets that the Netherlands tax authorities published in August 1994 concentrates on conditions regarding economic ownership. The Directive presents guidelines for the interpretation of Netherlands tax law and can not make any change to the law. Because the Directive was not published until after the technolease agreement between Rabobank and Philips, it can only be tested whether the technolease agreement satisfies *a posteriori* the conditions laid down in the Directive. Doing so does not invalidate the conclusion that general tax rules have been applied.
- (30) According to the Directive sale-leaseback of immaterial assets depends on meeting overall sufficiently five conditions:
1. the original owner may not stipulate an exclusive right of use of the asset by which also the question who has the factual power to dispose of the immaterial asset at the end of the lease-period is relevant;
 2. the duration of the lease must be shorter than the lifetime of the know-how;
 3. the depreciation must be in relation with the lease payments and take into account a just end value;
 4. the transfer price should be at arm's length and the tax administration should be able to test this;
 5. the lease payments plus other benefits to the lessor should enable the lessor to make up for its costs including depreciation and interest.
- (31) According to the Directive the conditions 1, 2 and 5 do not have to be fully met, as long as not meeting one of the conditions is compensated by meeting more other conditions. Overall the five conditions must be sufficiently met.

⁽¹⁾ Commission notice on the application of the State aid rules to measures relating to direct business taxation, (OJ L 384, 10.12.1998, p. 3).

⁽²⁾ The mere fact that know-how is an immaterial asset does not prohibit it being transferred.

- (32) Applying the conditions *a posteriori* to the technolease agreement between Philips and Rabobank yields the following results.

1. The lease-back to Philips is in principle exclusive. However, the agreement explicitly foresees the possibility that Philips capitalises the know-how by handing out licenses to third parties. With regard to the case that Philips hands out licenses to third parties, the agreement provides that Rabobank is entitled to 50 % percent of the revenues. There is a mutual interest for both Philips and Rabobank to engage in handing out licences. At the time Philips was going through a major reorganisation, going back to core business and closing down some of its production lines. For this reason Philips is actually a stakeholder in handing out licenses to third parties. From the information received it can be concluded that sublicensing of know-how to third parties is common practice to Philips.

Furthermore the Directive specifically provides that also the question who has the factual power to dispose of the immaterial asset at the end of the lease-period is relevant for deciding whether to qualify an agreement as 'exclusive'. It is clear that it is Rabobank who will have this power. As was noted above, Rabobank has only the right, but not the obligation, to sell the shares in Electrologica back to Philips at the end of the lease-period. Moreover, it can terminate the lease-back agreement between Electrologica and Philips as of 1 January 2004.

2. The duration of the lease is 10 years. The Commission has no reason to suspect that the expected lifetime of the know-how is less than the duration of the lease period.
 3. The depreciation on the acquired asset in 10 years by Rabobank can be regarded as normal in the light of its function as long-term funding.
 4. The transfer price of the know-how is based upon the OECD Transfer Pricing Guidelines, which are applicable to the transfer of the know-how. Furthermore the tax administration has tested and approved the transfer price of the know-how using the normal cost-minus method applied for that purpose in the Netherlands. The Commission considers the DECD Guidelines a useful basis for the valuation of the know-how.
 5. Given a commercial net calculation, Rabobank can be considered to have made a commercially sound transaction. Beyond that, there is a possibility of extra revenues for both Rabobank and Philips from licensing to third parties as well as the revaluation of the know-how at the end of the lease contract.
- (33) The Commission concludes that the technolease agreement between Philips and Rabobank *a posteriori* can be regarded as sufficiently meeting the conditions laid down in the Netherlands tax authorities Directive on sale-leaseback of immaterial assets.
- (34) Besides the aforementioned conditions concentrating mainly on the ownership of the asset, the Directive demands that there is an economic rationale to the sale-leaseback of immaterial assets in order to prevent any (ab)use of sale-leaseback for the purpose of tax avoidance.
- (35) The economic rationale for the technolease agreement is found in Philips' aim for an immediate improvement of its funding and its balance sheet figures and Rabobank's interest in a long-term funding operation. Crucial to the technolease agreement between Philips and Rabobank seems to have been the urgent need for cash flow at the side of Philips. Because the liquidity ratio of Philips was falling short at the time it was in danger of losing its AA-ranking as a debtor. The financial consortium behind Philips was no longer prepared to supply cash. Hence the liquidation of hidden reserves was some kind of last resort.
- (36) The fact that in 1987 the tax authorities had already approved a sale-leaseback of immaterial assets by merely interpreting general tax rules gives further evidence in favour of the conclusion that the tax authorities merely have applied general tax rules.
- (37) Another way to establish whether general tax rules have been applied is by checking whether other enterprises actually could engage in sale-leaseback of immaterial assets. The Netherlands authorities have supplied the names of enterprises that following Philips used sale-leaseback of immaterial assets in order to generate cash flow. These cases date from before as well as after the Philips/Rabobank agreement. Furthermore from press releases it can be concluded that other enterprises comparable to Philips also felt that sale-leaseback of immaterial assets was open to them.

