II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 May 1995

accepting a modified 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

(95/180/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3284/94 of 22 December 1994 on protection against subsidized imports from countries not members of the European Community [1], and in particular Articles 10 and 13 thereof,

After consultations within the Advisory Committee,

Whereas :

A. PREVIOUS PROCEDURE

(1) In June 1988 the Commission initiated an anti-subsidy proceeding concerning imports 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 (hereinafter 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. This undertaking involved the levying of an export tax of 1,76 baht, equivalent to the amount of subsidy recorded, which was liable to countervailing measures ('countervailable subsidy') 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.

(4) In July 1993, the Commission, following a review, established that the amount of subsidy had fallen to 0,91 baht per price. Having been informed of these findings, the Royal Thai Government changed the export tax rate to 0,91 baht per ball bearing exported to the Community, and offered a modified version of the undertaking to this effect. This was accepted by Commission Decision 93/381/EEC [4].

(5) In addition, in order to prevent the export tax being circumvented by indirect imports, the Council, by Regulation (EEC) No 1781/93 [5], imposed a definitive countervailing duty of imports of ball bearings originating in Thailand but exported to the Community from another country.

[1] OJ No L 349, 31. 12. 1994, p. 22.
[2] OJ No C 147, 4. 6. 1988, p. 4.
[3] OJ No L 152, 16. 6. 1990, p. 59.
[4] OJ No L 163, 6. 7. 1993, p. 35.
[5] OJ No L 163, 6. 7. 1993, p. 1.

(6) In September 1994, following a further review, the Commission, by Decision 94/639/EC [1], accepted a new version of the undertaking whereby, in view of a decline in the amount of subsidy, the export tax was reduced to 0,72 baht per ball bearing. Council Regulation (EC) No 2271/94 [2], amended the countervailing duty on indirect imports to 5,3 %, reflecting the fall in the amount of export tax.

B. REOPENING OF INVESTIGATION

(7) Following the above, the Commission became aware of certain evidence indicating a change in the amount of subsidy. In those circumstances, the Commission initiated a review of Decision 94/639/EC and of Regulation (EC) No 2271/94 in December 1994, by a notice published in the *Official Journal of the European Communities* [3].

(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, Bank Pa-in, Thailand.

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

C. RECALCULATION OF SUBSIDY AMOUNT

(10) No new evidence was presented as to the liability of the subsidies in question to the imposition of countervailing measures; the Commission therefore maintains its conclusion in Decision 94/639/EC that all the subsidies granted by the Royal Thai Government to the exporters (NMB Thai Ltd, Pelmec Thai Ltd and NMB Hi-Tech Ltd) continue to be so liable.

(11) The Commission calculated the amount of subsidy granted during the period 1 October 1993 to 31 March 1994 ('the investigation period'). This represents the most recent period for which audited accounts were prepared for the exporters, being an interim reporting period resulting from a change in the exporters' financial year, which now begins on 1 April instead of 1 October, as in previous years.

(a) Exemption from corporate income tax

(i) *Section 31 exemption*

(12) It was established that NMB Thai no longer enjoys the tax exemption granted in accordance with Section 31 of Thailand's Investment Promotion Act, since the period for such exemptions specified in its certificates of promotion has now expired.

Pelmec Thai made a loss during the investigation period and therefore derived no benefit from this exemption.

NMB Hi-Tech was profitable during the investigation period and still eligible for the exemption; it was thus the only exporter to benefit. The amount of subsidy, calculated as the taxable income multiplied by the tax rate of 30 %, amounted to 43,9 million baht.

(ii) *Section 36 (4)*

(13) It was established that both NMB Thai and NMB Hi-Tech continue to benefit from the subsidy granted under Section 36 (4) of the Investment Promotion Act, which entitles them to deduct from taxable income an amount equal to 5 % of the increment in export earnings over the previous year.

The calculation method is the same as for the Section 31 exemption, and the subsidy amounts are as follows:

(in million baht)

NMB Thai	16,2
NMB Hi-Tech	0,1

[1] OJ No L 247, 22. 9. 1994, p. 29.
[2] OJ No L 247, 22. 9. 1994, p. 1.
[3] OJ No C 348, 9. 12. 1994, p. 5.

(b) **Customs duty exemption on imports of machinery and essential materials**

(14) All the exporters continue to benefit from a 100 % exemption from customs duty on imports of machinery and essential materials. As in the original investigation, the subsidy amount with regard to machinery was calculated on a depreciation basis, with the value of the exemption being allocated over a period of 10 years, and the amount for essential materials (including machine parts and tools) during the investigation period was established on an expense basis. The amount of subsidy was as follows :

(in million baht)

NMB Thai	66,0
Pelmec Thai	61,1
NMB Hi-Tech	38,1

(15) The total amount of countervailable subsidy granted during the investigation period, was therefore as follows :

(in million baht)

NMB Thai	82,2
Pelmec Thai	61,1
NMB Hi-Tech	82,1

(16) When expressed as an amount per ball bearing exported from Thailand, and then weighted according to the volume of exports of each Thai exporter to the Community, the subsidy is equivalent to 0,66 baht per piece.

(17) The Royal Thai Government, the exporters, importers, and the complainant in the original investigation were informed of the facts on which these findings had been based, and were granted an opportunity to comment. The written comments submitted by the parties were, where appropriate, taken into consideration.

D. MODIFICATION OF UNDERTAKING

(18) 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 Community has been adjusted to 0,66 baht per piece. The Commission is satisfied in view of its findings that this rate is sufficient to eliminate the effect of the subsidy, and should therefore accept this modified version of the undertaking offered by the Royal Thai Government.

(19) This modified version of the undertaking would apply only to ball bearings of Thai origin exported directly from Thailand to the Community. Ball bearings of Thai origin imported into the Community via other non-member countries will continue to be subject to the definitive countervailing duty in order to safeguard the effectiveness of the undertaking and to prevent the evasion of the export tax. This duty is set by Council Regulation (EC) No 1169/95 [1], amending Regulation (EEC) No 1781/93, at the rate of 4,8 % of the net, free-at-Community frontier price of the product.

(20) The proposed acceptance of the modified undertaking met with no objection from the Advisory Committee,

HAS DECIDED AS FOLLOWS :

Sole Article

A modified 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 is hereby accepted.

Done at Brussels, 2 May 1995.

For the Commission
Leon BRITTAN
Vice-President

[1] See page 4 of this Official Journal.