II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 June 1990

accepting an undertaking given by the Royal Thai Government in connection with the countervailing duty proceeding concerning imports of ball bearings with a greatest external diameter not exceeding 30 mm, originating in Thailand

(90/266/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Articles 10 and 11 thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. PROCEDURE

(1) In June 1988 the Commission announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of a countervailing duty proceeding concerning imports into the Community of ball bearings with a greatest external diameter not exceeding 30 mm (hereinafter referred to as 'ball bearings') originating in Thailand, and commenced an investigation. The product investigated corresponds to the CN code 8482 10 10.

The proceeding was initiated as a result of a complaint lodged in December 1987 by the Federation of European Bearing Manufacturers' Associations (FEBMA) on behalf of producers representing a major proportion of all Community production of the ball bearings. This complaint contained evidence of the subsidization of this product originating in Thailand and of material injury resulting therefrom, which was considered sufficient to justify opening a proceeding.

(2) The Commission officially notified the Royal Thai Government of the initiation of the proceeding, and officially advised the exporters and importers known to be concerned, as well as the complainants, and gave all the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

The Royal Thai Government, all the known exporters and importers and the majortiy of Community producers, represented by the complainant, made their views known in writing.

(3) The Commission sought and verified all information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations either at the premises or with representatives of the following :

(a) *Royal Thai Government*

Department of Foreign Trade,

Customs Department,

Bank of Thailand,

International Finance Corporation of Thailand (IFCT),

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 147, 4. 6. 1988, p. 4.

Electricity Generating Authority of Thailand (EGAT),

Board of Investment (BoI),

Ministry of Finance;

(b) *Thai Exporters*

NMB Thai Ltd, Ayutthaya, Thailand,

Pelmec Thai Ltd, Bang Pa-In, Ayutthaya, Thailand,

Both companies are 100 % owned subsidiaries of Minebea Co. Ltd, Japan;

(c) *Importers in the Community*

NMB GmbH., Neu Isenburg, Germany,

NMB Italia, Mazzo di Rho, Milan, Italy,

NMB (UK) Ltd, Bracknell, United Kingdom;

(d) *Community producers*

FAG Kugelfischer Georg Schäfer KGaA, Schweinfurt, Germany,

Georg Müller Nürnberg AG, Nurenberg, Germany,

Gebrüder Reinfurt GmbH & Co., KG, Würzburg, Germany,

SKF Industrie SPA, Turin, Italy,

SKF Roulements Spécialisés (ADR), Thomery, France,

SKF France, Clamart, France,

ROL Rolamentos Portugueses SARL, Caldas da Rainha, Portugal.

(4) Following this stage the Commission formulated some preliminary findings on subsidies and injury. The complainant, the exporters and the Royal Thai Government (hereinafter referred to as 'the Government' unless otherwise stated) requested and were granted an opportunity to be heard by the Commission. The Commission informed them in detail of the facts on which it based its findings. Upon their request, the parties were also informed of the essential facts and considerations on the basis of which it was proposed to recommend measures. The parties were granted a period within which to make representations on any of the above matters subsequent to the disclosure meetings. Where appropriate their comments were taken into consideration.

(5) The investigation of subsidies covered the period 1 April 1987 to 31 March 1988 (the investigation period).

(6) This investigation has exceeded the normal time period because of the volume and complexity of the data initially gathered and examined, and because the completion of the investigation has required the study of related issues which arose during the proceeding and which could not have been foreseen at its outset.

B. PRODUCT UNDER CONSIDERATION

(7) The products concerned are ball bearings with a greatest external diameter not exceeding 30 mm; they fall within CN code 8482 10 10.

(8) From a technical point of view, the definition of the products under consideration covers a large number of standard bearing types, all available with different accessories, plus many special types made to the specification of the customer. Within this product definition, a distinction is sometimes made between the so-called miniature and instrument bearings and the standard small-sized bearings. However, they have the same basic physical characteristics and no clear dividing line can be made between them.

(9) The major components of the bearings under consideration are an inner and outer ring (usually in chrome, but sometimes stainless steel), a cage and a variable number of balls. Metal shields or rubber seals can be added depending on the customer's requirements and a variety of greases are applied. Their function is to reduce friction and so enable machine parts to move faster and more smoothly. The main applications of the bearings in question are in consumer electronics, domestic appliances and office automation.

(10) Ball bearings are an intermediate product used in the assembly of consumer and capital goods or for replacement purposes. The demand for ball bearings therefore depends directly on the demand for the final product (e.g. washing-machines, vacuum-cleaners, video recorders, fans, small electric motors). Small ball bearings generally account for only a tiny fraction of the cost of the final product.

