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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.4.2009  
COM(2009) 186 final

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 428/2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

<u>CONTEXT OF THE PROPOSAL</u>	
	<p><u>Grounds for and objectives of the proposal</u></p> <p>This proposal concerns the implementation of the judgment of the Court of First Instance of the European Communities in the case <i>Huvis Corporation v. Council of the European Union</i> (T-221/05) annulling, insofar as it concerns <i>Huvis Corporation</i>, Article 2 of the Council Regulation (EC) No 428/2005 concerning imports of polyester staple fibres originating, <i>inter alia</i>, in the Republic of Korea that followed from the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation')</p>
	<p><u>General context</u></p> <p>This proposal is made in the context of the implementation of the judgement of the Court of First Instance of the European Communities in the case <i>Huvis Corporation v. Council of the European Union</i> (T-221/05). According to Article 233 of the Treaty of the European Community, institutions whose act has been declared void shall be required to take the necessary measures to comply with the judgment of the Court of Justice.</p>
	<p><u>Existing provisions in the area of the proposal</u></p> <p>Council Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of polyester staple fibres originating in India and the Republic of Korea</p>
	<p><u>Consistency with the other policies and objectives of the Union</u></p> <p>Not applicable.</p>
<u>CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT</u>	
	<p><u>Consultation of interested parties</u></p>
	<p>Interested parties concerned by the implementation have already had the possibility to defend their interests during disclosure, in line with the provisions of the basic Regulation.</p>
	<p><u>Collection and use of expertise</u></p>
	<p>There was no need for external expertise.</p>
	<p><u>Impact assessment</u></p> <p>This proposal is the result of the implementation of the judgment of the Court of First Instance in the case <i>Huvis Corporation v. Council of the European Union</i> (T-221/05) on the interpretation of the basic Regulation.</p>

	<p>The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.</p>
<p><u>LEGAL ELEMENTS OF THE PROPOSAL</u></p>	
	<p><u>Summary of the proposed action</u></p> <p>The Council by Regulation (EC) No 2852/2000 imposed definitive anti-dumping duties on imports of polyester staple fibres originating, <i>inter alia</i>, in the Republic of Korea which were amended by Regulation (EC) No 428/2005 following an interim review.</p> <p>One Korean exporting producer, namely Huvis Corporation ('Huvis'), contested Regulation (EC) No 428/2005 with regard to the calculation of its individual duty rate before the Court of First Instance. On 8 July 2008, the Court of First Instance annulled Article 2 of Regulation (EC) No 428/2005 with regard to the anti-dumping duty rate applicable to Huvis. The anti-dumping duty imposed was annulled in so far as it exceeded that which would be applicable if the Institutions had based the duty rate on the methodology used in the original investigation.</p> <p>Accordingly, the duty rate for Huvis was recalculated which resulted in a different anti-dumping duty rate. Furthermore, as the individual rate calculated for Huvis Corporation had formed part of the basis for calculating the weighted average duty that should apply to non-sampled cooperating Korean exporters, the latter rate should also be recalculated.</p> <p>It is therefore proposed that the Council adopt the attached proposal for a Regulation amending Regulation (EC) No 428/2005.</p>
	<p><u>Legal basis</u></p> <p>Article 233 of the Treaty establishing the European Community</p> <p>Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005</p>
	<p><u>Subsidiarity principle</u></p> <p>The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.</p>
	<p><u>Proportionality principle</u></p> <p>The proposal complies with the proportionality principle for the following reasons:</p>
	<p>The form of action is described in the aforementioned basic Regulation and leaves no scope for national decision.</p>
	<p>Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.</p>

	<u>Choice of instruments</u>
	Proposed instruments: regulation.
	Other means would not be adequate for the following reason(s).  The aforementioned basic Regulation does not provide for alternative options.
<u>BUDGETARY IMPLICATION</u>	
	The proposal has implications for the Community budget. The amended anti-dumping duty will be applicable retroactively resulting in the refund of the difference in duties collected based on the original duty rate and the amended duty rate. The final impact on the budget has been estimated at 3.750.000 EUR, see attached legislative financial statement.

Proposal for a

## COUNCIL REGULATION

**amending Regulation (EC) No 428/2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 233 thereof,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> ('the basic Regulation'), and in particular Article 9(4) thereof,

Having regard to the proposal submitted by the Commission after having consulted the Advisory Committee,

Whereas:

### A. PROCEDURE

- (1) In October 1999, the Commission initiated an investigation <sup>(2)</sup> with regards to imports of polyester staple fibres ('PSF') originating in the Republic of Korea ('original investigation'). In July 2000 provisional anti-dumping duties were imposed by Commission Regulation (EC) No 1472/2000<sup>(3)</sup> and in December 2000 definitive anti-dumping duties were imposed by Council Regulation (EC) No 2852/2000<sup>(4)</sup>.
- (2) Pursuant to Article 11(3) of the basic Regulation, the Commission initiated <sup>(5)</sup> an interim review ('review investigation') of the anti-dumping duties on imports of PSF originating, *inter alia*, in the Republic of Korea in December 2003. The duties on imports from the Republic of Korea were amended by Council Regulation (EC) No 428/2005<sup>(6)</sup>, hereinafter "Regulation 428/2005".

