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2022/0226 (NLE)

Proposal for a

COUNCIL REGULATION

amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The purpose of the attached proposal for a Regulation is the temporary suspension of the common customs tariff duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 on goods used to produce nitrogen fertilisers currently classified under the Combined Nomenclature (CN) sub-headings 2814 10 and 3102 10.

The European Union (EU) market for certain nitrogen fertiliser inputs depends considerably on imports from third countries. In 2021, the EU imported 2,9 million tonnes of ammonia and 4,7 million tonnes of urea to produce nitrogen fertilisers. The prices for those products have increased substantially in 2021 and have further risen following the Russian invasion of Ukraine.

In order to alleviate costs for the EU fertilisers producers, and thereby reduce costs for EU farmers and contribute to the appropriate supply of food produced in the EU, it is appropriate to take the temporary trade-liberalising measures of this proposal. In order to increase stability of supply, it is also appropriate to enlarge the geographical scope of non-preferential origins, currently concentrated on Russia, to encompass other countries. In effect, and in particular at a time of scarcity on the international markets of nitrogen fertilisers, the existence of tariffs on the importation into the EU of intermediate inputs such as ammonia and urea constitutes a disincentive to the supply of the EU market compared to other world markets which have no such import tariffs. Considering that traded goods in this category are primarily commodities, this tariff differential hinders efforts for the diversification of EU imports.

Furthermore, in its Communication of 23 March 2022 to the European Parliament and the Council on “Safeguarding food security and reinforcing the resilience of food systems”, the Commission notes that already before the Russian invasion of Ukraine, commodity markets were witnessing a significant price surge, which agricultural markets felt through the increases in energy and fertiliser costs, and a consequent increase in farm product prices. The invasion of Ukraine and a global commodity price hike have further driven up prices in agricultural product markets and are exposing the vulnerabilities of the Union’s food system which is partially reliant on imports of fertilisers. The Communication stresses that, in the short term, the cost and availability of mineral fertilisers must be a priority, pending the transition to the use of sustainable types of fertilisers or methods of fertilising. During that period, the fertiliser industry in the EU must be able to access the necessary imports, including inputs to produce fertilisers within the EU itself.

Of the three main fertiliser types used by farmers, nitrogen-based fertiliser is the one subject to common customs tariff duties applicable to intermediate inputs that are key to its production, as opposite to potash and phosphorus, where key inputs are subject already to a zero-duty common customs tariff rate. Nitrogen based fertilisers are also the widest consumed fertilisers type in the EU, and also the one where prices have increased the most since 2021. Therefore, the proposed measures focus on inputs for nitrogen-based fertilisers.

• Consistency with existing policy provisions in the policy area

Currently, third countries that benefit from duty-free preferential access to the Union market pursuant to Free Trade Agreements are the main suppliers of these goods to the EU market. Nevertheless, the EU imports a large volume of inputs for nitrogen fertilisers originating in countries subject to the Common Customs Tariff, with tariff rates currently ranging between 5,5 and 6,5%. To increase stability of supply, it is appropriate to temporarily enlarge the geographical scope of supplying countries beyond those who benefit from a free-trade agreement, as supply is currently concentrated in a relatively small number of preferential suppliers. However, unlike for access via preferential trade agreements, the proposed measures for tariff suspensions under this proposal are temporary.

• **Consistency with other Union policies**

The trade-liberalising measures that are contained in this proposal aim at ensuring that the temporary suspension of the Union's common customs tariff is conducted in the context of the principles and objectives of the Union's external action set out in Article 21 TEU and that different areas of external action of the Union, as well as its external action and other Union policies, be consistent with another. It is therefore appropriate to exclude products originating in Russia and Belarus from the tariff reduction, in line with the restrictive measures taken by the Union against these countries following Russia's aggression against Ukraine.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• **Legal basis**

The legal basis of this regulation proposal is Article 31 of the Treaty on the Functioning of the European Union (TFEU).

• **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle does not apply, as the proposal falls under the exclusive competence of the Union.

• **Proportionality**

The proposal complies with the proportionality principle given that it balances the commercial interest of economic operators (producers of nitrogen fertilisers and consumers). The proposal foresees suspending the Common Customs Tariff duties only for the tariff lines of fertiliser inputs for which the EU reliance on imports is the highest, and where price increases have been most extreme. In addition, the suspension will apply for a temporary period only. The suspension does not limit anybody's fundamental rights; on the contrary, it temporarily removes a duty payment obligation.

