Council Regulation (EC) No 412/2009 of 18 May 2009 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

COUNCIL REGULATION (EC) No 412/2009

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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[(1)] ('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[(2)] 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[(3)] and in December 2000 definitive anti-dumping duties were imposed by Council Regulation (EC) No 2852/2000[(4)].

(2) Pursuant to Article 11(3) of the basic Regulation, the Commission initiated[(5)]. 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[(6)], hereinafter 'Regulation 428/2005'.

(3) On 10 June 2005, Huvis Corporation ('Huvis') lodged a request[(7)] 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.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 412/2009. (See end of Document for details)*

(4) On 8 July 2008, the CFI[8] 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[9] 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[10].

(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 cooperate in the investigation that led to Regulation 428/2005, the consequences from Article 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

(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 abovementioned 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 cooperating 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