II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 July 1993

accepting a modified version of the undertaking offered 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

(93/381/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 14 thereof,

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

Whereas :

A. PREVIOUS PROCEDURE

(1) In June 1988 the Commission initiated an anti-subsidy proceeding concerning of certain ball bearings originating in Thailand [2], following a complaint lodged by the Federation of European Bearing Manufacturers' Associations (Febma). The product has been defined as ball bearings with a greatest external diameter not exceeding 30 mm (hereafter referred to as 'ball bearings') originating in Thailand.

(2) The Commission found that the above imports were being subsidized and were causing material injury to the Community industry. In the light of those findings, the Royal Thai Government offered an undertaking to eliminate the effect of the subsidy. The undertaking involved the levying of an export tax of Baht 1,76, equivalent to the amount of countervailable subsidy found, for each ball bearing exported to the Community.

(3) In June 1990, by Decision 90/266/EEC [3], the Commission accepted the undertaking offered and terminated the investigation.

B. DEVELOPMENTS SINCE ACCEPTANCE OF UNDERTAKING

(4) Subsequent verifications carried out by the Commission demonstrated that both the Royal Thai Government and the exporters located in Thailand have complied with the terms of the undertaking. In particular, the export tax was being collected on all ball bearings of Thai origin which are exported direct from Thailand to the Community.

(5) However, notwithstanding the above, it came to the notice of the Commission that certain ball bearings manufactured in Thailand, exported to independent customers in a third country, were subse-

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 147, 4. 6. 1988, p. 4.
[3] OJ No L 152, 16. 6. 1990, p. 59.

quently re-shipped to the Community. Since the original destination of those exports was not the Community, export tax was not collected by the Thai authorities on such indirect imports.

C. REOPENING OF INVESTIGATION

(6) Since it had become apparent that a review of Decision 90/266/EEC was warranted, the Commission, after consultation, reopened the investigation with a view to considering the imposition of a countervailing duty on imports of all ball bearings originating in Thailand on which no export tax had been levied in order to eliminate fully the injurious effect of the subsidy on the Community industry. Since a new investigation was necessary for this purpose, the Commission decided to recalculate, at the same time, the amount of export tax required to eliminate the effect of the subsidy.

(7) In July 1992 the Commission announced, by a notice published in the *Official Journal of the European Communities*[1], the reopening of the investigation in the countervailing duty proceeding concerning imports into the Community of ball bearings with external diameter not exceeding 30 mm. The product concerned corresponds to CN code 8482 10 10.

(8) The Commission officially advised the Royal Thai Government, the exporters and importers known to be concerned, as well as the complainant in the original investigation (Febma) and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing. The Royal Thai Government, the exporters located in Thailand and the Community producers, represented by Febma, made their views known in writing.

(9) The Commission sought and verified all information it deemed to be necessary for the purposes of a determination and carried out an investigation at the premises of the following:

(a) Royal Thai Government

Department of Foreign Trade, Bangkok,

Board of Investment, Bangkok;

(b) Thai exporters

NMB Thai Ltd, Ayutthaya, Thailand,
Pelmec Thai Ltd, Bang Pa-In, Thailand,
NMB Hi-Tech Ltd, Bang Pa-In, Thailand.

All these companies are wholly-owned subsidiaries of Minebea Co. Ltd, Japan

D. RESULT OF REVIEW INVESTIGATION AS REGARDS INDIRECT IMPORTS

(10) In March 1993, the Commission, by Regulation (EEC) No 527/93 [2], imposed a provisional countervailing duty of 13,4 % on imports of ball bearings originating in Thailand but not directly exported from that country. The purpose of the duty is to prevent further injury to the Community industry during the proceeding by imports which avoid the export tax, pending the completion of the Commission's recalculation of the subsidy amount.