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<sup>1</sup> OJ L 56, 6.3.1996, p. 1.

<sup>2</sup> OJ C 285, 7.10.1999, p. 3.

<sup>3</sup> OJ L 166, 6.7.2000, p. 1.

<sup>4</sup> OJ L 332, 28.12.2000, p. 17.

<sup>5</sup> OJ C 309, 19.12.2003, p. 2.

<sup>6</sup> OJ L 71, 17.3.2005, p. 1.

- (3) On 10 June 2005, Huvis Corporation ('Huvis') lodged a request<sup>(7)</sup> before the Court of First Instance of the European Communities ('CFI') to annul Article 2 of Regulation 428/2005 as far as the anti-dumping duty rate with regard to Huvis was concerned.
- (4) On 8 July 2008, the CFI <sup>(8)</sup> annulled Article 2 of Regulation 428/2005 with regard to Huvis.
- (5) The CFI found, *inter alia*, that the Institutions did not sufficiently justify the use of different methodologies applied in the original investigation on the one hand and the review investigation on the other hand when calculating Huvis' individual duty rate. The findings of the Institutions in this regard were therefore considered inconsistent with Article 11(9) of the basic Regulation.
- (6) Article 2 of Regulation 428/2005 was consequently annulled to the extent to which the anti-dumping duty imposed on exports into the European Community of goods produced and exported by Huvis exceeded that which would be applicable if the method applied in the original investigation had been used.
- (7) It is recognised by the Courts <sup>(9)</sup> that, in cases where a proceeding consists of several steps, the annulment of one of these steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of parts of the definitive anti-dumping Regulation does not imply the annulment of the entire procedure prior to the adoption of the Regulation in question. On the other hand, according to Article 233 of the Treaty establishing the European Community, the Community institutions are obliged to comply with the Judgment of the Courts of the European Communities. Accordingly, the Community Institutions, in so complying with the Judgment, have the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the Judgment <sup>(10)</sup>.
- (8) This Regulation seeks to correct the aspects of the Regulation 428/2005 found to be inconsistent with the basic Regulation, and which thus led to the annulment of parts of that Regulation. It also draws, regarding exporters in the Republic of Korea that were willing to co-operate in the investigation that led to Regulation 428/2005, the consequences from Art. 9(6) of the Basic Regulation. All other findings made in Regulation 428/2005, which were not contested within the time limits for a challenge and thus were not considered by the CFI and did not lead to the annulment of the contested Regulation, remain valid.
- (9) Therefore, in accordance with Article 233 of the Treaty establishing the European Community, the anti-dumping duty rate for Huvis was re-calculated on the basis of the judgment of the CFI.

## **B. NEW ASSESSMENT OF THE FINDINGS BASED ON THE JUDGMENT OF THE CFI**

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<sup>7</sup> OJ C 193, 6.8.2005, p.38.

<sup>8</sup> OJ C 209, 15.8.2008, p.44.

<sup>9</sup> IPS v Council [1998] ECR II-3939.

<sup>10</sup> Case C-458/98 P IPS v Council [2000] ECR I-08147.

- (10) In this Regulation, the aspect of the judgment that is addressed is the calculation of the dumping margin, more specifically the calculation of the adjustment made to the normal value for differences between the export price and the normal value in import charges in accordance with Article 2(10)(b) of the basic Regulation.
- (11) As outlined in recitals (127) and (128) of the Regulation 428/2005, different methodologies were used to calculate the adjustment on the normal value in the original investigation on the one hand and in the above mentioned interim review on the other hand.
- (12) Without ruling on the legality as such of the method used in the interim review to calculate the above-mentioned adjustment, the CFI in its Judgment found that the Community Institutions had not demonstrated the existence of a change in circumstances which could justify a use of a different method from the one used in the original investigation, as required by Article 11(9) of the basic Regulation. It therefore annulled Article 2 of Council Regulation 428/2005 to the extent to which the anti-dumping duty imposed on exports into the Community of goods produced and exported by Huvis exceeded that which would be applicable if the method, used in the initial investigation, had been used to calculate the adjustment to the normal value for import charges.
- (13) Therefore, the adjustment to the normal value for import duties was re-calculated on the basis of the method used in the original investigation.
- (14) The comparison of the thus calculated weighted average normal value with the weighted average export price as found during the interim review by product type on an ex-factory basis showed the existence of dumping. The dumping margin established, expressed as a percentage of the CIF import price at the Community frontier, duty unpaid is 3.9%.
- (15) The individual rate calculated for Huvis had formed part of the basis for calculating the weighted average duty that should apply to non-sampled cooperating Korean exporters. Therefore the dumping margin for cooperating companies not included in the sample was recalculated. The new dumping margin for cooperating exporting producers not included in the sample established on the basis of a weighted average dumping margin is 4.4%.
- (16) One company, Woongjin Chemical Co., Ltd. (formerly Saehan Industries Inc.), contacted the Commission and argued that its duty, too, should be adapted. However, since that company has not asked for annulment of its duty by the CFI its duty has become definitive.