- (38) Furthermore, the economic rationale cannot be put in doubt by a possible fiscal gain over the sale-leaseback operation since, as shown in point V.I., it can be expected that there will not be any actual loss of tax revenues for the State. On the contrary, a tax benefit should result whose discounted value in 1994 amounts to NLG 68 million.

c) Use of State resources

- (39) As has been pointed out, the tax treatment of the technolease agreement will not impose any burden on State resources.

VI. Conclusion

- (40) In the light of the aforementioned considerations, the Commission concludes that, as the Netherlands authorities have not selectively granted a fiscal advantage to Philips nor Rabobank through any discretionary interpretation of their fiscal law nor at the expense of any State resources, there is no element of State aid falling under Article 92(1) to either party involved in the technolease agreement between Philips and Rabobank. The Commission therefore,

HAS ADOPTED THIS DECISION:

Article 1

The treatment by the Netherlands tax authorities of a technolease agreement between Philips and Rabobank does not constitute an aid within the meaning of Article 92(1) of the EC Treaty.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 21 April 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 28 June 2000

on the part of the Portuguese regional aid map for the period 2000 to 2006 which relates to the regions eligible for exemptions under Article 87(3)(c) of the Treaty

(notified under document number C(2000) 1964)

(Only the Portuguese text is authentic)

(Text with EEA relevance)

(2000/736/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

Whereas:

procedure provided for by Article 88(2) of the Treaty in respect of the regions eligible for exemptions under Article 87(3)(c) of the Treaty (State aid C 78/99).

(3) The Commission's decision not to raise objections to one part of the Portuguese map, considering it compatible with the Treaty, and to initiate the formal investigation procedure with respect to the rest of the map, was published in the *Official Journal of the European Communities* ⁽³⁾. Interested parties were invited to submit their comments within one month of the date of publication of this decision.

(4) The Commission received no comments from interested parties.

I. PROCEDURE

(1) By letters dated 19 May 1999 and 25 May 1999 (Nos 445 and 458 respectively), registered by the Commission on 20 May 1999 and 26 May 1999, the Portuguese Permanent Representation notified the Commission, in accordance with Article 88(3) of the EC Treaty, of the draft regional aid map for the period 2000 to 2006 ⁽²⁾. By letter dated 11 June 1999 (D/52497) to the Portuguese Permanent Representation, the Commission requested further information. By means of letters dated 12 July 1999 and 12 October 1999 from the Portuguese Permanent Representation (Nos 692 and 994 respectively), registered by the Commission on 19 July 1999 and 4 November 1999, and a bilateral meeting held on 7 September 1999, the Portuguese authorities provided this information.

(2) By letter dated 19 January 2000 (SG(2000) D/100638), the Commission informed Portugal that, having examined the information provided by the Portuguese authorities on the measure in question, it had decided, in accordance with Articles 87 and 88 of the Treaty and Articles 61 and 62 of the EEA Agreement, not to raise any objections regarding the part of the Portuguese regional aid map relating to the regions eligible for exemptions under Article 87(3)(a) of the Treaty (State aid N 305/99), and to initiate the formal investigation

(5) By means of letters dated 21 February 2000 from the Portuguese Permanent Representation and 2 May 2000 from the Portuguese Minister for Economic Affairs (Nos 221 and 2610), registered by the Commission on 22 February 2000 and 4 May 2000 respectively, a bilateral meeting held on 12 April 2000 and a fax dated 18 May 2000, the Portuguese authorities gave their comments to the Commission.