• **Choice of the instrument**

This proposal is in accordance with Article 207(2) TFEU, which envisages common commercial policy measures. By virtue of Article 31 of the TFEU, the Council fixes the Common Customs Tariff duties, acting by qualified majority on the basis of a Commission proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

• **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

In view of the significant and sudden price increase of the inputs from production of nitrogen fertilisers, aggravated by the emergency situation that Russia's – the second largest supplier of nitrogen fertilisers to the EU – invasion of Ukraine provoked in the market of fertilisers, it is important for the Regulation to enter into force as soon as possible in order to foster the diversification of supplies for the inputs necessary for fertiliser production, and a reduction of production costs, ahead of the forthcoming planting/seeding season in the autumn 2022. Therefore, no impact assessment was carried out for the measure at hand. However, it is expected that the proposed measure alters the profile of suppliers of nitrogen fertilisers inputs to the EU and helps diversify away from Russia.

- **Regulatory fitness and simplification**

The measure does not increase the regulatory burden of companies.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

This proposal has no financial impact on expenditure, but has a financial impact on revenue. Uncollected customs duties corresponding to the suspension will amount approximately to 15 Mio € per year when the measure is of application for a full year. The duration of the measure is a period of just over two years, until end of 2024.

The negative effect on the budget's traditional own resources is 11,25 Mio € (i.e. 75 % of the total). The legislative financial statement sets out the budgetary implications of the proposal in greater detail.

The loss of revenue in traditional own resources will be compensated by Member States' Gross National Income (GNI) based on resource contributions.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

On-line reporting on the evolution of EU imports of inputs for nitrogen-based fertilisers is available via dedicated websites of the European Commission (Eurostat).

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

In view of the extraordinary situation in the Union market for fertilisers, the measure aims at increasing the trade flows, and fostering diversification, concerning imports of inputs for the production of nitrogen-based fertilisers by temporarily suspending import duties applied to these products.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The European Union (EU) market for certain nitrogen fertiliser inputs depends considerably on imports from third countries. In 2021, the EU imported 2,9 million tonnes of ammonia and 4,7 million tonnes of urea to produce nitrogen fertilisers. The prices for those products have increased substantially in 2021 and have further risen during the current year.

(2) Currently, a significant part of these inputs for nitrogen fertilisers is imported into the Union from third countries that benefit from preferential access to the Union market, and thus the imports are duty free. Notwithstanding this, the EU imports a large volume of inputs for nitrogen fertilisers originating in countries subject to the Common Customs Tariff, with tariff rates currently ranging between 5,5 and 6,5%.

(3) In its Communication of 23 March 2022 to the European Parliament and the Council on “Safeguarding food security and reinforcing the resilience of food systems”, the Commission notes that already before the Russian invasion of Ukraine, commodity markets were witnessing a significant price surge, which agricultural markets felt through the increases in energy and fertiliser costs, and a consequent increase in farm prices. The Commission notes that the invasion of Ukraine and a global commodity price boom have further driven up prices in agricultural product markets and are exposing the vulnerabilities of the Union’s food system which is partially reliant on imports of fertilisers. This increases the costs for producers and affects the price of food, raising concerns as regards the purchasing power of consumers, and the income of EU farmers.

(4) The Communication stresses that, in the short term, the cost and availability of mineral fertilisers must be a priority, pending the transition to the use of sustainable types of fertilisers or methods of fertilising. During that period, the fertiliser industry in the EU must be able to access the necessary imports, including inputs to produce fertilisers within the EU itself. The Communication also highlights that fertiliser prices and supplies for farmers will be monitored to ensure that the prospects for EU harvests are not jeopardised.

(5) In light of the foregoing, it is appropriate to take action to reduce the costs faced by the EU producers of fertilisers when importing inputs necessary for the production of nitrogen fertilisers.

(6) Moreover, at a time of scarcity on the international markets of nitrogen fertilisers, tariffs on the importation into the EU of intermediate inputs such as ammonia and urea constitute a disincentive to the supply of the EU market compared to other world markets which have no import tariffs. This tariff differential also hinders efforts for the diversification of EU imports.

(7) It is therefore appropriate to temporarily suspend the Common Customs Tariff rates duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 for certain nitrogen fertilisers inputs. The temporary measure applies for the period of time for which the price disruption on energy and nitrogen fertilisers markets is expected to subsist, which is expected to last until end of 2024.

(8) At the same time, in accordance with Article 21(3) of the Treaty on European Union, the Union is to ensure consistency between the different areas of its external action as well as between its external action and other Union policies.

(9) The situation in the relations between the Union and the Russian Federation has developed very negatively over the past years, with a particular deterioration during the recent months in terms of the Russian Federation’s disregard for international law and in particular its unprovoked and unjustified invasion of Ukraine.

(10) Since July 2014, the Union has progressively imposed restrictive measures against the Russian Federation. In its conclusions of 24 February 2022, the European Council stated that Russia’s unprovoked and unjustified military aggression against Ukraine is grossly violating international law and the principles of the UN Charter and is undermining European and global security and stability.

(11) Most recently, on 3 June 2022, the Council adopted a sixth package of sanctions[1] against the Russian Federation over its continuous war of aggression against Ukraine and the reported atrocities committed by Russian armed forces in Ukraine.

