# COMMISSION DECISION

## of 21 June 1985

## concerning applications submitted by Görtz & Co., Duisburg, for the refund of anti-dumping duties collected on certain imports of cotton yarn originating in Turkey

(85/319/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) On 30 July 1982, an arrangement was agreed upon between the Commission on the one hand and the Turkish Government and the Turkish Textile Exporters' Association on the other. Under the terms of this arrangement the Turkish authorities and exporters agreed to raise the prices for exports of cotton yarn to the Community to specified levels (hereinafter called 'the arrangement prices'). The arrangement also provided for the periodic updating of these prices to take account of changes in raw cotton prices in Turkey which would have corresponding effects on prices of cotton yarn in Turkey. The arrangement prices were equivalent to the normal values definitively determined in Regulation (EEC) No 789/82 and, consequently, eliminated the dumping margin as finally established. Because of this arrangement, it was decided that it was no longer necessary to levy an anti-dumping duty. The definitive duty was, therefore, repealed by Council Regulation (EEC) No 2306/82 (4). 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 which had not yet been released into free circulation.

(3) Between 1 April 1982 and 28 February 1983 Gortz and Co., Duisburg, an importer of cotton yarn form Turkey, submitted several 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 form Turkey. The German authorities forwarded the applications to the Commission.

(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 Commisson 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 an allegation that its Turkish supplier's normal values were lower than those definitively determined in Regulation (EEC) No 789/82. In this respect it submitted a statement alleging certain price levels in Turkey but the source of this information was not disclosed and no evidence was submitted to substantiate it. The applicant also alleged that a certain number of the shipments involved in its claim were of low-quality cotton yarn and that therefore the normal value for these shipments should be reduced accordingly.

(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.

(7) In addition, the applicant has claimed that the arrangement prices mentioned in paragraph 2 above should not be used as normal values as these were not real prices as they were arrived at by negotiation between the Community and Turkey and, therefore, did not reflect actual price levels in Turkey. Moreover, the applicant has argued that the Commission's decision to use updated normal values for shipments released into free circulation in the Community (see paragraphs 10 and 11 below) after 28 August 1982 is not in accordance with Article 2 B of the Community's anti-dumping legislation. (Council Regulation (EEC) No 3017/79 [1] in force at that time has now been replaced by Regulation (EEC) No 2176/84). In this respect the applicant claims that Article 2 B only allows the use of one normal value for all the shipments in question.

## C. Admissibility

(8) 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

(9) 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.

(10) 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 9 above (original or updated arrangement prices) was appropriate. It is on that date that the obligation to pay the duty is incurred and the importer becomes eligible to claim a refund and, consequently, it is the circumstances on that date that have to be taken into account.

(11) In taking 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 applicant's allegation that the arrangement prices were not genuine prices as they were arrived at by negotiation between the Community and Turkey and as such did not reflect actual prices in Turkey. The Commission rejected this argument as the arrangement prices were, in fact, equivalent to the normal values established on the basis of constructed value at representative firms during the Commission's anti-dumping investigation in Turkey and, consequently, to those definitively determined in Regulation (EEC) No 789/82.

(12) This method of establishing normal values at representative firms was only used by the Commission 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 who, 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.

(13) Therefore, given that the abovementioned arrangement prices are equivalent to the normal values definitively determined in Regulation (EEC) No 789/82 and those normal values were calculated in accordance with the relevant provisions of the Community's anti-dumping legislation, the Commission considers that it was fully entitled to use them in the context of this refund claim. As the original arrangement prices remained in force until 28 August 1982, it is also considered appropriate that they be used as normal values for all goods released into free circulation in the Community until that date.

(14) With regard to the goods released into free circulation in the Community after 28 August 1982, the Commission has decided to reject the applicant's argument that updated normal values should not be used. This is because the arrangement provided for the periodic updating of the arrangement prices to reflect increases in normal values and the Turkish Textile Exporters' Association agreed to this. In this respect, the Commission does not accept that Article 2 B of Regulation (EEC) No 2176/84 in any way precludes the updating of normal values. These provisions in

[1] OJ No L 339, 31. 12. 1979, p. 1.

Article 2 B should be read in conjunction with Article 2 (9) which states that normal values and export prices should be compared as nearly as possible at the same time. This makes it clear that normal values may be updated when calculating dumping margins. In any event, the use of updated normal values (in this case increased normal values) for certain shipments has not affected the applicant's claim in this case as its export prices were, in fact, below the original arrangement prices. The second question raised by the applicant, therefore, has no practical significance for the Commission's conclusion in this case.

(15) 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.

(16) The Commission has also decided to reject the applicant's request that lower normal values should be used for certain shipments because the cotton yarn is of a lower quality. This is because, though the arrangements mentioned in paragraph 2 above does allow for lower export prices for low-quality cotton yarn, the applicant did not provide any evidence to substantiate its claim and, in any event, failed to identify which shipments it was alleging were of a low quality.

(17) A comparison of the normal values mentioned in paragraphs 13 and 15 above with the export prices of the goods concerned shows that the applicant's claim is not justified,

HAS ADOPTED THIS DECISION:

*Article 1*

The refund applications submitted by Görtz and Co., Duisburg, between 1 April 1982 and 28 February 1983, are not hereby rejected.

*Article 2*

This Decision is addressed to Görtz and Co., Duisburg.

Done at Brussels, 21 June 1985.

*For the Commission*

Willy DE CLERCQ

*Member of the Commission*