II. DESCRIPTION OF THE PART OF THE MEASURE IN RESPECT OF WHICH THE COMMISSION INITIATED THE PROCEDURE

(6) The draft regional aid map proposed by the Portuguese authorities covers the whole of Portugal and is for the period 1 January 2000 to 31 December 2006. Under the exemption provided for in Article 87(3)(c) of the Treaty, the Portuguese authorities proposed the following NUTS (Nomenclature of Territorial Statistical Units) level III regions and the following aid intensity ceilings (in net grant equivalent — nge):

<i>Grande Lisboa:</i>	45,68 % nge in 2000, 36,76 % nge in 2001; 27,84 % in 2002, 18,92 % nge in 2003, 10 % nge in 2004 to 2006;
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⁽¹⁾ OJ C 62, 4.3.2000, p. 2.

⁽²⁾ In accordance with the Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9) a Member State's regional aid map is based on the regions of a Member State eligible under the derogations provided for by Article 87(3)(a) and (c), the ceilings on the intensity of aid for initial investment or the aid for job creation approved for each region, and the applicable aid combination ceilings.

⁽³⁾ See footnote 1.

Lezíria do Tejo: 47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002; 26,92 % nge in 2003, 20 % nge in 2004 to 2006;

Médio Tejo: 47,68 % nge in 2000; 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;

Oeste: 47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;

Península de Setúbal: 47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006.

(7) In the Portuguese notification, all the above aid intensity ceilings are increased by 10 percentage points gross for small and medium-sized enterprises ⁽⁴⁾. The figures also represent the aid combination ceilings for the total amount of aid in cases where assistance is granted concurrently under several regional aid schemes, irrespective of whether it comes from local, regional, national or Community sources.

(8) The Commission examined the Portuguese notification in the light of the Guidelines on national regional aid and, in particular, point 5.2 thereof, which stipulates that the draft map should be 'drawn up in accordance with the criteria set out in points 3.5, 3.10, 4.8 and 4.9', taking due account of the fact that the maximum total coverage of regional aid in Portugal has been set at 100 % of the national population for the period from 2000 to 2006 ⁽⁵⁾.

(9) As regards the aid intensity ceilings proposed by the Portuguese authorities for each of the NUTS level III regions referred to above, the Commission recalled that, in accordance with point 4.8 of the Guidelines, 'the ceiling on regional aid must not exceed 20 % nge in general' and 10 % nge in regions eligible under Article 87(3)(c), 'which have both a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average'. The NUTS level III region of Grande Lisboa is the only region subject to the 10 % nge ceiling.

(10) The Commission also recalled that, in accordance with point 5.7 of the guidelines, for regions losing their Article 87(3)(a) status as a result of the review of the regional aid map and acquiring Article 87(3)(c) status, it could accept during a transitional period a progressive

reduction of the aid intensities for which such regions had been eligible under Article 87(3)(a) at a linear or faster rate until the intensity ceiling corresponding to the application of points 4.8 and 4.9 was reached. Since all the abovementioned regions, which together constitute the NUTS level II region Lisboa e Vale do Tejo, qualified for the derogation provided for in Article 87(3)(a) until 31 December 1999 and since the relevant aid ceiling was set at 75 % gross, the aid intensities proposed by the Portuguese authorities took account of this possibility.

(11) However, the Commission pointed out that, in accordance with footnote 43 concerning point 5.7 of the guidelines, the aforementioned transitional provisions do not apply to the parts of NUTS level II regions losing their Article 87(3)(a) status which, 'where the additional population-density percentage obtained by applying the second adjustment at point 8 of Annex III to these guidelines is not available, would have had to be excluded from the new aid map'. In the case of Portugal, this additional percentage corresponds to 23,2 % of the total national population.

(12) That being so, the Commission noted that, according to the Portuguese notification, the entire NUTS level II region Lisboa e Vale do Tejo, which accounts for 33,4 % of the national population, should benefit from the transitional period referred to in point 5.7 of the guidelines for the purpose of adapting the aid intensities from which they had benefited under Article 87(3)(a). In the light of the restrictions placed on the geographical scope of these transitional provisions, only 10,2 % of the Portuguese population could benefit from such a transitional period. Under the circumstances, the proposal by the Portuguese authorities regarding the aid intensity ceilings proposed for each of the NUTS level III regions concerned could not be deemed compatible with the relevant provisions of the guidelines. For this reason, the Commission doubted whether this aspect of the Portuguese proposal was compatible with the Treaty.

