

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 March 1985

concerning an application for the refund of anti-dumping duties collected on certain imports of cotton yarn originating in Turkey

(Only the German text is authentic)

(85/207/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 16 thereof,

Whereas :

A. Procedure

- (1) On 3 December 1981 the Commission, by Regulation (EEC) No 3453/81⁽²⁾, imposed a provisional anti-dumping duty of 16 % on certain cotton yarn originating in Turkey; on 3 April 1982, by Council Regulation (EEC) No 789/82⁽³⁾, a definitive anti-dumping duty of 12 % was imposed on the product concerned and the amounts secured by way of provisional duty from 1 January 1982 pursuant to Regulation (EEC) No 3453/81 were definitively collected up to the amount of the definitive duty.
- (2) Following an arrangement entered into between the Commission, on the one hand, and the

Turkish Government and the Turkish Textile Exporters' Association, on the other, the definitive duty was partly repealed by Council Regulation (EEC) No 2306/82⁽⁴⁾ on 21 August 1982. Under the terms of the abovementioned arrangement the Turkish authorities and exporters agreed to raise the prices for exports of cotton yarn to the Community (hereinafter called 'the arrangement prices') to a level eliminating the dumping margin as finally established. The arrangement also provided for the periodic updating of prices to take account of changes in raw cotton prices in Turkey which would have corresponding effects on prices of cotton yarn in Turkey. Regulation (EEC) No 789/82, however, continued to apply for those goods which had already been introduced into the customs territory of the Community but not yet released into free circulation.

- (3) Between July 1982 and April 1983 Rotspindel GmbH, Bayreuth, an importer of cotton yarn from Turkey, submitted 17 applications to the German authorities for refunds of amounts, totalling DM...⁽⁵⁾, which it had definitively paid in anti-dumping duties on its imports of cotton yarn originating in Turkey. The German authorities forwarded the applications to the Commission.

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No L 347, 3. 12. 1981, p. 19.

⁽³⁾ OJ No L 90, 3. 4. 1982, p. 1.

⁽⁴⁾ OJ No L 246, 21. 8. 1982, p. 14.

⁽⁵⁾ In the published version of the Decision, some figures have hereinafter been omitted, pursuant to the provisions of Article 8 of Council Regulation (EEC) No 2176/84 concerning non-disclosure of business secrets.

- (4) Following the submission by the applicant of further supporting evidence, the claims were examined by the Commission. The applicant was informed of the preliminary results of this examination and given an opportunity to comment on it. The comments made were taken into consideration prior to this Decision.
- (5) The Commission informed the Member States and gave its opinion on the matter. None of the Member States disagreed with the opinion of the Commission.

B. Arguments of the applicant

- (6) The applicant has based its claim on the allegation that the export prices concerned in the application were equal to or higher than those set out in the arrangement mentioned in paragraph 2 above.
- (7) The applicant also submitted a statement it had received from its Turkish supplier which alleged that the supplier's export prices were above its costs of production and that, therefore, the goods concerned in this refund application were not dumped. This statement was not supported by any evidence.
- (8) Following the Commission's disclosure of the results of its preliminary examination of the refund claim, the applicant argued that the normal values used for certain shipments should not be increased in line with increases in the arrangement prices mentioned in paragraph 2 above since the goods in question had been bought under contract prior to, but released into free circulation in the Community after, the coming into force of the updated arrangement prices. In this respect it argued that because goods were normally bought under contract some months prior to delivery, it could not foresee changes in the arrangement prices.

C. Admissibility

- (9) The application is admissible since it was introduced in conformity with the relevant provisions of the Community's anti-dumping legislation, in particular the time limits.

D. Merits of the claim

- (10) In considering the validity of the applicant's claim the Commission has used as normal values the arrangement prices (paragraph 2 above) in force at the time the goods concerned were released into free circulation in the Community. For goods released until 28 August 1982, the

original arrangement prices were used and for goods released after that date updated arrangement prices were used.