C.1 SUBSIDIES — BACKGROUND

(i) Alleged subsidies and summary of findings

(11) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, alleged subsidies under the following headings were investigated:

(a) customs duty and indirect tax exemption on imports of machinery and essential materials;

(b) rebate on indirect taxes on domestically purchased inputs;

(c) exemption from corporate income tax;

(d) rebate on electricity charges to exporters;

(e) duty drawback and tax exemption on imported raw materials;

(f) special investment zones and other regional incentives;

(g) loans from financial institutions allegedly controlled or influenced by the Government;

(h) other tax benefits.

(12) The Commission's investigation revealed that the exporters, NMB Thai and Pelmec Thai (herenafter referred to as 'the companies') received countervailable subsidies under headings 11 (a), (b), (c) and (d). Alleged subsidies under headings 11 (e), (f), (g) and (h) were found either not to be countervailable or not to have been granted at all.

(ii) **Certificates of Promotion**

(13) The companies have both been issued with 'Certificates of Promotion' by the board of Investment (BoI), a Government agency responsible for the administration of the Investment Promotion Act (IPA), which is the main legislative instrument for granting subsidies to Thai industries. Some of the incentives mentioned in the Act, albeit alleged by the complainant, have not been included in the Certificates of Promotion, and others have been included but have not been used by the companies. The most important feature of these certificates is that they make all the benefits granted to the companies conditional upon the export of almost all their production. Indeed only minimal sales are allowed on the domestic Thai market and the sales to other companies in the Minebea Group in Thailand have to be incorporated into other products destined for export.

(iii) **Quantification of subsidies**

(14) All the countervailable subsidies are expressed in Thai baht for each of the companies separately. In cases where the subsidy rate is calculated first as a percentage, this is converted into Thai baht by multiplying it by the total exports of ball bearings of the companies.

C.2 COUNTERVAILABLE SUBSIDIES

(i) **Customs duty and indirect tax exemption on imports of machinery and essential materials**

(15) The companies have obtained from the BoI a full exemption from customs duties and indirect taxes payable on imported goods to be employed in their production. The exemption was granted, under section 28 of the IPA, through the Certificates of Promotion issued to the companies, and therefore it is contingent upon export performance, as are all benefits granted through these certificates. The companies have benefited from the exemption since their establishment in Thailand; however, they have not used it for 'raw materials' (which correspond to physically incorporated inputs), for which they prefer to use the bonded warehouse system (see recital 33). They avail themselves of this exemption, instead, for capital goods ('machinery'), 'machine parts' and 'essential materials'. There can be no doubt about the countervailability of the exemption of machinery and machine parts. As to the essential materials, the Commission's investigation established that this category consists of non-physically incorporated inputs, and therefore is similarly countervailable.

(16) The following duty and indirect taxes are normally levied on products imported into Thailand:

— import duty levied on cif import value,

— business tax, which is calculated as a percentage of the gross receipt (the cif value plus duty plus a standard profit),

— municipal tax, equivalent to 10 % of the business tax.

(17) Considerable problems arose in obtaining the reliable data required for quantifying this subsidy.

Data supplied by the Government (Customs Depatment and BoI) were not collected in a way that made them useable for the purposes of this investigation.

The companies provided data on a transaction-by-transaction basis for the investigation period, giving the amount of tax and duty exemptions on three categories of products:

— machinery,

— machine parts and tools,

— consumables (equivalent to essential materials).

After verification, the Commission was satisfied that the total amount of tax and duty exemptions recorded was correct and the companies had been able to isolate fairly accurately the exemptions on machinery. However, it was also clear that it had been impossible to make a distinction between machine parts and tools, on the one hand, and consumables on the other, so that the separate totals of each of these two categories were rendered meaningless, although the sum of both categories was correct.

(18) On the basis of these data, it was possible to calculate the subsidy for each product category.

(a) Machinery is entered into the balance sheet as a fixed asset and depreciated over time. Since the exemption data for this category is sufficiently reliable, the appropriate method of calculation is to spread the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned (Regulation (EEC) No 2423/88, Article 3 (4) (c)). The part of the companies' total acquisitons of machinery (since establishment in Thailand) allocated to the investigation period is multiplied by the average duty rate to calculate the amount of the subsidy.

The total acquisitions of machinery (until 31 March 1988) were taken from the companies' balance sheet records.

As explained above, for the allocation of the subsidy, Regulation (EEC) No 2423/88 requires the use of a period reflecting 'normal depreciation ... in the industry concerned'. It has been established that the depreciation period for machines in the Japanese bearing industry is 10 years, while seven to 10 years is the standard period in Europe. The Commission therefore considers 10 years to reflect normal depreciation in this industry and has allocated the subsidy over this period. Therefore, 10 % of the companies' total acquisitions of machinery were allocated to the investigation period.

The average duty rate was calculated by dividing the amount of tax and duty exemption (recital 17) by the value of machinery acquired during the investigation period (again from balance sheet records).