(13) Accordingly, the Commission noted that, in view of the aforementioned doubts regarding the aid intensities proposed for each of the above regions, it did not take the view that the said intensities reflected the seriousness and intensity of the regional problems addressed when examined in a Community context, in accordance with point 4.8 of the guidelines. By the same token, it did not consider that the aid intensities proposed for small and medium-sized enterprises were in compliance with point 4.9 of the guidelines. Moreover, the Commission did not take the view either that the aid combination rules contained in point 4.18 of the guidelines had been complied with.

⁽⁴⁾ OJ L 107, 30.4.1996, p. 24.

⁽⁵⁾ OJ C 16, 21.1.1999, p. 5.

III. COMMENTS FROM THE PORTUGUESE AUTHORITIES

(14) In their comments, submitted as part of the formal investigation procedure, the Portuguese authorities emphasised their opposition to the principle of limiting the geographical scope of the transitional arrangements provided for by point 5.7 of the Guidelines on national regional aid. The Portuguese authorities felt that footnote 43 would drastically limit the effect of point 5.7 of the Guidelines, at a time when proper monitoring of the regions losing their right to exemptions under Article 87(3)(a) of the Treaty was required to avoid excessively rapid changes in eligibility, and that its application to the NUTS level II region Lisboa e Vale do Tejo was unjustified, since it would lead to the imposition of excessive restrictions on industrial and regional policies in a Member State which, in relative terms, gives least aid to businesses.

(15) The Portuguese authorities also felt that the imposition of the limitations provided for in footnote 43 of point 5.7 of the Guidelines would, in any event, have the effect of unduly penalising the NUTS level II region Lisboa e Vale do Tejo for the following reasons:

— With the exception of the NUTS level III region Grande Lisboa (in which GDP is 114 % of the Community average), the NUTS level II region Lisboa e Vale do Tejo has development levels comparable to the regions covered by Article 87(3)(a) which surround it (the per capita GDP of each of the other four NUTS level III regions in question is between 55 % and 58 % of the Community average). However, the aid intensity ceilings would be significantly lower in these regions. In other words, these four NUTS level III regions (Lezíria do Tejo, Médio Tejo, Oeste and Península de Sétubal) would not be eligible for the exemption provided for by Article 87(3)(a) simply because of being part of the NUTS level II region Lisboa e Vale do Tejo.

— Under the limitations imposed by footnote 43, only a restricted part of the NUTS level II region Lisboa e Vale do Tejo, which contains less than a third of its population would benefit from the transitional arrangements provided for in point 5.7 of the Guidelines. Indeed, the four less-developed NUTS level III regions represent 45 % of the population of the NUTS level II region Lisboa e Vale do Tejo and the new aid intensity ceiling (20 % in cash terms) would apply to some of them from 1 January 2000.

— Consequently, given the relative levels of development of the NUTS level III regions in question, the

imposition of the limits laid down in footnote 43 to point 5.7 of the Guidelines would not allow equal treatment of different Member States and regions, in that it would make it impossible to guarantee that all the aid intensity ceilings applicable were adequate, taking into account the seriousness and intensity of specific regional problems.

(16) The Portuguese authorities also believed that the imposition of the limits set by footnote 43 was at odds with the Council's approach to the Structural Funds, which was much more generous as regards the 'phasing out' of Objective 1 status for the NUTS level II region Lisboa e Vale do Tejo. Such limits on regional state aid would produce a contradiction between regional policy and competition policy, which would be at variance with the objective set by the Commission in this area ⁽⁶⁾.

(17) Despite their opposition in principle to the imposition of any limits on the geographical scope of the transitional arrangements provided for by point 5.7 of the Guidelines, the Portuguese authorities did, however, amend their original notification during the formal investigation procedure. The Portuguese authorities made this change mainly to avoid a negative decision from the Commission under Article 7(5) of Council Regulation (EC) No 659/1999 ⁽⁷⁾, which would have had a negative effect on the implementation of a consistent and coordinated regional policy in Portugal. The new proposal for exemptions under Article 87(3)(c) put forward the following aid intensity ceilings for the NUTS level III regions in question:

<i>Grande Lisboa:</i>	10 % nge for the whole period 2000 to 2006;
<i>Lezíria do Tejo:</i>	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
<i>Médio Tejo:</i>	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
<i>Oeste:</i>	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006;
<i>Península de Sétubal:</i>	47,68 % nge in 2000, 40,76 % nge in 2001, 33,84 % in 2002, 26,92 % nge in 2003, 20 % nge in 2004 to 2006.