E. RESULT OF REVIEW INVESTIGATION AS REGARDS THE AMOUNT OF SUBSIDY

(11) The Royal Thai Government and the exporters made submissions with regard to the amount of countervailable subsidy granted during a period of one year immediately prior to the initiation of the review. The Commission's investigation revealed that the situation was as follows:

(a) Rebate of indirect taxes on domestically purchased inputs; electricity rebates for exporters

(12) It was established that the two abovementioned rebates, which had been found during the original investigation to be countervailable export subsidies were no longer available to the exporters. There are consequently no subsidies granted under these headings.

(b) Exemption from corporate income tax

(13) The certificates of promotion issued to NMB Thai and Pelmec Thai continue to exempt those companies from corporate income tax under the same conditions as are described in Decision 90/266/EEC.

NMB Hi-Tech, which had not yet begun production during the original investigation period, is a related company to NMB Thai and Pelmec Thai and receives certificates of promotion on a similar basis to these two companies, also entitling it to complete exemption from corporate income tax.

(14) The Commission is satisfied that the corporate income tax exemption remains a countervailable subsidy for all exporters.

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

(15) The certificates of promotion issued to NMB Thai and Pelmec Thai continue to confer exemption from the payment of customs duty on imports of machinery and essential materials under the same conditions as are described in Decision

[1] OJ No C 182, 18. 7. 1992, p. 6.

[2] OJ No L 56, 9. 3. 1993, p. 24.

90/266/EEC. NMB Hi-Tech also benefits from such an exemption, as it receives certificates of promotion on a similar basis to NMB Thai and Pelmec Thai. The Commission is satisfied that the exemption from customs duty on machinery and essential materials remains a countervailable subsidy for all exporters.

(16) In the original investigation, the Commission determined that the exemption from payment of business tax and municipal tax on imported machinery and essential materials was a countervailable subsidy.

On 1 January 1992 Thailand abolished the business and municipal tax and replaced it with value-added tax on their imports of essential materials and, following a period of transition, will shortly begin paying it on imported machinery.

The value-added tax system in Thailand operates in a similar way to that of the Community, and in particular, is neutral in its effect as regards domestic and export sales.

In those circumstances, the Commission concludes that, as a result of the abolition of the business tax and municipal tax, there is no longer an element of countervailable subsidy in respect of the exemption from payment of those taxes.

(d) **Calculation of subsidy amount**

(17) The amount of countervailable subsidy was calculated using the method employment in Decision 90/266/EEC. On this basis, the value of the subsidies was as follows (in million baht):

— corporate income tax exemption:	373,
— import duty exemption:	352,
— total amount of subsidy:	725.

(18) When expressed as an amount per ball bearing exported from Thailand, and then weighted according to the relative volume of exports of each Thai producer to the Community, the subsidy is equivalent to Baht 0,91 per piece.

(19) The Royal Thai Government, the exporters and the complainant in the original investigation were all informed of the facts on which those findings had been based, and were granted an opportunity to comment.

F. **MODIFICATION OF UNDERTAKING**

(20) The Royal Thai Government has offered the Commission a modified undertaking in which the rate of the export tax levied on ball bearings exported to the European Community has been adjusted to Baht 0,91 per unit. The Commission is satisfied in view of its findings that this rate is sufficient to continue to eliminate the effect of the subsidy, and therefore accepts this modified version of the undertaking offered by the Royal Thai Government.

(21) The modified version of the undertaking applies only to ball bearings of Thai origin exported direct from Thailand to the Community. Ball bearings of Thai origin imported into the Community via third countries will be subject to the definitive countervailing duty of 6,7 % imposed by Council Regulation (EEC) No 1781/93 [1] in order to safeguard the effectiveness of the undertaking and to prevent the evasion of the export tax as referred to in recital 5.

(22) The proposal met with no objection from the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Sole Article

A modified version of the undertaking given by the Royal Thai Government in connection with the countervailing duty preceeding concerning imports of ball bearings with a greatest external diameter not exceeding 30 mm originating in Thailand is hereby accepted.

Done at Brussels, 1 July 1993.

For the Commission

Leon BRITTAN

Member of the Commission

[1] See page 1 of this Official Journal.