COUNCIL REGULATION (EC) No 1169/95

of 22 May 1995

amending Regulation (EC) No 2271/94 imposing a definitive countervailing duty on imports of ball bearings with a greatest external diameter not exceeding 30 mm, originating in Thailand but exported to the Community from another country

THE COUNCIL OF THE EUROPEAN UNION,

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 Article 13 thereof,

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

Whereas :

A. Background

(1) In September 1994, following a review, the Council, by Regulation (EC) No 2271/94 (2), amended the definitive countervailing duty imposed on imports of ball bearings with a greatest external diameter not exceeding 30 mm, originating in Thailand but exported to the Community from another country, from 6,7 % to 5,3 %.

(2) The 6,7 % countervailing duty had been imposed in July 1993 by Regulation (EEC) No 1781/93 (3), following a review of Commission Decision 90/266/EEC (4), accepting an undertaking offered by the Royal Thai Government, in connection with the countervailing duty proceeding concerning imports of the abovementioned ball bearings. This involved the Royal Thai Government levying an export tax to offset the subsidies granted. No countervailing duty was imposed at the time of adoption of this Decision. The review investigation revealed, however, that a duty was necessary in order to prevent indirect imports into the Community avoiding the export tax levied by the Royal Thai Government on direct imports and to safeguard the effectiveness of the undertaking.

(3) The amended definitive duty rate of 5,3 % on indirect imports, posed by Regulation (EC) No 2271/94, was based on the revised rate of export tax of 0,72 baht per piece, as determined by Decision 94/639/EC (5), following a further review.

B. Reopening of investigation

(4) In December 1994, the Commission initiated a review of Decision 94/639/EC and of Regulation (EC) No 2271/94, by a notice published in the *Official Journal of the European Communities* (6).

(5) The purpose of this review was to recalculate the amount of subsidy granted by the Royal Thai Government, with a view to allowing a modification of the rate of export tax established by Decision 94/639/EC. Since the rate of countervailing duty on indirect imports directly reflects the export tax rate, the review also covers Regulation (EC) No 2271/94 imposing the definitive duty.

(6) 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 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.

(7) 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 exporting companies are wholly-owned subsidiaries of Mineba Co., Ltd., Japan.

(1) OJ No L 349, 31. 12. 1994, p. 22.
(2) OJ No L 247, 22. 9. 1994, p. 1.
(3) OJ No L 163, 6. 7. 1993, p. 1.
(4) OJ No L 152, 16. 6. 1990, p. 59.
(5) OJ No L 247, 22. 9. 1994, p. 29.
(6) OJ No C 348, 9. 12. 1994, p. 5.

(8) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment to the rate of definitive countervailing duty. They were also granted a period within which to make representations subsequent to the disclosure.

The written comments submitted by the parties were, where appropriate, taken into consideration.

C. Recalculation of subsidy amount

(9) It has been determined that the countervailable subsidies granted to the exporters in Thailand in the period 1 October 1993 to 31 March 1994 ('the investigation period') amount to 0,66 baht per piece. The Royal Thai Government has accordingly amended the export tax rate on ball bearings exported directly to the Community to 0,66 baht per piece, and has offered a modified version of the undertaking to this effect. Ths has been accepted by Commission Decision 95/180/EC [1], which also explains in detail the reasoning with regard to the calculation of the amount of subsidy.

D. Injury and Community interest

(10) No new evidence was supplied with regard to injury or Community interest. The Council therefore maintains its conclusions set out in Regulation (EC) No 2271/94 concerning these matters.

E. Amendments to definitive duty

(11) In view of the change in the export tax rate from 0,72 to 0,66 baht per piece, the rate of definitive countervailing duty on indirect imports should be amended accordingly to an amount equivalent to the new export tax rate. When expressed as a percentage of the net, free-at-Community-frontier, price of the product, the new rate of countervailing duty amounts to 4,8 %.

F. Collection of anti-dumping and countervailing duties

(12) As explained in recital (12) of Regulation (EC) No 2271/94, the countervailing duty should continue to be collected in addition to the anti-dumping duty imposed by Regulation (EEC) No 2934/90 [2].

The combined amount of anti-dumping and countervailing duty to be collected in this case is, therefore, 11,5 % (6,7 % anti-dumping duty plus 4,8 % countervailing duty).

The basis for calculating the amount of both anti-dumping and countervailing duty should be the same net, free-at-Community-frontier, price of the product,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 2271/94 shall be replaced by the following:

'Article 1 (2) of Regulation (EEC) No 1781/93 shall be replaced by the following:

"2. The countervailing duty expressed as a percentage of the net, free-at-Community-frontier, price of product, shall be 4,8 %."

Article 2

This Regulation shall enter into force on the day following 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, 22 May 1995.

For the Council

The President

A. MADELIN

[1] See page 94 of this Official Journal.

[2] OJ No L 281, 12. 10. 1990, p. 1.