⁽⁶⁾ Communication from the Commission to the Member States on the links between regional and competition policy — Reinforcing concentration and mutual consistency (OJ C 90, 26.3.1998, p.3).

⁽⁷⁾ OJ L 83, 27.3.1999, p. 1.

- (18) As in the original notification, all the above aid intensity ceilings are increased by 10 percentage points gross for small and medium-sized enterprises. They also represent the aid combination ceilings for the total amount of aid in cases where assistance is granted concurrently under several regional aid schemes, irrespective of whether it comes from local, regional, national or Community sources.

IV. ASSESSMENT OF THE MEASURE

- (19) The Commission examined the part of the Portuguese notification which related to the regions proposed for exemptions under Article 87(3)(c) of the Treaty, together with the amendments submitted during the formal investigation procedure, in the light of the Guidelines on national regional aid.
- (20) As regards the aid intensity ceilings proposed by the Portuguese authorities for the NUTS level III regions, the Commission would recall that, in accordance with point 4.8 of the guidelines, and with the exception of low population density regions or outermost regions, 'the ceiling on regional aid must not exceed 20 % nge in general and 10 % nge in regions eligible under Article 87(3)(c), which have both a higher per capita GDP/PPS and a lower unemployment rate than the respective Community average'. As the Portuguese authorities were informed by letter SG(98) D/12398 of 30 December 1998, the NUTS level III region of Grande Lisboa is the only region subject to the 10 % nge ceiling.
- (21) The Commission would also point out that, in accordance with point 5.7 of the guidelines, for regions losing their Article 87(3)(a) status as a result of the review of the regional aid map and acquiring Article 87(3)(c) status, it can accept during a transitional period of no more than two years for operating aid and four years for aid for initial investment and job creation, a progressive reduction of the aid intensities for which such regions had been eligible under Article 87(3)(a) at a linear or faster rate until the intensity ceiling corresponding to the application of points 4.8 and 4.9 is reached. Since all the abovementioned regions, which together constitute the NUTS level II region Lisboa e Vale do Tejo, qualify for the derogation provided for in Article 87(3)(a) until 31 December 1999 and since the relevant aid ceiling is set at 75 % gross (which corresponded, at the date of notification and for aid in the form of non-refundable grants, to 54,6 % nge), the aid intensities proposed by the Portuguese authorities for the NUTS level III regions

Lezíria do Tejo, Médio Tejo, Oeste and Península de Sétubal take account of this possibility.

- (22) In this regard, the Commission would also point out that, in accordance with footnote 43 concerning point 5.7 of the guidelines, the aforementioned transitional provisions do not apply to the parts of NUTS level II regions losing their Article 87(3)(a) status which, 'where the additional population-density percentage obtained by applying the second adjustment at point 8 of Annex III to these guidelines is not available, would have had to be excluded from the new aid map'.
- (23) Finally, the Commission would point out that, as it stressed in point 3.3 of its Communication to the Member States on the links between regional and competition policy⁽⁸⁾, how 'phasing out' is to be conducted will vary depending on which of the two policies is involved. Consistency between them will none the less be ensured, as Agenda 2000 points out, by the fact that 'measures for the regions which will benefit from transitional (phasing out) support from the Structural Funds will have to comply with the competition rules on State aid', so it follows that the application of the rules laid down by the Guidelines, which are in themselves a guarantee of fairness, does not imply unfair treatment of Portugal by comparison with the other Member States.
- (24) That being so, the Commission would note that, according to the Portuguese notification, the four NUTS level III regions, Lezíria do Tejo, Médio Tejo, Oeste and Península de Sétubal, which account for 14,9 % of the national population, should benefit from the four-year transitional period referred to in point 5.7 of the guidelines for the purpose of adapting the current aid intensities under the system laid down in Article 87(3)(a) while, in the light of the restrictions placed on the geographical scope of these transitional provisions by footnote 43 of point 5.7 of the Guidelines, only 10,2 % of the Portuguese population could benefit from such a transitional period. This is because, in the case of Portugal, the additional percentage referred to in footnote 43, which can be calculated by the method set out at point 3 and in Annex III of the Guidelines, after the second adjustment referred to above is removed and the maximum total coverage of 42,7 % of the Community population is taken into account, corresponds to 23,2 % of the total national population.
- (25) The Commission would point out, however, that the objective of the limitations imposed by footnote 43 on the geographical scope of the transitional arrangements laid down in point 5.7 of the Guidelines, is simply to ensure that regions whose socio-economic situation is such that they should not be included in the regional aid map, do not gain double benefits, firstly under the aid coverage arrangements (as regions which are losing their Article 87(3)(a) status) and in application of the second adjustment referred to at point 8 of Annex III to the Guidelines and, secondly, through the aid ceilings. Since