(b) Consumables (e.g. grinding stones, greases) are expenses in the company accounts and the value of the subsidy should therefore be calculated on an expense basis, i.e. the tax and duty exemptions of purchases made during the investigation period.

(c) Machine parts and tools in principle are entered into the balance sheet as fixed assets and depreciated. They could at first sight be treated in the same way as machinery. However, in the companies' data on duty and tax exemptions, it is clear that products in this category have been confused with consumables on a very large scale. The main reason for this seems to be that many of such machine parts are replaced with such frequency that they are, in practice, difficult to distinguish from other consumables. Another complicating factor is that machine parts valued below a certain amount are treated as expenses rather than being capitalized as fixed assets. Any calculation of an average duty rate is therefore bound to be inaccurate, and the appropriate solution is to deal with machine parts and tools in the same way as consumables, i.e. on an expense basis. This method also ensures that the combined total of duty and tax exemptions for machine parts, tools and consumables is accurate.

(19) The depreciation calculation for machinery is slightly complicated by the fact that, before 1 February 1986, imports of goods employed by an importer for his own productive activity were exempt from business (and therefore municpal) tax, according to a general provision of law (section 79 ter (11) of the Revenue Code).

This exemption was generally available to all importers regardless of their export performance, and would not have been countervailable. It follows that for the purpose of calculating the effect of the exemptions on imported machinery, the acquisition of machines before February 1986 should only be taken into account for calculating import duty and not business and municpal tax.

(20) On the basis of these calculations, the following amounts of subsidy (in millions of Thai baht), have been found under this heading:

NMB Thai	156,95
Pelmec Thai	157,83.

(ii) Rebate on indirect taxes on domestically purchased inputs

(21) Under the 1981 Tax and Duty compensation of Exported Goods Produced in the Kingdom Act, exporters may obtain rebates relating to customs duties, import sales taxes and domestic sales taxes incurred in respect of inputs used in the production of exported goods. Rebates are obtained by applying for 'tax coupons', which are freely transferable and can be used to pay any tax collected by the Revenue Department of the Government. For each product, there are two rates, the 'A' rate used by exporters who do not use any of the duty drawback systems, and the 'B' rate used by exporters who do use some form of duty drawback. The companies therefore use the 'B' rate, which is set at 0,59 % for products in the category which includes ball-bearings and which relates to the rebate of business and municipal taxes on domestically purchased inputs. The granting of this subsidy is contingent upon export performance, and it is therefore countervailable.

(22) The rebate rates are calculated by the Government on the basis of an 'input/output' study, originally carried out in 1980 (based on 1975 data) and updated in 1985 (with 1980 data); a further update is being carried out, on 1985 data, to be published in 1990. Using this study, the Government calculates the value of all inputs and the incidence of customs duties and indirect taxes for each category of products, and determines the rebate rates on the basis of this. Chapter 111 of the input/output table, 'fabricated metal products', includes ball bearings.

After verification and discussion with the competent services of the Government, the Commission considers that the method applied by the Government is a reasonable one.

(23) In the case of this subsidy, it is clear that only the rebate on non-physically incorporated inputs is countervailable. The Commission has calculated, on the basis of the input/output study, that 0,2 % of the 0,59 % rebate is given on non-physically incorporated inputs and thus constitutes the countervailable part of the subsidy.

(24) However, the companies do not receive the whole of this 0,2 % rebate. They receive an equivalent amount in tax coupons and, since they pay no tax, they have to sell these at a discount of 34 %, therefore finally receiving only the equivalent of 0,13 % of their total export.

(25) On the basis of these calculations, the following amounts of subsidy (in millions of Thai baht), have been found under this heading:

NMB Thai	2,28
Pelmec Thai	1,72.

(iii) **Exemption from corporate income tax**

(26) The Certificates of Promotion issued to both companies grant them exemptions from the payment of corporate income tax for the eight years following the start-up of their operations. The exemption is in accordance with Section 31 of the investment Promotion Act.

This exemption constitutes a countervailable export subsidy since it has already been established that the privileges granted in the Certificates of Promotion are conditional on virtually all production being exported.

(27) The following method is used to calculate the subsidy:

Taxable income × Tax rate (%).

(28) The calculation should be made on a fiscal year, since it is only for this period that fully audited accounts are available. In the case of the companies, the fiscal year runs from 1 October to 30 September.

The correct solution is to take the fiscal year 1987 (1 October 1986 to 30 September 1987), which is the last completed fiscal year within the investigation period.

(29) On the basis of these calculations, the following amounts of subsidy (in millions of Thai baht), have been found under this heading:

NMB Thai	94,06
Pelmec Thai	124,49.