- (11) The Commission took the date on which the goods were released into free circulation in the Community as the basis for deciding which of the normal values mentioned in paragraph 10 above (original or updated arrangement prices) was appropriate. It is on that date that the importer pays the duty and becomes eligible to claim a refund and, consequently, it is the circumstances on that date that have to be taken into account.
- (12) In arriving at the decision to use the arrangement prices in operation at the time of release into free circulation, as normal values, consideration was given to the (unsupported) statement received from the applicant alleging that its Turkish supplier's export prices were above its costs of production and that, therefore, the goods concerned were not dumped. In this regard, the Commission decided that, since the normal values definitively determined in Regulation (EEC) No 789/82 were calculated on the basis of constructed value at representative firms in Turkey it was not possible, for the purpose of refund claims, to change the method of calculation by taking into account the alleged costs of production of the individual exporter.
- (13) This method of establishing normal values at representative firms was used by the Commission only because individual Turkish exporters failed to reply to requests for domestic and export price information. The Commission was instead contacted by the Turkish Textile Exporters' Association which, acting on behalf of all Turkish exporters, including the Turkish supplier of the present applicant, volunteered price information which they stated was representative and could be verified at the premises of some of the larger exporters to the Community. This approach was accepted by the Commission since the Community's anti-dumping legislation provides expressly for such a representative method to be used and because of the assurances given by the Turkish Textile Exporters' Association of the representative nature of the exporters selected for this purpose.
- (14) To now use individual normal values for the purposes of this refund claim would have the result of seriously undermining *ex post facto* the basis of the normal values used in imposing the abovementioned duty. Importers with suppliers having normal values below the representative level would be likely to be eligible for a refund of the duty whilst no account could be taken of the fact that, if the representative method had not

been used, higher anti-dumping duties would have been collected from those importers with suppliers having normal values above the representative level. In addition, the Commission considers that it is entitled to rely on the Turkish Textile Exporters' Association's assurances, given to the Commission on behalf of all its members, that the firms investigated were representative of all Turkish exporters.

- (15) Therefore, as the original arrangement prices, which are equivalent to the normal values definitively determined in Regulation (EEC) No 789/82 under which the definitive duty was imposed, remained in force until 28 August 1982, it is considered appropriate that they be used as normal values for goods released into free circulation in the Community until that date.
- (16) However, for the goods which were released into free circulation in the Community after 28 August 1982, the Commission has decided that updated normal values must be used for comparison purposes. The Commission considers that for this refund claim, normal values should be updated as the original arrangement prices were updated to reflect increases in normal value and the Turkish Textile Exporters' Association agreed to this. This was done with effect after 28 August 1982.
- (17) The applicant's argument that he had entered into contracts prior to the arrangement prices being updated is not considered relevant since the updated arrangement prices agreed between the Commission and the Turkish authorities and exporters reflected changes in the normal values in Turkey and applied to all shipments made after that arrangement irrespective of whether the goods were under prior contract or not. The Commission, however, took account of the normal shipping time between Turkey and the Community frontier in that the updated arrangement prices were only used as normal values for shipments arriving in the Community seven days after the entry into force of the updated arrangement price. In any event, an importer always runs the risk of changes in customs duties for goods under contract or even in transit from the exporting country to the Community. If this were not the case, the system would be open to abuse by

allowing importers who have entered into long-term contracts to avoid any impact of changes in customs duties, e.g. the imposition of an anti-dumping duty.

- (18) Therefore, for the goods which were released into free circulation in the Community after 28 August 1982, the Commission has decided that the normal values to be used should be equivalent to the updated arrangement prices.
- (19) A comparison of the normal values referred to in paragraphs 15 and 18 above with the export prices of the goods concerned shows that the applicant's claim is only partly justified.

E. Amount of refund

- (20) The amount to be refunded should be equal to the amount by which the duty collected exceeded the difference between the normal values referred to in paragraphs 15 and 18 above and the export prices of the goods concerned. The total difference for the shipments in question amounts to DM ...

HAS ADOPTED THIS DECISION :

Article 1

The refund claims submitted by Rotspindel GmbH, Bayreuth, between 1 July 1982 and 30 April 1983 are granted for DM ... and rejected for the remainder.

Article 2

The amount set out in Article 1 shall be refunded by the authorities of the Federal Republic of Germany.

Article 3

This Decision is addressed to the Federal Republic of Germany and Rotspindel GmbH, Bayreuth.

Done at Brussels, 22 March 1985.

For the Commission

Willy DE CLERCQ

Member of the Commission