### **C. DISCLOSURE**

- (17) All interested parties concerned by the implementation of the judgment were informed of the proposal to revise the rates of anti-dumping duty applicable to Huvis Corporation and the non-sampled co-operating companies. They were also granted a period within which they could make representations subsequent to this disclosure in accordance with the provisions of the basic Regulation. Comments were taken into consideration where sufficiently substantiated and justified.



## D. CONCLUSION

- (18) On the basis of the above the duty rate applicable to Huvis and the co-operating exporting producers not included in the sample should be amended accordingly. The amended rates should apply retroactively from the date that Regulation (EC) No 428/2005 came into effect,

HAS ADOPTED THIS REGULATION:

### *Article 1*

The table in Article 2 of Regulation (EC) No 428/2005 concerning the definitive anti-dumping duty rates applicable on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 originating in the Republic of Korea, shall be replaced by the following:

Company	Duty (%)	TARIC additional code
Huvis Corporation 151-7, Samsung-dong, Gangnam-gu, Seoul	3,9	A151
Woongjin Chemical Co., Ltd. (formerly Saehen Industries Inc.) 254-8, Kongduk-dong, Mapo-ku, Seoul	10,6	A599
Sung Lim Co., Ltd. RM 911, Dae-Young Bldg, 44-1; Youido-Dong Youngdungpo-ku, Seoul	0	A154
Dongwoo Industry Co. Ltd. 729, Geochon-Ri, Bongwha-up, Bongwha-Kun, Kyoungsangbuk-do	4,4	A608
East Young Co. Ltd. Bongwan #202, Gumi Techno Business Center, 267 Gongdan-Dong, Gumi-si, Kyungbuk	4,4	A609
Estal Industrial Co. 845 Hokyedong, Yangsan-City, Kyungnam	4,4	A610
Geum Poong Corporation 62-2, Gachun-Ri, Samnam-Myon, Ulju-Ku, Ulsan-shi	4,4	A611
Keon Baek Co. Ltd. 1188-3, Shinsang-Ri, Jinryang-Eup, Kyungsan-si, Kyungbuk-do	4,4	A612
Samheung Co. Ltd. 557-12, Dongkyu-Ri, Pochon-Eub Pochon-Kun, Kyungki-do	4,4	A613
All other companies	10,6	A999

### *Article 2*

The amounts of duties paid or entered into the accounts pursuant to Article 2 of Regulation (EC) No 428/2005 in its initial version and which exceeds those as established on the basis of Article 2 of Regulation (EC) No 428/2005 as amended by this Regulation, shall be repaid or remitted.

Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation. In duly justified cases, the time limit of three years provided in Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code <sup>(1)</sup> shall be extended for a period of two years.

### *Article 3*

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union and shall apply retroactively from 18 March 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

*For the Council*  
*The President*  
[...]

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<sup>11</sup> OJ L 302, 19.10.1992, p.1.

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A  
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

**1. NAME OF THE PROPOSAL:**

Council Regulation amending Regulation (EC) No 428/2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan

**2. BUDGET LINES:**

Chapter and Article: 120

Amount budgeted for the year concerned: 17 655 800 000

**3. FINANCIAL IMPACT**

Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€million to one decimal place)

Budget line	Revenue <sup>12</sup>	12 month period, starting 01/01/2009	2010
Article 120	<i>Impact on own resources</i>	- 3.8	0

**4. ANTI-FRAUD MEASURES**

Not applicable

**5. OTHER REMARKS**

The Court of First Instance partially annulled Article 2 of Regulation (EC) No 428/2005 insofar as it concerned one Korean exporter ("the applicant", i.e. Huvis Corporation). As a result, the definitive anti-dumping duty for the applicant decreases from 5.7% to 3.9% and the one for the non-sampled exporting producers

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<sup>12</sup> Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs

from 6% to 4.4%. The new duty rates should be applied retroactively from the date of entry into force of the anti-dumping duty, i.e. 18 March 2005.

The amount of duties that were paid since the imposition of the anti-dumping measures until the end of January 2009 have been estimated on the basis of information extracted from imports statistics database.

It appears, therefore, that the amounts eligible for reimbursement would be approximately 5.000.000 EUR. The reimbursement should be requested from national customs authorities in accordance with the applicable Community customs legislation thus the actual amount will be dependent on the amounts claimed by importers.

Based on the above, the final impact on the revenue side of the budget is 3.750.000 EUR, i.e. the eligible amount minus the 25% collection costs.