(iv) **Rebates on electricity rates for exporters**

(30) The Electricity Generating Authority of Thailand (EGAT) has established a programme of rebates on electricity rates for exporters. Eligibility for this programme is dependent upon eligibility for rebates on indirect taxes on exports. The producer has to file an application with the electricity authority from which it receives its electricity, in this case the Provincial Electricity Authority (PEA), showing eligibility for the tax rebate and giving the elements which the PEA needs in order to calculate the amount of electricity used per unit of product and the cost charged to the producer. The electricity discount will be equivalent to about 20 % of this cost.

Once the producer has received PEA and EGAT approval, it has to apply to the PEA for an electricity rebate. Each application (which is made on the same form used to claim indirect tax rebates) must provide complete details of export transactions involving eligible products, to enable the PEA to calculate the rebate. This is then shown as an adjustment on a subsequent electricity bill.

(31) The companies have received EGAT approval and are eligible for electricity rebates. However, Pelmec received approval only at the end of May 1988, and thus did not receive any benefit during the investigation period. The programme obviously constitutes a subsidy, is contingent upon export performance (since export performance is a condition for indirect tax rebates — Recital 21 — and the amount of the electricity rebate is calculated on the basis of units of product exported) and is therefore countervailable.

(32) During the investigation period the total benefit received by NMB Thai amounted to 4,79 million baht. This figure therefore represents the total amount of subsidy found under this heading.

C.3 SUBSIDIES FOUND NOT COUNTERVAILABLE OR NOT RECEIVED BY COMPANIES

(i) Duty drawback and tax exemption on imported raw materials

(33) The companies used a bonded warehouse system to qualify for this exemption. Only raw materials and components which are physically incorporated into the final product can be imported through the bonded warehouse system, and therefore this is not a countervailable subsidy.

The bonded warehouse system allows duty and tax free entry, so that no question of countervailable over-rebate arises.

(ii) Special investment zones and other regional incentives

(34) Regional incentives in Thailand are the responsibility of the BoI. Until 1988 the Investment Promotion Act empowered the BoI to grant investors who had been approved for investment promotion some additional privileges if they located in certain designated areas.

(35) It was established that the companies were not located in any such areas at the time they received approval for investment promotion, and that subsequent changes in BoI policy on regional incentives and/or in designated areas were not retroactive, and did not apply to investors who had already established operations in Thailand.

In addition, verification of the original applications of the companies for investment promotion revealed that neither of them had ever requested any of the privileges related to special investment zones.

(iii) Loans from financial institutions allegedly controlled or influenced by the Government

(36) The companies received two loans from the industrial Finance Corporation of Thailand (IFCT). The Government claimed that the interest rate on these loans was higher than the cost of long-term funds to the Government, represented by the interest rate on bonds issued by the Government on the domestic market. Given that the loans are denominated in baht, Government bonds are the appropriate benchmark, and the Commission was able to verify with representatives of the Bank of Thailand that the Government's claim was correct, and determined that no countervailable subsidy was involved. Thus, there was no need to decide the issue of whether the IFCT is controlled or influenced by the Government.

(37) Secondly, the Commission considered the 'Packing Credits' programme (administered by the Bank of Thailand). It is a form of short-term export financing, and it certainly constitutes an export benefit, since it is conditional upon export and confers a benefit on the recipient (preferential interest rates in comparison with market rates). However, in this case the Government claimed that the interest charged to exporters, albeit lower than market rates, is still higher that the cost of short-term funds to the Government, represented by the interest rate on treasury bills issued by the Bank of Thailand on behalf of the Government. The Commission considered the choice of the benchmark appropriate, and the claim was verified with the Bank of Thailand and again found to be correct, leading to the conclusion that there was no countervailable subsidy.

(38) Finally, it emerged that the Financial Institutions Development Fund (FIDF), a public agency of the Government, is responsible, among other things, for 'helping depositors of financial institutions whose licences have been revoked by issuing FIDF promissory notes in exchange for the promissory notes of those companies'. The Commission found that this was done in response to a recent crisis in the Thai banking sector, that FIDF notes were redeemable in 10 years and carried no interest, and that no such notes had been issued to the companies under investigation.

(iv) Other tax benefits

(39) Under the Certificates of Promotion (in accordance with Section 34 of the Investment Promotion Act) dividends transferred back to Minebea in Japan are exempt from the normal 15 % withholding tax which is levied under the terms of the Japan-Thailand Tax Treaty of 1963.

This benefit is clearly contingent upon export and obviously involves a cost to the Government, However, it does not constitute a direct benefit to the companies, but rather to their parent company in Japan, which is not the subject of this investigation, and therefore the benefit is not countervailable.

(40) It has been established that the companies did not receive any other tax benefits in connection with their promoted status.