⁽⁸⁾ See footnote 6.

the per capita GDP of each of the four NUTS level III regions which would benefit from the transitional arrangements in question (Lezíria do Tejo, Medio Tejo, Oeste and Península de Sétubal) is between 55 % and 58 % of the Community average, it does not seem reasonable to insist that they should be totally or partially excluded from the Portuguese regional aid map, because of their socio-economic situation. On the contrary, the four NUTS level III regions in question have sufficient regional disparities with regard to the thresholds set out at point 5 of Annex III of the Guidelines, and they were taken into consideration for this reason in the calculation of the distribution key for Community coverage of regional aid under Article 87(3)(c) of the Treaty between Member States, in accordance with the method laid down in section I of Annex III of the Guidelines. That being the case, and since the per capita GDP of these regions is now similar, any differences in treatment between these regions could damage the development prospects of the region as a whole. This being the case, despite exceeding by 4,7 % in terms of total population the limit obtained by the mechanical application of footnote 43, the Portuguese proposal can, in this instance, be considered compatible with the Guidelines as regards the scope of the transitional arrangements provided for at point 5.7.

- (26) The Commission would also point out that, in accordance with point 4.8 of the Guidelines, the aid intensity ceilings proposed for each region must be adjusted to reflect the seriousness and intensity of the regional problems addressed when examined in a Community context. Given that the draft Portuguese map implies a significant and immediate reduction in the aid intensities which apply to the NUTS level II region Grande Lisboa (75 % gross for 10 % nge), and the low levels of economic development of the NUTS level III regions Lezíria do Tejo, Medio Tejo, Oeste and Península de Sétubal, this aspect of the Portuguese proposal can also be considered compatible with the relevant provisions of the Guidelines.

- (27) Finally, the Commission notes that the proposed aid intensities for small and medium-sized enterprises are in line with point 4.9 of the Guidelines, which provides that the ceilings may be raised by the supplements for SMEs provided for in the Commission notice on aid for SMEs⁽⁹⁾, that is, by 10 percentage points gross in the case of regions qualifying for exemption under Article 87(3)(c), and that the rules on aid combinations set out at point 4.18 of the Guidelines were respected. In relation to these two points, the Portuguese proposal can also be considered compatible with the relevant provisions of the Treaty.

V. CONCLUSION

- (28) In the light of the above, the Commission considers the new draft Portuguese regional aid map for the period 2000 to 2006 for the regions eligible for exemptions under Article 87(3)(c) of the Treaty to be compatible with the Guidelines on national regional aid,

HAS ADOPTED THIS DECISION:

Article 1

The part of the Portuguese regional aid map for the period 2000 to 2006 which relates to the regions eligible for exemptions under Article 87(3)(c) of the Treaty is considered compatible with the common market under Article 87(3)(c) of the Treaty.

Implementation of the measure is therefore authorised.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 28 June 2000.

For the Commission

Mario MONTI

Member of the Commission

⁽⁹⁾ OJ C 213, 23.7.1996, p. 4.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2256/2000 of 11 October 2000 derogating, as regards the list of double-zero (00) colza and rape seed varieties and variety associations, from Regulation (EC) No 2316/1999 laying down detailed rules for the application of Council Regulation (EC) No 1251/1999 establishing a support system for producers of certain arable crops

(Official Journal of the European Communities L 258 of 12 October 2000)

On page 17, in the Annex:

for: 'Coccon (VA: 70 % CSH 08 (MS), 10 % Bristol, 10 % Capitol),'

read: 'Cocoon (VA: 70 % CSH 08 (MS), 10 % Bristol, 20 % Capitol),'

On page 23, in the Annex:

the variety 'Sprinter' should be inserted between 'Spirit' and 'Sputnik'.
