



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.07.2005  
COM(2005) 316 final

Proposal for a

**COUNCIL REGULATION**

**amending Council Regulation (EC) No 428/2005 imposing definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns 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 461/2004 of 8 March 2004, ("the basic Regulation") in amending Council Regulation 428/2005 imposing definitive anti-dumping duties on imports of polyester staple fibre (PSF) originating, inter alia, in Saudi Arabia

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with other policies and objectives of the Union**

Not applicable.

### 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic regulation.

The basic regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

By Council Regulation N° 428/2005 of 10 March 2005, the Council imposed definitive anti-dumping duties on imports of polyester staple fibre originating, inter alia, in Saudi

Arabia.

Following several meetings between Saudi Basic Industries Corporation (SABIC) in Saudi Arabia and the Commission services, an acceptable undertaking offer was received prior to the publication of the definitive findings.

Since it was administratively impossible to include the acceptance of the undertaking in the definitive Regulation, it is proposed to accept the undertaking offer and to amend Council Regulation (EC) N° 428/2005 accordingly.

Member States were consulted and the proposed course of action was unanimously supported.

It is therefore proposed that the Commission adopt the attached draft Decision accepting the undertaking and the proposal for Council Regulation amending Council Regulation (EC) N° 428/2005 and publish them as soon as possible in the Official Journal of the European Union.

- **Legal basis**

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 461/2004 of 8 March 2004.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The form of action is described in the above-mentioned basic regulation and leaves no scope for national decision.

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.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic regulation does not foresee alternative options.

**4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

### **amending Council Regulation (EC) No 428/2005 imposing definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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 Articles 8 and 9 thereof,

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

Whereas:

#### **A. PROCEDURE**

- (1) The Council, by Regulation (EC) No 428/2005<sup>2</sup> (“the definitive Regulation”), imposed definitive anti-dumping duties on imports of polyester staple fibre (“PSF”) originating in the People’s Republic of China and Saudi Arabia, amended the definitive anti-dumping duties in force on such imports originating in South Korea and terminated the anti-dumping proceeding in respect to such imports originating in Taiwan.
- (2) Saudi Basic Industries Corporation (“Sabic”), on its behalf and of all related companies, including the related producer of the product concerned Arabian Industrial Fibres Company (Ibn Rushd), offered an acceptable undertaking prior to publication of the definitive findings but at a stage when it was administratively impossible to include its acceptance in the definitive Regulation.
- (3) The Commission, by Decision XXXX, accepted the undertaking offer by Sabic. The reasons for accepting this undertaking are set out in this Decision. The Council recognises that the revisions introduced to the undertaking offer eliminate the injurious effect of dumping and limits to a sufficient degree the risk of circumvention in the form of cross-compensation with other products.
- (4) In view of the acceptance of the undertaking offer it is necessary to amend Regulation (EC) No 428/2005 accordingly.

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<sup>1</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>2</sup> OJ L 71, 17.3.2005, p.1

HAS ADOPTED THIS REGULATION:

*Article 1*

In Regulation (EC) No 428/2005, the following paragraphs shall be inserted in Article 1:

- “4. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by paragraphs 1 and 2, provided that they are manufactured, shipped and invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in the relevant Commission Decision or Regulation, as from time to time amended, and have been imported in conformity with the provisions of the same Commission Decision or Regulation.
5. The imports mentioned in paragraph 4 shall be exempt from the anti-dumping duty on condition that:
- (a) the goods declared and presented to customs correspond precisely to the product described in paragraph 1,
  - (b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation, and
  - (c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.”.

*Article 2*

The text as set out in the Annex to this Regulation shall be added to Regulation (EC) No 428/2005.

*Article 3*

This Regulation shall enter into force the day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

*For the Council  
The President*

## ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales of polyester staple fibres to the Community which are subject to an Undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company mentioned in Article 1 of the Commission Regulation/Decision [INSERT NUMBER] accepting the undertaking issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
  - Product code number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN 1, PCN 2, etc),
  - plain language description of the goods corresponding to the PCN concerned,
  - company product code (CPC) (if applicable),
  - CN code,
  - quantity (to be given in kilograms).
7. The description of the terms of the sale, including:
  - price per kilogram,
  - the applicable payment terms,
  - the applicable delivery terms,
  - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the invoice and the following signed declaration:

‘I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Regulation/Decision [INSERT NUMBER], I declare that the information provided in this invoice is complete and correct.’