C.4 TOTAL AMOUNT OF COUNTERVAILABLE SUBSIDY

(41) The total value of the countervailable subsidies granted to the companies during the investigation period was as follows:

in baht (millions)

Subsidy	NMB Thai	Pelmec Thai
Duty and tax exemption on imported machinery and essential materials	156,95	157,83
Exemption from corporate income tax	94,06	124,49
Indirect tax rebate on domestic purchases	2,28	1,72
Electricity rebate	4,79	—
Total	258,08	284,04

C.5 COMMENTS FROM THE COMPANIES ON THE SUBSIDIES

(42) After being informed of the basic facts of the Commission's findings on subsidies, the companies submitted their comments, including a number of claims for adjustment to the calculations. These are listed below, accompanied by the Commission's reply in each case.

(i) Customs duty and indirect tax exemptions on imports (Recitals 15 to 20)

(43) *Claim 1:* The subsidy concerning machinery should have been allocated by using the 20-year depreciation period used by the companies in Thailand in their accounts, instead of the 10-year period chosen by the Commission.

Reply: The Commission rejects this argument. Article 3 (4) (c) of Regulation (EEC) No 2423/88 requires the use of 'the normal depreciation of such assets in the industry concerned' when spreading the value of a subsidy based on the acquisition of fixed assets over time.

Having examined the situation in the Community and in Japan, the Commission concludes that a period of 10 years reflects the normal depreciation of machinery and equipment in the ball-bearing industry.

(44) *Claim 2:* Whether or not a 10- or 20-year period is used, the Commission should have calculated the subsidy concerning machinery on the basis of the total depreciation recorded during the investigation period.

Reply: The Commission cannot accept this method. It would mean that machinery acquired less than one year before the end of the investigation period (i.e. during it) would not be included in the subsidy calculation. The Commission considers that since the companies received the benefit of the subsidy on all machinery imported up to 31 March 1988, it is this amount (allocated over a period of 10 years), which is countervailable.

(45) *Claim 3:* If a 10-year period is used to allocate the subsidy concerning machinery, this period should be reflected in a reduction of the corporate income tax exemption, since a 10-year depreciation period would result in a lower level of taxable profit.

Reply: The Commission does not agree. The 10-year period is appropriate for allocating the subsidy in this case, but has no relevance to the depreciation and tax calculations of the companies.

(ii) 'Double-counting' in corporate income tax exemption

(46) *Claim 4:* Subsidies other than the corporate income tax exemption reduced tax-deductible expenses and therefore increased the value of the income tax exemption. Having countervailed these other subsidies, the Commission should adjust pre-tax expenses upwards and therefore reduce the income tax exemption, in order to avoid double-counting.

Reply: The Commission refuses to accept this argument. The companies have enjoyed the full benefit of the duty and tax exemption on imports, the electricity rebate and the tax rebate on domestic purchases. In the same way, they have pocketed the full amount of the corporate income tax exemption on their declared taxable profit. The Government has forsaken a corresponding amount of revenue. Therefore it is logical to countervail the full amount of all these subsidies.

It is not for the Commission to speculate on what may or may not have happened if one or more subsidies had not been available. This kind of approach would be entirely hypothetical and would ignore other factors which may have come into play in the absence of certain subsidies (e.g. changes in selling prices).

D. INJURY

(i) Like product

(47) The ball bearings produced in the Community have the same physical characteristics and uses as the bearings defined in recital 7.

(ii) Community industry

(48) For the purpose of this investigation the Japanese-owned companies producing in the Community are not considered to be part of the Community industry under Article 4 (5) of Regulation (EEC) No 2423/88. This is because they are related to exporters of the same product from Japan who are currently subject to anti-dumping duties (1). These are being reviewed in an investigation running currently with the present proceeding (2). The Japanese-owned production companies sell all their production to the same Japanese sales subsidiaries who are involved in selling imported bearings from Japan at dumped prices, and they thus benefit from these unfair business practices. In these circumstances they cannot be considered to be behaving as normal Community producers but rather as a complementary source of supply for exporters practising dumping. After excluding the Japanese-owned companies from the scope of the proceeding, the Commission found that, during the period under investigation, the Community producers on behalf of whom the complaint was lodged manufactured about 85 % of Community production. This is clearly a major proportion of total production and these companies are therefore considered to form the Community industry.

(iii) Preliminary observations

(49) This case was investigated by the Commission at the same time as anti-dumping proceedings concerning imports of the same product originating in Thailand (3). The Commission is still considering the latter proceeding and no decision has yet been taken. The following analysis of injury caused by subsidization is made without prejudice to any eventual finding of dumping.

(iv) Volume and market shares of imports

(50) Between 1985 and the investigation period, total sales of ball bearings in the Community rose from 332,5 to 356,1 million pieces, an increase of 7,1 %.

(51) The sales of bearings imported from Thailand increased from 3,1 million pieces in 1985 to 31,5 million pieces in the investigation period and their share of the Community market rose from 0,9 % to 8,8 %.

(52) The Community market share of imports from countries other than Thailand fell from 59 % in 1985 to 50 % in the investigation period.

