

COMMISSION DECISION

of 29 October 1984

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

(Only the German text is authentic)

(85/19/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and the Turkish Government and the Turkish Textile Exporters Association on the other, the definitive duty was partly repealed by Council Regulation (EEC) No 2306/82⁽⁴⁾ on 21 August 1982.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 introduced a system of minimum prices for exports of cotton yarn to the Community which eliminated the dumping margin as finally established. 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) On 24 March and 28 April 1982, Continentale Produkten Gesellschaft Erhardt-Renken, GmbH & Co., Hamburg, an importer of cotton yarn from

Turkey, applied to the German authorities for a refund of the amount of DM 676 782,57 which it had definitively paid in anti-dumping duties on its imports of cotton yarn from Turkey. The German authorities forwarded the application to the Commission.

- (4) Following the submission by the applicant of further supporting evidence, the claim was 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. One Member State disagreed with this opinion and Member States were therefore consulted prior to this Decision.

B. Arguments of the applicant

- (6) The applicant has based its claim on the allegation that his Turkish suppliers' normal values were lower than those definitively determined in Council Regulation (EEC) No 789/82. In support of this claim, the applicant presented statements from its Turkish suppliers on their alleged normal values which were not, however, substantiated by any evidence. It argued that the Commission was obliged to investigate these allegations, if necessary, by visits to the premises of its Turkish suppliers.

C. Admissibility

- (7) 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

- (8) However, the application is only justified for part of the sum claimed. In arriving at this conclusion the Commission has rejected the applicant's arguments that the refund calculations in this case

⁽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.

should be based on normal values calculated on a basis different from the normal values definitively determined in Regulation (EEC) No 789/82, i.e. constructed value established at a certain number of representative firms in Turkey. This is for the following reasons.

(9) At the outset of the anti-dumping investigation, carried out prior to the imposition of the definitive duty, the Commission contacted more than 50 Turkish producers and requested that they submit detailed evidence on their prices and costs. They were also informed that this evidence might have to be verified by visits to their premises in Turkey.

(10) Individual exporters failed to reply to this request for detailed information but the Turkish Textile Exporters' Association acting on behalf of all Turkish exporters, including the suppliers of the applicant, provided evidence of Turkish domestic and export prices which, they stated, was representative of all Turkish exporters. They also proposed that this information could be verified at the premises of some of the larger Turkish exporters.

(11) Given that the Community's anti-dumping legislation provides expressly for normal values to be established by reference to representative or weighted average prices, and after consultations with the Association on the representative nature of some of the larger exporters, it was agreed that the three largest exporters to the Community could be chosen for this purpose. Being the three largest exporters to the Community, these firms could be expected to fairly reflect, or even to have production costs slightly lower than, the average production costs in Turkey. In addition, these firms included both public and private firms and represented the three major growing areas in Turkey.

(12) The Commission's acceptance of the Turkish Textile Exporters' Association's proposal was further justified during its anti-dumping investigation as it was established that the largest single element (approximately 60 %) in the costs of production of all Turkish exporters, the cost of the raw cotton, was practically the same within

each growing area because of Government-imposed seed cotton support prices.

(13) Therefore, it was on the above basis that the Commission calculated the provisional duty imposed by Regulation (EEC) No 3453/81, which was later made definitive by Regulation (EEC) No 789/82.

(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 representativeness of the normal values used in imposing the abovementioned duty since 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 all of the members of the Turkish Textile Exporters' Association are bound by their Association's assurances, given to the Commission on their behalf, that the firms investigated were representative of all Turkish exporters.

(15) The Commission, in any event, noted that the applicant did not provide any evidence to substantiate its allegations that its Turkish suppliers' costs were, in fact, lower than those established by the Commission during its anti-dumping investigation. The applicant also failed to comment on doubts expressed by the Commission on the information given by it on its suppliers' costs, in particular with regard to their raw cotton costs, which allegedly were approximately 20 % below those used by the Commission during its investigation; these costs used by the Commission were provided by the Turkish exporters which had informed the Commission that Turkish raw cotton prices did not vary from purchaser to purchaser because of Government-imposed seed cotton support prices.

(16) The Commission has not considered it necessary for the purposes of examining this refund claim to update the normal values on which the definitive duty was based. This is because the imports in question took place during or shortly after the end of the period of investigation which the

Commission used to calculate the normal values appropriate for the imposition of that duty. Furthermore, the fact that these same normal values were used in the abovementioned (paragraph 2) arrangement which was signed after these imports were made, underlines the validity of using these same normal values in the context of this refund claim.

- (17) Therefore, the Commission has decided that the normal values to be used for the purposes of this refund claim should be equivalent to those definitively determined in Regulation (EEC) No 789/82.

E. Amount of refund

- (18) The amount to be refunded should be equal to the amount by which the duty collected exceeded the difference between the above normal values referred to in paragraph 17 above and the applicant's export prices,

HAS ADOPTED THIS DECISION:

Article 1

The refund claim submitted by Continentale Produkten Gesellschaft Erhardt-Renken, GmbH & Co.,

Hamburg on 24 March and 28 April 1982 is granted for DM 1 638,01. It is 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 Continentale Produkten Gesellschaft Erhardt-Renken GmbH & Co., Hamburg.

Done at Brussels, 29 October 1984.

For the Commission

Wilhelm HAERKAMP

Vice-President