(12) Furthermore, while the Russian Federation is a member of the World Trade Organization, the Union is relieved, by virtue of the exceptions that apply under the Agreement Establishing the World Trade Organization, and in particular Article XXI of the GATT 1994, from the obligation to accord to products imported from the Russian Federation the advantages granted to like products imported from other countries (most-favoured-nation treatment).

(13) It would therefore not be appropriate to allow imports from the Russian Federation to enjoy duty-free and most-favoured-nation treatment with regard to the products covered by this Regulation.

(14) The situation between the Union and Belarus has also deteriorated over the past years, because of the regime’s disregard for international law, fundamental freedoms and human rights. In addition, Belarus has supported the Russian military aggression against Ukraine from its very beginning, inter alia by allowing Russia to fire ballistic missiles from the Belarusian territory, enabling transportation of Russian military personnel and heavy weapons, tanks, and military transporters, allowing Russian military aircraft to fly over Belarusian airspace into Ukraine, providing refuelling points, and storing Russian weapons and military equipment in Belarus.

(15) Since October 2020, the Union has progressively imposed restrictive measures against Belarus. On 2 December 2021, the Council adopted a fifth package of sanctions over continued human rights abuses and the instrumentalisation of migrants. Further

[1] www.sanctionsmap.eu

packages of sanctions were adopted on 24 February, 2 March, 9 March and 3 June 2022, in view of Belarus' involvement in the unjustified and unprovoked Russian military aggression against Ukraine. Furthermore, Belarus is not a member of the World Trade Organization. Therefore, the Union is not obliged, by virtue of the Agreement Establishing the World Trade Organization, to accord to products from Belarus most-favoured-nation treatment. In addition, trade agreements allow actions justified on the basis of applicable exception clauses, in particular security exceptions, as already pointed out.

(16) In the light of the context above, the exclusion of Russia and Belarus from the scope of the autonomous tariff suspensions laid out in this Regulation is appropriate and permitted, in application of the General Rules concerning duties of Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, and in particular Section 1, part B, paragraph 1 thereof.

(17) Accordingly, imports of inputs for nitrogen fertilisers originating in Russia and Belarus should not be subject to the duty suspension. Instead, imports of the products concerned by this Regulation from Russia and Belarus should continue to be subject to the import duty to which they were subject beforehand.

HAS ADOPTED THIS REGULATION:

Article 1

1. In Annex 1 to Regulation (EEC) No 2658/87, the text for CN code 2814 10 00 in column 3 is replaced by the following:

'5,5 (*)

(*) Customs duty autonomously suspended, until 31 December 2024, except for Russia and Belarus where rate of 5,5% applies, pursuant to Council Regulation 2022/XXXX [number of this Regulation].'

2. In Annex 1 to Regulation (EEC) No 2658/87, the text for CN codes 3102 10 10 and 3102 10 90 in column 3 is replaced by the following:

'6,5 (*)

(*) Customs duty autonomously suspended, until 31 December 2024, except for Russia and Belarus where rate of 6,5% applies, pursuant to Council Regulation 2022/XXXX [number of this Regulation].'

Article 2

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

It shall apply until 31 December 2024.

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

Done at Brussels,

For the Council
The President
[…]

LEGISLATIVE FINANCIAL STATEMENT

NAME OF THE PROPOSAL:

Proposal for a Council Regulation amending Annex I to Regulation (EEC) No 2658/87 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff.

BUDGET LINES:

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year 2022: 17 912 606 159

FINANCIAL IMPACT:

☐ Proposal has no financial implications

X Proposal has no financial impact on expenditure but has a financial impact on the traditional own resources revenue, for the following reasons:

In 2021, the total value of imports of CN codes 2814 10 00 amounted to 1,3 billion €. The conventional rate of duty for this CN code is 5,5%. Most of these imports (68%) were duty free as a result of the implementation of Free Trade Agreements. Additional 29% were imports from Russia, that will not be subject to tariff reduction. The estimated uncollected duties are therefore 2,1 million € (1,3 bio € x 3% import share x 5,5%) per year.

In 2021, the total value of imports of CN codes 3102 10 10 and 3102 10 90 amounted to 1,8 billion €. The conventional rate of duty for this CN code is 6,5%. Most of these imports (65%) were duty free as a result of the implementation of Free Trade Agreements. Additional 24% were imports from Russia and Belarus, that will not be subject to tariff reduction. The estimated uncollected duties are therefore 12,9 million € (1,8 bio € x 11% import share x 6,5%) per year.

On the basis of the above, the impact on the loss of revenue for the EU budget resulting from this Regulation is estimated at 11,25 Mio € per year [(12,9 mio € + 2,1 mio € = 15 mio € gross amount, including collection costs) x 0,75].

For 2022 the impact on the loss of traditional own resources revenue for the EU budget is estimated as one third of the above amount. i.e. 3,8 million €.

The loss of revenue in traditional own resources will be compensated by Member States Gross National Income (GNI) based on resource contributions.