(v) Prices

(53) For the purpose of analysing price undercutting by the Thai exporters, a comparison was made between the selling price (net of all discounts and rebates) of Thai-made bearings and of bearings sold by Community manufactures in the German, Italian and United Kingdom markets.

Calculations always involved representative types of bearings, sold in reasonable quantities, usually exceeding 50 000 pieces. Only sales to industrial users who purchase bearings for incorporation into their final product (e.g. makers of vacuum-cleaners, VCRs, etc.) have been taken into account; these industrial users account for the great majority of the sales made by the Thai and Community producers and are almost the only customers who buy in sufficient quantities to enable a comparison to be made.

(54) On a weighted-average basis, the bearings from Thailand undercut those sold by the Community producers by 17 %.

(vi) Situation of the Community industry

(a) *Market shares*

(55) Although the Community sales of the Community industry rose by 3,5 %, from 112 to 116 million pieces, between 1985 and the investigation period, the 7,1 % increase in total demand in the Community market (see recital 50) meant that the Community industry's share dropped from 33,6 % to 32,5 %.

(b) *Price depression*

(56) A considerable amount of price depression was found. The average unit selling prices of most Community producers to industrial users fell between 1985 and the investigation period.

For the major Community producers, the average decreases, in current terms, varied from 2,6 to 9 %.

(c) *Profitability*

(57) The overall profitability of the Community producers in the sector of the bearings under investigation has declined by half since 1985, leading to a situation where current profits are clearly inadequate to finance the additional expenses required to keep the Community industry competitive. Indeed, at a time when the appropriate pre-tax

(1) OJ No L 193, 21. 7. 1984, p. 1.
(2) OJ No C 159, 18. 6. 1988, p. 2.
(3) OJ No C 147, 4. 6. 1988, p. 6.

profit margin for the bearings industry has been established to be 15 % (see recital 59), the Commission has found that the profitability achieved during the investigation period fell far below this figure. During this period, the profitability of the Community industry, on sales made in the ordinary course of trade in the Community, reached just 8 %.

(d) *Production, capacity utilization and employment*

(58) Community production fell from 170,6 million pieces in 1985 to 153,9 million during the investigation period, a decline of 10 %.

Community production capacity, calculated as far as possible on a two-shift, five day per week basis, expanded from 177,5 million units in 1985 to 185,5 million during the investigation period. Utilization of capacity therefore declined from 96 % in 1985 to 83 % in the investigation period.

Over the same period, employment in the sector declined from 2 304 to 2 033, a net loss of 271 jobs and a fall of 12 %.

(vii) **Determination of injury**

(59) An examination of the indicators described in the recitals above leads the Commission to conclude that the Community industry has suffered material injury in this case. The Commission considers that the following factors constitute the elements of injury.

(a) Decline and shortfall of profitability. The fall in profitability since 1985 has led to a situation where the current pre-tax profit margin on sales to independent customers in the Community market of 8 % (see recital 57) is inadequate in view of the additional expenses required to keep the Community industry competitive. These additional expenses are mainly related to investments in fixed assets, research and development, training and marketing. The Commission has concluded that a 15 % pre-tax profit margin is necessary for this purpose. The establishment of the adequate return on sales at 15 % also corresponds broadly to an empirical/historical approach to the profitability issue, i.e. the fact that there was an adequate level of profitability in 1985 when the overall profit margin stood at about 15 % of sales.

(b) A loss of market share has taken place (see recital 55 in conjunction with recitals 50 to 52).

(c) There has been a decline in production, capacity utilization and employment (see recital 58).

E. CAUSATION OF INJURY

(i) Injury caused by subsidization

(60) In the market for high volume industrial users as opposed to the distributor/dealers' market, the main competitors to the Community producers are the manufacturers in Thailand.

85 % of Community producers' sales in the Community are destined for the industrial users' market, while the corresponding figure for the exporters from Thailand is 90 %.

(61) Since there are no real differences in quality, particularly in the case of standard types, price is the main consideration in sourcing supply of these products. Thus the price undercutting, which was to a certain extent caused by subsidization, practised by the producers and exporters concerned, has led to price depression, i.e. forcing the Community producers to reduce their prices (and therefore their profits) or risk losing further market share, thus depriving themselves of the benefits of economies of scale.

(62) The sharp increase in the Thai exporters sales in the Community (almost exclusively in the industrial users' sector) has given them an increased share of the Community market, usually at the expense of Community producers. In particular, they have prevented the Community industry from taking full advantage of the increase in demand since 1985.

(63) The Commission considers that, had subsidization of Thai imports not taken place, the export prices would have been higher and, consequently, the price erosion and loss of profitability of the Community producers would not have occurred.

(64) In conclusion, the market conditions applying to this product and the factors listed above demonstrate that the price pressure resulting directly from subsidization of Thai imports, and the consequent rapid increase in combined import volumes from Thailand, has led to injury of the Community industry, i.e. inadequate and reduced profitability, loss of market shares and decline of production, employment and capacity utilization.

(65) The Commission determines therefore that there is a causal link between these indicators of injury and the subsidization of imports from Thailand.

(ii) **Other factors**

(a) *Fall in Community exports*

(66) The injury suffered by the Community industry is to a certain extent due to the fall in Community exports. Indeed these exports fell from 59 to 38 million pieces and this fall has certainly had an effect on the level of production, employment and capacity utilization ; it could furthermore by argued that the fall in exports and the consequent drop in capacity utilization may have an impact on profitability, since this would result in an increase in fixed costs per piece.

The fall in production, employment, capacity utilization (and therefore profitability which, as will be seen below, is used for the establishment of the injury thresholds), would have been less marked if the Community producers had been able to maintain their share of the Community market, where the demand was increasing; the reason for the Community producers being unable to do so is precisely that this increasing demand in the Community market has largely been satisfied by the unfairly low-priced imports under investigation.

However, this observation in no way invalidates the argument that the fall in exports is a cause of injury.

(b) *Imports from Japan*

(67) Bearings from Japan are being sold in the Community at dumped prices and compete in the industrial users' market. However, during the investigation period they were sold in lower volumes than the Thai bearings (21,7 million pieces compared to 31,5 million), and since 1985 their sales volume declined by over 30 %. In addition, their prices only undercut the Community producers by a small amount, compared to the 17 % undercutting found in the case of Thai bearings.

It should be borne in mind that the Japanese bearings have been subject to anti-dumping duties since 1984, and that several Japanese exporters have transferred production to Europe.

However, without, for the purpose of this Decision, considering the impact of modifying the existing anti-dumping duties, it is clear that while the level of Japanese bearing imports is still significant, and that the anti-dumping duties in force have not completely removed injury to the Community industry caused by imports from this source, the amount of current injury caused by imports from Japan is rather limited.

(c) *Imports from other sources*

(68) As far as imports from other countries are concerned, with the exception of a part of the high-precision miniature bearing market, these are not competing directly with those types produced in the Community.

— Bearings from Eastern Europe and China are of lower quality than Community or Thai products.

— Bearings from Switzerland are of specialized, often miniature, types.

(iii) **Conclusion**

(69) After taking account of the other factors described in recitals 66, 67 and 68, the Commission concludes that the remaining injury, caused by the subsidization of imports from Thailand, is material.

F. COMMUNITY INTEREST

(70) In general, it is in the Community interest for there to be fair and workable competition and the purpose of measures in this case is to re-establish a situation of fair competition. In considering the Community interest in this case, the Commission has taken account of the interest of the Community ball bearing industry, the users of ball bearings and the final consumer of the end product.

(71) In the absence of measures, a continuation of the trend observed would lead to negative consequences for the Community industry producing the ball bearings in question and endanger its viability. The loss of this industry would have serious consequences from the point of view of :

— employment and investment expenditure,

— research and development in high technology areas (particularly new materials), and

— development of new products in fast-growing sectors (telecommunications, aerospace and vehicle electronics).

It is in the interest of the Community that such consequences do not occur.

(72) As far as the purchasers of ball bearings (and implicitly the final consumers of their products) are concerned, it may be argued that they could derive some benefit from buying subsidized low-priced bearings. Any such benefit, however, would be minimal, since the bearings in question account for only a tiny fraction of the final price of most products. This is confirmed by the fact that no Community purchaser of ball bearings up to 30 mm external diameter has reacted to any of the proceedings.

(73) The Commission has therefore concluded that on balance the interest of the Community clearly lies in granting protection to its ball bearings industry against unfair competition caused by imports at subsidized prices.

G. MEASURES

(i) General

(74) Having established the existence of the countervailable subsidy, injury caused by the subsidized imports and Community interest in taking protective measures, the Commission would normally impose a countervailing duty. The rate of duty should not exceed the amount of subsidy, and it should be less if such lesser duty would be adequate to remove the injury.

(75) Although, as explained in recitals 83 to 87, the Commission has decided to accept an undertaking offered by the Royal Thai Government and to terminate the proceeding rather than impose a duty, a full explanation of the choice of the type of duty and the calculation of the rate of duty that would have been imposed is given (recitals 79 to 82). This is because the undertaking takes the form of an export tax, to be levied at exactly the same rate as a specific countervailing duty.

(76) It should be noted that, prior to the acceptance of the undertaking, the Commission had completed a full investigation of the case and in particular gave all parties concerned the opportunity to exercise their rights under Article 7 (4) of Regulation (EEC) No 2423/88.

(ii) Injury threshold

(77) The Commission's view is that in order to eliminate injury to the Community industry, it would be necessary to :

— eliminate price undercutting, found to be 17 % (see recital 54),

— ensure that Community producers realise an adequate return on sales, i.e. cover the 7 % gap between the target profit (15 %, see recital 59) and the profit earned in the investigation period (8 %, see recital 57).

(78) The addition of the price undercutting (17 %) and the profit shortfall (7 %) gives an injury threshold of 24 % on the basis of the resale price in the Community. The basis for using this method is that the prices of Thai bearings in the Community are so far below the prices of Community products mainly because the Thai exports have succeeded in capturing a number of very high volume customers by offering them extremely low prices. Community producers have for the moment retained customers who pay higher prices. Since the customers are different and since there are no quality differences between Thai and Community bearings, there is no guarantee that the mere elimination of 17 % Thai price undercutting would result in any appreciable increases in the prices paid to Community producers. Only by adding the 7 % profit shortfall is it possible to reach a price level at which Community producers could earn the required level of profit to realise an adequate return on sales (see recital 77).

When converted to cif import value the injury threshold becomes 34,8 %.

(iii) Type of duty

(79) The goods are shipped directly from Thailand to the Community but are invoiced to the parent company in Japan, which then invoices its Community subsidiary. This second invoice amount contains a considerable mark-up.

It cannot therefore be guaranteed in this case that an *ad valorem* duty calculated on the cif value would fully countervail the subsidy received, since the mark-up could be reduced in order to alter the cif price.

The appropriate way of countervailing the subsidy in Thailand would be by the imposition of a specific duty (i.e. expressed in value per piece), based on the value of the subsidy divided by the total number of ball bearings exported from Thailand in the investigation period.

(iv) Rate of subsidy

(80) Using the above method, the countervailable subsidy per piece for each company (in Thai baht), is calculated as follows :

NMB Thai	1,34
Pelmec Thai	1,91.

In calculating these rates of subsidy, the Commission accepted the companies' argument that those bearings sold in bond to other Minebea companies in Thailand, for incorporation into exported products, should be included in the denominator over which the total subsidy amount was divided.

(81) However, since the companies are wholly-owned subsidiaries of the same parent company, it would not be appropriate to apply separate duties to them, but rather a single duty to both. This is calculated by weighting the subsidy per piece of each company according to their exports to the Community and would result in a duty of 1,76 baht per piece.

(82) The specific duty rate would therefore be 1,76 baht per ball bearing exported, equivalent to an *ad valorem* rate of 13 % on import cif value determined during the investigation period, and therefore falling well below the injury threshold of 34,8 %. The Commission considers that this level of duty would be required to remove the injury caused by the subsidization of imports from Thailand.

(v) **Undertaking**

(83) Having been informed of the findings of the Commission's investigation, the Royal Thai Government offered an undertaking to eliminate the effect of the subsidies found, in the form of a tax on exports to the Community of the product under investigation. This tax on exports will initially be levied at a rate of 1,76 baht per piece — exactly the same amount that would have been levied as a countervailing duty.

(84) Regulation (EEC) No 2423/88 enables the Commission to accept undertakings whereby 'the subsidy is eliminated or limited, or other measures concerning its injurious effects taken, by the Government of the country of origin or export' (Article 10 (2) (a)). This provision reflects fully Article 4 (5) of the GATT subsidies/CVD code.

(85) The Commission has decided to accept the Royal Thai Government's undertaking, being satisfied that it will fully eliminate the subsidy and that it includes sufficient provision for:

(a) monitoring of the payment of the tax and export volumes;

(b) surveillance of the subsidy rate;

(c) notification of any changes in existing subsidy mechanisms and a commitment not to grant any new subsidies to the companies involved;

(d) verification of all information by the Commission;

(e) provisions for withdrawal of acceptance of the undertaking in the event of imports into the Community of ball bearings originating in Thailand for which the export tax has not been paid.

(86) In accepting the undertaking, the Commission has taken account of the excellent relations that exist between the Community and Thailand. Thailand is still a developing country and, although the Commission has found that countervailable subsidies were granted in this case, it does not wish to impose countervailing duties when a more amicable solution which fully eliminates the effect of the subsidy is proposed. Furthermore, the Commission notes that Thailand has an excellent record of abiding by trade agreements with the Community. Thus, although Thailand is not a signatory of the GATT subsidies code, the Commission is satisfied that it is appropriate to accept the Royal Thai Government's undertaking.

(87) It is, of course, understood by both parties that any proven violation of or non-compliance with the undertaking will lead to a provisional countervailing duty being imposed immediately, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88. In addition, a definitive countervailing duty may be imposed on the basis of the facts and arguments established before the acceptance of the undertaking.

DECIDES:

Sole Article

The Commission hereby accepts the undertaking given by the Royal Thai Government in connection with the countervailing duty proceeding concerning imports of ball-bearings with a greatest external diameter not exceeding 30 mm originating in Thailand.

Done at Brussels, 13 June 1990.

For the Commission

Jean DONDELINGER

Member of the Commission